


REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Registrar's Ref No: SS94/2011

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DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: Yes
	
SIGNATURE	<u>21 January 2013</u> DATE

In the matter between:

THE STATE

And

HENRY EMOMOTIMI OKAH

The Accused

JUDGMENT

C. J. CLAASSEN J:

INTRODUCTION

[1] Nigeria is an oil-rich country. The evidence disclosed that the extraction of oil represents 95% of its Gross Domestic Product. The oil is extracted from the southern states of Nigeria known as the Niger Delta area. However, little of this income was re-invested in the upgrading of the

infra structures and other social requirements of the Niger Delta. Hence, a general uprising by the populace of this region occurred against the government of Nigeria. Several militant groups began attacking the large oil companies' pipelines and hijacked their executives demanding ransom in exchange for their release. The ransom was utilized to purchase more armaments to further the armed struggle. These various militant groups joined forces under an umbrella organisation known as "The Movement for the Emancipation of the Niger Delta" ("MEND") The origins and context of MEND and the armed struggle in the Niger Delta is succinctly described in the admitted documents¹ in the following terms:

"From the point of view of MEND and its supporters, the people of the Niger Delta have suffered an unprecedented degradation of their environment due to unchecked pollution produced by the oil industry. As a result of this policy of dispossessing people from their lands in favour of foreign oil interest, within a single generation, many now have no ability to fish or farm. People living in the Niger Delta have found themselves in a situation where their government and international oil companies own all the oil under their feet, the revenues of which are rarely seen by the people who are suffering from the consequences of it.

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Over the last twenty years various political movements and activists have emerged in opposition to the perceived injustices perpetrated upon the people of the Niger Delta by the government and the oil companies. These were usually non-violent; Ken Saro-Wiwa was the most famous activist. Saro-Wiwa was an Ogoni activist who was executed by the Nigerian government in 1995 on what many believe to be deliberately false charges with the aim of silencing his vocal opposition to the oil interests in Nigeria. In Saro-Wiwa's footsteps came others who, instead of believing in non-violent activism, advocated violence as resistance to the ostensible enslavement of their people. Militants in the delta enjoy widespread support among the region's approximately 20 million people, most of whom live in poverty despite the enormous wealth generated in the oil-rich region."

- [2] The accused, a 46-year old Nigerian male citizen, espoused the sentiments stated above. He is a permanent resident with his wife and children in the Republic of South Africa. At the time of his arrest on 30 September 2010, he was residing with his family at 19 Dibberic Drive, Bassonia in the district of Johannesburg. He was arrested for his

¹ See Exhibit "GG1" pages 266 etseq.

alleged involvement in the planning and organising of two car bomb attacks in Nigeria wherein several people were killed and many injured.

- [3] He was charged with thirteen counts in contravention of the Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004. Counts 1 to 12 arose from two incidents which occurred respectively on 15 March 2010 in Warri and 1 October 2010 Abuja, Nigeria. In each instance two car bombs exploded killing and injuring several people and causing damage to property. In the process certain internationally protected persons were also threatened by the explosions. It is further alleged that the accused provided the finance and the necessary equipment in order for these bomb explosions to take place. Each of the main counts 1 to 12 carry alternative charges of conspiracy to commit such crimes alternatively to induce and/or incite others to commit such crimes. Counts 1, 3, 5, 7, 9 and 11 relate to the bombings which occurred on 15 March 2010 in Warri. Counts 2, 4, 6, 8, 10 and 12 relate to the bombings which occurred on 1 October 2010 in Abuja, Nigeria.
- [4] Count 13 alleges that the accused unlawfully and intentionally threatened certain South African nationals employed in Nigeria with terrorist activities and to disrupt their businesses alternatively to take their employees hostage.

JURISDICTION OF THIS COURT

- [5] One may well ask: Why is the accused being tried in a South African court? South Africa is a member of the United Nations and therefore committed to executing its obligations in terms of international instruments dealing with terrorism and related activities. South Africa is bound to do so by virtue of the fact that it became a signatory and party

to the following United Nations Universal Conventions relevant to this matter namely:

1. The Convention on the Prevention and Punishment of Crimes against Internationally Protected persons including Diplomats, adopted by the General Assembly of the United Nations on 14 December 1973;
2. The International Convention Against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979;
3. The International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997;
4. The Convention on the Prevention and Combating of Terrorism, adopted by the Organisation of African Unity, at Algiers on 14 July 1999; and
5. The International Convention on the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

[6] Inspired by the aforesaid international instruments as well as the destruction of the Twin Towers in New York on 11 September 2001, the Security Council of the United Nations passed Resolution 1373/2001 on 28 September 2001. Resolution 1373/2001 reaffirmed that any act of international terrorism constituted a threat to international peace and security and called upon States to work together to prevent and suppress terrorist acts, through increased cooperation and full implementation of the relevant international conventions relating to

terrorism. The relevant provisions of Resolution 1373/2001 are as follows:

“Clause 1

‘*Decides* that all States shall:

- (a) Prevent and suppress the financing of terrorist acts;
- (b) Criminalise the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;...

Clause 2

‘*Decides...*that all States shall:

....

- (c) Deny safe haven to those who finance, plan, facilitate or commit terrorist acts, or provide safe havens;
- (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;
- (e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such acts are established as serious criminal offences in domestic laws and regulations and that punishment duly reflects the seriousness of such terrorist acts;
- (f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating the financing or support of terrorist acts, including in obtaining evidence in their possession necessary for the proceedings...’

Clause 3

‘*Calls* upon States to:

- (a) ...
- (b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;
- (c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and to take action against perpetrators of such acts;...

Clause 4 the Security Council:

‘*Notes* with concern the close connection between international terrorism and transnational organised crime...and in this regard *emphasises* the need to

enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security.'

Clause 5 the Security Council:

'Declares that acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist attacks are also contrary to the purposes and principles of the United Nations.'

[7] The incorporation of these international instruments and Resolution 1373 into our municipal law occurred by virtue of the Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004 ("the Act").

a. The Act came into force on 20 May 2005 and according to its preamble was enacted:

"to provide for measures to prevent and combat terrorist and related activities; to provide for an offence of terrorism and other offences associated or connected with terrorist activities; to provide for Convention offences; to give effect to international instruments dealing with terrorist and related activities; to provide for a mechanism to comply with United Nations Security Council Resolution, which are binding on member States, in respect of terrorist and related activities; to provide for measures to prevent and combat the financing of terrorist and related activities; to provide for investigative measures in respect of terrorist and related activities; and to provide for matters connected therewith."

b. The remaining part of the preamble lists all the various international instruments to which South Africa has become bound including the Security Council Resolution 1373/2001 referred to above. This list is repeated in the definition of "Instruments dealing with Terrorist and Related Activities" in the definition section 1 of the Act.

c. The concept of "Terrorist Activity" is given a very wide definition in section 1 of the Act and means:

"(a) any act committed in or outside the Republic, which –

- (i) involves the systematic, repeated or arbitrary use of violence by any means or method;
 - (ii) involves the systematic, repeated or arbitrary release into the environment or any part of it or distributing or exposing the public or any part of it to –
 - (aa) any dangerous, hazardous, radioactive or harmful substance or organism;
 - (bb) any toxic chemical; or
 - (cc) any microbial or other biological agent or toxin;
 - (iii) endangers the life, or violates the physical integrity or physical freedom of, or causes serious bodily injury to or the death of, any person, or any number of persons;
 - (iv) causes serious risk to the health or safety of the public or any segment of the public;
 - (v) causes the destruction of or substantial damage to any property, natural resource, or the environmental or cultural heritage, whether public or private;
 - (vi) is designed or calculated to cause serious interference with or serious disruption of any essential service, facility or system, or the delivery of any such service, facility or system, whether public or private, including, but not limited to –
 - (aa) a system used for, or by, an electronic system, including an information system;
 - (bb) a telecommunication system;
 - (cc) a banking or financial service or financial system;
 - (dd) a system used for the delivery of essential government services;
 - (ee) a system used for, or by, an essential public utility or transport provider;
 - (ff) an essential infrastructure facility; or
 - (gg) any essential emergency services, such as police, medical or civil defence services;
 - (vii) causes any major economic loss or extensive destabilisation of an economic system or substantial devastation of the national economy of a country; or
 - (viii) creates a serious public emergency situation or a general insurrection in the Republic, whether the harm contemplated in paragraphs (a)(i) to (vii) is or may be suffered in or outside the Republic, and whether the activity referred to in subparagraphs (ii) to (viii) was committed by way of any means or method; and
- (b) which is intended, or by its nature and context, can reasonably be regarded as being intended, in whole or in part, directly or indirectly, to –
- (i) threaten the unity and territorial integrity of the Republic;
 - (ii) intimidate, or to induce or cause feelings of insecurity within, the public, or a segment of the public, with regard to its security, including its economic security, or to induce, cause or spread feelings of terror, fear or panic in a civilian population; or
 - (iii) unduly compel, intimidate, force, coerce, induce or cause a person, a government, the general public or a

segment of the public, or a domestic or an international organisation or body or intergovernmental organisation or body, to do or to abstain or refrain from doing any act, or to adopt or abandon a particular standpoint, or to act in accordance with certain principles, whether the public or the person, government, body, or organisation or institution referred to in subparagraphs (ii) or (iii), as the case may be, is inside or outside the Republic; and

- (c) which is committed, directly or indirectly, in whole or in part, for the purpose of the advancement of an individual or collective political, religious, ideological or philosophical motive, objective, cause or undertaking;

- d. The concept of “Terrorist and Related Activities” are also defined as meaning:

“any act or activity related to or associated or connected with the commission of the offence of terrorism, or an offence associated or connected with a terrorist activity, or a Convention offence, or an offence referred to in sections 11 to 14.”

- e. Section 1(3) and (4) exclude from the definition of terrorist activities certain actions which could constitute a defence to any charge on terrorism under the Act. Section 1(4) states:

“(4) Notwithstanding any provision of this Act or any other law, any act committed during a struggle waged by peoples, including any action during an armed struggle, in the exercise or furtherance of their legitimate right to national liberation, self-determination and independence against colonialism, or occupation or aggression or domination by alien or foreign forces, in accordance with the principles of international law, especially international humanitarian law, including the purposes and principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the said Charter, shall not, for any reason, including for purposes of prosecution or extradition, be considered as a terrorist activity, as defined in subsection (1)”.

- f. Section 1(5) excludes as a defence to a charge of terrorism under the Act the following:

“Notwithstanding any provision in any other law, and subject to subsection (4), a political, philosophical, ideological, racial, ethnic, religious or any similar motive, shall not be considered for any reason, including for purposes of prosecution or extradition, to be a justifiable defense in respect of an offence of which the definition of terrorist activity forms an integral part.”

- g. Section 2 of the Act establishes the offence of terrorism in the following terms:

“Any person who engages in a terrorist activity is guilty of the offence of terrorism.”

- h. Section 3 of the Act creates as offences certain actions which are regarded as associated or connected with terrorist activities. In particular, it is stated that the provision of a skill or expertise or training or instruction to engage in any terrorist activity will be regarded as an offence associated with a terrorist activity.

- i. Section 4 creates the use of property associated with any terrorist activity as offences.

- j. Section 5 creates offences relating to explosive or other lethal devices and reads as follows:

“Any person who intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a state or government facility, a public transport facility, a public transportation system, or an infrastructure facility, with the purpose, amongst others, of causing –

(a) death or serious bodily injury; or

(b) extensive damage to, or destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss,

is guilty of an offence relating to explosive or other lethal devices.”

- k. Section 8 provides for the creation of offences relating to causing harm to internationally protected persons. Who is regarded as an internationally protected person is defined in section 1 as including, inter alia, any Head of State, a head of government or a minister of foreign affairs or a representative or official of a State or other agent of any international organisation or intergovernmental organisation.

- l. Section 14 deals with threats, attempts, conspiracy and inducement of other persons to commit offences and reads as follows:

“Any person who –
 (a) threatens;
 (b) attempts;
 (c) conspires with any other person; or
 (d) aids, abets, induces, incites, instigates, instructs or commands, counsels or procures another person,
 to commit an offence in terms of this Chapter, is guilty of an offence.”

- m. Section 15 grants express jurisdiction to courts in the Republic to try and hear “specified offences” as defined in section 1, which reads as follows:

“‘**specified offence**’, with reference to section 4, 14 (in so far as it relates to section 4), and 23, means –
 (a) the offence of terrorism referred to in section 2, an offence associated or connected with terrorist activities referred to in section 3, a Convention offence, or an offence referred to in section 13 or 14 (in so far as it relates to the aforementioned sections); or
 (b) any activity outside the Republic which constitutes an offence under the law of another state and which would have constituted an offence referred to in paragraph (a), had that activity taken place in the Republic;”

- n. In terms of section 15(1)(a), Courts in the Republic of South Africa are granted extraterritorial jurisdiction in respect of terrorist offences if:

“(1) (a) the accused was arrested in the territory of the Republic,…”

It is common cause that the accused in the present matter was arrested at his residence in Bassonia in Johannesburg.

- o. Jurisdiction is further granted in terms of section 15(2) which reads as follows:

“Any act alleged to constitute an offence under this Act and which is committed outside the Republic by a person other than a person

contemplated in subsection (1), shall, regardless of whether or not the act constitutes an offence or not at the place of its commission, be deemed to have been committed also in the Republic of that –

- (a) ...
- (b) person is found to be in the Republic; and
- (c) person is for one or other reason not extradited by the Republic or if there is no application to extradite that person.”

It is common cause that the accused in the present matter was not extradited to Nigeria.

- p. Jurisdiction is further qualified in section 15(3) which states the following:

“Any offence committed in a country outside the Republic as contemplated in sub-section (1) or (2), is, for the purpose of determining the jurisdiction of a court to try the offence, deemed to have been committed –

- (a) at the place where the accused is ordinarily resident; or
- (b) at the accused person’s principal place of business.”

- q. Section 16(1) prohibits any prosecution under Chapter 2 of the Act without written authority of the National Director of Public Prosecutions as appointed in terms of section 179(1) of the Constitution. In terms of Exhibit “A” such authorisation was granted. The purpose of the section is to ensure that a charge under the terrorism Act is taken by the highest official after a proper consideration of all relevant facts.²

- [8] By virtue of the above, I am of the view that the State has succeeded in establishing the jurisdiction of this Court to hear this matter. However, counsel for the accused sought to rely on the provisions of section 1(4) to oust the jurisdiction of this Court to try the accused. Such reliance is misplaced. Section 1(4) excludes from the ambit of the Act any armed struggle in the exercise of a people’s legitimate right to national liberation, self-determination and independence against colonialism, or

² See **Bogaards v The State** (864/10) [2011] ZASCA 196 (21 November 2011) at p 27 par [52] to p 28 par [54]

occupation or aggression or domination by alien or foreign forces in accordance with the principles of international law. As stated earlier, it is common cause that a militant campaign was waged against the Nigerian Government by its own civilians living in the southern states of Nigeria in protest to the alleged wrongful application of funds derived from oil extraction occurring within the jurisdiction of those southern states. Subsequent to the grant of amnesty by the Government of Nigeria to its civilians who had been engaged in such armed struggle, and subsequent to the accused accepting the terms of such amnesty for himself, no further armed struggle was legitimate. In any event, at no stage prior to amnesty was the struggle directed at the occupation of foreign forces or for the purpose of national liberation or self-determination and independence against colonialism. No basis in fact or in law was placed before this Court by the accused to bring himself within the four corners of section 1(4). Counsel's argument in this regard is therefore rejected.

PLEA PROCEDURE

- [9] The accused pleaded not guilty to all counts as well as the alternative counts thereto. No plea explanation was offered and the accused elected to remain silent. At all times he was represented by Mr M. I. Maunatlala.
- [10] At the time of the pleading stage, the minutes of two pre-trial conferences were handed in as Exhibits "I" and "J" respectively. The correctness thereof was confirmed by the signatures of both State counsel and the accused's legal representatives. It appeared from these documents that the accused was not willing to make any admissions other than those listed in paragraphs 3.3.1 – 3.6.4 in Exhibit "J". Subsequently and during the trial the accused made a substantial

amount of admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977 as listed in Exhibits “GG” and “GG1”.

- [11] The State was represented by Mr S. Abrahams. The State tendered *viva voce* evidence of thirty two witnesses one of which was recalled. It would not be necessary to refer to the evidence of all the witnesses for purposes of this judgment for the reasons set out in the next paragraph.
- [12] On behalf of the defence only two witnesses were called namely Colonel N. G. Zeeman, the investigating officer in this matter and Mr Ayodeji Majekodumni, an information technology expert. The defence closed its case without calling the accused to testify. Hence, much of the defence case which was put to the State witnesses during cross-examination never materialised. The defence was therefore obliged to argue its case largely on the State evidence.

THE COMMON CAUSE FACTS

- [13] As indicated earlier in the judgment the accused made a number of admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977 which are contained in Exhibit “GG” pages 1 to 276 and in Exhibit “GG1” pages 1 to 398. Not all of the admissions regarding the documentation in these two exhibits are relevant for the purposes of this judgment. However, I will refer to those that are material for this judgment.
- [14] It is admitted that the list of eleven people named in annexure “A” to the indictment sustained serious bodily injuries as a result of the explosion of two vehicle-borne improvised explosive devices (VBIED) at Government House Annex, Warri, Nigeria on 15 March 2010.
- [15] The correctness is admitted of the statements made by persons injured in the Warri bombing being Blessing Eweta, Joseph Temisanren, John

Emakara, Tosan Arurah, James Okakor, Faith Igiogio and Rebecca Okakor together with photographs of the injuries suffered by Blessing Eweta, Tosan Arurah and Faith Igiogio.

- [16] The correctness are admitted of the photographic album reflecting the persons injured and the property damaged and the photographic album with a plan and key depicting the scene after the twin bomb blast at Government House Annex, Warri.³
- [17] The correctness is admitted of the content of a post blast analysis report of the twin car bombing at Government House Annex, Warri on 15 March 2010 compiled by Edet Effanga.⁴ The report confirms that on Monday, 15 March 2010 the Vanguard Newspaper organised a Post Amnesty Dialogue for stakeholders in the Niger Delta states to promote sustainable peace and development in the region. The occasion was attended by sundry dignitaries including his Excellency the Governor of the Delta State, Dr Emmanuel Ewenta Uduaghan. At the commencement of the proceedings two bombs exploded along the NPA Expressway within an interval of ten minutes from one another. The scene was successfully cordoned off by 11:35. Photographs were taken of the scene, the bodies of the victims and the damaged vehicles. One of the car bombs was a Mercedes Benz motor vehicle. The analysis of a fragmented detonator found on the scene indicated that TNT (dynamite) was used as explosives. Analysis also showed that the explosions were caused by improvised explosive devices placed in two motor vehicles.
- [18] It is further admitted that the names mentioned in annexure “B” to the indictment to wit Romanos Alumona, John Chidera Arua, Verty Bala, Joshua Umaru, Onyena Ambrose Ozoko, Onah Alfred, Haruna Tijani, Aladgoke and Omotosho Suleiman died on 1 October 2010 as a result

³ See Exhibit “GG” pp 24 – 41

⁴ See Exhibit “GG” pp 87 – 90

of injuries sustained at Eagle Square, Abuja, Nigeria due to the detonation of two vehicle-borne improvised explosive devices ("VBIED"). In addition, the bodies aforementioned did not sustain any further injuries. The bodies were correctly identified. The correctness of the death reports, post-mortem examination reports and reports by medical practitioners was admitted.⁵

[19] The fifty three persons named in annexure "C" to the indictment all sustained serious bodily injuries as a result of the explosion of two VBIED's at Eagle Square, Abuja on 1 October 2010. The correctness of the reports from the National Hospital and the State House Medical Centre confirming the names and the injuries of the victims are also admitted.⁶

[20] The correctness is admitted of the affidavit of a Special Agent Bomb Technician, Jeffrey Haverty, and his post blast analysis report in relation to the bombings at Eagle Square on 1 October 2010.⁷ In paragraph 22 of his affidavit, Haverty concludes that one VBIED was a 16 valve Honda vehicle and the second VBIED was a Mazda 626. Two mobile telephone handsets to which wires were attached were collected in close proximity to the location of the second VBIED. As a result of Haverty's investigations on site, he compiled a post blast explosive investigation report dated 6 October 2010 entitled "Double VBIED 50th Independence Anniversary 10/1/2010 Abuja, Nigeria".⁸ The report confirms that on 1 October 2010 at approximately 11:00 a.m. two car bombs exploded within ten to fifteen minutes from one another which were situated approximately a hundred metres apart. The two VBIED's were parked on the side of the Shehu Shagari Way opposite the Arcade Suite and Club and adjacent to the Millennium Park. The correctness is

⁵ See Exhibit "GG" pp 52 – 86

⁶ See Exhibit "GG" pp 42 – 51

⁷ See Exhibit "GG" pp 91 – 176

⁸ See Exhibit "GG" pp 122 – 176

also admitted of mobile phone videos captured by a witness taken after the first explosion and depicting the second explosion.⁹ The location of the explosives in the Honda was assessed to be in its boot.¹⁰ The location of the explosives in the second VBIED, i.e. the Mazda 626 was also assessed to be in its boot.¹¹ The close proximity to the Mazda 626 of the two mobile phones found is indicated on photographs 169 and 171 of Exhibit “GG”. The report concludes with the following:

“Method of initiation for either VBIED is unknown at this time. While the recovery of cell phones with wires in proximity to the second VBIED may indicate the presence of a remote controlled improvised explosive device (RCIED) receiver, further laboratory analysis is required. In addition, video footage at the time of the incident indicates a large crowd around the second VBIED at the time of the detonation. Open sources reporting, indicated that group responsible for the attacks warned the Nigerian Government prior to the attacks and claimed to not want to kill or injure anyone. If this is true, the fact that the second VBIED detonated with a large crowd around it either indicates the statement was false and the bomber knowingly detonated the device with a crowd present or the device was timed and the bomber had no control as to the circumstances surrounding the device at the time of detonation.”

- [21] The correctness was admitted of statements made by police investigating the scene being Makaiga Ruth, Halimat Sannie and Christian Akioja Olakpe together with the latter’s post blast analysis report.¹² The report by Olakpe is in similar vein to that of Haverty.
- [22] The correctness is admitted of the witness statement by Olufemi Hunjenukon, a trained officer in explosives detection, disposal and post blast investigation. He was part of the team deployed on 1 October 2010 at Eagle Square as a result of intelligence about the likely explosive attack on public facilities during the Independence Celebrations. Vehicles were disallowed from parking close to the venue and at about 11:00 a.m. a loud explosion was heard accompanied by

⁹ See Exhibit “GG” pp 133 – 142

¹⁰ See Exhibit “GG” photographs 150 and 151 and 158

¹¹ See Exhibit “GG” pp 162, 166 and 167

¹² See Exhibit “GG” pp 177 – 187

black fumes attracting many people to such location. Approximately ten minutes later another loud explosion was heard which led to serious pandemonium around the Millennium Park Junction on Shehu Shagari Way. It was evident that the perpetrators used two VBIED's. The first explosion was used as a hoax to attract more people towards the second VBIED which was responsible for all the recorded casualties. Photographs were taken which indicate the horrendous carnage and damage caused by the two explosions.¹³

- [23] The correctness is admitted of the contents of the statements by Marc Segret, the General Manager of Novotel Hotel, Port Harcourt dated 27 September 2011 and 28 June 2012 together with its attachments.¹⁴ These documents indicated that the accused resided at the aforesaid hotel between 10 – 14 March 2010, 3 – 5 June 2010 and again from 28 – 30 July 2010. In each instance he paid the hotel in cash in advance.
- [24] The correctness is admitted of the statement by Mrs Bridgette Austin, the operations manager, Green Fields Hotel, Port Harcourt dated 28 June 2012.¹⁵ The documents indicate that Mr Charles Okah resided at the aforesaid hotel on 14 September 2010 (in two rooms, C2 and A7) and 26 September 2010 (in one room, A2).
- [25] It is admitted that Mr Charles Okah opened a bank account with Zenith International Bank Limited in the name Tombra Life Support Company Limited to which he was the sole signatory and the correctness of bank statements of the account attached thereto.¹⁶

¹³ See Exhibit "GG" pp 191 – 273

¹⁴ See Exhibit "GG1" pp 1 – 18

¹⁵ See Exhibit "GG1" pp 19 – 24

¹⁶ See Exhibit "GG1" pp 25 – 64

[26] It is admitted that Intercontinental Bank Limited opened a bank account in the name of Sangfroid Limited to which the accused was a signatory together with the bank statements in respect of the account.¹⁷

[27] The correctness is admitted of the contents of Exhibits “JJJ1”, “JJJ2” and “JJJ3” being statements and photograph albums prepared by Lieutenant Colonel Retief van der Merwe and Warrant Officer Lebuso and Constable Nkuna in respect of the accused’s home and items there seized.

[28] The correctness of copies of 3 journals kept by the accused in his own handwriting was admitted.¹⁸ In these journals the accused made notes in from January to September 2010 of names, military cloathing, equipment and hardware. For example, he writes:

“Battle jackets... boots... boats, rounds... walkies...engines... balaklavas... water bottles... tee shirts, caps, belts, camo(flage) shorts... TNT... backpacks... binoculars nightvision... badges... bulletproof vests... tents... VHF radios ... generators... rechargeable lamps... fuel... ordering through Ange Dewrance the construction of a gunboat with protector plates for the gunmen... rifle slings... the contact numbers of Military Surplus Stores CC... compasses... BMG assault weapons... RPG ...SAM ...grenade launchers... mortars... landmines... anti-tank missiles... shotguns... handguns... notes on military tactics inter alia the use of explosives, weaponry and sabotage... and notes on counter insurgency.. names of his co-militants like Tompolo, Stoneface, Boyloaf, Moses, Chima, Raphael, VIP, Stanley...”

[29] Also admitted is the fact that an email address and account was registered with Yahoo with a login name “nigdelunrest” in the name of “Mr. Jomo Gbomo”.¹⁹ The accused also had an account with Yahoo with the login name of henryokah and email addresses henryokah@yahoo.com and sangfroid60@yahoo.ca (in California).²⁰

¹⁷ See Exhibit “GG1” pp 65 – 91

¹⁸ See Exhibit “GG1” pp 92 – 175

¹⁹ See Exhibit “GG1” p 181.

²⁰ See Exhibit “GG1” p 186.

[30] The correctness of the passports issued in the name of Henry Emomotimi Okah with number A01871823 and A2947735A as well as the conditions attached to an ECOWAS Travel Certificate and the accused's temporary residence permit in South Africa, is admitted.²¹ According to his travel documents he travelled to Cotonou, Benin on 18 February but did not lawfully cross over into Nigeria during March 2010 at a recognised port of entry.²²

[31] The correctness is admitted of a typed document which also contains handwritten notes by the wife of the accused entitled "Movement for the Emancipation for the Niger Delta". This document was also extracted from the hard drive of the laptop in the accused's possession.²³

[32] It is admitted that the document headed "Times of Nigeria" was also found on the external hard drive of the accused's computer. It purports to be an article dated 15 October 2007 containing a statement from MEND after the accused was arrested in Angola in a question and answer format. It states:

- "Q: Since the arrest of Henry Okah in Angola, the press is awash with rumours that Jomo Gbomo and Okah are the same and one person. Please, clarify.
- Ans: The organisational structure of MEND is a closely guarded secret. If Jomo and Henry are the same persons, then I will not be answering your questions. The Angolan jails do not have the luxury of wireless internet services. When Henry is released, he will be the best position to admit if he is the elusive Jomo.
- Q: Is Okah the leader of MEND or is it Gbomo or Dokubo-Asari?
- Ans: The leader of MEND is called Jomo Gbomo.
- Q: Who is the official spokesman of MEND?
- Ans: The official spokesman is Jomo Gbomo. Any other release from any other e-mail account claiming to speak for MEND is fake."²⁴

²¹ See Exhibit "GG1" pp 221 – 237

²² See [29] below.

²³ See Exhibit "GG1" pp 266 – 275

²⁴ See Exhibit "GG1" pp 281 – 285

- [33] It is admitted that a document headed “The Nigerian Village Square” may be used in evidence. It purports to be an article written by Akinseye Agunloko on 26 September 2007 and states inter alia:

“Considering that we do not know Henry Okah (Jomo Gbomo) except from his e-mails to media houses, we would have to unravel the mystery man from titbits from news reports and descriptions from MEND itself. It is instructive to know that MEND described him as ‘a silent partner’.”²⁵

- [34] It was admitted that an article written by Emma Amaize 31 May 2008 concerning Boyloaf and the accused may be used in evidence. It states inter alia the following:

“He is not just an activist with solid credentials of being affiliated to the MEND as the JTF offhandedly assumed, Boyloaf said he, it was, who designed the struggle that is, today, known as MEND and that he is the second-in-command to the seized Henry Okah, a man he repeatedly described as his boss and bona fide leader of the MEND.

....

You just called Henry Okah your boss. Within MEND, there is the confusion about the real MEND and the fake MEND. Can you shed light on this matter by telling us how MEND came about, the forces behind it and the position of Okah in the scheme of things in the group?

The truth of the matter is simple. I told you earlier that we, the IJAW people, are poor and our betrayal is as a result of the poverty and because this poverty has been with us for a long time, when little cash is thrown into the system, they can always betray their brother. When you talk about Henry Okah, he is the overall boss, the pioneer of MEND, that is the struggle for the emancipation of our people, the Niger-Delta people.”²⁶

- [35] It was admitted that an article headed “Conscience is an open wound: Only truth can heal it” purported to be an open letter from Dokubo Asari may be used in evidence. In this letter Asari refers to the accused “as an Ijaw man who deals in arms”. The letter refers to several occasions where the accused supplied Asari with arms to the tune of N6.8 million, N2.5 million and N13.24 million. The letter further states:

“Henry Okah, who was in South Africa for the integrity of our information flow, was appointed e-mailer in his absence.”²⁷

²⁵ See Exhibit “GG1” p 304

²⁶ See Exhibit “GG1” pp308 and 311.

²⁷ See Exhibit “GG1” pp 314 – 321

- [36] It was admitted that an article headed “MEND gives FG conditions for cease fire” dated 1 December 2007 written by Bisi Olaniyi may be used in evidence. This article quotes Boyloaf as having said:

“We can give a chance to the new Government (of President Umaru Yar’ Adua). Our Master, Jomo Gbomo, said we should give peace a chance, but we want development in the Niger Delta.”²⁸

- [37] It was admitted that reference may be had to an article in the newspaper K.P. News dated 16 September 2009 where an article headed “MEND gives 30 days’ grace to Yar’ Adua” was published. The article stated inter alia:

“The ceasefire came shortly after the release of its leader Henry Okah, who had been jailed for close to two years on charges of treason and gun-running.

....

The Oil and Gas industry who will bear the brunt of renewed hostilities should not be deceived by the amnesty charade or the recent military hardware purchases as this is only the leading to another cycle of violence.

On June 25, Yar’ Adua offered the amnesty to all militants who lay down their arms in the Delta region. The arms were to be handed over in centres where the fighters would be registered under a reintegration programme running from 6 August to 4 October.

....

MEND has not clearly stated its position as a group, although one of its commanders has already surrendered some arms.

....

On Monday, it said it was waiting for directives from Okah on how to proceed after the expiration of the ceasefire.

....

The violence in the Niger Delta has brought about a plunge in Nigeria’s crude production to about 1.7 million barrels a day compared to 2.6 million in 2006.”²⁹

- [38] It was admitted that reference may be had to a letter written by the accused dated 19 May 2010 to the Ambassador of Venezuela wherein he stated that he represented the interest of millions of inhabitants in the Niger Delta and sought an audience with the Venezuelan Ambassador to explain himself properly.³⁰

²⁸ See Exhibit “GG1” pp 322 – 323

²⁹ See Exhibit “GG1” pp 324 and 325

³⁰ See Exhibit “GG1” p 326

[39] In summary, these admissions boil down to the following:

- a. The accused was at all relevant times a supplier of arms and military equipment and hardware to inter alia MEND.
- b. At the relevant times during 2010 the accused was the leader of MEND.
- c. The only reasonable inference to be drawn from the admitted documents is that the accused was the same person as Jomo Gbomo and that he used the latter as a pseudonym in emails and notifications to the media.
- d. The accused was in Port Harcourt in the Novotel on 14 March 2010, the day before the bombing in Warri after having entered Nigeria unlawfully from Benin.
- e. The bomb blasts at Warri and Abuja were caused by motorcars laden with dynamite. In Warri two car bombs were used one of which was a Mercedes Benz. In Abuja the two cars used were a Honda and Mazda 626.
- f. The bombings at Warri and Abuja comply with the definition of terrorism and terrorist activities in the Act.
- g. The bombings caused mayhem to buildings and cars and killed and injured several people as set out in the indictment. Timing devices were found on site, which were used to set off the bombs at different times. The delay in the second bomb exploding was designed to attract people to the location of the first bombing and thereby to cause maximum injury and death to those attracted during the explosion of the second bombing.
- h. It is also common cause that MEND accepted responsibility for both terrorism acts in Warri and Abuja.
- i. The people who attended the gatherings at Warri and Abuja fall within the definition of “Internationally protected person” as defined in section 1 of the Act. The buildings damaged during the

bombings fall within the definition of “State or governmental facility” as defined in section 1 of the Act.

INFORMATION TECHNOLOGY EVIDENCE

[40] The State tendered the evidence of an Information Technology Expert on two occasions, namely Captain Charles Maree of the South African Police Services attached to the Cyber Crimes Support unit of Crime Intelligence. The bulk of his evidence related to the scientific analysis of hundreds of e-mails allegedly sent by Jomo Gbomo in order to establish that the IP addresses point to the sender being the accused. In response the defence called an IT specialist, Mr Ayodeji Majekodumni to counter this evidence. During the course of the evidence of these two witnesses countless exhibits and documents were handed in. I am of the view that it is not necessary to traverse this complicated and somewhat convoluted evidential dispute for the purpose of this judgment. There is, in my view, more than adequate evidence to come to a definitive finding without reference to such evidence.

THE STATE CASE

[41] A convenient summary of the State’s case has been set out in the document prepared by Mr Abrahams in terms of section 144(3)(a) of the Criminal Procedure Act attached to the indictment. I shall therefore refer to it liberally in setting out an overview of the State’s case.

HISTORICAL BACKGROUND

[42] The accused, a Nigerian national, was a leader of a rebel militant organisation from the oil-rich Niger Delta region, in the southern parts of the Federal Republic of Nigeria. It was an umbrella organisation (“entity”

as described in section 1 of the Act) of various militant groups known as the “Movement for the Emancipation of the Niger Delta” (“MEND”).

- [43] MEND was dissatisfied with what it believed to be the Nigerian Federal Government’s unequal and discriminatory sharing of oil revenues, which in its view, had adversely affected the Niger Delta region and the Nigerian Federal Government’s non-cooperation in having the land of the people of the Niger Delta restored to the people of that region which MEND believed had been unlawfully taken from them. As a result MEND had been constant conflict with the Nigerian Federal Government since 2005.
- [44] The nature of the conflict included armed attacks on the oil industry such as blowing up the oil pipes and hijacking the executives of oil companies, claiming ransom for their return. These attacks adversely affected the economy of the Federal Republic of Nigeria as it was proved that approximately ninety five per cent of the gross national product of Nigeria emanated from the oil extracted from the southern region.
- [45] The militants conducted their guerrilla attacks on the oil industry from various bases in the Delta region from where they conducted their armed attacks on motorised riverboats. The area where these bases were established was known as “the creeks”. The militants were well armed and properly clad in camouflage uniforms, MEND badges, army boots etc.
- [46] Dr Goodluck Jonathan originated from the southern regions of Nigeria. He became first vice-president and thereafter president of Nigeria. In a bid to end attacks on the oil industry his predecessor President Umaru Yar’Adua initiated an amnesty program in 2009 which inter alia included the voluntary surrender of arms and ammunition by armed MEND

militants and other rebel factions associated with the conflict in the Niger Delta. One of the conditions in negotiating the amnesty with the militants was that the accused as leader of MEND who was in custody at the time on charges of treason and gun-running, should be released.

[47] During July 2009 the accused accepted an offer of amnesty extended to him by the Nigerian Federal Government for his involvement in MEND's previous criminal activities. In so doing the accused also offered to work with the Nigerian Federal Government towards the restoration of peace in the Niger Delta region.

[48] The accused returned to South Africa during August 2009, after previously, during 2005 having made the Republic of South Africa his principal place of residence. It would appear that the accused became increasingly dissatisfied with subsequent post amnesty conditions in the oil-rich regions of southern Nigeria.

THE WARRI BOMBING ON 15 MARCH 2010 (COUNTS 1, 3, 5, 7, 9 AND 11)

[49] During February 2010 the accused left South Africa and travelled to Nigeria. In Nigeria he gave N1 200 000 (the Nigerian currency) to Obi Nwabueze ("Obi"), a Nigerian national and instructed him to purchase two vehicles. Obi purchased a Toyota and a Honda Ballade and took the vehicles to the residence of Mr Y, also a Nigerian national living in Port Harcourt.

[50] The accused requested another Nigerian national, Bassey Umoren, to construct hidden compartments in the two vehicles for which he paid Umoren N50 000. The accused gave Umoren an additional N20 000 to purchase materials to be used in the construction of the hidden compartments. The construction consisted of welding a metal plate between the boot and the backseat. Umoren performed this work at the

residence of Mr Y after which the accused paid Umoren another N50 000 for his services.

- [51] The accused gave N750 000 to Chima Orlu, also a Nigerian national, to purchase dynamite and detonators. The accused, Mr Y, Obi, Raphael Damfebo (also a Nigerian national) and Chima Orlu met at Mr Y's residence where the dynamite, detonators and timing devices were fitted into the hidden compartments of the two vehicles. The timing devices were supplied by the accused in the form of clocks and/or mobile phones. The accused taught his accomplices how to place a detonator in a dynamite stick and then connect the detonator to a clock or mobile phone and the latter to a battery and the battery again to the detonator. As such, the clock or mobile phone broke the electrical circuit, but as soon as the clock or telephone rang, the electrical circuit was complete and the detonator was set off exploding the first dynamite stick which thereafter ignited all the other dynamite sticks in the secret compartments. Normally between thirty and sixty dynamite sticks were packed into the secret compartments of the motor vehicles.
- [52] On 15 March 2010 and on the instruction of the accused, Tiemkemfa Francis Oswo (alias "General Gbokos") and a person unknown to the State, attempted to park two vehicles (one a Mercedes Benz) in the demarcated parking area of Government House Annex, Warri, Nigeria where the Vanguard Newspaper was due to hold a Post Amnesty Dialogue meeting. However, due to the visible presence of State security officials they parked the vehicles in the public road in front of Government House Annex.
- [53] The Minister of the Niger Delta, the Delta State Governor, the Imo State Governor, the Edo State Governor and other representatives and/or State officials of the Federal Republic of Nigeria were in attendance along with many other dignitaries and guests.

- [54] During the course of the morning an internet warning was sent by Jomo Gbomo on behalf of MEND that a bomb will explode in the vicinity of Government House Annex. The motor vehicles exploded where they were parked on either side of the road in front of Government House Annex.
- [55] One person namely Alex Igbi, a forty five year old adult male, a Nigerian national, died from injuries sustained as a result of the explosion. The persons listed in annexure "A" attached to the indictment sustained serious bodily injuries as a result of the explosion. The vehicles in the immediate vicinity as well as the buildings, Government House Annex and the International Unity School, were also damaged as a result of the explosion.
- [56] Thereafter MEND publically on internet took responsibility for the aforementioned bombings.

THE ABUJA BOMBINGS ON 1 OCTOBER 2010 (COUNTS 2, 4, 6, 8, 10 AND 12)

- [57] During September 2010 the accused and his brother, Charles Okah, gave Obi N2 000 000 to purchase four vehicles. The accused also gave Chima Orlu N1 640 000 to purchase dynamite and detonators. At the request of Obi, Bassey Umoren again constructed hidden compartments in the four vehicles at the residence of Charles Okah in Lagos, Nigeria. Charles paid Obi an amount of N50 000 for the aforesaid services.
- [58] Dynamite and detonators were fitted in constructed hidden compartments of two of the vehicles namely a Honda and a Mazda 626. The accused supplied four timer devices (clocks) that were used in assembling the two vehicle-borne improvised explosive devices.

- [59] On 1 October 2010 MEND gave an advance warning of its intention to cause an explosion at the Eagle Square.³¹ On the instructions of the accused, there was an unsuccessful attempt to park the vehicles within the Eagle Square precinct in Abuja where the Nigerian president, Dr Goodluck Jonathan, foreign dignitaries and other representatives and/or State officials of the Federal Republic of Nigeria were celebrating the Nigerian Federal Republic's 50th Independence Anniversary. Due to the visible presence of State security officials, the vehicles were parked on the main public road in proximity to Eagle Square where public vehicles were parked and persons using public transport were being dropped off to attend the celebrations.
- [60] During the morning of 1 October 2010 the two motor vehicles exploded. The persons listed in annexure "B" attached to the indictment died as a result of the injuries sustained during the explosion and the persons listed in annexure "C" attached to the indictment sustained serious bodily injuries as a direct result of the explosion. MEND once again publically took responsibility for the aforementioned bombings.
- [61] In the indictment the State alleged that the accused at all relevant times conspired with and/or induced and/or incited and/or instigated and/or instructed and/or commanded and/or procured Chima Orlu and/or Obi Nwabueze and/or Charles Okah and/or Tiemkemfa Francis and/or Segun Ilori and/or Edmund Ebuwari and/or Bassy Umoren and/or Emmanuel Alison and/or Raphael Damfebo and/or persons unknown to the State in the commission of and/or to commit the aforesaid acts and/or acted with a common purpose.³²

TERRORIST THREATS (COUNT 13)

³¹ See Exhibit "OO" and "OO1"

³² See the alternative charges to counts 1 – 12

- [62] On 27 January 2012, one Peter Timi, ostensibly the European representative of MEND, forwarded a communiqué to various persons and entities, including the South African Nigeria Chamber of Commerce in which MEND threatened the South African Government to facilitate the release of the accused from lawful detention, failing which MEND would disrupt the business activities of South African entities in the Federal Republic of Nigeria and would take South African nationals employed by such entities, hostage.
- [63] On 30 January 2012 whilst in the presence of the investigating officer the accused directed similar threats as those communicated by Peter Timi and/or MEND. In this regard the accused, Peter Timi and/or MEND and/or persons unknown to the State at all relevant times acted with a common purpose to threaten the entities and individuals referred to above.

THE DEFENCE CASE

- [64] The nature of the defence case amounted to a denial by the accused of being involved in any of the terrorist activities alleged by the State. A further defence was postulated in cross-examination of the State witnesses to the effect that the Government of Nigeria in a corrupt fashion embarked upon a giant conspiracy against the accused in alleging his involvement in the terrorist activities. Such a conspiracy was denied by all State witnesses to whom the proposition was put in cross-examination. Mr Maunatlala valiantly attempted on behalf of the accused to argue the existence of such a conspiracy by a process of deduction. In my view, there is no basis for any inferences of a conspiracy to be drawn from the proven facts as disclosed by the evidence. In addition, no facts were placed before this Court by the defence which constituted any iota of evidence pointing to the existence of such a conspiracy against the accused. On the contrary, many of the

State witnesses were the accused's former accomplices who were intimately involved with the actions of the accused in planning and executing the bombings in Warri and Abuja. At no stage did the evidence disclose any agreement or opportunities to enter into an agreement amongst them to testify collectively against the accused in a false manner. The opposite is rather more apparent from their testimony as there seems to be minor differences between their respective factual recollections of the actions of the accused.

THE EVIDENCE

Elder Godsay Peter Orubebe ("Orubebe")

- [65] The historical setting in Nigeria was well described by this witness who is a Minister of Niger Delta Affairs in the Cabinet of the Government of the Federal Republic of Nigeria under the leadership of the president, Dr Goodluck Jonathan. Orubebe was appointed to this position for purposes of fast tracking the development in the Niger Delta and to coordinate the activities of all agencies and departments involved in the development and security of the Niger Delta region.
- [66] He testified that the Niger Delta is a wetland area of Nigeria where oil was first discovered in commercial quantities in 1956/1957. Oil became the only source of revenue for the people of Nigeria. Over 95% of the revenue of Nigeria is derived from such oil extraction.
- [67] Over time, the entire Niger Delta was neglected in terms of development which resulted in environmental pollution and economic deprivation of the peoples living in Niger Delta. The people of the Niger Delta did not have the opportunity to be involved in the political affairs of the region and did not have a say in the revenue derived from the oil

extraction in that region. As a result the people of the Niger Delta became aggrieved. The Nigerian Federal Government was then confronted on the issues of lack of development concerning the people of that region. This protest was originally led by Isaac Adaka Boro, followed by Ken Saro-Wiwa who peacefully demonstrated the agitation against the Nigerian Government. The people of the Niger Delta felt that the Government had not been pushed far enough in meeting their demands and inevitably armed struggle commenced against the Government.

- [68] When President Yar' Adua was elected president of Nigeria, he set up a technical committee, headed by Orubebe to go to the creeks in the Niger Delta to persuade militant leaders to lay down their arms and to give peace an opportunity so that the Niger Delta could be developed. During these discussions with all the militant leaders, three critical conditions were raised by the militant leaders as a proviso to lay down their arms. These were:
- (a) Firstly, amnesty should be granted to all the militants at the time;
 - (b) Secondly, the accused should be released from prison; and
 - (c) Thirdly, the development in the Niger Delta should be fast tracked.
- [69] The demands of the militant leaders were conveyed to then President Yar' Adua. He found the demands to be acceptable. The militant leaders also wanted the then Deputy President of Nigeria (Dr Goodluck Jonathan), who is the current President, to come to the creeks and address them. This was done and the process of amnesty commenced.
- [70] As a result, in June 2009 a Presidential Amnesty Proclamation was issued pursuant to section 157 of the Constitution of the Federal Republic of Nigeria, granting amnesty and pardon to all persons who directly or indirectly participated in the commission of offences associated with militant activity in the Niger Delta.

- [71] The pardon offered in the proclamation would only take effect upon the surrender and handing over of all weapons, arms, ammunition and equipment, along with denunciation of militancy in the Niger Delta, which was to be done in writing by individual militants and in some cases due to illiteracy of certain militants, collectively signed on their behalf by their leaders. The pardon had also been extended to all persons who were at the time being prosecuted for alleged offences associated with militant activity.
- [72] The acceptance of amnesty placed obligations on the Federal Government to take the former militants and disarm and demobilise them; take them through reorientation programmes and train them in various skills so as to reintegrate them into society; take concrete steps in taking care of environmental issues in the Niger Delta; provide immediate jobs to engage the former militants and to go ahead with the infrastructure development of the Niger Delta. Various government institutions were to take care hereof, in that, the amnesty was to be supervised by the Special Advisor to the President on the Niger Delta, Mr Kingsley Kuku; the Minister of Petroleum Resources was responsible for the immediate job creation of youths by building pipelines and oil facilities; the Minister of Environmental Affairs was responsible for the environmental concerns; and structural development in the Delta was under the portfolio of the Minister for the Niger Delta Affairs.
- [73] At the height of the Niger Delta crises oil production dropped to seven hundred thousand barrels a day and has since, after amnesty, risen to 2.6 million barrels per day. Over twenty two thousand ex-militants are undergoing training in various parts of the world, including South Africa. Ex-militants are being trained in oil and gas industry, construction, the maritime industry and piloting.

- [74] By virtue of his position he has access to all documents and information relevant to the Niger Delta and to amnesty. Exhibit "B" is a document dated 25 June 2009 and entitled "Amnesty Proclamation" and contains the terms of the amnesty. Exhibit "C" is a document entitled "Renunciation of Militancy" which was signed by many militants individually. For those militants who could not read and write their leaders were asked to compile their names and then signed on their behalf.
- [75] The accused accepted amnesty. The accused was a key figure in the Niger Delta struggle and the militants had a lot of respect for him. The accused's release was given as one of the conditions by the former militant leaders in order for them to accept amnesty. Exhibit "D" dated 8 July 2009 is a document signed by the accused and completed on 8 July 2009 in his own handwriting in acceptance of amnesty.
- [76] Orubebe stated that the accused is his friend. They first met in 1998/1999 when there was conflict between two tribal groups in the Niger Delta. He and the accused thought it unwise for these two groups to fight and that it would be better for them to work as one. At the time he saw the accused's philosophy as embracing and good. The accused had an interest in the people of the Niger Delta and felt a need for government to address the issue of development in the Niger Delta. All the leaders of the region were talking of this very need at the time. That is how he and the accused came to like each other, each other's ideas, which included ideas about peace, development, the environment and economic empowerment of the people of the Niger Delta. Orubebe and the accused were house friends and often visited each other in Warri where he lived and in Lagos, where the accused lived. He and the accused are still friends today.

- [77] MEND was an umbrella body consisting of all the various militant groups in the Niger Delta. The leadership of MEND was chaired by the accused and Government Ekpemupolo (aka, "Tompolo"). He knew this because this was discussed at leadership level when they met. When amnesty was granted, Tompolo addressed a press conference which was publicised all over the national newspapers of Nigeria, during which he categorically stated that he and the accused were the leaders of MEND. "This is a fact and is not up for debate."
- [78] MEND had a spokesperson named "Jomo Gbomo", which was a fictitious name. The accused and Tompolo were the two main spokespersons of MEND.
- [79] Orubebe said it is not good judgment for the accused to deny being a leader of MEND because the people, including Orubebe himself, were proud of the accused at the time. They all loved the accused and worked with him. The military leaders supported the accused taking up the leadership role and the accused was accepted by everybody. "The accused did a good job at the time."
- [80] After the accused accepted amnesty he was released from detention and participated in post amnesty meetings. The accused had personal meetings with Orubebe and during one of these meetings the accused enquired whether government was sincere about its promise in giving amnesty and in developing the region. Orubebe advised the accused that the present could not be a better time as the Vice President (Dr Goodluck Jonathan) came from the Niger Delta region. He told the accused that the President was sincere in both official and private meetings he had with the President and Vice President, collectively and individually about their attitude towards the development of the Niger Delta.

- [81] The Governors of the Edo, Imo and Delta States and other top government functionaries attended the Post Amnesty Dialogue meeting at Government House Annex, Warri on 15 March 2010 as hosted by the Vanguard Newspaper in their official capacities as representatives of government when the bombs exploded.³³
- [82] Orubebe visited the accused in South Africa on 18 April 2010 to question him on issues about renewed violence in the Niger Delta and to educate the accused on why it was absolutely necessary for the leaders and elders of the Niger Delta to work with government in bringing lasting peace to the Niger Delta. The discussion concerning the security and development of the Niger Delta took place on a friendly and brotherly note whereby the accused was once again reassured of governments commitments. He denied meeting with the accused at the behest of the Acting President as alleged by the accused during the latter's bail application.
- [83] There were rumours in the Nigerian print media that the accused was behind militants trying to renew attacks on oil facilities. Orubebe needed to meet with his brother, the accused, to find out what the problem was and to reassure him of Government's commitment to develop the Niger Delta. When Orubebe confronted the accused on the aforementioned allegations the accused responded by saying he hopes it will be the way Orubebe had explained to him. The accused did not admit nor deny the allegations that he was behind a probable renewed uprising and instead laughed and asked Orubebe to tell him about the readiness of Government.

³³ According to the evidence of Dr C. Okafor, the accused's passport in question is an ECOWAS passport. If the accused entered Nigeria between February and March 2010, May and June 2010 and July 2010, his entry and exit were not done through a recognised or authorised border post and would thus have been illegal. See Exhibit "GG1" pp 221 – 237.

- [84] Orubebe denied handing the accused a quotation from China Xinshdai Company dated 3 September 2010 which ex facie related to the procurement of arms and had never seen the document before. The Minister of Defence is responsible for the procurement of arms and ammunition in Nigeria.³⁴
- [85] Orubebe was present on 1 October 2010 at Eagle Square, Abuja and participated in the Nigerian Federal Governments 50th Independence Anniversary celebrations. Many African Heads of States were in attendance representing their various governments. Every 1 October Nigerians sing and celebrate their independence, which is usually one of the top official activities of the government. After the ceremony had started they heard two heavy bangs and then saw fire trucks driving to the left hand side of Eagle Square, the official ceremonial centre for top government activities. Although a government facility, it is also used for private activities and is frequented by government officials and members of the public.
- [86] Orubebe confronted the accused telephonically after the 1 October 2010 bombings as to whether he was involved and the accused was not prepared to discuss it with him telephonically. The accused's involvement was public knowledge as it was publicised in both the Nigerian print and electronic media. The accused's failure to deny any involvement outright leaves room for a negative inference to be drawn that he was indeed involved.
- [87] Subsequent to amnesty being granted, a split occurred in the ranks of MEND. However, after militancy had been renounced, and the name Jomo Gbomo was being used, Tompolo came on air and stated in both print and electronic media that they are no longer using that name and

³⁴ See Exhibit "E"

whoever is using that name is somebody other than them and it doesn't come from MEND.

- [88] MEND claimed responsibility for the 1 October 2010 bombings in Abuja. He called Tompolo who said MEND was not involved and anybody using the name MEND is not them. There was a breakaway faction of MEND which was armed and linked to the accused. It is common knowledge in Nigeria that the accused was involved in a breakaway MEND that is causing disturbances in the Niger Delta. There are now two MEND's, with which the accused is in agreement. It is totally wrong for the accused to assert that the one faction of MEND works with the government to ensure his downfall. There is no MEND member looking for the downfall of the accused. All they are looking for is for everybody in the Niger Delta to work together for peace and anyone who is still trying to create trouble in the Niger Delta is not part of them. In this regard Orubebe said:

"COURT: With that I have some difficulty and which I am not clear in my own mind if you can help me. You say you speak to all militant leaders in MEND but you also say they – the leaders of MEND – are ... [indistinct] with others to come to the table to work with the government of each development of the Delta region?

MR MAUNATLALA: That is right M'Lord.

COURT: So there is a faction which is not part of this working together with the government is that correct? --- Yes M'Lord there is a group.

Yes? --- That is still creating some problems in the Niger-Delta and that group is linked to the accused and that is why they are now talking to them.

Yes? --- That we are on the way to recovery in our sector of the Niger-Delta and that everybody should come together to work together, they are still talking to everybody."

- [89] Under cross-examination Orubebe further said that the purpose of his evidence was to talk about how he came to know about the accused and other militants' efforts, officially and privately; what government has done to address the problems of the Niger Delta and to portray to the world that there would be no basis for any further protest considering

Government's efforts to address the longstanding problems of the Niger Delta.

[90] Under re-examination Orubebe inter alia confirmed the following: That he had more than three mobile telephone numbers for the accused.

[91] Orubebe made a very good impression as an impartial and objective witness. He bore the accused no malice and confirmed several times that he still regarded the accused as his friend. Pertinently he stated that the Government of Nigeria would be happy to receive the accused back to work with them should he repent "because he is still a friend, a brother." I see no reason whatsoever to disbelieve this witness. In my view, he gave a very clear and comprehensive exposé of the historical past and the present situation of development taking place in the southern regions of Nigeria. From his evidence it can be conclusively concluded that there is no reason to rebel or protest against the Nigerian Government's conduct in the Niger Delta. For those who accepted amnesty in 2009, the necessity for rebelling against the Government has on this evidence completely dissipated. There is, however, clear evidence to the effect that there is a remaining faction of MEND of which the accused forms part rebelling against the Nigerian Government.

Mr X³⁵

[92] The main witnesses for the State were the accused's two principal accomplices in planning and executing the bombings in Warri and Abuja. The state was granted an application to retain the anonymity of these witnesses for fear of reprisal by those who are still loyal to the accused. The application was also granted as these two witnesses were expected to testify in the trials of other accused currently charged in

³⁵ See Exhibits "GGG1" to "GGG7"

Nigeria with similar offences arising from the same two bombings in Warri and Abuja. Their identities were, however, verified by myself upon checking exhibits of their respective statements.

- [93] Mr X first became aware of the accused in 2006 – 2007 through Selekeye Victor Ben ('Sele'), who worked for the accused at the time. He accompanied Sele to the market where the latter bought clocks, Nokia 3310 mobile telephone handsets, wires and other materials for use in the construction of car bombs. Sele use to refer to the accused as being the "General Master".
- [94] He got to know more of the accused through Stanley³⁶, who worked for the accused as his personal assistant. During 2006/2007, he accompanied Stanley to the Chessbar restaurant, GRA, Port Harcourt where he met Chima Orlu for the first time. Stanley handed N300 000 to Chima. The money came from the accused.
- [95] He then informed Stanley of residential rental problems he was experiencing. Stanley informed the accused of this witness's problems. As a result, about a week later, the accused gave Mr X N250 000 through Stanley.
- [96] He remained in telephonic contact with the accused whilst he was in Nigeria and the accused in South Africa. During February/March 2010, and in one of the telephonic conversations the accused discussed the proposed Warri bomb blast with him and told him that he was coming to Nigeria. However, before coming to Nigeria the accused sent money for him and one "Gbokos" to do a reconnaissance of the venue where the Post Amnesty Dialogue meeting was to take place. The Post Amnesty Dialogue meeting was initially supposed to have taken place at the

³⁶ Also known as Zion Amada, who worked for and was paid by the accused for running errands for him.

Wellington Hotel, Warri on 15 March 2010. The accused deposited N200 000 into the witness's bank account for reconnaissance. The witness and Gbokos went to the venue and informed the accused who instructed the witness to look for a position to park the cars where maximum damage could be caused.

- [97] The accused arrived in Nigeria around 11 or 12 March 2010³⁷ and called him and requested him to meet him at the Novotel Hotel, Port Harcourt. He later met the accused in his hotel room, where they discussed the Warri bombings. Obi Nwabueze³⁸ arrived whilst he was there. It was his first time to meet Obi. The accused opened a safe in his hotel room, took out about N1, 2 million and handed it to Obi and instructed Obi to buy two cars. Obi then left the room. Whilst in the hotel room, the accused said that he was placing Mr X in charge of the Warri bomb blast and that Mr X would be responsible should anything go wrong.
- [98] The accused called him the following day and directed him to assist Obi to buy cars in Port Harcourt. The accused provided him with Obi's mobile telephone number. He met Obi and Chima in Airport Road, Port Harcourt. Obi had already purchased a Toyota passenger vehicle. There were four motor vehicle batteries and wires in this vehicle. These items were to be used in the assembly of the dynamite and timers for the bombs. Obi gave him N600 000 to buy another car. The next day Mr X and Mr Y bought a Honda Bullet passenger vehicle and thereafter went to the State Secretariat to register the vehicles. Mr X and Y used fictitious names to register the vehicles. The witness was also instructed by the accused to obtain plastic number plates for the vehicles so that

³⁷ The accused stayed in the Novotel Hotel in Port Harcourt for the period 10 – 14 March 2010. See Exhibit "GG1" pp 1, 6 – 8

³⁸ This witness did not testify but by consent the nine statements he made to the police were handed in Exhibit "WW1 – 9"

the origin of the vehicles is not traced back to him after it had exploded. The vehicles were then taken to Mr Y's compound.

[99] The accused had directed Obi and Chima to buy a welding machine, iron plates, a rug, dynamite, batteries and wires. Obi and Chima returned with Bassey Umoren who constructed the hidden compartments in the boots of the vehicles. The witness fetched the accused from his hotel and took him to Mr Y's residence. The accused directed Chima to buy more dynamite and gave him money. The accused assembled black timers and wires and requested Mr X, Mr Y and Obi to peel the wires for the assembly in Mr Y's room. The accused collapsed as a result of the fumes from a generator they were using for the welding. The witness, with the assistance of Mr Y carried the accused to the vehicle and took him back to his hotel room. The accused claimed to have a medical condition (heart) and explained that he had not taken his medication that day.

[100] The next day the witness fetched the accused from his hotel and took him to Mr Y's residence where the accused continued with the assembly of the dynamite and tested the timer to ensure it is safe. The witness then took the accused back to his hotel room where the accused gave the witness N150 000 to use for fuel and accommodation costs and reminded the witness that he was in charge of the operation. The accused also informed the witness that the venue for the Post Amnesty Dialogue meeting had changed to Government House, Annex, Warri and that he had forwarded his invitation to Gbokos. Obi and Chima packed the dynamite and timers into the hidden compartment of each vehicle. The next day, 14 March 2010, the accused informed the witness that he was leaving for Lagos and thereafter for South Africa.

[101] On the Monday, 15 March, the witness and Mr Y drove in Gbokos' Mercedes Benz following Gbokos, who, with his girlfriend drove the

Honda vehicle. The other two persons drove the Toyota to Warri where it and the Honda vehicles were parked at a workshop where Gbokos had directed them. Gbokos also pointed out to the witness and Mr Y, Government House, Annex along NPA Express road.

[102] During the morning of 15 March 2010 they had a look at the venue and observed that security officials were already present. They returned to the vehicles and the witness called the accused and informed the accused of the presence of a Nursery School next to the venue. The accused nevertheless insisted that the vehicles must be positioned inside the venue. The accused said it is an order that the vehicles must be parked inside the venue. Due to the tight security the vehicles could not be parked inside the venue and as a result, the Honda and Toyota vehicles were parked on the left and right hand side of the Expressway. The witness and Mr Y set the timers so that the bombs can explode 10 minutes after each other. The vehicles were also parked close to the entrance to Government House Annex.

[103] The explosion took place whilst the witness was still in Warri. Whilst on his way to Port Harcourt after the explosion, the accused called the witness. The accused was angry and expressed his dissatisfaction because the vehicles were not parked as he had ordered. The witness informed the accused that the purpose of the bombs was to disrupt the meeting and had the vehicles been parked inside the venue, people would have died. The accused phoned back later that day and now seemed happier as the meeting was in fact disrupted and did not go ahead. The accused gave him N200 000 after the bombing to assist him towards the payment of his dowry.

[104] The accused informed the witness that the timers used in the construction of the bombs were brought by him from South Africa. The accused also cautioned that if the security agents see the timers they

would be able to trace them back to South Africa where he had bought them. The timers looked like microwave timers. The accused had shown him and Mr Y how to set the timers. When they took the vehicles to Warri, all that had to be done was for them to plug the battery cap head with the wire attached onto the iron head of the battery. This was done by him and Mr Y after they had parked the vehicles.

[105] The witness and the accused were in continuous telephonic contact between 15 March 2010 and 1 October 2010. During September 2010 the accused telephonically informed the witness of his plans to bomb Eagle Square on 1 October 2010. As a result, the witness called Stanley and requested him to inform the Governor of Bayelsa State of the accused's plans. The witness also informed Sele of the accused's intentions. Sele took him to a meeting with Boyloaf, and he then also informed Boyloaf of the accused's plans. Edmund Ebiware also confirmed to the witness that he was aware of the accused's plans. The witness had also established confirmation of the accused's plans through Mr Y.

[106] During September the accused called the witness and asked him to drive vehicles from Lagos to Port Harcourt and informed him that the vehicles would be containing bullet proof vests and camouflaged uniforms. In addition, the accused asked him to obtain prices on military boots to accompany the uniforms he would be sending in the vehicles. The witness did not want to get involved and informed the accused that he was with his family in Benin City. The witness was also afraid that he might be stopped by Nigerian Police authorities and as a result he informed the accused that he would get someone to assist the accused. When the accused phoned back later that day, the witness informed him that the persons would assist on condition they are paid N30 000 each. The witness suggested the accused calls Chima and request him

to do it. The accused did not call him again. The accused was upset and dropped the call.

[107] Mr Y gave the witness information about the Abuja bombings. The witness told him not to get involved and to change his telephone number. The witness thereafter deleted the accused's telephone number from his phone.

[108] On 1 October 2010, the witness was informed by Mr Y that the bombs will explode between 9:00 and 10:00 at Eagle Square. Mr Y had also informed him that the accused had been arrested the previous day but had subsequently been released. The witness immediately called Stanley and informed him that the explosive laden vehicles were now in Abuja so that he could pass the information on to the Governor of Bayelsa State. The witness, at Stanley's request, provided him with the accused's telephone numbers which he obtained from Mr Y via text message, to pass them on to the Governor of Bayelsa State, Timipre Sylva. The witness had sent two telephone numbers. The one ended in 333. The witness did not know the other number.

[109] The witness called the accused who did not answer his calls. The accused phoned back almost immediately and told him that his telephone lines are bugged and that he would get back to the witness, but he never did. The witness called Stanley to establish whether he managed to inform the Governor. Stanley said that the Governor was also at an Independence Celebration and that it was extremely noisy and as a result they could not hear each other.

[110] Whilst at a mechanic in Abuja on 1 October 2010 an unknown lady ran in shouting that a bomb had exploded in Eagle Square. The witness was angry and immediately called Sele to inform him about it. Whilst still at the mechanic, the witness heard the explosion of the second bomb.

Edmund Ebiware arrived at the mechanic's workshop. The witness angrily confronted him about what the accused had done. Ebiware responded that it was a good thing as some people are benefitting from the amnesty programme, whilst others are not.

[111] The witness was arrested on 3 October 2010 for the Abuja bombings after Ebiware led the State Security officials to him at the hotel where he was staying in Abuja. The witness immediately informed the authorities that he was not involved and that the accused was responsible for the bombings at Eagle Square.

[112] The witness confirmed the contents of an SMS dated 10 February 2010 to the accused in which he texted his name and bank account details and explained that it was for the payment of money by the accused to do the reconnaissance in Warri for the bombings of 15 March 2010. The witness also referred to the accused as "Boss" in a text message dated 11 February 2010.

[113] Under cross-examination Mr X inter alia testified to the following:

1. He confirmed his involvement in the bombings in Warri on 15 March 2010.
2. He confirmed that he voluntarily had made six statements under caution after having been interrogated by different Nigerian State Security officials who requested him to make statements after being interrogated. He confirmed that he had not been told by anyone what to say and had written the statements in his own handwriting.
3. His statement, Exhibit "GGG3", related to the Warri bombings and was written by him after he had been arrested. He was fearful, felt under pressure and confused about the dates of the bombings at the time.
4. He confirmed that he was there when Bassey constructed the hidden compartments in the boots of the vehicles and when the

batteries, timers and dynamite were positioned in the vehicles, as instructed by the accused.

5. He again confirmed the accused collapsed on Saturday, 13 March 2010 and that the accused returned to Mr Y's residence the next day, 14 March 2010. He confirmed that the vehicles were taken to Warri on Sunday, 14 March 2010.

[114] The cross-examination of Mr X was exhaustive, repetitive and inconsequential. It related to peripheral matters only distantly related to the Warri bombings. As to the witness' evidence on the preparation and execution of the Warri bombings, his evidence was not undermined in any material manner.

Mr Y³⁹

[115] Mr Y is also to be regarded as an accomplice of the accused. He met the accused through Mr X. He was aware that Mr X had met with the accused at the Novotel Hotel in Port Harcourt. On 13 March 2010, he accompanied Mr X to buy a dark blue Honda passenger vehicle. He negotiated the price for the vehicle which they bought for N550 600. The vehicle was bought at the instance of the accused. They went to the Registration Office in Port Harcourt where they used fictitious names in registering the vehicles. At Mr X's request, Chima Orlu drove the vehicle to his residence the same day. That was the first time he met Chima.

[116] At his house that day, he also met Obi Nwabueze, Bassey Umoren and Segun Ilori for the first time. Chima brought dynamite and Obi brought four car batteries and refrigerator or microwave timers. Mr X then brought the accused to his residence, whom he met for the first time.

³⁹ See Exhibit "HHH"

[117] The accused was very persuasive and charismatic and spoke a lot about politics and issues concerning the Niger Delta Region and the amnesty programme. In this regard, the accused was not satisfied with the way the government was running the amnesty programme and he was of the view that it was not going according to plan. He also complained that people in the region were describing him as a “paper tiger” and he wanted to prove a point that he was very much around and still to be reckoned with. The accused was of the view that the President was not in charge and people were using him to meet their own selfish needs. At the time there was a post-amnesty programme in the Delta State which he wanted to disrupt to prove his point.

[118] While he and the accused were talking, the other persons brought the items mentioned earlier into his master bedroom. There were several bags of dynamite, each bag consisting of thirty to forty dynamite sticks. The accused showed them how to assemble improvised explosive devices. Among other things, he told them how to peel the cables and how to do the wiring. The accused is the person who taught them how to couple the copper wire and attach the wire to the cap and to stick it into the dynamite and connect it to the timer (clock). Mr Y, Chima and Obi assembled all the dynamite sticks with copper wire and caps attached thereto into the hidden compartments of the two vehicles which were to be driven to Warri where the post-amnesty dialogue meeting was supposed to take place.

[119] While still at Mr Y’s residence, the accused slumped due to the fumes of the generator which was on. The accused later explained that he had not eaten all day and that he had a health condition. Mr X and Mr Y assisted him to Mr X’s vehicle, who then drove the accused back to his hotel. At the time, Bassey was busy constructing false compartments in the Honda and Toyota vehicles. The compartments were constructed between the back seat and the boot with the use of an aluminium sheet

which separated the rear seat from the boot. This is where the car batteries and the dynamite were loaded into.

[120] Mr Y and Chima then tested to see if the improvised explosive devices would work. They dug a hole in the ground and buried the cap therein. They adjusted the timer to five minutes and after the time elapsed, they heard a bang. Prior to the accused showing him how to assemble improvised explosive devices, he had no knowledge thereof.

[121] Mr X was the person who called him and who called Gbokos to drive the vehicles to Warri. On 14 March 2010, Gbokos arrived there with two adult males and he and the other two persons then drove the bomb-laden vehicles to Warri. It was the first time that he met Gbokos. Mr X and Mr Y followed the two bomb-laden vehicles in Gbokos' Mercedes Benz. When they arrived in Warri, the cars were parked at Gbokos' mechanic's workshop. As instructed by the accused, plastic number plates were provided, because it would melt after the explosion.

[122] The post-amnesty meeting was initially supposed to be held at the Wellington Hotel. While in the presence of Mr X and Gbokos, the accused phoned and informed them that the venue had been moved to Government House Annex, Warri and the meeting was strictly by invitation. The accused had sent his invitation letter to Gbokos. Messrs X, Y and Gbokos retrieved the invitation.

[123] On the morning of 15 March 2010, they went back to observe the venue and saw there was a tent covering where the meeting was to take place, as well as a primary school located next door to the premises. The accused instructed that the cars be parked inside the yard of the premises. They argued amongst themselves that it was not wise to park the cars inside the yard considering what the casualty outcome would be. Mr Y said he could not live with himself had the vehicles been

parked there. A decision was then made to park the vehicles outside in proximity to the venue. Gbokos and his boys parked the vehicles on the road in front of the venue. The accused had taught Mr X and Mr Y how to set the timers and after setting same, they left town. The bombing was all over the news later that day.

[124] Mr X gave the accused Mr Y's mobile telephone number. As a result, the accused and Mr Y were in constant communication thereafter right up until the Abuja bombings on 1 October 2010. At some point after the Warri bombings, the accused called Mr Y and enquired from him where he could store items. Mr Y suggested that the accused could use his residence in Port Harcourt. At the time Mr Y did not know what items the accused wanted to store at his residence. The accused informed him that Segun Ilori (Stoneface) would arrive at his residence with the items. Before he even arrived at his residence, Segun was waiting there in an Isuzu Jeep. To his surprise, when Segun opened the boot of the Jeep, he observed a false bottom big enough for a human being to fit in, which contained AK47 rifles, grenades and bullets, which Segun stored in his residence. From that point on, his residence became an operational base for the accused and he cannot count the amount of times weapons passed through his residence.

[125] The persons who brought arms to his residence at the instructions of the accused were Segun Ilori and a person from Abia. Segun used to convey the same arms to militants in the Creeks. Mr Y's function was merely to store the items and make sure everything is coordinated to plan. He described himself as being the "enforcer". This he did on the instructions of the accused.

[126] Segun also used to store military camouflage, boots and an array of military items at his residence, which he brought from Lagos. Whenever items arrived at his residence, Mr Y would advise the accused thereof.

Segun used to deliver these military items to the creeks as well. On one occasion, the accused called Mr Y and informed him that his brother, Charles Okah, would be sending items from Lagos through ABC Transport and directed him to collect the items. Mr Y gave the accused his brother's name so it could be sent to him. This name, Nimi Allison, was sent to Charles Okah. He had difficulty in retrieving the items from ABC and contacted Charles Okah, who gave him the name of one of his employees, namely Friday Kufre, which resulted in him collecting the items that included army uniforms, tents, hoods and masks. Segun also brought MEND logo badges on arm bands from Lagos, which items were also taken to the creeks on behalf of the accused.

[127] The accused provided Mr Y with a mobile telephone number for them to communicate with each other. Mr Y was made to feel very special and important, because he believed this number was obtained especially for him. Because they were in constant communication thereafter, the accused cut Mr X off. Mr X even complained to Mr Y about this. The numbers that the accused used were 0737031170 and 0782495333. Mr Y's telephone number was 08160506011.

[128] Mr Y was involved in the 1 October 2010 bombing in Abuja. In September 2010, the accused called him and informed him that he wanted to embarrass the then acting President, Dr Goodluck Jonathan during the 50th Independence Anniversary Celebrations, because at the time the Federal Government had budgeted N6 billion for the celebration. The accused was of the view that money could have been used better in the Niger Delta Region to empower his people.

[129] At the time the accused also told him that he had called Obi Nwabueze, whom he directed to buy four cars. The accused had also given Chima money to buy dynamite. The accused also said that he intended sending the timers from South Africa, which he duly did. The accused

hereafter called Mr Y and informed him that his brother, Charles Okah, was coming to Port Harcourt and requested him to assist Charles in every possible way. Mr Y and Charles were in communication with each other thereafter and met at the Greenfield Hotel in Port Harcourt.⁴⁰ During this meeting, Charles handed him a box which came from the accused. Upon opening the box, Mr Y observed the box contained night vision goggles, Walkie Talkies (communication gadgets) and timers that looked like a microwave switch. Mr Y handed all these items to Segun back at his residence in Port Harcourt. At that point, Segun, Chima, Obi and Mr Y had gathered at the latter's residence in Port Harcourt.

[130] Mr X advised Mr Y that the accused is self-centred and a chop-alone man. The accused's initial idea was for Mr X and Mr Y to drive the cars from Port Harcourt to Abuja for the bomb blast on 1 October 2010. Three days before the incident, the accused called Mr Y and informed him that he no longer needs to travel to Abuja as the people in Abuja are already aware that he, the accused, is sending people.

[131] During September 2010, Obi brought two cars to Mr Y's residence even though he had been informed that four cars would be coming. Obi drove the one vehicle to Mr Y's residence and he had contracted somebody from Lagos to drive the other vehicle to Port Harcourt. When the cars arrived at Mr Y's compound, there was military attire packed in the hidden constructed compartments in the vehicles. The compartments were once again between the back seat and the boot of the vehicle. When the vehicles arrived at Mr Y's residence, the hidden compartments had already been constructed and he did not know who had constructed them. The military attire was offloaded and stored in Mr Y's residence. Segun later delivered the military attire to the creeks. Chima had bought the dynamite and the caps and was busy assembling

⁴⁰ See Exhibit "GG1" pp 19 – 24

the dynamite with the assistance of Obi, who was the coordinator for this particular event. After the dynamite was assembled, Obi and Chima loaded the items into the hidden compartments in the two vehicles. There was a third person with them whose name Mr Y could not remember.

[132] After the cars had been moved to Abuja, the timers were left behind in Mr Y's master bedroom in Port Harcourt. The accused was very angry with Obi and Chima. This resulted in Chima having to come back to Port Harcourt to collect the timers. On 30 September 2010, the accused informed Mr Y that his lines were bugged and that he would revert to him. It was all over the news that the accused had been arrested earlier that day, but was subsequently released.

[133] Mr Y had advised the accused that he should re-strategize by stopping with his actions, as everybody is already aware that he would be responsible for the bombing. It was on the Internet that MEND was going to strike on 1 October 2010 and all fingers were pointing to the accused, because all the other militants had embraced amnesty. The accused did not heed Mr Y's advice.

[134] On 1 October 2010, Mr Y was in contact with everybody that was involved in the bombing, namely Obi, Chima and Segun, to make sure everything went according to plan. That morning he established from Obi that he had delivered three cars and he was on his way back from Abuja. Mr Y accepted that Obi had been part of the people who had been responsible for the parking of the vehicles. Mr Y gave Mr X the accused's telephone numbers and informed him that the explosives were to be detonated at about 09h30 to 10h00. Mr Y was in communication with the accused via three text messages on 1 October 2010, the first at 10:58:59, the second at 13:13:01 and the third at 13:29:59, in which messages he informed him that everything had gone

according to plan. The messages were sent from 2348160506011 to number 00927737031170.

[135] Mr Y recognised the arm bands with the MEND logo thereon as part of the items that Segun had brought to his residence as depicted in photograph 2 of Exhibit “VV1”. He also identified the communication gadgets, binoculars and the protective vests as depicted in photograph 5 of Exhibit “VV1” as items that came to his residence. These were items he received from Charles Okah during their meeting at the Greenfields Hotel in Port Harcourt. He identified all the items depicted in photograph 1 of Exhibit “VV1” as identical items that came to his residence for onward dispatch to the creeks.

[136] He identified a deposit of N200 000 into his bank account on 25 June 2010 from Ben Gold as having come from the accused, as he recalled that he had sent his account number to the accused. He also identified a withdrawal of N500 000 from his bank account on 27 September 2010 as the money that he handed over to VIP at the instructions of the accused on the premise that the accused would later refund him, which never occurred.

[137] The items depicted on photographs 33, 35 to 39, 48 to 59, 64, 65, 67, 69, 71 of Exhibit “JJJ”⁴¹ were identified by Mr Y as items that Segun Ilori had brought to his residence in Port Harcourt.

[138] Mr Y identified photograph 15 of Exhibit “JJJ2” as items that were used to cut the wires, when assembling the explosives. According to him he still had similar items in a black bag to the ones used during the preparations for the Warri bombings. The black bag was brought to the accused the first day the accused came to his residence. He also identified the electrical connections in photographs 19 and 20 of the

⁴¹ See Exhibit “JJJ”

same exhibit. According to him, the soldering iron depicted in photograph 24 and the cutters depicted in photographs 25 and 26 and the items in photograph 29 were all similar to items contained in the black bag the accused brought to his residence. In fact, all the items identified by Mr Y in the photographs contained in Exhibit “JJJ2” were items of which similar ones were contained in the black bag the accused had brought to his residence.

[139] All the military items reflected in Exhibit “JJJ3” were identified by Mr Y as similar items to those which were brought to his residence by Segun Ilori. In photograph 115 of Exhibit “JJJ3”, he identified a high power torch light as similar item to that received from Charles Okah during their meeting in September 2010.

[140] According to Mr Y, Obi cannot deny his involvement in the October 2010 bombings. Obi was the one who bought the cars used in the bombing. He also drove the cars to Abuja and was the coordinator of the activities. If Obi denies any involvement he would be lying.

[141] When Mr Y met the accused for the first time at his residence, he was afraid of the accused because of his reputation and as a result, could not stop him when the preparations for the Warri bombings began. During their discussion that day, the accused told him how he had killed a person’s family in Abuja who had run away with his money. Prior to the accused coming to his residence, Mr X had informed Mr Y that the accused had a small job for him to do, but his place was not safe. As a result, Mr Y’s house was ideal, because it was situated in an isolated place in a newly developed area in Port Harcourt. Mr Y participated in the 1 October 2010 bombings, because he was already in the thick of things and was too afraid of the accused to opt out.

EVALUATION

[142] The evidence of these three witnesses for the State is, in my view, conclusive of the accused's guilt on charges 1 to 12. The evidence of the two main accomplices is congruent and corroborates one another. There are no contradictions or discrepancies which may negatively affect their testimony. It is trite law that an accused may be found guilty on the evidence of accomplices.

[143] The evidence of these witnesses overwhelmingly established that the accused was the planner, funder, supplier, instructor, expert and leader in the execution of the bombings in Warri and Abuja. Although he was not present at the moment the car bombs exploded, it cannot be gain said that they exploded at his instance and direction. To my mind that makes him guilty beyond all reasonable doubt of the charges in counts 1 to 12 as the main perpetrator.

[144] I shall deal with the remaining witnesses in a rather cursory manner because they mostly confirm the evidence of the two main witnesses and only add minor details.

REMAINING WITNESSES

Chima Orlu ("Chima")

[145] The next 3 witnesses are Chima Orlu, Segun Ilori and Bassey Umoren. They were also involved in the planning of the bombings in that they assisted in obtaining the necessary materials for the assembly of the car bombs. They confirm and corroborate the evidence of Mr X and Mr Y.

[146] Chima met the accused through his late relative, Dakro Princewell, in 2006. Dakro used to refer to the accused as "Grand Master". The

accused knew that he was going around with Dakro and as a result, deliberately made contact with him so that he could assist him to buy dynamite.

[147] Dakro took the witness to two different places in Port Harcourt from which they bought a large quantity of dynamite which was stored at the same premises as the eleven vehicles.

[148] Dakro died in early February 2007. In March 2007, the accused called Orlu and during their telephonic discussion, he promised to buy Chima a car. Not long thereafter, Chima met Stanley and Mr X at Chessbar Restaurant, GRA, Port Harcourt, where Stanley handed over N300 000 to Chima which came from the accused to assist him in the purchase of a vehicle.

[149] Later in 2007, the witness met the accused at the Gateway Hotel in Port Harcourt. This was the first time that he and the accused met one another in person.

[150] Before the arrest of the accused in Angola in 2007, Chima, at the instance of the accused, met with Bassey Umoren and Segun Ilori ("Stoneface") at the premises in Port Harcourt where the dynamite had previously been stored by him and Dakro. He saw how Bassey Umoren constructed hidden compartments between the boots and the back seats of some of the vehicles, while Segun assisted a person named "Sakkie" to run wires from the engine of the vehicles to the constructed hidden compartments. According to Chima, such compartments were constructed in five vehicles.

[151] When he returned to the premises the next day, Segun, Bassey Umoren and Sakkie were nowhere to be seen. On the Monday, he established through the print media that the accused had been arrested

in Angola. It was the first time that he established the accused's true identity and that he was the leader of MEND.

[152] Around February 2010, the accused contacted him. The accused enquired from him if he still remembered where he and Dakro had bought the dynamite. After locating the place, he called the accused and confirmed the existence thereof. The accused requested him to send his bank account number which he sent to the accused via a text message. The accused subsequently paid N700 000 into his account. Of this money, he used N400 000 to buy dynamite and retained the balance for himself. (Later, he said that he bought the first batch of dynamite in March and not in February.)

[153] After informing the accused that he had bought the dynamite, the accused informed him that Obi Nwabueze would call him. Towards the evening of the same day, Obi called him and directed him to meet him at Port Harcourt. He met with Obi the very next day. This was the first time they met. Obi took him to Mr Y's residence in Port Harcourt, where he stored the dynamite after being shown by Obi where to pack it.

[154] The next day, he went to Mr Y's residence after being directed by Obi to do so, where he met Bassey Umoren. There were two cars, namely a black Honda Bullet and a green Toyota Corolla, parked in the property. He accompanied Bassey to rent a welding machine and upon their return, Bassey started constructing the secret steel compartments between the back seats and the boots of the vehicles as he had seen it previously done.

[155] After Bassey completed the construction of the compartments in the vehicles, they left and returned the following day. Whilst there, Mr Y arrived at his residence. It was the first time that he met Mr Y. Not too long thereafter, Mr X arrived in a Honda Baby Boy vehicle with Obi and

the accused. The accused and Messrs X, Y and Obi went into Mr Y's residence.

[156] The accused then instructed Chima to buy more dynamite and gave him N50 000. Chima looked into Mr Y's bedroom and saw some of the dynamite, wires, pins, electrical working material, meter testers and pliers lying scattered on the floor in the room. When he returned, there was nobody there and he decided to leave the dynamite in the bush. He returned later that evening at the request of Obi and Mr X. After his arrival, he carried a motor battery into Mr Y's residence and also fetched some of the dynamite, which was tested. He was thereafter instructed by Obi to load the dynamite into his vehicle. The dynamite had wires attached to it. He and Mr Y assisted Obi to put the pins into the dynamite. He, Obi and Mr Y thereafter packed the dynamite with the pins into the hidden compartments of the two vehicles which Bassey had constructed.

[157] The next day, which was 15 March 2010, he phoned Mr X, who informed him that he had left town. He thereafter called Mr Y, who also informed him that he had travelled back to Yenegoa where he works. He simultaneously established from Mr Y that there had been an explosion. He later heard on the news that there was a bomb explosion in Warri, Delta State, where the amnesty meeting had taken place.

[158] The accused called him during June 2010 and once again enquired whether the people, from whom he had previously bought dynamite, are still selling it. He first confirmed that this was indeed still the position and reverted to the accused. At the request of the accused, he again sent his bank account number to the accused via text message. The accused paid N500 000 into his bank account and deposited a further N500 000 two days later. Chima bought dynamite to the value of N650 000 and stored it at Mr Y's residence on the instruction of Obi.

[159] During August 2010, the accused called him again and requested his account number, which he sent to the accused. The accused subsequently deposited N1 million into Chima's account and instructed him to buy more dynamite, which Chima did and stored it at Mr Y's residence. He used N630 000 to buy the dynamite.

[160] When Chima bought the dynamite in June 2010, Segun came to Mr Y's residence with an Isuzu Jeep and loaded the dynamite into the vehicle and drove away with it. He did not know where Segun had taken the dynamite. The Isuzu Jeep also had a hidden compartment constructed where the spare tyre is usually kept. The dynamite which Chima had bought during August 2010 and had stored at Mr Y's residence was once again loaded by Segun into his Jeep, which he removed from Mr Y's premises. During this time, there were three vehicles parked in Mr Y's yard, which had hidden compartments constructed in them and from which army uniforms, bullet-proof caps and shoes were removed. Segun also loaded these items into the Jeep before he left while the three cars remained parked in the premises.

[161] The next day, he received a call from Obi, who requested him to meet him at Mr Y's residence, which he duly did. At the direction of Obi, he took out all the remaining dynamite, opened them one-by-one and inserted pins into the dynamite. Thereafter he assisted Obi to load the dynamite and batteries into the hidden compartments of the remaining three vehicles. Each vehicle was packed with approximately 60 dynamite sticks and two car batteries. This took place towards the end of September 2010 after which Chima returned to his village.

[162] On the last Wednesday in September 2010, Chima received a call from Obi who requested him to bring four clocks, which he had forgotten at

Mr Y's residence, to him in Abuja, which Chima duly did. The clocks were small with a square body and a round face. See Exhibit "YY".

[163] He arrived in Abuja on 30 September 2010, where he met Obi at a hospital and handed the clocks over to him. Obi gave him N10 000 to assist him with his costs of transport.

[164] He thereafter called the accused and informed him that the police had visited his house. The accused told him to remain calm wherever he is, as the situation would calm down. He again phoned the accused on 1 October 2010 and told him that the police were still disturbing him. The accused once again told him to relax and that the situation would calm down. He took the accused as a father figure whenever he was in a difficult situation. He remained where he was, because the accused told him to remain wherever he was until the situation calmed down.

[165] He went to Lagos where Bassey assisted him with accommodation. On 3 October 2010, Bassey telephonically informed him that he is wanted, as his face appeared on television and the newspapers. As a result, he fled Nigeria and went to stay in the Republic of Benin, until he was arrested by members of the State Security Services, who had lured him over the border back into Nigeria.

[166] After his arrest, he cooperated with members of the Department of State Security Services in Nigeria. He was not threatened, nor tortured, nor bribed by anybody to cooperate.

[167] He identified photographs 1 to 8 of Exhibit "AAA" as the residence of Mr Y.

[168] On 8 March 2010, an amount of N250 000 was deposited into his bank account. The same day an amount of N247 000 was withdrawn from the account. Under re-examination, he confirmed that he had previously

made a mistake and he bought the first batch of dynamite in March and not in February as he previously stated.⁴²

[169] The second time was in July 2010 and then he again bought dynamite in August 2010. He could not remember the exact dates that he bought dynamite, but he knew that he bought dynamite on three occasions and he bought dynamite twice during July and August.

Segun Ilori (“Segun”)

[170] He is a qualified mechanic by trade and is also known as “David Emmanuel” and “Stoneface”. He first met the accused in 1996 when he worked for the accused’s mother-in-law. At the time he used to repair the accused mother-in-law’s Nissan Stanza.

[171] About two years later, whilst the accused was using the same vehicle, he discovered that there was a hidden compartment built between the boot of the vehicle and the back seat, dividing the boot into two compartments by a metal plate. Inside the compartment he discovered AK47 rifles. Although he did not count them, he was certain that there were more than three. The accused found out that he had discovered the hidden compartment and the AK47 rifles and was very angry at him.

[172] From the year 2000 onwards, he commenced working for the accused as a driver and a mechanic up until the accused was arrested in Angola in July 2007. During this period, he drove a number of different vehicles for and on behalf of the accused.

[173] Between 1996 and 2000, he transported AK47 rifles to Port Harcourt, using the Nissan Stanza. The accused paid him N10 000 per trip.

⁴² See p 2 of Exhibit “ZZ”

[174] He thereafter drove a Toyota Dyna truck which had a hidden compartment constructed in it, transporting AK47 rifles to Farra Degogo and Boyloaf. He could not remember how many trips he had made in the Dyna truck, but the accused paid him N20 000 to N30 000 per trip. At one stage he was stopped by policemen and agents from the Department of State Security Services in Nigeria whilst driving the Dyna truck. After informing the accused hereof, they stopped using the Dyna truck and commenced using a Mercedes Benz truck.

[175] There was a hidden compartment built in the Mercedes truck. He identified Exhibit "K" as the truck which he used to convey arms. He indicated that the compartment was constructed between the front of the truck towards one of the black lines coming down and the entrance of the compartment was from underneath the side of the truck. He identified the arms depicted in photograph 1 of Exhibit "K4" as items that he conveyed to Farra Degogo and Boyloaf. He was never paid by Farra and Boyloaf for the delivery of the arms using the Mercedes Benz truck. The accused paid him between N50 000 and N70 000.

[176] He also drove a sewerage truck to load arms at the military barracks in Kaduna State. The reason why they used a sewerage truck was to conceal their actions. During this time he was assisted by the accused's younger brother Sunny Bowie. The firearms used to be offloaded at a rented flat in Kaduna and loaded back into the Mercedes Benz truck, depicted in Exhibit "K" for onward transportation to Boyloaf and Farra. The Mercedes Benz truck belonged to the accused. It was bought with the accused's money.

[177] After the accused was arrested in Angola, he stopped supplying arms to Boyloaf and Farra.

- [178] He also confirmed the fact that wires were passed from the front to the back of the vehicles wherein hidden compartments had been built. The accused had given him instructions to see whether the vehicles were in working condition.
- [179] After the accused was released from incarceration in July 2009, the accused contacted him and requested him to buy two cars, which he duly did. He gave one to Bassey and one to Kojo for them to construct hidden compartments in the two respective vehicles. The accused gave him N2 million with which to buy the vehicles, namely a Honda Baby Boy and an Isuzu Jeep.
- [180] He collected military attire from Charles Okah's residence and delivered same to Black Moses on not more than four occasions. Thereafter an employee of Charles Okah, named "Friday", used ABC Courier Services to send the items to Mr Y.
- [181] He identified the residence of Charles Okah as reflected in photographs 1 to 5 of Exhibit "BBB", as well as the residence of Mr Y, reflected in photographs 1 to 8 of Exhibit "AAA".
- [182] In addition hereto, he also delivered between thirty and thirty five AK47 rifles to Black Moses on behalf of the accused, fifteen AK47 rifles to Obesi and seven AK47 rifles to VIP. He identified the arms depicted in the first row of photograph 1 of Exhibit "VVV1" as identical to the ones he had delivered to Black Moses, because he loaded them into his vehicle and delivered them to Black Moses. He also identified the badge for the militants depicted in photograph 2 of Exhibit "VVV1" as having been delivered to Black Moses and which he had initially collected from Mr Y's residence. According to him, the badges were delivered to Mr Y

via ABC Courier Services. He confirmed that the badges and firearms were delivered on the instruction of the accused. He also delivered dynamite to Black Moses on the instruction of the accused. This was closer to the period of the 1 October 2011 bombings.

[183] The accused called him from South Africa in the beginning of September 2010. During this conversation the accused instructed him to buy four cars. The accused told him he was going to send him N2 million to buy the vehicles. However, he could not buy the cars, so the accused directed Obi to buy the cars. Obi phoned him and confirmed that the accused had now directed him to buy the cars and that he will be getting the money to do so.

[184] He also confirmed that Chima collected the clocks in Port Harcourt and took them to Obi in Abuja at the end of September 2010.

[185] He was arrested in October 2011 and immediately cooperated with the Department of State Security Services in Nigeria and is a voluntary witness in this matter. He was not threatened, assaulted, or tortured, nor bribed to cooperate with the authorities.

Bassey Umoren (“Bassey”)

[186] He is a welder by profession. He first did welding work for the accused in 2007. He constructed hidden compartments for the accused in a Dyna Truck, the Mercedes Benz truck (See Exhibits “K” and “K5”), a red Honda and another vehicle, the make of which he could not recall.

[187] In March 2010, after receiving a call from the accused, he met with him in his hotel room in Festac Town, Lagos. Upon his arrival he also met his brother Charles. It was the first time they had met. The accused told him he has a job for him in Port Harcourt and gave him N50 000 for

travelling and accommodation costs which he would incur in his travels to Port Harcourt. When he arrived in Port Harcourt he received a call from Obi Nwabueze at the behest of the accused. Obi took him to Mr Y's residence where two passenger vehicles were parked. He constructed hidden compartments between the back seat and the boot of the two vehicles. Obi paid him N20 000 for materials and he received a further N50 000 from a person he and Chima met at a certain Junction in Port Harcourt, after which he returned to Lagos.

[188] Towards the end of September 2010 he received a call from Obi who informed him there was a job for him on four cars and that he should go to Charles' house in Apapa, Lagos. Obi picked him up at a bus stop and took him to Charles' house where the cars were parked. There were two vehicles in addition to the one that Obi was driving. Obi said he would bring the fourth one when he is finished. Obi gave him N20 000 for materials. The following day he constructed hidden compartments in the four passenger vehicles. When he was finished he called Obi who said he would send him money. The following day at the direction of Obi he returned to Charles' residence, where Charles handed him an envelope containing N50 000. When he arrived there he opened one of the vehicles back seats where he had constructed the compartment and observed bullet proof vests, army vests and boots stored therein. There were two Mazda's, a Hyundai and a Honda Bullet. The one Mazda was blue in colour.

[189] On 30 September 2010, he received a call from Chima who needed a place to stay. He accommodated him at his brother's residence. That evening he saw a photograph of Chima shown on television reporting that he was wanted. He called Chima and advised him to flee to the Benin Republic, which was in close proximity.

[190] He identified the vehicle depicted in Exhibit “FF”, as well as the hidden compartment he constructed and the items stored therein. He also identified the same vehicle in Exhibit “FF2”, the residence of Mr Y reflected in Exhibit “AAA” and Charles Okah’s residence depicted in Exhibit “BBB”.

[191] He admitted that the accused assisted him in buying equipment for his shop.

Selekaye Victor Ben (“Sele”) (The brother of Ebikabowei Victor Ben (aka Boyloaf))

[192] I will refer to this witness as “Sele” to distinguish him from his brother Boyloaf who did not testify. Sele also hails from the southern parts of the Niger Delta and is part of the ethnic Ijaw people. He confirmed the historical background evidence of Orubebe but supplied greater detail.

[193] The agitation first commenced in the 1960s with Isaac Adaka Boro, when he carried out the 12 days’ revolution. Later in the 1990s with Ken Sero-Wiwa, the Ogoni’s agitated peacefully for the control of the resources in their land. Still in the 1990s, the agitation continued with the Niger Delta People Volunteer Force, the NDPVF, which commenced the armed phase of the Niger Delta agitation against the discriminatory sharing of oil revenues by the Nigerian Federal Government and the negative environmental, health impact and limited political platform for the Niger Delta people. In essence, the NDPVF, led by Asari Dokubo, stayed in camps in the creeks of the Niger Delta and waged gorilla warfare tactics against the Federal Government of Nigeria.

[194] After Asari was arrested for his role in the armed struggle in 2005 MEND was created. MEND was formed during a meeting held in Warri, Delta State. The key persons present during this meeting were the accused, Farah Degogo, his brother Ebikabowei Victor Ben (a.k.a.

Boyloaf) and Tompolo. MEND was created to foster the economic, political, environmental and social issues raised by previous agitators and to negotiate the release of Asari Dokubo.

[195] During the early stage Sele was the spokesperson of MEND to interface between MEND and the media via e-mail. MEND was fully on the ground at the time and were engaged in guerrilla warfare, attacking oil installations and military formations in the creeks, which included blowing up pipelines, oil facilities and abducting of expatriates and executives of the oil companies.

[196] He used the pseudonym “Brutus Ebipadei” and the e-mail address haaizon@yahoo.com to interact with the media. He would send an e-mail notification to the media that attacks would be carried out and the details of the attacks. He would also afterwards accept responsibility for the attacks via e-mail on behalf of MEND. He acted on the instruction of the leadership of MEND which consisted of the accused, Boyloaf and Fara Dagogo. Later the accused took over the communication with the media by sending e-mails using the pseudonym Jomo Gbomo. Thereafter, that was the only way MEND communicated with the public. The accused was the overall leader of MEND and was known as the “General Master”.

[197] Sele worked for the accused by facilitating logistical arrangements for the supply of arms and ammunition, military uniforms and other attire to militants via Fara Degogo and Boyloaf. He identified Exhibit “K”, a Mercedes Benz truck, as being one of the vehicles used by the accused to convey arms and ammunition. The truck had a hidden compartment constructed where the weapons were stored. All weapons used by MEND were supplied by the accused.

[198] At the time, a Honda Civic passenger vehicle, which had a hidden compartment built between the boot and the backseat of the vehicle, was also used to transport dynamite and hand-grenades. The accused was the owner of both the Mercedes Benz truck and the Honda Civic.

[199] The accused had expertise in the manufacture of explosives. During the middle of 2006 the accused put together components he used in car bomb explosives. Sele bought the GSM mobile telephones which the accused used in the assembling of the bombs. The accused used the motherboards of remote controls and explained to Sele that the motherboards and the mobile telephone would act as an interface and when the mobile phone is called the explosion will take place. After the accused put the components together there would be two wire outlets, one leading to the battery of the car and the other to the sack containing the dynamite and explosives. A detonation cap is then connected to the dynamite. When the mobile phone was called, it transferred the current to the motherboard, which then moved to the cap and caused the dynamite to explode. The accused put together the components, which included the SIM card and he was the only one who knew the telephone number of the SIM card and the only one who could call the mobile phone attached to the car bomb.

[200] During December 2006, four Agip expatriate executives were kidnapped after an attack by MEND on the Nigerian Agip Oil Company's terminal in Brass Local Government. N135 million was received as ransom for their release. One of the persons kidnapped was a man called Francesco Arena, the Agip Swamp manager. The accused told them Arena was a very important man and Agip would pay whatever was asked.

[201] As a result of the Agib incident, Sele was arrested on 27 February 2007 and charged on five counts of terrorism. The accused, Boyloaf and Fara Dagogo were also to be charged for the same crimes, but they

remained at large. However, the accused was later arrested and taken into custody.

[202] Sele was granted bail in June/July 2007. The accused paid him N700 000 in cash for his efforts. Thereafter he accepted amnesty.

[203] When the accused was in custody in Nigeria prior to receiving amnesty he was still the leader of MEND. One of the conditions given by all the ex-militants in the creeks during the peace negotiations was to release their leader, the accused.

[204] Mr X, who also testified, is his childhood friend, whom he has known for 18 years. On 23 September 2010 he met Mr X at the Hilton hotel, Abuja where Mr X informed him that the accused is planning to carry out a bomb attack on 1 October 2010 at the Independence Anniversary celebrations. He took Mr X to Boyloaf where he also informed him of the accused's plans. He thereafter reported what Mr X had told him to the Nigerian authorities as it is a crime in terms of the Nigerian Criminal Code to fail to report such information.

[205] He identified the camouflage and other army clothing, Exhibits 1 – 13 as items supplied by the accused and which MEND militants use to wear. He had seen the items at about 70% of the militant camps.

[206] Under cross-examination, Sele said that the bombs that exploded during March and October 2010 were not for the interest of the people of the Niger Delta because the main players in the Niger Delta struggle, stakeholders, Statesman, chiefs and politicians who seriously fought for the cause of the Niger Delta at various levels had assembled in the very meeting where the bombs exploded.

[207] The accused cannot claim to be victimised by the Nigerian government as he was granted amnesty for every action taken by MEND before amnesty was granted. Whatever the accused had been arrested for is for something that was done after amnesty. Nobody in MEND wants to do anything to hurt the accused because they fought with their lives for his freedom which gave birth to amnesty. Nobody wants to silence the accused.

Stanley (aka Zion Amada)

[208] He met the accused in 2007 at Boyloaf's residence where the accused was introduced to him as "Master".

[209] Three months thereafter he received a telephone call from the accused, whom he later met in his hotel room at the Beverly Hills Hotel, Port Harcourt. The accused was in the company of Dakro. The accused offered him employment to run errands for him. As a result he paid monies sent by the accused into various bank accounts on behalf of the accused and bought recharge cards in unusual large quantities from the three major mobile telephone service operators in Nigeria. The accused at least had three mobile telephones in Nigeria and more than one mobile number in South Africa. The accused did not have any fixed residence at the time and stayed in various hotels. Besides himself, nobody knew where the accused was staying. He was often in the accused's company when he was on the telephone and overheard him talking over the telephone about the purchasing of guns and ammunition and overthrowing the government of Equatorial Guinea, which he would use as a transit point to convey arms and ammunition to the Niger Delta.

[210] During January 2010 he received a telephone call from the accused who requested him to look for a private apartment in Port Harcourt

which he could use to assemble car bombs. The accused also told him to get in touch with Chima and that he was going to send him money to give to Chima to buy dynamite ('yam').

[211] He received N100 000 from the accused on 11 February 2010 which was paid into his Intercontinental Bank account. He did not know the person, Emmanuel A, who paid the money into his account.⁴³

[212] Mr X called him on 29 September 2010 and informed him that he had been instructed by the accused to take some cars to Abuja and requested Stanley to inform the Governor of Bayelsa State. Stanley tried to reach the Governor but he was unavailable. On 30 September 2010, Mr X called him again and informed him that he had discussed the accused's plans to bomb Abuja on 1 October 2010 with Sele. He passed this information on to the Executive Governor of Bayelsa State, along with the accused's telephone numbers in South Africa, +27737031170 and +27782495333.

[213] In Nigeria, the State Governor is the Chief Security Officer of his State and it was necessary for him to relate such information to the Governor as he did not want to be criminally charged.

Tamunonyemiba Kuna (aka "General Obese")

[214] This was a very poor witness. He did not contribute to the clarification of the disputes and it is uncertain why the State called him. The least said about him, the better.

Feroz Osman ("Osman")

⁴³ See Exhibit "O"

[215] He is employed as Sales Representative at Military Surplus Stores, trading as Army Surplus Stores. The three statements he made to the police are contained in Exhibits “CC”, “DD” and “EE”. As the name suggests the store trades in military and camping attire. The statements were handed in as exhibits by consent.

[216] According to Exhibit “CC”, the accused bought various military attire to the value of R16 050-00 which was collected on his behalf by William Amangabara on 26 February 2010 as well as military items valued at R200 000-00, which the accused paid by a Nun R Import & Export CC cheque that was deposited in July 2010 into Military Surplus Stores’ Standard Bank account.

[217] Exhibit “DD”, is indicative of the accused having bought various military items from Military Surplus Stores on 28 June 2010, which was paid for by the cheque mentioned in the previous paragraph. The items included: 400 camouflaged vests, 470 webbing belts, 480 slings, 40 camouflaged boots, 90 canvas boots and 14 tents.

[218] Exhibit “EE” gives a description of the items he sold to the accused.

[219] He identified Exhibits 1, 2 and 10 as items that he sold to the accused.

[220] He identified the green camouflaged vests depicted in photographs 1, 2, 3 and 5 of Exhibit “FF” as items he had sold to the accused and which is mentioned in the invoice.

Uchenna Alatta Ogba (“Ogba”)

[221] He is a Medical Doctor in the employ of the Nigerian Red-Cross Society as head of the Department of Health and Care in Abuja. Obi Nwabueze is his brother-in-law.

[222] Ogba testified to a lot of hearsay evidence regarding Obi Nwabueze who never testified, but several of his statements were handed in by consent as exhibits. The admissible evidence relates solely to an event which occurred on 29 September 2010 when, because of a message received, he met a man who handed a Mazda saloon vehicle to him at his home. It was a vehicle identical to the model shown and depicted in the photographs of Exhibit "FF". Obi unexpectedly arrived at his residence in Abuja about two hours later in a black Honda which he had driven from Warri. On 30 September 2010 Obi left his residence with the Honda, but did not return with it.

[223] After he learned of Obi's arrest, he went to the offices of the Department of State Security Services where such arrest was confirmed. Obi never complained to him about any abuse or torture. He was sure that Obi would have related any such inappropriate conduct to him as they were relatives and family friends.

[224] He received an amount of N50 000 from Obi which was paid into his access bank account by another person on 13 October 2010. He knew it was from Obi, because Obi phoned him and asked him if he had received the money whereupon he confirmed the fact to Obi.

Fritz Ferdinand Kassberger ("Kassberger")

[225] He is a commercial property broker and the owner of Unit 7, Boskruin Business Park, situated on the corner of Kelly - and Bosbok Streets, Randpark Ridge. He bought this property brand new in 1996/1997. It is a commercial office park, which has 15 offices. He manages the whole complex and is there on a daily basis. He has never heard of Nun R Import and Export, neither has he heard of the accused or his wife, Azuka. He checked his records and could not find the accused's name nor his business name as having rented unit no 7 from him before. His

evidence destroys the veracity of the purported registration certificate of Nun R Import Export CC.⁴⁴

Fatai Isiaka Adeyinka (“Adeyinka”)

[226] He is an auto-electrician by profession with his workshop situated in Lagos, Nigeria, which he shares with Achmed Ariyo, a motor mechanic. He cannot read nor write English.

[227] Adeyinka sold a blue Mazda 626 with registration number BY 315 FKJ to Obi Nwabueze for N25 000 on 17 September 2010. Obi also bought a Hyundai Sonata, blue in colour, with registration number PU 803 KJA for N380 000 from Achmed Ariyo. He identified the vehicle depicted in photographs 8 and 10 of Exhibit “FF” as the vehicle sold to Obi.

[228] On 30 October 2010 Adeyinka was interviewed by the State Security Services in Abuja where he confirmed that he sold the vehicle depicted in Exhibit “FF” to Obi.

[229] He admitted that the date “17/10/2010” written by him on the purchase receipt, Exhibit “TT” is wrong as it was intended to mean 17 September 2010 as reflected on Exhibit “TT” at the top of the document. This is confirmed by the fact that the change of ownership document, Exhibit “TT1”, was also dated 17 September 2010.

[230] Lastly, he confirmed that the vehicle did not have any hidden compartment constructed in it prior to him selling the vehicle to Obi, as depicted in photographs 9, 11 and 12 of Exhibit “FF1”.

Achmed Ariyo (“Ariyo”)

⁴⁴ See Exhibit “GG1” p 330

[231] This witness confirmed in all respects the relevant evidence of Adeyinka.

Oluwale Adelakun (“Adelakun”) and Humphrey Ohikhuare (“Ohikhuare”)

[232] These witnesses did not contribute to the case in any meaningful way.

OFFICIAL WITNESSES

Patrick Origho (“Origho”)

[233] He is the Permanent Secretary to the Governor’s office, Annex, Warri. He is the administrative head and accounting officer and is responsible for the day-to-day business of the office. The Governor’s office is situated along NPA Express, Warri. He was present on 15 March 2010 at the Post Amnesty Dialogue meeting. The purpose of the Post Amnesty Dialogue meeting was to explore options for: Skill acquisition and training programmes for the former militants; re-evaluating strategies to reconstruct the communities devastated by militant activities and oil pollution; rehabilitation programmes; disarmament and amnesty, bunkering and economic sabotage in Nigeria’s exclusive economic zone; resource control; demilitarisation of the Niger Delta; security and economic development; economic empowerment of youths in the Niger Delta Post amnesty and disarmament era; and promoting people centred development in the Niger Delta.

[234] The meeting was attended by the Governors of the Delta, Edo and Imo States, the then Minister of the Niger Delta and was chaired by retired General Andrew Azazi. The target group of the meeting also included the leaders of militant organisations, multinational oil companies, elders

and youths from the region, woman organisations and members of civil society, media organisations and multinational agencies.

[235] Vanguard Media Limited was the organisers of the Post Amnesty Dialogue meeting. The Vanguard Newspaper had printed all the names of the persons invited to attend the Post Amnesty meeting in the media the day before, 14 March 2010. The accused's name appeared therein as he had been invited.⁴⁵

[236] The meeting took place in the Unity Hall with about four hundred and fifty persons being present. At about 11:00 he heard a loud explosion. The meeting proceeded. The explosion came from outside the hall and occurred along the NPA Express Way. When the chairman of the Vanguard was presenting his introductory remarks, a second explosion occurred which shattered the glass window panes and doors and broke the aluminium fittings and frames of the doors and windows.

[237] Eleven persons were injured and one person died. These persons were outside along NPA Express Way and were not in the hall. Alex Mode Igben died. He was found burnt to death in a burnt out vehicle. He left a wife and two children. The persons injured were taken to various hospitals for treatment.

[238] There is a private school next to the venue where the meeting took place. The glass in the window panes was shattered and the aluminium frames of the doors and windows of the school were also damaged. Fortunately there was no school that day as the principal in her wisdom decided to close the school because of the Amnesty Celebrations.

[239] MEND took responsibility for the attack. He established this through the printed media.

⁴⁵ See Exhibit "V".

[240] Exhibit “W” is a report documenting the incident, with an annexure listing the persons injured, the nature of the injuries sustained and damage to property, the correctness whereof was not placed in dispute.

[241] Had the two explosions occurred in the parking area of the venue it would have been disastrous as it would have led to the deaths of many in attendance, including the dignitaries.

Abel Bulus Achi (“Achi”)

[242] He is a Deputy Director in the employ of the Department of State and was in charge of operations in the Niger Delta. He coordinated all operational activities in the State. He received intelligence on 14 March 2010 that MEND was going to disrupt the Post Amnesty meeting in Warri on 15 March 2010.

[243] He deployed additional operators to the venue and received periodical reports on the security situation concerning the threat made by MEND. He visited the scene of the bombings at Government House Annex, Warri and established that two vehicles, a Toyota Camry and a Honda, were used in the bombing. He also confirmed that the two vehicles were parked along the NPA Express Way in front of Government House, Annex on either side of the Express Way. One person had been left dead and eleven persons sustained serious injuries and were taken to various hospitals for treatment. He visited the injured persons at the respective hospitals.

[244] The deceased, Alex Igben’s corpse was burnt beyond recognition. An examination thereof was carried out in the morgue. Family members came to identify the corpse and that is how the body was identified.

[245] Government House Annex, the International School and two vehicles passing along NPA Express Way were damaged as a result of the explosions.

[246] On 16 March 2010, he learned in the print media that MEND took responsibility for the bombings. The contents of Exhibit “Y” were contained in the media reports. After MEND claimed responsibility for the attack, there was no disclaimer by MEND or anyone else.

[247] He confirmed that the accused cannot deny being the leader of MEND and has a considerable influence in the Niger Delta.

Friday Onuiche (“Onuiche”)

[248] He is the Local Government Security Chief for Oshimili South Local Government Area, Asaba, Delta State. His responsibilities include the detection and prevention of crimes against the State such as espionage, sabotage, terrorism, subversion as well as being responsible for VIP Protection.

[249] He had been deployed to Government House, Annex. He was aware of threats through the media by Jomo Gbomo, the spokesperson of MEND wherein Gbomo called for the meeting to be cancelled. As a result, robust security operatives were mobilised to the venue. Vehicles were directed to park outside the venue along the NPA Express Way.

[250] The first explosion went off at about 10:45 and the second one at about 11:00. The second explosion impacted heavily on the conference hall resulting in damage to it and causing panic amongst the delegates. The Governors and Ministers were evacuated through the rear door and driven to safety. The police and ballistic units had cordoned off the

scene. The explosions were caused by two vehicles, namely a Honda and a Toyota, which had been implanted with explosives.

[251] He confirmed that the body of Alex Igben had been burnt beyond recognition but was later identified by relatives. He also confirmed the identity of the injured persons and the damage to property. He recognised the contents of Exhibits “Y” and “Z” as what he observed in both printed and electronic media.

[252] He was part of a six-man task team appointed to conduct a preliminary investigation within 48 hours, after which a report was submitted to the management of the Department of State Security Services, Delta State Command.

Bulus Emmanuel Shehu (“Shehu”)

[253] He is an Assistant Director in the employ of the Department of State Security Services, Ogun State Command and is in charge of security enforcement in that State. He oversees border security amongst other portfolios. He also holds a Bachelor’s Degree in Public Administration and a Master’s Degree in International Law.

[254] He received reliable information that the accused was involved in gunrunning. As a result, on 10 March 2006, he obtained a search and seizure warrant from the Magistrate for the District of Ogun State to search the accused’s residence at 2 Abak Clos, Agbara Estate, Ogun State.⁴⁶

[255] A large number of arms and military camouflaged uniforms were found in a storeroom attached to the main bedroom. There were also arms

⁴⁶ See Exhibit “AA”

and ammunition in the main bedroom. The items seized are listed in Exhibit “BB”.

[256] The accused’s residence is 20 to 25 kilometres from the border of the Benin Republic. The border between Nigeria and the Republic of Benin is very porous, in that there are many illegal routes with only one approved route. This became problematic for Nigeria.

[257] He disputed that the accused had not been residing there since 2004.

Penelope Nkosi (“Nkosi”)

[258] She is a Warrant Officer in the South African Police attached to the Cyber Crime Forensic Laboratory, Pretoria. Her duties include the forensic investigation and analysis of computers and other electronic media. On 15 March 2012 she was requested to trace the origin of an e-mail communication also purportedly from Mr Peter Timi containing as its subject a threat in the following terms:

“Release Mr. Henry Okah to the Nigerian Government or else...(MEND)”

[259] The South African Presidency, Parliament, Ministry of Justice, Ministry of Foreign Affairs and the South African Embassy in Nigeria were copied therein.

Dr Efoloina Patrick Ekphiwhre (“Ekphiwhre”)

[260] He is a medical doctor by profession and is employed as a Senior Medical Officer in the Ministry of Health, Delta State. He is based at the Central Hospital, Warri, a government facility, where he works in the Department of Trauma and Orthopaedic Surgery.

[261] He testified as to the identification of Alex Igben as the deceased who died in the explosion in Warri on 15 March 2010. Since these events are no longer in dispute, it is unnecessary to traverse this witness's evidence. He issued a Medical Certificate of Cause of Death in respect of the death of Alex Mode Igben indicating that his death was caused by a bomb blast and burns.⁴⁷

Franklin Dele Akingbade ("Akingbade")

[262] This witness was security officer deployed at Eagle Square on 1 October 2010 when the bombs exploded. He testified that he was knocked over by the blast. He sustained injuries to his ears, forehead and thigh.

Phillip Fagbemi (aka Thulani Adediram)

[263] He is in the employ of the Department of State Security Services. He was a member of a team of operatives who executed a search and seizure warrant on 8 March 2007 at Flat B2/16 GRA2, Federal Housing Estate, Calabar after receiving information from the accused's brother Sunny concerning the conduct of the accused in using trucks to convey arms and ammunition and the storage thereof. Exhibit "K" is a photograph of the accused's truck and Exhibit "K1" is the search warrant issued by the Magistrate in Calabar. Exhibit "K2" is the inventory of the items seized.

[264] They searched the house and the truck. Amongst the items seized, were 14 assault rifles, 9mm rounds, 15 rifle magazines and 16 rifle

⁴⁷ See Exhibits "X" and "HH"

slings, which were retrieved from a hidden compartment in the rear of the truck.⁴⁸

[265] The arms and ammunition came from the military armoury. Both he and Sunny testified in a Military Court Marshall against senior military officials in respect of the same weapons referred to in Exhibit “K”. The military officials concerned were convicted.

Abdul Abubaker (“Abubaker”)

[266] He is an Assistant Director in the employ of the Department of State Security and in charge of internal security in the Federal republic of Nigeria. He is the lead Nigerian Investigator into the bombings of 15 March 2010 in Warri and 1 October 2010 at Eagle Square, Abuja.

[267] Prior to the event, MEND, through Jomo Gbomo, sent out a publication through the media, warning that there will be a bomb explosion at the event. MEND, through Jomo Gbomo, also took responsibility for the bombings via email communications to the media after the event.⁴⁹

[268] The investigation commenced on 1 October 2010. Investigations revealed that the name Jomo Gbomo is synonymous with the Okah family. The accused’s brother, Sunny Bowie, granted an interview in the media in which he explained how the accused and his wife, Azuka used the email address. This allegation has to date not been refuted by the accused or his wife, Azuka.

[269] He expressly denied the accusations⁵⁰ of torture and threats of execution allegedly perpetrated by the State Security Services officers

⁴⁸ See Exhibit “K4”

⁴⁹ See Exhibits “OO” and “PP”

⁵⁰ As made in Exhibit “QQ”

to force Obi to make the nine written statements implicating the accused. In addition, the allegation by Obi that he was beaten for having requested a lawyer was untrue. His assertion that he did not plan or execute the October 2010 bomb blast under the direction of the accused was also untrue.

Inalhassam Iliasu (“Iliasu”)

[270] He took the nine cautionary statements written by Obi Nwabueze. In doing so, he followed standard operational procedures whereby Obi was informed of his rights to a lawyer and the right to remain silent. He took Obi to a conference room where the caution was explained to him. Obi was not handcuffed during this time. At no stage was he mistreated in any way.

[271] Obi understood the cautionary words after which he undertook to voluntarily make a statement, which he subsequently wrote himself. The witness read the statement back to Obi, who appended his signature thereto. Obi was then taken to Abubaker, who read the statement back to Obi, who confirmed the correctness thereof and appended his signature thereto. This process was followed in respect of the recording of all nine statements.⁵¹

[272] As the investigation progressed, Obi was confronted with new evidence after which he volunteered to make written statements in respect of such further information. Obi was a very cooperative suspect, who made his cautionary statements freely and voluntarily.

[273] He disputed the allegations levelled by Obi in Exhibit “QQ”.

Soobramoney Perumal Pillay (“Pillay”)

⁵¹ See Exhibits “WW1” to “WW9”

- [274] During September 2010, he was a Warrant Officer in the South African Police Service, attached to the Interpol National Centre Bureau, Extradition and Fugitive Unit. The accused's particulars were circulated on an Interpol Red Notice⁵², which notice is normally circulated to seek the location and arrest of wanted persons or fugitives.
- [275] During the evening of 29 September 2010, he and his colleague were summoned to discuss the Interpol Red Notice with other units in the South African Police Service to confirm the identity of the person in the Red Notice. They were informed that the accused had been suspected of terrorist-related offences and there was a possibility that car bombs were to explode a day or two later. As a result, they accompanied other members of the South African Police Service to the residence of the accused at about 04h00 in the morning of 30 September 2010.
- [276] While in his bedroom, the accused was questioned about the current situation in Nigeria and his involvement with MEND. To this the accused denied being the leader of MEND and explained that the oil has been taken from the Niger Delta area and it is only the Government that has been enriched and nothing has been done for the people of the Niger Delta and for their wellbeing. The accused further said that should he be arrested and the people of Nigeria hear about his arrest, the situation in the Niger Delta would escalate, referring to the fighting of rebels in that area. The accused denied being involved in the scheduled detonation of car bombs, laughed and said he was in South Africa and how could he instigate things in Nigeria. The accused did not give any specific answer when confronted with the question why problems would escalate in Nigeria if he was not the leader of MEND.

⁵² See Exhibit "XX"

[277] When the accused was questioned on the Interpol Red Notice (See Exhibit “XX”) he explained that he had previously been arrested in respect thereof in Angola, extradited or repatriated to Nigeria, where he received amnesty.

Jan Frederick Janse van Vuuren (“Janse van Vuuren”)

[278] He is a Lieutenant Colonel in the South African Police Service, and was stationed at Crime Intelligence Head Office, Pretoria during September 2010. At about 22:00 on 29 September 2010, he received a directive to meet fellow colleagues in the south of Johannesburg. Upon his arrival, he was briefed that vehicle bombs would explode in Abuja, Nigeria the following day, which are being coordinated from the residence of the accused in the south of Johannesburg. Their mandate was to prevent the explosions from taking place.

[279] Due to the lateness of the hour, they could not obtain a search and seizure warrant and could not wait any longer to prevent the explosion from taking place in Abuja. As a result, at 04:00 the morning of 30 September 2010 they proceeded to the accused’s residence at 19 Dibberic Drive, Bassonia. They used an intercom system to announce their presence. Shouting or knocking did not work to allude the residents of their presence.

[280] Since there was no response, the Task Force broke the door open to gain entrance and immediately secured the premises. The kitchen door opened and as he moved to the kitchen door, he and the accused ran into each other after which he informed the accused of his rights and placed him under arrest. The accused then phoned his legal representative who arrived later.

[281] He found a lot of mobile phones and SIM cards in the accused's bedroom, which he collected and placed on the bed. He also discovered books about warfare, revolutions, *coup d'états*, modern warfare weapons, aeroplanes, war planes, ships, small arms and big arms. He also discovered a box of batteries used in radio controlled cars and tactical lights, which items he kept for safekeeping until the arrival of the investigating officer, Lt Col Noel Zeeman, to whom he handed over the scene and the accused.

[282] While taking Col Zeeman through the accused's residence, they entered a study room where they found an array of camouflage attire.

Lindsay Allen Smith ("Smith")

[283] He is an inspector of explosives' substances, appointed in terms of Section 25 of the Explosives' Act. Improvised explosive devices are often referred to as "homemade devices" and are in essence an explosive created in the majority of times out of household items. "Improvised" means simply that they used whatever they can to improvise to bring about the explosion of the explosive substance itself.

[284] One needs a power source, because inevitably it is the current that will set off the detonator, which in turn will set off the explosive. In many cases, bombers also use an arming switch and an activation switch. The arming switch is primarily a safety measure for the bomber. One can incorporate the arming and activating switch in a cell phone. An activating switch could be a number of different switches ranging from cell phones, clocks, pressure releases, etc. He gave an example of an egg timer that is set for fifteen to twenty minutes and is very similar to the timer on a microwave. Once the switch is activated, it closes the

circuit and allows the power to flow through to the detonator, causes a spark which, in turn, causes the high explosives to explode.

[285] He sketched a circuitry drawing, marked page 8 of Exhibit “MM”, which depicts the power source on the left and the battery on the right, with the circuit running to an arming switch to an activation switch and on to a detonator and the explosives. Once both switches are closed, then the current flows freely from the source of power to the detonator.

[286] The cap can be referred to as the detonator and the explosive would be the dynamite. When forty sticks of dynamite in which caps had been inserted were connected to a battery and a timer device, and inserted into a hidden compartment in between the boot and the back seat of a vehicle one would classify it as a standard “vehicle-borne improvised explosive device” (VBIED). The timer, in determining the time, acts as both the timing and activation switch. The car battery would be the power source and the timer would be coupled between the battery and the explosives. Once it reaches its time, the circuit closes and the current flows. The reason for the explosives to be hidden in the vehicle is to prevent its detection in case the vehicle is searched.

[287] The more you confine an explosive, the more pressure is generated. The explosion causes a chemical reaction that creates a pressure wave that is referred to as a positive and negative pressure wave. The more you confine the explosive the more power you will get out of the explosive. Only one detonator is required when the dynamite sticks are in close contact with each other.

[288] The smoke colouring of an explosion depends on the chemicals within the explosive along with what is involved in the explosion. Primarily explosives like dynamite containing ammonium nitrate will give off a

pure white smoke. However, where nitro-glycerine is used, it gives off a darker to black greyish smoke, depending on the explosives used. Fuel and oil of the car would affect the colour of an explosion, giving off a much darker or black smoke, so much so that there have been reports of vehicle explosions where the explosive contained ammonium nitrate, yet the smoke was black.

[289] With regard to Exhibit “JJ2”, he said the photographs depicted the following:

1. In respect of photograph 3: Fast rechargeable, high capacity batteries, used in remote controlled toys are popular in the improvised explosive world.
2. In respect of photograph 11: Normal 9 volt batteries, in particular are utilised as official initiators, as they have more than sufficient current to detonate or to initiate a detonator.
3. In respect of photographs 17 to 22: They are male and female lugs which are normally utilised in joining electrical wiring.
4. In respect of photograph 24: This depicts a standard soldering iron. The soldering of wires gives one a much stronger connection than trying to couple wires.
5. In respect of photograph 27: Depicts a vice grip/plier/cutter, which can be used as a stripper.
6. In respect of photograph 28: Depicts a multi-tool.

7. In respect of photograph 31: A current tester, which is used for showing the current flow on a particular circuit.
8. In respect of photograph 42: Insulation tape used in all electrical fields to insulate wiring.
9. In respect of photograph 46: AA batteries have sufficient current to activate a detonator.
10. In respect of photograph 47: A magnet could be used as a break in the wiring of a close circuit. When bomb technicians penetrate, they break the middle lining and use the magnet to draw the wiring towards it and its circuit closes. Magnets could also be used when you assemble electronic items to hold things in place. A plated magnet should be used.

Johan Rudolpf Heenen (“Heenen”)

[290] He is employed as a control immigration officer, appointed in terms of Section 33 of the Immigration Act, No 13 of 2002. By virtue of the position he holds, he has access to all the information contained on the immigration data base and the movement control system of the Department of Home Affairs.

[291] The available Home affairs records reflect the following:

1. The accused first travelled to South Africa on 28 October 2001. Thereafter, the accused frequently travelled to and from South Africa, using Nigerian passports up until 27 August 2007 when he departed from South Africa. The accused is a Nigerian national. On 13 March 2007, the accused was granted permanent

residency status in terms of Section 27(c) of Act 13 of 2002. This falls in a category of “own business” and is applicable where a person arrives in South Africa and applies for status to run his own business as a director, CEO or is in partnership with somebody. The accused’s wife was granted permanent residency on the same day and in terms of the same subsection as the spouse of the business owner. If she continues in a spousing relationship, a good business relationship and in continuity of the conditions of the permit, she will maintain permanent residency.

2. The accused departed from South Africa using his Nigerian passport on 18 February 2010 and arrived in Cotonou in the Republic of Benin on the same day. The passport is then endorsed as “cancelled” thereafter, making it null and void. That was the last entry in the passport. The accused’s passport was replaced on 8 March 2010, issued in Festac Town, Lagos. The passport shows a stamp dated 19 March 2010 where the accused departs Cotonou in the Republic of Benin and he arrives in South Africa on the same day at OR Tambo International Airport.⁵³
3. On 23 May 2010, the accused departed South Africa and arrived at Katoka in Ghana on 24 May 2010. The accused again departed Ghana on 7 June 2010 and arrived in South Africa on 8 June 2010. No stamp indicative of the accused having entered or departed Nigeria exists.⁵⁴
4. The accused departed South Africa on 15 July 2010 and arrived in Ghana on 16 July 2010. He subsequently returned from Ghana

⁵³ See pp 235, 221 and 223 of Exhibit “GG1”

⁵⁴ See p 223 Exhibit “GG1”

on 6 August 2010 and arrived in South Africa on 7 August 2010. There is no stamp showing any entry or exit to and from Nigeria.

5. He is not familiar with any regulations or port of entries permitting one to enter or leave a port of entry without appearing in front of an immigration officer.

Hilda du Plessis (“Du Plessis”)

[292] She is a specialist forensic data analyst, employed by MTN, Johannesburg. In view of my previous statement that the IT evidence is not required for purposes of coming to a final conclusion in this matter, it is not necessary to consider the testimony of this witness. There is direct evidence by several witnesses of telephone calls made to them by the accused which stand uncontradicted.

COUNT 13

Simon Francis Kerry (“Kerry”)

[293] This witness came to testify about the effect of Exhibit “L” on his company. His evidence relates to the allegations contained in count 13 of the indictment. Exhibit L contains a threat against the South African Companies and their employees involved in Nigeria. The e-mail dated 27 January 2012 read as follows:

“I am Mr Peter Timi the Europe representative of the Movement for the Emancipation of the Niger Delta (MEND). I have been mandated to communicate our displeasure over your country’s involvement through the South African judiciary as it concerns our leader Mr Henry Okah.

...

We should remind you of the South African investments in Nigeria such as the few stated below and we will not hesitate to disrupt the business activities and take the South African nationals working for these companies hostage.

- Ethnix Designs

- Pepkoro Limited
- Standard Bank
- Nampak
- KPMG
- MTN
- Phillips Consulting
- Plessey
- Legacy Hotels
- Enterprise IG
- Dimension Data
- Johnnic Africa
- Pace Property
- Altech Namitech
- Sun International
- ABSA and Southern Sun

The South African Government through her judiciary is hereby advised to within the next two weeks affiliate (sic) release our leader or else the South African citizens and companies will be at risk. Don't forget that no amount of Nigerian Government's security guarantee can stop us.

We will carry out these 'PROMISES' to the later (sic), enough is enough...

Signed Mr Peter Timi
For: MEND"

[294] Kerry said that he is the Group Risk Manager for Plessey Pty Ltd. The company installs and build telecommunications infrastructure for the telecommunications industry throughout South Africa and Africa. He looks after the risk portfolio of the company in so far as it relates to staff wellbeing and security for the company, locally and internationally. The company has four South African nationals employed at Plessey (Pty) Ltd, Lagos, Nigeria.

[295] Plessey provides support to Nigerian companies and infrastructure by erecting and constructing telecommunication towers and wireless infrastructure for the communication industry. After receiving Exhibit "L", he spoke to the companies' executives and accepted the threats as a concern to the staff in Nigeria. They discussed whether action should be taken. There would have been great financial implications for Plessey if the expatriates had to be brought back to South Africa or if the South African expatriates were taken hostage in Nigeria. Plessey provides an

essential service in the Nigerian infrastructure as it is part of the communications and network operations in that country.

[296] Dimension Data is Plessey's holding company and also has South African nationals employed in Nigeria. The persons employed there are in excess of four people. Dimension Data took the same measures as Plessey.

[297] He Googled the accused's name and based on what he found, he regarded the threats as serious. The e-mail communications attached to Exhibit "L1" are indicative of how serious Plessey and Dimension Data took the threat. Although the threat was seen in a serious light, the executives of Plessey and Dimension Data did not in actual fact, according to the e-mails, evacuate any of its personnel from Nigeria. They put in place contingency plans for quick evacuation, if needed. There is no evidence that these plans were actually implemented.

Noel Graeme Zeeman ("Zeeman")

[298] He is a Colonel in the South African Police Service and the investigating officer in this matter. The investigation commenced on 30 September 2010. His evidence is merely confirmatory to that of Pillay and Janse van Vuuren and need not be considered in detail.

[299] On 30 January 2012, he interacted with the accused in the reception area of the court cells at the South Gauteng High Court. The accused's matter had already been postponed and the two of them were waiting for the transport of the accused to return him to prison. The accused appearing visibly upset and out of his own, started complaining about his lawyer. The accused *inter alia* said that South Africa is going to pay, as it should not be involved in this matter, as it was not their problem.

The accused further stated that there was nothing preventing him from attacking South African interests in Nigeria, as he is a warrior and will continue fighting. The accused was talking about the current matter before Court. On 7 February 2012, he was approached with a letter from Peter Timi in which MEND threatened South African businesses if the accused is not released. He confirmed that he made a statement in this regard and had also attached media articles confirming the threats made by Peter Timi. (See Exhibit “AAAA”)

[300] I am satisfied that the State proved beyond a reasonable doubt that the accused is also guilty on count 13. The evidence of Kerry and Zeeman is uncontroverted and prove that the accused and/or one of his supporters, Timi, voiced threats of danger to South African companies and their employees operating in Nigeria.

CONSPIRACY

[301] A conspiracy is an agreement between two or more persons to commit, or to aid or procure the commission of the crime.⁵⁵ When two or more persons are engaged in a common enterprise, the acts and/or declarations of one of them in pursuance of that common enterprise are admissible against the other.⁵⁶

[302] When considering the liability of the respective conspirators, it should be borne in mind that everything done by anyone of the conspirators in furtherance of the conspiracy “is evidence against each and all of the parties concerned, whether they are present or absent or whether or not they were individually aware of what was taking place...and that such acts and declarations of other conspirators before any particular

⁵⁵ See Burchell J – **Principles of Criminal Law** Third Edition Juta at p 653.

⁵⁶ See **R v Miller and Another** 1939 AD 106 at 115 – 118; **S v Cooper and Others** 1976 (2) SA 875 (T) at 879A – 880G

conspirator joined the association, are only receivable against the latter to prove the origin, character and object of the conspiracy...”⁵⁷

[303] In **S v Du Toit en Andere (3)** 2004 (1) SACR 66 (T) at 76g – h the court held there did not have to be an agreement in a conspiracy as to the specific acts to achieve the greater goal. The court further held where there was a conspiracy and plan that that acts of violence and unrest would be committed, the specific acts and means were irrelevant in determining the guilt of the principal planner.

[304] In **S v Libazi and Another** 2010 (2) SACR 233 (SCA) at [18] to [19] the court explained its interpretation of conspiracy as follows:

“It appears that for a conviction on a charge of conspiracy to be achieved, the commission of an offence must be the focal point of the agreement between the perpetrators. It is, however, not a requisite for a conviction on a charge of conspiracy for the actual offence to have been committed. Once the planned offence is committed it appears that it is preferable to rather convict of that offence than the conspiracy, or both.”

[305] To the extent that it may be held that I am wrong in having found the accused guilty on the main charges, I am of the view that the evidence in any event clearly discloses that the accused conspired with some or all of the individuals mentioned in the indictment to commit the various charges 1 to 12.

CONCLUSION

[306] For the reasons set out above, I have come to the conclusion that the State proved beyond a reasonable doubt the guilt of the accused on the main charges of counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 as set out in the indictment.

⁵⁷ See **R v Leibbrandt and Others** 1944 AD 253 at 276; **R v Mayet** 1957 (1) SA 492 (AD) at 494

THUS DATED AND SIGNED THIS 21st DAY OF JANUARY 2013 AT
JOHANNESBURG.

A handwritten signature in black ink, appearing to read 'C. J. Claassen', with a large, stylized initial 'C'.

C. J. CLAASSEN

JUDGE OF THE SOUTH GAUTENG HIGH COURT

Counsel for the State: Adv S. Abrahams

**Counsel for the Accused: Adv M. I. Maunatlala instructed by Majang
Attorneys**

Trial commenced from 1 October 2012

Argument took place on 14 December 2012