judgment

DISTRICT COURT OF THE HAGUE

Commercial team

Judgment dated 30 January 2013

in the matter with case number / docket number: C/09/330891 / HA ZA 09-0579 of:

1. **FIDELIS AYORO OGURU**,
2. **ALALI EFANGA**,
   both residing in Oruma, Bayelsa State, Nigeria,
3. the association with corporate personality **VERENIGING MILIEUDEFENSIE**,
   domiciled in Amsterdam, Netherlands,

plaintiffs in the main action,
attorney conducting the case: Ch. Samkalden, LL.M., of Amsterdam, Netherlands,
attorney of record: W.P. den Hertog, LL.M., of The Hague, Netherlands,

versus

1. the legal entity organized under foreign law **ROYAL DUTCH SHELL PLC**,
   having its registered office in London, United Kingdom, but its principal place of business in The Hague, Netherlands,
2. the legal entity organized under foreign law **SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LTD.**,
   having its registered office in Port Harcourt, Rivers State, Nigeria,

defendants in the main action,
attorney: J. de Bie Leuveling Tjeenk, LL.M., of Amsterdam, Netherlands,

and in the matter with case number / docket number: C/09/365498 / HA ZA 10-1677 of:

1. **FIDELIS AYORO OGURU**,
2. **ALALI EFANGA**,
   both residing in Oruma, Bayelsa State, Nigeria,
3. the association with corporate personality **VERENIGING MILIEUDEFENSIE**,
   domiciled in Amsterdam, Netherlands,

plaintiffs in the main action,
attorney conducting the case: Ch. Samkalden, LL.M., of Amsterdam, Netherlands,
attorney of record: W.P. den Hertog, LL.M., of The Hague, Netherlands,

versus

1. the public limited company **SHELL PETROLEUM N.V.**,
having its registered office in The Hague, Netherlands,
2. the legal entity organized under foreign law **THE "SHELL" TRANSPORT AND TRADING COMPANY LIMITED**,
having its registered office in London, United Kingdom,

defendants in the main action,
attorney: J. de Bie Leuveling Tjeenk, LL.M., of Amsterdam, Netherlands.

In the following, the District Court will refer to the parties as "Oguru", "Efanga", "Milieudefensie", "RDS", "SPDC", "Shell Petroleum" and "Shell T&T". Plaintiffs Oguru, Efanga and Milieudefensie will collectively be referred to as "Milieudefensie et al." and defendants RDS, SPDC, Shell Petroleum and Shell T&T will collectively be referred to as "Shell et al.".

1. The two proceedings

The proceedings with docket number 09-0579

1.1. In rendering this judgment, the District Court has taken the following case documents into account. This list also appears from the course of the proceedings:
- the judgment in the jurisdiction motion of 30 December 2009 (published on www.rechtspraak.nl under number LJN BK8616), and all previous case documents with all exhibits mentioned in this judgment;
- the judgment in the motion to produce documents of 14 September 2011 (LJN BU3535) and all previous case documents with all exhibits mentioned in this judgment;
- the statement of reply, also containing a change of claim of 14 December 2011, with exhibits;
- the statement of rejoinder of 14 March 2012, with exhibits;
- Milieudefensie et al.'s document for submitting exhibits, also containing a change of claim of (in fact) 11 September 2012, with exhibits;
- Shell et al.'s document for submitting exhibits of (in fact) 11 September 2012, with exhibits;
- the written pleadings of attorney Samkalden of 11 October 2012;
- the written pleadings of attorney De Bie Leuveling Tjeenk of 11 October 2012.

The proceedings with docket number 10-1677

1.2 In rendering this judgment, the District Court has taken the following case documents into account. This list also appears from the course of the proceedings:

- the judgment in the motion to produce documents of 14 September 2011 (LJN BU3535) and all previous case documents with all exhibits mentioned in this judgment;
- the statement of reply, also containing a change of claim of 14 December 2011, with exhibits;
- the statement of rejoinder of 14 March 2012, with exhibits;
- Milieudefensie et al.'s document for submitting exhibits, also containing a change of claim of (in fact) 11 September 2012, with exhibits;
- Shell et al.'s document for submitting exhibits of (in fact) 11 September 2012, with exhibits;
- the written pleadings of attorney Samkalden of 11 October 2012;
- the written pleadings of attorney De Bie Leuveling Tjeenk of 11 October 2012.

In both proceedings

1.3. On 11 October 2012, the closing arguments were delivered in these two main actions, together with the closing arguments in the three other related main actions. At the hearing of 11 October 2012, the District Court scheduled today as the date for rendering judgment in these five main actions that were dealt with simultaneously.

2. The facts

2.1. For years, there have been significant problems in Nigeria for people and the environment in the oil production operations of oil companies. The Shell Group, a multinational headquartered in The Hague (Netherlands), is one of the oil companies that have been active in Nigeria for years. Each year, many oil spills occur in Nigeria from oil pipelines and oil facilities. Oil spills may be caused by defective and/or obsolete materials used by the oil companies or by sabotage in combination with, in fact, inadequate security measures. Sabotage is often committed to steal oil or to receive compensation from oil companies for the oil pollution in the form of cash or paid orders for the remediation work to be performed following an oil spill.

2.2. Defendants Shell et al. are legal entities that are part of the Shell Group. Until 20 July 2005, (in brief) Shell Petroleum in The Hague and Shell T&T in London as parent companies collectively headed the Shell Group and through subsidiaries, they collectively held all the shares in SPDC. RDS has its registered office in London but is headquartered in The Hague (Netherlands). Since 20 July 2005, RDS has been at the head of the Shell Group; since this date of the restructuring of the Shell Group, through subsidiaries, RDS has held all shares in its sub-subsidiary SPDC. SPDC is the Nigerian legal entity that conducts the oil production operations in Nigeria for the Shell Group.

2.3. Plaintiffs Oguru and Efanga are two Nigerian farmers and fishermen who live in the village of Oruma in Bayelsa State in Nigeria. In 2005, Oguru and Efanga supported themselves by exploiting farmland and fish ponds near Oruma. Plaintiff Milieudefensie is a Dutch organization whose objective is the worldwide promotion of environmental care; it supports plaintiffs Oguru and Efanga in these two proceedings.

2.4. In brief, these two proceedings involve one specific oil spill from an underground oil pipeline of which SPDC is the operator. This oil spill occurred on 26 June 2005 in the village of Oruma where Oguru and Efanga live. On 29 June 2005, following an initial verification of the oil spill, SPDC stopped the oil flow through the pipeline near Oruma to the extent possible. On 7 July 2005, employees of SPDC definitively repaired the leak, after it was demonstrated that the oil leaked from a more or less round hole with a diameter of approximately 8 mm. On 7 July 2005, according to the JIT report described below, an estimated 400 barrels of oil had spilled from the oil pipeline near Oruma.

2.5. In October 2004 – i.e. before this oil spill occurred in June 2005 near Oruma – SPDC had drawn up an internal report regarding the underground (trunk) line of operator SPDC, which *inter alia* runs past Oruma. This report includes the following conclusion:

> *"SPDC proposes to replace the 20" Trunkline with carbon steel pipeline due to corrosion. The corrosion was deemed "unmanageable" by a recent engineering study carried out on the line in 1999.*
> *The fact that the line is likely to leak before the year 2003/2004 informed the decision to replace the line with carbon steel pipes with adequate provision for frequent pigging and biocide injection.*
> *Considering the rate of corrosion observed in the old pipelines proposed for replacement, if the replacement is not carried out, then there would be a very high risk of leakage which will result in oil spill and consequent contamination of the environmental resources."*

2.6. After ultimately obtaining permission from the local community of Oruma, a Joint Investigation Team (hereinafter: the "JIT") – which was comprised of representatives of SPDC, of Nigerian government agencies and of the community of Oruma (including Efanga) – investigated the oil spill of 26 June 2005 on 7 July 2005. The JIT report has not been signed for approval by the representatives of the Oruma community, but has been signed by two representatives of two Nigerian government agencies and by four representatives of SPDC. Part A of the JIT report includes the following regarding the cause of this oil spill near Oruma:

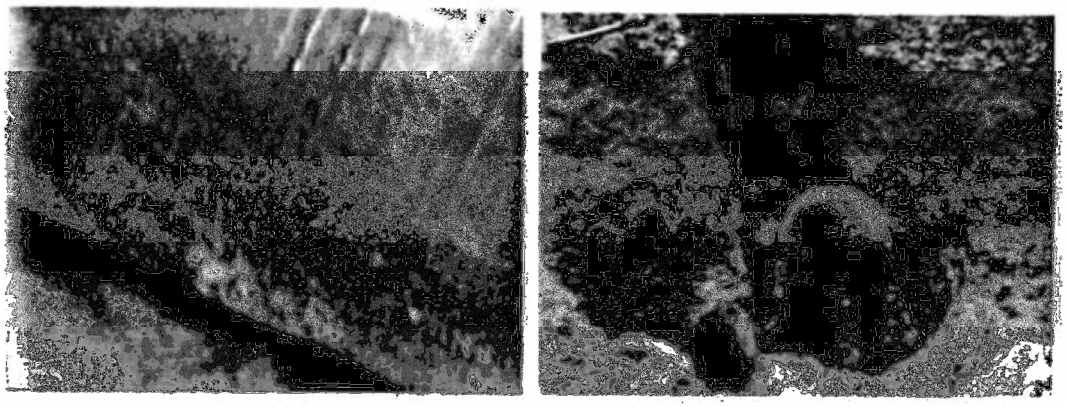
> *"Evidence of Previous Excavation: Yes*

Soft Soil backfill: Yes
Coating Damage: Yes
Tool Marks: No
Drill Hole: Yes
External Corrosion: No
Estimated quantity of oil spilled: 400 BBLS
Still photographs and video coverage of the inspection provided: Yes
Size of Leak Point: 8 mm
Wall Thickness Measured Nominal Wall Thickness 9.52 mm"

Part B of the JIT report includes the following:

"Evidence of previous excavation noticed at leak site.
During excavation to expose pipe, the soil texture at the leak spot was softer than the surrounding soil.
The pipe is coated with coalton enamel material. During de-coating, there was satisfactory coating adhesion to the pipe, however, there was coating damage around the leak spot – suspectedly caused by a third party interference.
External surface condition of the pipe when de-coated was smooth without any sign of corrosion.
The leak hole was at 8.30 o'clock position. The hole measuring 8 mm in diameter was round and circular in shape with smooth edges consistent with damage done with a drilling device by unknown persons.
Ultrasonic thickness measurements taken with a (…)-meter around the leak hole and around the circumference of the pipe indicated no significant wall loss.
UT around leak hole: a – 9.7 b – 9.6 c – 9.6 d – 9.6 e – 9.5 f – 9.6"

2.7. By way of illustration, the District Court selected the following two stills of the JIT team's investigation on 7 July 2005 of the oil spill near Oruma from the video footage made on that occasion:



2.8. After ultimately obtaining permission from the local community of Oruma, by order of, under the management of and at the expense of SPDC, in the period from August 2005 through June 2006, a Nigerian contractor (with Efanga as one of the sub-

contractors) performed the remediation work in the vicinity of Oruma using the RENA method ("*Remediation by Enhanced Natural Attenuation through land farming process*"); the remediation work was required as a result of the oil spill of June 2005.

2.9. In August 2006, the *Joint Federal and States Environmental Regulatory Agencies* prepared a *Clean-up and Remediation Certification Format* regarding the remediation of the contaminated lands and fish ponds near Oruma, which was signed by three representatives of three Nigerian government agencies. In as far as relevant, this certificate includes the following:

> *"FACILITY: 20" Trunkline at Oruma*
> *Cause & Date of Spill: SABOTAGE 2005*
> *Initial TPH Level 3.074 mg/kg*
> *Final TPH Level 61 mg/kg*
> *Completion date: June 2006*
> *STATUS: Site Certified"*

2.10. In February of 2008, at the instructions of Milieudefensie's Nigerian sister organization, Bryjark Environmental Services Ltd. issued an assessment study report in which it addresses the question regarding whether the oil contamination caused by the oil spill near Oruma in 2005 had been adequately cleaned up. In this report, Bryjark submitted the following – in as far as relevant:

> *"The objectives were achieved through detailed field and laboratory studies in June 2007.*
> *The study has shown that the Oruma study area is impacted by hydrocarbon from either the spill source or previous incidents of existing SPDC-activities in the area.*
> *Total Petroleum Hydrocarbon Concentrations in Soil Samples*

S/No.	*Study Station*	*TPH (mg/kg)*
1.	*Oruma 1*	*24.3*
2.	*Oruma 2*	*4,348.0*
3.	*Oruma 3*	*25.3*
4.	*Oruma 4*	*27.6*
5.	*Oruma 5*	*6,991.0*
6.	*Oruma 6*	*12.0*

> *The concentration of Total Petroleum Hydrocarbon (TPH) recorded in the surface water of the study area is 0.17 – 1.35 milligram/liter. This concentration has a negative impact on the resources of the area and the recruitment potential of the system.*
> *The presence of hydrocarbon in soils and sediments of the study area is partly responsible for the stress observed in the ecology of the environment."*

2.11 A statement dated 15 May 2012 with the names and signatures of 12 members of the Oruma community includes the following:

> *"The Oruma community hereby declares that the land and fish ponds subject of the suit in The Hague, The Netherlands, situated at Olumogbo-bara in Oruma Community,*

Ogbia Local Government Area of Bayelsa State as shown in the google earth map annexed hereunto are owned and used by [Oguru], and that he has the right to do so."

2.12 A statement dated 15 May 2012 with the names and signatures of 12 members of the Oruma community includes the following:

"The Oruma community hereby declares that the land and fish ponds subject of the suit in The Hague, The Netherlands, situated at Olumogbo-bara in Oruma Community, Ogbia Local Government Area of Bayelsa State as shown in the google earth map annexed hereunto are owned and used by [Efanga], and that he has the right to do so."

2.14. On 3 September 2012, Mr. Kuprewicz of Accufacts Inc. issued a study report by order of Milieudefensie et al.'s attorney. This report includes the following, in as far as relevant:

"In the Oruma spill, amazingly, there is no video evidence or pictures to support SPDC or the JIT's claims of an eight-millimeter sabotage drill hole in the pipe.
Video evidence does show coating damage at the failure site that is not indicative of a drill hole. Corrosion, especially internal corrosion, can also not be eliminated as a possible failure cause, as Shell's evidence attempting to dismiss corrosion threats is deficient.
Given the approximate height of the individuals of almost 6 feet, the top of the 20-inch pipe is at least ten, but more likely, twelve feet below the general surface of the pipeline right of way. The pipe at this location is quite deep.
Coating damage at the release [site] at approximately the 8.00 o'clock position (toward the bottom of the pipe) is not indicative of drill damage.
The ILI pig information supplied is insufficient to rule out possible corrosion failure.
The UT measurements/processes/methods shown on the video are not appropriate and also do not rule out corrosion as a possible failure mechanism.
There is insufficient information to rule out corrosion, especially internal corrosion which external pipe coating doesn't prevent, as a bona fide cause of this failure.
This 20-inch pipeline and its predecessor have a history of severe and extensive corrosion from the fluids being moved on the system (oil with very high water cuts).
Suggestions that there are indications of previous digging activity are pure speculation given the soil conditions and the extreme pipe depth at the failure site shown in the video.
In reviewing the video, I find it odd that the video shows no real close-ups of the claimed "drilled" hole. The video indicates coating damage at approximately the 8 o'clock position not indicative of a drilled hole. A clear picture of the failure site with the coating removed would clarify and easily identify the most probable cause of this pipe failure.
I also find the assertion that soil had to be previously disturbed to allow oil released to bubble to the surface, without merit and disingenuous. The oil, being lighter than water, while it may not always rise to the surface immediately above the failure, usually finds a path to the surface, even in well-packed soil cover situations. The soil

does not have to have been previous dug of fractured to permit the oil to rise/float to the surface from a pipeline release, especially given the pressure still in the pipeline as shown in the video to indicate a pipeline failure. Given the extreme depth of the pipeline as well as soil conditions clearly indicated in the video, claims of previous indications of prior digging to the pipeline are without merit.
Statements that corrosion does not generate round holes in pipe are false.
The coating at the leak site appears damaged from either rock impingement or activity that is associated with pipeline construction/installation actions.
The UT measurements and method performed in the video do not follow industry standards required to field measure actual corrosion loss or calibrate ILI runs to evaluate or eliminate corrosion as a possible cause of pipeline fracture.
Shell's arguments and evidence of UT readings and an ILI run are not sufficient to disallow possible corrosion as a cause of this pipeline's failure.
The video evidence does not substantiate Shell's assertion of sabotage for the Oruma spill."

2.14. On 4 September 2012, Mr. Slenders of Arcadis Nederland BV issued a study report by order of Shell et al. This report includes the following regarding Bryjark's report mentioned in ground 2.10:

"The defective study approach means that conclusions based on the data obtained are uncertain beforehand.
Even though the Bryjark data are only reliable to a very limited extent, it is likely that the soil and water contain mineral oil components (TPH). However, the concentration is so low that with regard to TPH it can be said that most of the soil and sediment at both locations are suitable for people, plants and animals (smaller than or equal to the target value for soil quality; in other words, a "clean" soil is involved). Only two of the six soil samples of the Oruma location show higher concentrations of TPH.
The surface water in the study areas has such a dynamic nature that the TPH concentrations will fluctuate strongly at different times; their relationship with the oil spills is uncertain.
Bryjark did not sufficiently demonstrate the influence of oil components on the environment. In our opinion, only possible indications were found of ecological stress in the micro flora and fauna caused by TPH. These possible indications are the differences in number of types and amount of organisms between the various sampling points and the dominance of blue algae. However, the number of types and amount of organisms are usually within the normal band widths. Bryjark itself also indicates that this stress cannot have been caused by TPH alone, but also by other causes, for example the tidal movement or the saline content."

2.15. In an email dated 6 September 2012, Mr. Von Scheibler of BKK Bodemadvies B.V. wrote the following to Milieudefensie et al.'s attorney:

"The annex includes my comments regarding the documents dealing with Goi. The same reasoning and calculations could be applied by analogy to the other locations. Based on the documents, the following general points stood out in any event.

Before and after remediation, Shell compares the TPH concentrations. This is the sum of the concentrations of very many oil components with different toxic properties. This means that nothing can be said regarding the highly toxic BETX concentrations, which may still be above the permissible limit values. By not making any distinction, at a minimum the clean-up reports are incomplete."

3. The claims in the two main actions

The proceedings with docket number 09-0579

3.1. Following a change of claim on the occasion of the pleadings, Milieudefensie et al. move that, in a judgment that is declared provisionally enforceable, the District Court:

I renders a declaratory judgment to the effect that based on the arguments in Milieudefensie et al.'s case documents, RDS and SPDC committed tort against Oguru and/or Efanga and are jointly and severally liable towards Oguru and/or Efanga for the damage that they suffered and will suffer in the future as a result of these torts on the part of RDS and SPDC, which damage is to be assessed by the court and to be settled in conformance with the law, all this plus the statutory interest from the date of the summons until the date of payment in full;

II renders a declaratory judgment to the effect that RDS and SPDC are liable for the infringement of Oguru's and Efanga's physical integrity because they had to live in a contaminated living environment;

III renders a declaratory judgment to the effect that based on the arguments in Milieudefensie et al.'s case documents, RDS and SPDC committed tort against Milieudefensie and are jointly and severally liable for the damage to the environment near Oruma as a result of these torts on the part of RDS and SPDC;

IV orders RDS and SPDC to commence the clean-up of the soil around the oil spill so that it will comply with the international and local environmental standards within two weeks after the judgment is served, and to complete this clean-up work within one month after the commencement, in evidence of which RDS and SPDC will present Milieudefensie et al. with a unanimous clean-up declaration – within one month after completion of the clean-up – to be prepared by a panel of three experts, who will be appointed within two weeks after the judgment and in which one expert will be appointed by RDS and SPDC collectively, one expert will be appointed by Milieudefensie and one expert will be appointed by the two experts appointed in this way, or at least within the terms to be determined by the District Court and providing evidence of the clean-up to be determined by the District Court;

V orders RDS and SPDC to commence purification of the water sources in and near Oruma within two weeks after the judgment is served, and to complete this purification within one month after commencement, in evidence of which RDS and SPDC will present Milieudefensie et al. with a unanimous purification declaration –

within one month after completion of the purification – to be prepared by a panel of three experts, who will be appointed within two weeks after the judgment and in which one expert will be appointed by RDS and SPDC collectively, one expert will be appointed by Milieudefensie and one expert will be appointed by the two experts appointed in this way, or at least within the terms to be determined by the District Court and providing evidence of the purification to be determined by the District Court;

VI orders RDS and SPDC to maintain the oil pipeline near Oruma in good condition after replacement, in accordance with *good oil field practice*, including at a minimum complying with the compulsory inspections of the pipelines, preparing or maintaining an adequate system of pipeline inspection and to act responsibly in conformance with this system; orders RDS and SPDC to present Milieudefensie et al. with a written report of these inspections, in each instance within two weeks after the inspection was conducted;

VII orders RDS and SPDC to implement an adequate oil spill contingency plan in Nigeria and to ensure that all the conditions have been met for a timely and adequate response in the event that an oil spill near Oruma occurs again; Milieudefensie et al. in any case consider this to include making sufficient materials and resources available in order to limit the damage of a potential oil spill to the extent possible – in evidence of which RDS and SPDC will provide overviews to Milieudefensie et al.;

VIII orders RDS and SPDC to pay Milieudefensie et al. a penalty of EUR 100,000.00 (or any other amount to be determined by the District Court in the proper administration of justice) for each instance in which RDS and SPDC individually or jointly, act in breach of (as the District Court understands) the orders referred to in paragraphs IV, V, VI and/or VII above;

IX orders RDS and SPDC jointly and severally to compensate the extrajudicial costs;

X orders RDS and SPDC to pay the costs of these proceedings, or at least orders each party to pay its own costs.

3.2. Following the provisional rulings and the other pre-trial directions in the interlocutory judgment of the District Court dated 14 September 2011, Milieudefensie et al. base these ten claims in the main action on the following, summarized in the rejoinder and during the pleadings in supplement to the summons. Milieudefensie et al. reproach SPDC for failing to comply with its duty of care to produce oil in a careful manner and prevent oil spills from occurring. According to Milieudefensie et al., SPDC should take more and better preventive measures to prevent oil spills from occurring, both oil spills caused directly by defective and/or obsolete material and oil spills caused directly by sabotage. In addition, SPDC failed to adequately respond to this oil spill in 2005 and failed to clean up the oil pollution in time and completely. In view of this, Milieudefensie et al. are of the opinion that in the oil spill from the oil pipeline in 2005 near Oruma, under Nigerian law, SPDC committed a *tort of negligence*, a *tort of nuisance*, or a *tort of trespass to chattel* against Milieudefensie et al., or is liable under

Nigerian law for Milieudefensie et al.'s damages based on the rule in *Rylands v Fletcher*.
In addition to SPDC, under Nigerian law, RDS also committed a tort of negligence against Milieudefensie et al. in this oil spill in 2005. After all, parent company RDS in The Hague failed to comply with its duty to induce its (sub-)subsidiary SPDC to prevent this oil spill near Oruma in 2005, to adequately respond to this oil spill and to adequately clean up the oil pollution by issuing guidelines and ensuring compliance with these guidelines, and to ensure that SPDC had sufficient financial resources and technical expertise to adequately perform these activities, all this according to Milieudefensie et al.
By virtue of Section 3:305a DCC, Milieudefensie has an independent interest in the District Court finding that Shell et al.'s acts and omissions are wrongful. Section 3:305a DCC creates the legal fiction that the damage to the environment near Oruma is Milieudefensie's damage. In preparing for these proceedings, Milieudefensie incurred extrajudicial costs in the sense of Section 6:96 (2)b DCC, according to Milieudefensie.

The proceedings with docket number 10-1677

3.3. To the extent that in the proceedings with docket number 09-0579, the District Court were to accept RDS' defense that in connection with the restructuring of the Shell Group as of 20 July 2005 referred to in ground 2.2 above, RDS cannot be liable for damage that was caused and/or occurred before 20 July 2005, Milieudefensie et al. lodge the same claims against Shell Petroleum and Shell T&T in the proceedings with docket number 10-1677 that they lodged against RDS in the proceedings with docket number 09-0579.

3.4. Milieudefensie et al. – in brief – base those claims in the main action on the following. According to RDS, it was only placed at the head of the Shell Group on 20 July 2005; before that time, the Shell Group was led by Shell Petroleum and Shell T&T. To the extent that the District Court is of the opinion that in this connection, RDS cannot be liable for damage that was caused and/or occurred before 20 July 2005, Shell Petroleum and Shell T&T are liable for such damage, according to Milieudefensie et al.

In both proceedings

3.5. Shell et al. have advanced a substantiated challenge of the claims in the two proceedings. In as far as relevant, the District Court will address these defenses below.

4. The assessment in the two cases

4.1. The two cases regard the same oil spill and the same parties to the proceedings are the plaintiffs. In addition, in both cases essentially the same claims have been lodged and the defenses in the two cases are closely related. For this reason, the District Court will assess the two cases collectively below.

International jurisdiction of the District Court of The Hague

4.2. In the interlocutory judgment in the jurisdiction motion of 30 December 2009 (LJN BK8616), the District Court ruled in the case with docket number 09-0579 – summarized – that by virtue of Section 7 DCCP, it has jurisdiction in those proceedings, not only over the claims lodged against RDS, but over the claims against SPDC, as well. The reason is that there is such a connection between the claims lodged against RDS, on the one hand, and the claims lodged against SPDC, on the other, that reasons of efficiency justify a joint hearing, and because at that time, it had been insufficiently submitted or demonstrated that abuse of procedural law was allegedly involved.

4.3. In the rejoinder and during the pleadings, Shell et al. concluded that the District Court will have to reconsider its decision in the interlocutory judgment to the effect that it has jurisdiction over the claims against SPDC. However, in the interlocutory judgment, the District Court rendered a binding final decision on this point. For this reason, the District Court can only reconsider its final decision that it has jurisdiction over the claims against SPDC if it is demonstrated that this binding final decision was rendered on an incorrect legal or factual basis (see HR 25 April 2008, *NJ* 2008, 553).

4.4. Shell et al. argued that the decision regarding jurisdiction of the Dutch court over the claims against SPDC was rendered on an incorrect legal basis. To this end, they first of all contend that following the interlocutory judgment in the motion to produce documents and in the main action of 14 September 2011 (LJN BU3535), it was demonstrated that under Nigerian law, the claims against RDS were clearly certain to fail beforehand and that Milieudefensie et al. knew this or should have realized this. For this reason, Shell et al. are of the opinion that Milieudefensie et al. most certainly abused procedural law by initiating these claims against RDS and SPDC collectively and by accordingly – via the summoned legal entity RDS in The Hague and via Section 7 DCCP – creating jurisdiction for the District Court in The Hague in respect of the claims lodged against the Nigerian legal entity SPDC, as well. The District Court dismisses this argument. In these proceedings, the claims against RDS could not be designated as clearly certain to fail beforehand, because beforehand it could be defended that under certain circumstances, based on Nigerian law, the parent

company of a subsidiary may be liable based on the tort of negligence against people who suffered damage as a result of the activities of that (sub-) subsidiary. After all, this is demonstrated by the decision in *Chandler v. Cape* still to be discussed below. Thus, in the case at issue, the District Court is of the opinion that no abuse of procedural law by Milieudefensie et al. was and is involved.

4.5. Secondly, during the pleadings Shell et al. invoked the *Painer* ruling of the European Court of Justice ("**ECJ**") of 1 December 2011, no. C-145/10. In paragraph 81 of the *Painer* ruling, the ECJ found that in the event of a difference in the basis of claims lodged against various defendants, in and of itself this fact does not preclude application of Article 6(1) of the Brussels Regulation, provided that the defendants could foresee that they might be sued in the Member State where at least one of them was domiciled. According to Shell et al., this rule of law from the *Painer* ruling can be applied by analogy to Section 7 (1) DCCP. Shell et al. argue that the Nigerian SPDC could not foresee that it would be summoned in the Netherlands with regard to the oil spill at issue and that it also follows from this that the Dutch court has no jurisdiction over the claims lodged against SPDC.

4.6. The District Court does not follow Shell et al. in this argument. First of all, the claims against RDS and SPDC do not have a different legal basis; rather they have (in part) the same legal basis, i.e. a tort of negligence under Nigerian law. Secondly, for quite some time (see Enneking in NJB 2010, pp. 400-406) there has been an international trend to hold parent companies of multinationals liable in their own country for the harmful practices of foreign (sub-) subsidiaries, in which the foreign (sub-) subsidiary involved was also summoned together with the parent company on several occasions. This means that the District Court is of the opinion – including in the sense of the *Painer* ruling that was only rendered after the summons – that it was "foreseeable" for SPDC that it might be summoned in the Netherlands together with RDS in connection with the alleged liability for the oil spill near Oruma. For this reason, it can be left aside whether or not the rule of law from the *Painer* ruling can be applied fully by analogy to Section 7 DCCP and to the facts in these proceedings before the District Court of The Hague.

4.7. In the event that the District Court were to dismiss the claims against RDS in The Hague in a final judgment, this gives rise in advance to the question regarding whether subsequently, the Dutch court should possibly leave the assessment of the claims against SPDC up to the Nigerian court. After all, Oguru, Efanga and SPDC are Nigerian parties that are litigating under Nigerian law on damage caused by an oil spill in 2005 on Nigerian territory. However, the *forum non conveniens* restriction no longer plays any role in today's international private law. The District Court is of the opinion that it was not the Dutch legislator's intention to have jurisdiction of the Dutch court in

the matter against SPDC based on Section 7 DCCP cease to exist in the event that the claims against RDS were to be dismissed, not even if subsequently, in fact, no connection or hardly any connection would remain with Dutch jurisdiction.

4.8. The conclusion is that the District Court will not reconsider its binding final decision that by virtue of Section 7 DCCP, it has jurisdiction over the claims initiated in the proceedings with docket number 09-0579, not only against the legal entity RDS in The Hague, but also against the Nigerian legal entity SPDC. The jurisdiction of the District Court in the proceedings with docket number 10-1677 is not in dispute between those litigants and also follows from Articles 2, 6 and 60 of the applicable Brussels Regulation.

Applicable law

4.9. The claims involve a specific oil spill that occurred in June 2005 near Oruma in Bayelsa State in Nigeria; according to Milieudefensie et al., Shell et al. are liable based on tort for the damage caused by this oil spill. The alleged harmful events occurred before 11 January 2009; this means that the case falls outside the temporal scope of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II). Please refer to Articles 31 and 32 of Rome II and to the ECJ's ruling dated 17 November 2011, *NJ* 2012, 109. For this reason, the Dutch Torts (Conflict of Laws) Act (*Wet Conflictenrecht Onrechtmatige Daad* ("**WCOD**") applies to the question regarding under which law the District Court must substantively assess the initiated claims.

4.10. In the event of a tort that has been committed by SPDC, this tort occurred on the territory of Nigeria. In the event that RDS, Shell Petroleum and/or Shell T&T allegedly committed tort with regard to the occurrence of this oil spill, this tort by these legal entities had harmful effects in Nigeria. Therefore, the District Court is of the opinion that based on Section 3 (1) and (2) WCOD, the claims in the two main actions must be substantively assessed under Nigerian law, more in particular the law that applies in Bayelsa State, where this oil spill occurred. Thus, the District Court maintains this provisional opinion from the interlocutory judgment of 14 September 2011. Based on the Dutch conflict of law rules, the following exceptions apply. Nigerian law is not applied if the application of this law in this specific case would be manifestly incompatible with Dutch public order in the sense of Section 10:6 DCC or in the event that priority rules of Dutch law apply in the sense of Section 10:7 DCC. After all, retroactive effect can be given to the sections of Title 1 of Book 10 DCC, which came into effect on 1 January 2012, because they codify the unwritten rules that applied until 1 January 2012 (Explanatory Memorandum 32 137, no. 3, p. 95). However, it has

been insufficiently submitted or demonstrated that those exceptions occur in the case at issue.

4.11. To apply Nigerian law, the District Court first of all examined the legal opinions of Professor Oditah furnished by Shell et al., on the one hand, and the opinion of the International Legal Institute (IJI) and the legal opinions of Professor Ladan and Dr. Ako and of Professor Duruigbo furnished by Milieudefensie et al., on the other hand. In addition, in its conclusion of Nigerian law, the District Court consulted English common law literature, including handbooks regarding the specific torts alleged by Milieudefensie et al. After all, Nigerian law is a common law system that is based on English law.

Admissibility of Milieudefensie's claims

4.12. Shell et al. submitted that Milieudefensie's claims in the main action are inadmissible. To this end, they *inter alia* argued that Section 3:305a DCC is part of substantive Dutch law because it is included in the Dutch Civil Code, whereas applicable substantive Nigerian law does not recognize any (similar) law governing class actions. However, in the interlocutory judgment of 14 September 2011, the District Court already definitively ruled that and why Section 3:305a DCC is a rule of Dutch procedural law. It has not been submitted or demonstrated that this binding final decision has an incorrect basis. In addition, in that interlocutory judgment, the District Court held the provisional opinion that Milieudefensie's claims are admissible, because – in contrast to what Shell et al. argue – the requirements stipulated by Section 3:305a DCC have been satisfied in the case at issue.

4.13. The District Court now also definitively dismisses Shell et al.'s argument in the statement of defense that Milieudefensie's claims are inadmissible. According to Shell et al., a purely individual representation of interests is involved, this class action does not offer any advantage over litigating in the name of the interested parties themselves, Milieudefensie does not develop sufficient actual activities for the environment in Nigeria and/or these proceedings involve a purely local interest. However, the District Court maintains that a number of Milieudefensie et al.'s claims clearly rise above the individual interest of (only) Oguru and Efanga, because remediating the soil, cleaning up the fish ponds, purifying the water sources and preparing an adequate contingency plan for future responses to oil spills – if ordered – will benefit not only Oguru and Efanga, but the rest of the community and the environment in the vicinity of Oruma, as well. Given that many people may be involved, litigating in the name of the interested parties may most certainly be objectionable. In addition, in contrast to Shell et al., the District Court considers conducting campaigns aimed at stopping environmental pollution in the production of

oil in Nigeria as a factual activity that Milieudefensie developed to promote the environmental interests in Nigeria. Finally, the description of Milieudefensie's objective in its articles of association is to promote environmental protection worldwide. Although this is a comprehensive objective, this does not mean that it is insufficiently specific. Nor is there sufficient reason to assume that local environmental damage abroad allegedly falls outside that description of Milieudefensie's objective or outside the effect of Section 3:305a DCC.

4.14. In the statement of rejoinder and during the pleadings, Shell et al. pointed out that there is no room for a class action if the interests of the persons who are represented in the class action are not sufficiently safeguarded. According to Shell et al., this situation occurs because Milieudefensie fails to specify the interests of what specific other people it is representing and because Milieudefensie allegedly has insufficient knowledge of the extremely complex situation in Nigeria. The District Court also ignores this argument. Milieudefensie moves that Shell et al. are ordered to take a number of measures to reduce the risk of oil spills near Oruma in Nigeria and to minimize the results of oil spills. The District Court fails to see that this could contravene the interests of the Nigerian citizens who may be affected by oil spills. The statements cited in grounds 2.11 and 2.12 above further demonstrate that the community of Oruma does not object to Milieudefensie being a party to these proceedings, so that it cannot be held based on Section 3:305a (4) DCC that Milieudefensie's claims are inadmissible.

4.15. The above leads the District Court definitively to the opinion that Milieudefensie's claims are admissible.

Substantive assessment

4.16. The District Court puts the following first in the substantive assessment of the claims. Many oil spills occur each year in Nigeria. This has far-reaching consequences for the local population and for the environment. It is an established fact that part of these oil spills occur from oil pipelines and oil facilities of SPDC. Milieudefensie et al. submit that these oil spills (too) frequently result from defective maintenance of oil pipelines and oil facilities and of Shell et al.'s defective policy. According to Shell et al., the oil spills are usually caused by sabotage and SPDC makes every reasonable effort to prevent and clean-up oil pollution in Nigeria. However, in these two proceedings, the Dutch court cannot and will not render an opinion regarding the discussion between Milieudefensie et al. and Shell et al. regarding Shell et al.'s general policy in its oil production operations in Nigeria. In these two proceedings, the District Court may and will only rule on the specific claims lodged by Milieudefensie et al. in response to this specific oil spill in 2005 near Oruma and Shell et al.'s defenses against these claims.

Right of action of Oguru and Efanga

4.17. The litigants disagree regarding the question of whether under Nigerian law, Oguru and Efanga are entitled to initiate a claim for compensation of their damage. In the summons, Milieudefensie et al. submitted that Oguru and Efanga are the owners of (land and) fish ponds that have been contaminated by this oil spill and that as a result, Oguru and Efanga suffered loss of income, among other things. In the defense, Shell et al. put forward a substantiated challenge of the fact that Oguru and Efanga exclusively own the land and fish ponds with the argument that under Nigerian common law, in principle, land and the fish ponds on this land in non-urban areas are jointly owned by the local community. In the interlocutory judgment of 14 September 2011, the District Court also assumed that the existence of the alleged ownership right of Oguru and Efanga was relevant for their rights of action. However, it has subsequently become clear that this is not the case. After all, in the rejoinder, Shell et al. submit that Oguru and Efanga can also initiate a claim for compensation in the event that they do not own but are only in possession of the land and fish ponds at issue; in that case, this is something that Oguru and Efanga must first prove according to Shell et al. Shell et al. also believe that the exact locations of the land and fish ponds that are exploited by Oguru and Efanga and which have been allegedly contaminated by this oil spill must be specified.

4.18. Oguru and Efanga submitted that they came in possession of the land and the fish ponds by using and cultivating them. Under Nigerian common law, this can lead to possession of land and fish ponds, as *inter alia* follows from *Mogaji & Ors. V. Cadbury Fry Export Ltd.* (1972), given that in that matter, the Nigerian court found that if a person demonstrates that he cultivates agricultural land, this constitutes sufficient evidence to determine that he is in possession of that land. The same will apply for the fish ponds on the land. In addition, after the interlocutory judgment of 14 September 2011, Milieudefensie et al. furnished the statements described in grounds 2.11 and 2.12 above by the Oruma community, from which the District Court understands that according to the local community, Oguru and Efanga in any event had and have the required possession of the contaminated land and fish ponds at issue. Shell et al. failed to submit any concrete facts and circumstances indicating that Oguru and Efanga should not be considered to be possessors. In the opinion of the District Court, this sufficiently establishes that Oguru and Efanga are the possessors of the land and fish ponds contaminated by this oil spill and thus have a right of action. The community's statements also specify the locations of the contaminated land and fish ponds in sufficient detail, so that – in contrast to what Shell et al. believe – this is no longer unclear. Moreover, the fact that Shell et al. argue that SPDC had the land and fish ponds cleaned demonstrates that Shell et al. sufficiently understand

which contaminated land and fish ponds near Oruma Milieudefensie et al. are referring to in these two proceedings.

Cause of the oil spill in June 2005 near Oruma

4.19. It follows from grounds 4.7 – 4.10 of the interlocutory judgment of 14 September 2011 that under applicable Nigerian law, the actual cause of an oil spill is relevant for assessing the claims. After all, in contrast to the event of defective material or defective maintenance, in the event of sabotage, under Nigerian law the main rule is that an operator like SPDC is not liable for the damage caused by an oil spill. In part in view of that main rule of Nigerian law and the request of both attorneys for pre-trial directions by the District Court for the further course of the proceedings in the main actions (see ground 5.1 of that interlocutory judgment), in its interlocutory judgment, the District Court held the provisional opinion that in this position of the discussion between the parties, this specific oil spill of 2005 near Oruma for the time being appeared to have been caused by sabotage. To this end, the District Court found as follows: *Shell et al. submitted that the oil was spilling from a small hole with a diameter of 8 mm, round and with smooth edges, similar to a drilling hole, that the surface of the pipeline around the hole was smooth and did not show any signs of pitting or corrosion, and that the thickness of the pipeline wall at that location was normal. Shell et al. refer to the video footage that Milieudefensie et al. submitted into the proceedings, which shows the leak being repaired and measurements of the wall thickness being taken. In addition, Shell et al.'s argument is supported by a report submitted by the Joint Investigation Team (the JIT) that investigated the oil spill. This report is also signed by representatives of the ministries of Environmental Affairs of both the federal government and Bayelsa State. Shell et al. further submitted data from a study of the wall thickness of the pipeline in question by means of an intelligent pig run by SPDC from December 2004. An intelligent pig is a type of robot that measures the pipeline wall thickness on the inside, as this robot is guided through the pipeline. No decreased wall thickness was measured at the location of the leak. According to Shell et al., these circumstances demonstrate that the oil spill was most likely caused by sabotage; it does not stand to reason that the damage of the pipeline is the result of a poor condition of the pipeline and/or corrosion.*

4.20. In its interlocutory judgment of 14 September 2011, the District Court further found that *to date, Milieudefensie et al. failed to sufficiently substantiate that despite all of the above, this oil spill in June 2005 nevertheless may have been caused by corrosion or by any other defective condition of the pipeline, or that the JIT report signed by the state and federal authorities is unreliable.* In view of this, in its interlocutory judgment the District Court ruled that *Milieudefensie et al. for the time being have failed to advance a sufficiently substantiated refutation of Shell et al.'s argument that this oil spill was caused by sabotage, which means that with the current position of the discussion, this argument by Shell et al. must be deemed to be correct for the time being.* As a result, after the interlocutory judgment of 14 September 2011, in these two proceedings it was up to Milieudefensie et al. to still

advance a substantiated refutation in the reply – properly substantiated and as specific as possible – of Shell's factual defense that sabotage was involved in 2005 near Oruma.

4.21. The District Court now further finds that the video footage that the District Court already assessed in the interlocutory judgment was made during the JIT report regarding this oil spill described in ground 2.6 above. The conclusion in that JIT report is that no corrosion was involved, but instead that traces of recent digging and of a drilling hole – and thus sabotage – were involved. Shell et al. based their factual defense on the facts established in this JIT report and the video made during the JIT investigation on 7 July 2005 (to this end, also see the illustrations in ground 2.7).

4.22. The District Court is of the opinion that after its interlocutory judgment dated 14 September 2011, in the further course of the proceedings, Milieudefensie et al. have not advanced a sufficiently concrete and/or substantiated challenge of the fact that Shell et al.'s argument that this oil spill near Oruma in 2005 was, in fact, caused by sabotage by means of the drilling hole visible on the video footage must be deemed to be factually correct in these two proceedings. To this end, the District Court finds as follows.

4.23. In this connection, after the interlocutory judgment of 14 September 2011, Milieudefensie et al. (not in the reply but only during the pleadings) firstly invoked the Accufacts report partially cited by the District Court in ground 2.13. Those quotations from Accufacts merely create general doubts. However, the Accufacts report does not contain sufficient concrete indications – nor are these visible on the available video footage – that can lead to the conclusion that the subject oil spill was caused by anything other than sabotage, such as – for example – the corrosion hole suggested by Accufacts.

4.24 Although the quality of the video footage of the leak hole near Oruma of 7 July 2005 is not very good, the footage does sufficiently visibly demonstrates a more or less round hole that indicates sabotage with a drill or similar tool rather than a corrosion hole. The JIT report confirms that a (drilling) hole is involved following digging and not a corrosion hole. In addition, the UT measurements (*Ultrasonic Thickness*) of the thickness of the steel pipeline wall around the leak hole described in the JIT report demonstrate that at that time, the wall thickness was not significantly thinner than the original wall thickness. This means that, if those UT measurements are correct, a (drilling) hole made by saboteurs must be involved and that the oil spill cannot have been caused by corrosion. After all, the parties do not disagree regarding the fact that the wall thickness around the hole will not have decreased significantly in the event of a hole made by saboteurs, whereas a decrease in wall thickness around the hole will

be involved in the event of corrosion. The measurement values recorded in the JIT report further correspond to the measurement values that the investigator in question calls out during his UT measurements on 7 July 2005; this is clearly audible on the video footage made at that time. The Accufacts report insufficiently explains in concrete terms what could have gone wrong in those UT measurements and how Accufacts observed this on the video footage. Thus, in this case there is not sufficient concrete reason to doubt the accuracy of the values of the UT measurements recorded in the JIT report (which was signed for approval by two Nigerian government agencies).

4.25. In addition, the fact that the underground oil pipeline near Oruma had been dug in relatively deeply does not rule out that sabotage was involved. If the employees of SPDC manage to expose the oil pipeline in a relatively short time, this must also be possible for a group of saboteurs. The fact that the leak hole is at the bottom of the pipeline wall rather than on the top does not mean that sabotage cannot be the obvious cause, either. After all, by drilling or making a hole in the bottom of the pipeline wall, the saboteurs prevent the crude oil from immediately spraying over them after they created the leak hole. Thus, the underside of the pipeline may very well be an obvious place for sabotage. Milieudefensie et al. point out that it is not very credible that saboteurs will find the right position of the underground pipeline in one go. However, there is nothing to demonstrate that the saboteurs did not dig in several places.

4.26. During the pleadings, Milieudefensie et al. secondly invoked that the internal report of SPDC from October 2004 described in ground 2.5 above, which according to Milieudefensie et al. demonstrates that the leak hole in June 2005 near Oruma can most certainly be the result of internal corrosion of the pipeline wall, so that sabotage has not been established. It is true that this internal SPDC report from October 2004 demonstrates that in 2005, the risk of oil spills caused by internal corrosion was high for this oil pipeline. However, taking everything into consideration, the District Court does not believe that internal corrosion – regarding which the report from 2004 contains a general warning – is a realistic alternative cause for the subject oil spill near Oruma. The reason for this is that SPDC's report from 2004 describes that the entire oil pipeline that is many kilometers long is subject to serious corrosion. The cause of this problem was that the water cut of the crude that was being transported through this pipeline was higher than average. However, the oil pipeline at issue was, in fact, used until 2009. If the risk of corrosion that SPDC's internal report from 2004 warns about could have resulted in leak holes like the subject leak hole in June 2005 near Oruma, without any concrete explanation – which is absent – it is not clear why no similar oil spills from this obsolete and corrosion-sensitive oil pipeline have been reported and/or demonstrated near Oruma or elsewhere in the period from July 2005

until 2009. This also indicates that sabotage and not corrosion was involved in June 2005 near Oruma.

4.27. For these reasons, the District Court maintains its provisional opinion from the interlocutory judgment of 14 September 2011 and taking everything into consideration, now definitively rules that this oil spill in 2005 near Oruma was, in fact, caused by sabotage.

Non-contractual obligations for compensation under Nigerian law

4.28. The Nigerian legal system regarding non-contractual obligations for compensation is based on the common law legal system of England. The legal system based on common law is part of Nigeria's federal law and applies in all states of Nigeria. Formally, decisions of English courts that date from after Nigeria's independence in 1960 are not binding on the Nigerian court, but do have persuasive authority and are therefore frequently followed in Nigerian case law. Legal systems based on common law do not recognize an umbrella term of tort that is governed by law – as in the Dutch legal system. These systems do recognize a number of non-contractual obligations for compensation developed in the case law, referred to as specific torts, each with its own standards. Under Nigerian law, based on common law, the liability of operators such as SPDC for damage resulting from oil spills has further been partially codified in the Nigerian Oil Pipelines Act 1956 (hereinafter: "OPA").

Tort of negligence and duty of care

4.20. It can be inferred from the ruling of the English House of Lords in *Donoghue v. Stevenson (1932)* that tort of negligence is committed in the event that the defendant breached a duty of care that resulted in damage on the part of the plaintiff. Under Nigerian law, whether or not a defendant has a duty of care to the plaintiff is meanwhile determined based on three criteria that can be inferred from the English ruling in *Caparo Industries plc v Dickman (1990, House of Lords)*. These three criteria are:

(i) the foreseeability for the defendant that the plaintiff would suffer damage;
(ii) the proximity between the plaintiff and the defendant;
(iii) whether it is fair, just and reasonable to assume that a duty of care exists in a specific situation.

In Nigerian case law, as well, whether or not a party has a duty of care to another party is determined based on these three criteria. In addition, in Nigerian and English case law, whether or not a duty of care exists is determined on a case-by-case basis, in steps and by looking for parallels with similar, previous legal cases (precedents). This approach is called the incremental approach.

4.30. In legal systems based on common law, including Nigeria's system, there is no general duty of care to prevent other parties from suffering damage as a result of the practices of third parties. This follows from the English ruling in *Smith v Littlewoods (1987, House of Lords)*. The findings of Lord Goff in that ruling imply that under the following special circumstances, a plaintiff can successfully submit that the defendant had a duty of care to prevent a third party from inflicting damage on the plaintiff:

(i) a special relationship was created between the plaintiff and the defendant because the defendant assumed a duty of care towards the plaintiff;
(ii) there was a special relationship between the defendant and the third party based on which the defendant had to supervise the third party or had to exercise control over the third party;
(iii) the defendant created a dangerous situation that could be abused by a third party and this way result in damage;
(iv) the defendant knew that a third party had created a dangerous situation while that situation was under the influence of the defendant.

4.31. If one of these exceptional situations is involved, the requirements that proximity must exist between the plaintiff and the defendant and that it is fair, just and reasonable to impose a duty of care on the defendant to prevent a third party from inflicting damage on the plaintiff have been satisfied. The District Court assumes that under Nigerian law, as well, these exceptional situations constitute a reason to assume that a duty of care exists to prevent others from suffering damage as a result of the practices of third parties, to the extent that this damage of the plaintiff was foreseeable for the defendant. In his legal opinions on behalf of Shell et al., Professor Oditah called into question that Nigerian law recognizes the possibilities for the occurrence of a duty of care described by Lord Goff. However, those possibilities are part of the positive law under common law, so that the District Court considers those criteria applicable under Nigerian law, as well, in view of its findings in ground 4.28.

Tort of negligence of parent companies RDS in The Hague, Shell Petroleum in The Hague and Shell T&T in London?

4.32. Below, the District Court will start from the assumption that under Nigerian law, both the current parent company (RDS in The Hague) and the previous two parent companies (Shell Petroleum in The Hague and Shell T&T in London) of the Shell Group may be liable for the loss items that can possibly be attributed to this oil spill near Oruma in the period 26 June 2005 through 29 June or 7 July 2005, even though the relevant restructuring of the Shell Group in fact occurred on 20 July 2005 (see ground 2.2 above).

4.33. The legal rule under Nigerian law that there is no general duty of care to prevent third parties from inflicting damage on others also implies that parent companies like RDS, Shell Petroleum and Shell T&T in general have no obligation under Nigerian law to prevent their (sub-) subsidiaries such as SPDC from inflicting damage on others through their business operations. There is just one exception to this main rule in the event that one of the special circumstances mentioned by Lord Goff is involved (see ground 4.30 above).

4.34. Milieudefensie et al. submit that the parent companies RDS, Shell Petroleum and Shell T&T were aware of the problematic situation of oil spills in Nigeria and that in many respects they interfered with and exercised influence on SPDC's activities in Nigeria from The Hague and London. Moreover, the parent companies made the prevention of environmental damage as a result of the activities of their operating companies – including SPDC in Nigeria – a key objective of their policy and also publicly invoke this policy. According to Milieudefensie et al., this can be taken to mean that the parent companies of the Shell Group assumed a duty of care regarding the manner in which SPDC's oil operations in Nigeria are conducted. The described situation can be equated with the one in the English *Chandler v Cape PLC* case, all this still according to Milieudefensie et al.

4.35. The key question in *Chandler v Cape* was whether a parent company can have a duty of care in respect of the employees of a subsidiary with regard to the health and safety policy. This involved damage caused by exposure to asbestos dust. On appeal, the court ruled that this might be the case if the parent company assumed this duty of care. This is involved under the following special circumstances:

(i) the businesses of the parent company and of the subsidiary are essentially the same;
(ii) the parent company has more knowledge or should have more knowledge of a relevant aspect of health and safety in the industry than the subsidiary;
(iii) the parent company knew or should have realized that the working conditions at its subsidiary were unhealthy;
(iv) the parent company knew or should have foreseen that the subsidiary or its employees would rely on the fact that the parent company would use its superior knowledge to protect those employees.

In *Chandler v Cape*, the court further found that the condition under (iv) can be deemed to have been fulfilled in the event that it is clear that (v) the parent company had intervened before in the subsidiary's business operations.

4.36. The District Court finds that the special relation or proximity between a parent company and the employees of its subsidiary that operates in the same country cannot be unreservedly equated with the proximity between the parent company of an

international group of oil companies and the people living in the vicinity of oil pipelines and oil facilities of its (sub-) subsidiaries in other countries. The District Court is of the opinion that this latter relationship is not nearly as close, so that the requirement of proximity will be fulfilled less readily. The duty of care of a parent company in respect of the employees of a subsidiary that operates in the same country further only comprises a relatively limited group of people, whereas a possible duty of care of a parent company of an international group of oil companies in respect of the people living in the vicinity of oil pipelines and oil facilities of (sub-) subsidiaries would create a duty of care in respect of a virtually unlimited group of people in many countries. The District Court believes that in the case at issue, it is far less quickly fair, just and reasonable than it was in *Chandler v Cape* to assume that such a duty of care on the part of the parent companies of the Shell Group exists.

4.37. At best, SPDC can be blamed for failing to prevent third parties from indirectly inflicting damage on people living in the vicinity by sabotage and that it insufficiently limited this damage, whereas in *Chandler v Cape*, the subsidiary itself directly inflicted damage on its employees by allowing them to work in an unhealthy work environment. Thus, at best, the parent companies RDS, Shell Petroleum and Shell T&T can be blamed for failing to induce and/or failing to enable their (sub-) subsidiary SPDC to prevent and limit any damage caused to people living in the vicinity by sabotage. This situation fundamentally differs from the one in *Chandler v Cape*.

4.38. In addition, (all of) the circumstances that can create a duty of care on the part of a parent company according to *Chandler v Cape* do not occur here. One identical circumstance is that the parent companies of the Shell Group knew and know that SPDC's business operations involve health risks for third parties. However, the businesses of the parent companies and SPDC are not essentially the same, because the parent companies formulate general policy lines from The Hague and/or London and are involved in worldwide strategy and risk management, whereas SPDC is involved in the production of oil in Nigeria. It is further not clear why the parent companies should have more knowledge of the specific risks of the industry in which SPDC operates in Nigeria than SPDC itself; thus, it is also unclear why people living in the vicinity like Oguru and Efanga allegedly relied on the fact that the parent companies of the Shell Group would use this superior specific know-how, if any, to protect the local community near Oruma.

4.39. The conclusion is that the special circumstances based on which the parent company was held liable in *Chandler v Cape* are not so similar to those in the subject case that on this ground alone it may be assumed that RDS, Shell Petroleum and Shell T&T have a duty of care in respect of Milieudefensie, Oruma and Efanga. In other words:

the District Court is of the opinion that *Chandler v Cape* does not create any precedent in the subject case.

4.40. In the circumstances of this case, it cannot be assumed on other grounds, either, that the parent companies in The Hague and London assumed the obligation to intervene in SPDC's policy regarding the prevention of and response to sabotage of oil pipelines and oil facilities in Nigeria. The District Court is of the opinion that the general fact that the parent companies made the prevention of environmental damage caused by operations of their (sub-) subsidiaries the main focus of their policy and that to some extent, they are involved in SPDC's policy constitutes insufficient reason to rule that under Nigerian law, those parent companies assumed a duty of care in respect of the people living in the vicinity of the oil pipelines and oil facilities of SPDC. Those circumstances do not mean that any proximity was created between the parent companies in The Hague and/or London, on the one hand, and those people living in the vicinity in Nigeria, on the other, or that it would be fair, just and reasonable to assume that the parent companies of the Shell Group had a specific duty of care in 2005 near Oruma. Nor have any other circumstances been contended or demonstrated based on which the District Court can rule that these requirements of Nigerian law have been satisfied.

4.41. In view of all of the above, the District Court is of the opinion that under applicable Nigerian law, the parent companies in The Hague and London did not commit any tort of negligence against Milieudefensie, Oguru and Efanga. For this reason, the District Court will dismiss all the claims initiated against RDS, Shell Petroleum and Shell T&T.

Tort of negligence of SPDC against Milieudefensie in Amsterdam?

4.42. Under III, Milieudefensie in Amsterdam moves for a declaratory judgment to the effect that SPDC committed tort against Milieudefensie. However, this claim cannot be allowed. Milieudefensie argues that Section 3:305a DCC creates the legal fiction that the interests of all parties who have been affected by the harmful practices are incorporated in Milieudefensie. However, this argument is not supported by Nigerian law; it is pointed out that the argument is not supported by Dutch law, either. The fact that by virtue of Section 3:305a DCC, Milieudefensie can protect the interests of third parties in law does not mean that any damage of those third parties can be considered to be damage of Milieudefensie itself. Thus, no damage occurred at Milieudefensie as a result of the oil spill in 2005 near Oruma, so that no tort of negligence of SPDC against Milieudefensie can be involved. The District Court further notes that under common law, the proximity between SPDC in Nigeria and Milieudefensie in Amsterdam is not sufficient, either, for any damage that occurred in Nigeria near Oruma. For this reason alone, Shell et al. have not violated any duty of

care in respect of Milieudefensie. Thus, the District Court will dismiss the claims initiated under III by and for Milieudefensie.

Liability of SPDC to Oguru and Efanga on account of the rule in Rylands v Fletcher?

4.43 Section 11 (5) (c) OPA stipulates the following: *"The holder of a license shall pay compensation (…) to any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage or leakage from the pipeline or an ancillary installation for any such damage not otherwise made good"*.
This Nigerian statutory provision codifies the liability of a license holder such as SPDC based on *the rule in Rylands v Fletcher*. The main rule that follows from this Nigerian statutory provision is that SPDC is liable for damage of Oguru and Efanga caused by the oil spill in 2005 near Oruma, unless this oil spill can be blamed on Oguru and/or Efanga or sabotage by third parties. In ground 4.27 above, the District Court already ruled definitively that this oil spill was caused by sabotage. For this reason, by virtue of Section 11 (5) (c) OPA or based on *the rule in Rylands v. Fletcher*, SPDC cannot be liable for damage caused by this oil spill occurring. However, Milieudefensie et al. submit that SPDC can still be liable on this ground for the failure to respond adequately to the oil spill and for the failure to properly clean up the oil contamination. The District Court does not follow Milieudefensie in this argument, because this argument is incompatible with the text and purport of Section 11 (5) (c) OPA. After all, this Nigerian statutory provision does create liability for the consequences of the occurrence of an oil spill, but not for the consequences of inadequately responding to this oil spill or for the consequences of not properly cleaning up this oil spill.

Tort of nuisance of SPDC against Oguru and Efanga?

4.44. The tort of nuisance alleged by Milieudefensie et al. – in this connection, the District Court takes this tort to be an infringement of a right of enjoyment or right of use to land and fish ponds on this land – has been codified for operators like SPDC in Section 11 (5) (a) OPA, which stipulates the following: *"[The operator shall pay compensation to any person whose land or interest in land (…) is injuriously affected by the exercise of the rights conferred by the license, for any such injurious affection not otherwise made good."*
The District Court is of the opinion that the failure to prevent sabotage cannot be designated as a tort of nuisance caused by exercising the license rights that the Nigerian government granted to SPDC. Nor can the failure to adequately respond to an oil spill or the failure to properly clean up such oil spill be designated as a tort of

nuisance caused by exercising the license rights by SPDC. Under English law as well as under Nigerian common law, no tort of nuisance is involved if this infringement was caused by sabotage committed by a third party. Thus, by failing to prevent the sabotage, SPDC did not commit any tort of nuisance against Oguru and Efanga.

Tort of negligence of SPDC against Oguru and Efanga in the occurrence of the oil spill in 2005 near Oruma?

4.45. The next issue to be addressed is whether SPDC committed a tort of negligence against Oguru and Efanga. The circumstances under which an operator like SPDC in Nigeria can commit a tort of negligence in connection with its business operations are codified in Section 11 (5) (b) OPA. This section stipulates the following: *"[The operator shall pay compensation] to any person suffering damage by reason of any neglect on the part of [the operator] or his agents, servants or workmen to protect, maintain or repair any work structure or thing executed under the license, for any such damage not otherwise made good."*
The District Court assumes that in general, the case law on the tort of negligence also applies in the scope of interpreting this Nigerian statutory provision. In this connection, Milieudefensie et al. submit *inter alia* that SPDC had the obligation to Oguru and Efanga to take additional and better measures to prevent sabotage.

4.46. According to Milieudefensie et al., sabotage of oil pipelines and oil facilities in Nigeria is foreseeable in each case, there is proximity between SPDC and the people living in the vicinity and it is fair, just and reasonable to impose a general duty of care on SPDC to prevent sabotage. In Milieudefensie et al.'s view, by installing oil pipelines and oil facilities and keeping these in operation, SPDC created a dangerous situation for the people living in the vicinity of these pipelines and facilities, which can be exploited by third parties. For this reason, according to Milieudefensie et al., under Nigerian law SPDC has a general duty of care in respect of people living in the vicinity such as Oguru and Efanga to prevent sabotage of its oil pipelines and oil facilities by taking additional and better preventive measures. Shell et al. contest this.

4.47. To date, Nigerian case law has no precedent in which an operator like SPDC was held liable for damage resulting from an oil spill based on a tort of negligence, because the operator had violated a general duty of care to prevent sabotage of its oil pipeline or oil facility by third parties. To date, in Nigerian rulings finding that sabotage was involved, the court consistently ruled that the operator was not liable. This clearly demonstrates that under Nigerian law, operators have no general duty of care in respect of the people living in the vicinity of their oil pipelines and oil facilities to prevent sabotage of these pipelines and facilities. Apparently, to date, Nigerian case law does not designate installing and keeping an oil pipeline or an oil facility in and of

itself as creating or maintaining a dangerous situation that creates a general duty of care, even though sabotage frequently occurs in Nigeria.

4.48. However, as all the professors consulted by the parties also recognize in their legal opinions, under Nigerian law it is not ruled out that in the event of sabotage, in a specific case an operator may have committed a tort of negligence because it failed to act sufficiently in a specific situation to limit the risk of sabotage of a specific oil pipeline or oil facility. This also follows from the Nigerian ruling in *Shell Petroleum Development Company (Nigeria) Limited v Otoko (1990)*. After all, this ruling held that *"where the immediate cause of the [oil spill] is [sabotage], the [operator] is not liable, unless [the operator] (…) should have foreseen the sabotage and should have taken measures against this."*

4.49. In the event that an oil spill occurs from an oil pipeline or facility of SPDC, it is in any event foreseeable that this has harmful consequences for the people living in the vicinity of the location where the oil spill originates and farm or fish at that location. This means that the requirement of foreseeability described in ground 4.29 has been satisfied.

4.50. However, the District Court is of the opinion that in this specific case, no special circumstances have been submitted and/or demonstrated that allegedly justify a specific duty of care of SPDC in respect of Oguru and Efanga. In the case at issue, the sabotage of the underground oil pipeline in June 2005 near Oruma was not easy to carry out. After all, the oil pipeline was dug in so that it was necessary to first dig relatively deeply to reach the steel oil pipeline. Then the pipeline had to be damaged with a tool such that oil could start to leak. For this reason, in June 2005 near Oruma there was no specific and/or exceptional risk of sabotage for people living in the vicinity such as Oguru and Efanga, which was considerably larger or essentially different than the general risk of sabotage for all other people living in the vicinity of oil pipelines and oil facilities of SPDC in Nigeria. For this reason, it cannot be held that in June 2005, by using the underground oil pipeline, SPDC created a special risk and allowed this risk to continue, which could be abused by a third party in the sense referred to by Lord Goff (see ground 4.30 above).

4.51. In addition, SPDC could only have reduced or ruled out the general risk of sabotage near Oruma in 2005 at very high cost. Milieudefensie et al. submitted that SPDC could and should have taken more measures to prevent sabotage, such as installing cameras or measuring instruments that could have detected sabotage of the underground oil pipeline (sooner) and/or deploying (more or better) surveillance teams. It must be pointed out that the cameras or measuring instruments mentioned can also be sabotaged. In addition, in no. 108 of the rejoinder, Shell et al. submitted

that – at its own expense – SPDC already had surveillance teams conduct daily surveillance rounds of this underground pipeline, monitored by means of helicopters and used a system to measure the pressure in the pipelines. On the occasion of the pleadings, Milieudefensie et al. have not (sufficiently) refuted these factual arguments of Shell et al., which means that the District Court will consider these factual arguments of Shell et al. in these two proceedings to be correct. However, these additional preventive measures taken by SPDC were also unable to prevent the subject sabotage in 2005 near Oruma. It has not been submitted or demonstrated that under Nigerian law, SPDC could reasonably be demanded to take more extensive security measures for the underground oil pipeline near Oruma in 2005.

4.52. In view of the above, the District Court is of the opinion that under Nigerian law, in June 2005 there was no proximity between SPDC on the one hand, and Oguru and Efanga, on the other, nor is it fair, just and reasonable to rule that at that time, SPDC was under a specific duty of care in respect of Oguru and Efanga to take the security measures specified by Milieudefensie et al. or other, additional security measures to prevent sabotage of its dug-in oil pipeline near Oruma. Under those circumstances, the District Court is of the opinion that in this case, no tort of negligence of SPDC against Oguru and Efanga is involved.

Tort of negligence of SPDC against Oguru and Efanga in the response to the oil spill near Oruma?

4.53. Milieudefensie et al. further argued that SPDC committed a tort of negligence against Oguru and Efanga by failing to adequately respond to the oil spill in 2005 near Oruma. The District Court considers that – in as far as the District Court was able to verify – there is no prior Nigerian case law similar to this case, which demonstrates that SPDC may have committed a tort of negligence by failing to adequately respond to an oil spill. In addition, as already found above, none of the exceptional situations prescribed by Lord Goff occurs in the case at issue. Moreover, (in brief) in the case at issue, on 29 June and 7 July 2005 SPDC, in fact, stopped and remedied the oil spill as quickly as reasonably possible, so that it cannot be held that its response was inadequate. The conclusion is that in this respect, as well, SPDC did not commit any tort of negligence against Oguru and Efanga.

Tort of negligence of SPDC against Oguru and Efanga in the remediation of the oil contamination near Oruma?

4.54. The litigants disagree regarding whether under Nigerian law, SPDC was under the obligation to properly clean up the oil contamination near Oruma. The *Environmental Guidelines and Standards for the Petroleum Industry in Nigeria* (the EGASPIN)

stipulate the following: *"An operator shall be responsible for the containment and recovery of any Spill discovered within his operational area, whether or not its source is known. The operator shall take prompt and adequate steps to contain, remove and dispose of the spill."* Shell et al. submit that despite this, in the event of sabotage SPDC does not have any duty of care to remediate in respect of people living in the vicinity, such as Oguru and Efanga, because the EGASPIN merely contain recommendations and are not legally binding. Starting from the accuracy of Milieudefensie et al.'s assumption that the EGASPIN represent the industry custom in the Nigerian oil industry and that on this basis, SPDC has a duty of care in respect of people living in the vicinity, like Oguru and Efanga, to also properly remediate oil contamination caused by sabotage like the one at issue near Oruma, the District Court finds as follows. Shell et al.'s defense is that the actual clean-up near Oruma mentioned in ground 2.8 above at the instructions and expense of SPDC was correct according to Nigerian criteria, so that SPDC did not commit the tort of negligence stated by Milieudefensie et al. in this respect, either. To this end, Shell et al. submit that SPDC had that remediation work perform in accordance with the customary RENA method and that the Nigerian government approved that remediation by issuing the signed certificate described in ground 2.9.

4.55. Milieudefensie et al. contest that the remediation was sufficient. To this end, they first of all submit that the remediation method used, the RENA method, cannot have produced sufficient results. They base this on a report of the *United Nations Environment Programme* (UNEP) regarding the environmental pollution in Ogoniland (*Environmental Assessment of Ogoniland*, 2011). This UNEP report concludes that under specific circumstances, the RENA method is not useful and in practice is not properly performed in some cases, either. Milieudefensie et al. have taken the general position that the circumstances that mean that the RENA method is ineffective in Ogoniland – according to the UNEP report – also apply to the subject oil contamination near Oruma. In this regard, they specifically point out the fact that more than a year expired between the oil spill and the clean-up near Oruma, so that exposure to the sun, air and rain occurred and oil was able to seep into the groundwater. However, the District Court is of the opinion that Milieudefensie et al. failed to offer sufficient concrete substantiation that those general circumstances already render the RENA method unsuitable beforehand; they also failed to submit a concrete substantiation of the fact that all other objectionable circumstances for the RENA method mentioned in the UNEP report actually occurred at this location near Oruma in the period relevant for these two proceedings. For this reason, the District Court dismisses Milieudefensie's point of view that the mere use of the RENA method in conjunction with the UNEP report already means that it can be concluded that this specific oil contamination near Oruma was insufficiently cleaned up by SPDC.

4.56. Secondly, Milieudefensie et al. submit that in general, documents of the Nigerian government are not reliable, so that according to Milieudefensie et al., it is not possible to rely on the fact that the certificate of the Nigerian government regarding the clean-up near Oruma mentioned in ground 2.9 above – and on which Shell et al. based their factual defense – are correct. The District Court does not follow Milieudefensie et al. in this argument, either, and finds the following to this end.

4.57. In this connection, Milieudefensie et al. firstly submit that the EGASPIN stipulate that in cleaning up oil contamination, an end result of 50 mg/kg of *Total Petroleum Hydrocarbons* (TPH) oil residue must be achieved, and that according to the JIT report and the certificates, in the case at issue near Oruma an end result of only 61 mg/kg of TPH was achieved. In response, Shell et al. submitted that 50 mg/kg of TPH is only a target value and that the end result near Oruma is far below the intervention value of 5,000 mg/kg. Milieudefensie et al. did not refute this argument by Shell et al. or did so insufficiently, so that the District Court will assume that under Nigerian law, 50 mg/kg of TPH is only a target value. Thus, based on this argument of Milieudefensie et al. it cannot be assumed that despite the certificate issued by the Nigerian government, SPDC's clean-up of the subject oil contamination near Oruma was insufficient.

4.58. Secondly, Milieudefensie et al. submit that the Bryjark report submitted with the summons (see ground 2.10 above) demonstrates that the remediation was insufficient. However, during the pleadings Shell et al. advanced a substantiated argument and during the pleadings Milieudefensie insufficiently refuted that Arcadis' later report (see ground 2.14 above) sufficiently demonstrates that (in brief) the conclusions from the previous Bryjark report are not sufficiently reliable due to a defective study method and that – even if Bryjark's measurement results are correct – the TPH content in the soil near Oruma was so low at that time that a "clean soil" was involved. Only in two places did Bryjark measure a strongly increased TPH content near Oruma in June 2007, but this may have other causes, as the Bryjark report also states. It has not been sufficiently submitted or demonstrated that those two high measurement results of Bryjark in June 2007 can be attributed to the consequences of the subject oil spill in June 2005, including in view of the certificate issued by the Nigerian government in August 2006 for the remediation completed at that time by order of and at the expense of SPDC. According to Milieudefensie et al., the Bryjark report also demonstrates that SPDC's clean-up was incorrect because the crude was burned uncontrolled in waste pits, which allegedly led to damage to surrounding crops. However, the Bryjark report does not demonstrate how Bryjark was able to determine this in its study in June 2007 – approximately one year after the clean-up in June 2006 near Oruma had been completed. Thus, the District Court will also dismiss

this argument by Milieudefensie et al. because no sufficiently concrete substantiation has been offered for this argument.

4.59 Thirdly, Milieudefensie et al. invoke the email from Mr. Von Scheibler that their attorney produced on the occasion of the pleadings (see ground 2.15 above). As Shell et al. rightfully submitted, this email only demonstrates that in general, the concentration of TPH is not a decisive factor in answering the question regarding whether the clean-up was sufficient. However, Von Scheibler's email does not demonstrate – or does not demonstrate sufficiently concretely – that the certificate issued by the Nigerian government for this specific clean-up near Oruma following this specific oil spill in 2005 is substantively incorrect or has otherwise been wrongfully issued.

4.60. All this leads the District Court to conclude that SPDC's tort of negligence alleged by Milieudefensie et al. but contested by Shell et al. – allegedly consisting of an insufficient remediation of the vicinity of Oruma – has not been established as regards the facts in these two proceedings.

Tort of trespass to chattel by SPDC against Oguru and Efanga?

4.61. Milieudefensie et al. submit that SPDC also committed a tort of trespass to chattel against Oguru and Efanga, which the District Court takes to be an infringement of movable property. Under legal systems based on common law, a tort of trespass to chattel can only be involved if the movable property of another party is intentionally or negligently infringed. However, no intent has been submitted or demonstrated, while the District Court already ruled above that under Nigerian law, no negligence by SPDC in respect of Oguru and Efanga is involved. For this reason alone, no tort of trespass to chattel by SPDC against Oguru and Efanga can be involved, either.

Liability on account of infringement of Oguru's and Efanga's human rights?

4.63. Under II, Milieudefensie et al. moved for a declaratory judgment to the effect that SPDC is liable for affecting Oguru's and Efanga's physical integrity because they had to live in a contaminated living environment. To this end, Milieudefensie et al. refer to the ruling in the Nigerian lawsuit *Gbemre v. Shell Petroleum Development Company and others (2005)*. The District Court finds that a fundamental difference can be pointed out between that case and the subject matter. In *Gbemre v. Shell Petroleum Development Company and others*, the court ruled that SPDC had infringed a human right by its active conduct, namely by deliberately flaring gas during a long period. However, in the case at issue, SPDC cannot be blamed for any active conduct but at best for negligence. However, in all of the above the District Court ruled that no

reprehensible conduct based on a tort of negligence is involved. As far as the District Court was able to verify, to date there have been no Nigerian rulings (precedents) in which a reprehensible failure in horizontal relationships such as the one at issue and in the event of sabotage by third parties is considered to be an infringement of a human right. For this reason, the declaratory judgment demanded under II will be dismissed.

Conclusion of the District Court regarding the initiated main claims

4.63. All of the above means that the District Court will dismiss the main claims lodged in these proceedings under I through III.

The initiated ancillary claims

4.64. Under IV through VII, Milieudefensie et al. also moved that the District Court orders SPDC to take several measures. These are ancillary claims for injunctions under Nigerian law. The District Court can only decide to order an injunction in the event that under Nigerian law, tort has been committed and if the District Court feels that an injunction is appropriate and in order in that connection. In that case, the District Court has broad discretionary power in ordering an injunction. However, for the sole reason that in all of the above, the District Court already ruled that in the case at issue, under Nigerian law Shell et al. did not commit any tort against Milieudefensie, Oguru and Efanga so that the main claims under I through III must be dismissed, the measures claimed under IV through VII, the penalties claimed under VIII and the extrajudicial costs claimed under IX must also be dismissed as ancillary claims.

The request to produce evidence

4.65. In the reply, Milieudefensie et al. submitted that they “maintain their request to order Shell et al. to furnish the relevant documents”. As the District Court – like Shell et al. – understands, Milieudefensie et al. request that at this stage of the proceedings, based on Section 22 DCCP, the District Court still orders Shell et al. to produce the evidence regarding which the District Court already ruled in its interlocutory judgment of 14 September 2011 that based on Section 843a DCCP, the relevant claims in the motion must be dismissed. In view of the contents of all previous findings of the District Court and in view of its discretionary power in the application of Section 22 DCCP, the District Court dismisses this request of Milieudefensie et al.

Costs of the proceedings and declaration of provisional enforceability

4.66. As the parties ruled against, Milieudefensie, Oguru and Efanga must be jointly and severally ordered to pay Shell et al.'s costs of the proceedings in the two proceedings. As requested by Shell et al. and as customary, the District Court will declare these orders to pay the costs of the proceedings provisionally enforceable.

5. The decisions

In the proceedings with docket number 09-0579, the District Court:

5.1. dismisses all claims initiated by Milieudefensie, Oguru and Efanga;

5.2. orders Milieudefensie, Oguru and Efanga jointly and severally to pay the costs of the proceedings to RDS and SPDC, to date estimated at EUR 262.00 for paid court fees and at EUR 1,808.00 for the fixed salary of the attorney, stipulating that these costs of the proceedings must be paid within 14 days after the date of this judgment, failing which Milieudefensie, Oguru and Efanga will be in default after those 14 days;

5.3. declares this order to pay the costs of the proceedings provisionally enforceable;

In the proceedings with docket number 10-1677, the District Court:

5.4. dismisses all claims initiated by Milieudefensie, Oguru and Efanga;

5.5. orders Milieudefensie, Oguru and Efanga jointly and severally to pay the costs of the proceedings to Shell Petroleum and Shell T&T, to date estimated at EUR 263.00 for paid court fees and at EUR 1,808.00 for the fixed salary of the attorney, stipulating that these costs of the proceedings must be paid within 14 days after the date of this judgment, failing which Milieudefensie, Oguru and Efanga will be in default after those 14 days;

5.6. declares this order to pay the costs of the proceedings provisionally enforceable.

This judgment was rendered by judges H. Wien, LL.M., M. Nijenhuis, LL.M. and F.M. Bus, LL.M., and declared in public on Wednesday 30 January 2013 in the presence of the court clerk, F.L.M. Munter, LL.M.