

Factsheet

The legal case, step by step



On [11 October 2012 at 9:30 am](#), at the court in The Hague the plea will be entered in an unusual legal case –the case that four Nigerian farmers and Milieudefensie (Friends of the Earth Netherlands) jointly brought against Shell in 2008 as the result of oil pollution in three Nigerian villages.

The legal case in a nutshell

In the case, the four victimised farmers from the villages of [Goi](#), [Ikot Ada Udo](#) and [Oruma](#) and Milieudefensie (henceforth Milieudefensie and associates) demand that Shell clean up the oil pollution in their fields and fishponds. They also demand that Shell better maintains and secures the pipelines under its management so that new spills can be prevented in the future. Finally, the farmers also want financial compensation from Shell for the economic damage they have suffered.

Milieudefensie and associates have brought the legal case against both Shell's international headquarters located in the Netherlands – Royal Dutch Shell – and Shell's Nigerian subsidiary – SPDC. The plaintiffs believe that the headquarters is also liable for the environmental damage caused in Nigeria. Shell's argument is that its Nigerian subsidiary – of which Shell holds all shares– is an independent legal entity for which it carries no responsibility.

Verdict

A verdict from the court is expected in late 2012 or early 2013. This may not be the final verdict in the case. Because no comparable case has ever been tried in the Netherlands, it is very difficult to predict what the outcome will be. It may not be that the court rules entirely in favour of one of the parties on all points. Many options are possible. The judge could order Shell to replace the outdated pipelines but withhold financial compensation for the farmers, or the court could rule in favour of compensation but not for all the plaintiffs. Once the final verdict has been delivered, an appeal could be made to a higher court.

Unique legal case

The legal case is unique because it is the first time in history that a Dutch company is being brought before a Dutch court to answer for environmental damage caused abroad. The case could set an important precedent and lead to

more cases of the same type, from Nigeria – where tens of millions of euros damage has been done due to oil pollution – as well as from other countries. Many eyes are therefore focused on this case, both in the Netherlands and the rest of the world.

Shell tactics

The case was started in May 2008 by Milieudefensie and associates. The main hearing is only now being held because Shell has systematically delayed the case by placing procedural obstacles in the way and by withholding important documents. Moreover, Shell has continually tried to question the authority of the Dutch court – so far without success – and to relegate the case to a Nigerian court (obstacle 1). This is one of the tactics by which Shell – acting in the knowledge that the Nigerian justice system functions very poorly – has kept trying to deflate the case.

The legal case, chronological overview

11 October 2012: Main hearing before the court in The Hague

Three spills from Shell pipelines and the consequences of these are the focus: a spill in the village of [Goi](#) in 2004, a spill in the village of [Oruma](#) in 2005 and various spills in the village of [Ikot Ada Udo](#) in 2007. The spills are just the tip of the iceberg; about 250 spills occur at Shell installations in Nigeria per year. Millions of people in the densely populated country suffer every day from the consequences of the pollution. Fifty-five per cent of all leaks from Shell pipelines take place in Nigeria, while no more than 10 per cent of Shell's oil production takes place there. In some places the spilled oil has saturated the ground to a depth of five metres. Due to the pollution, farming and fishing – which most Nigerians depend on for their livelihood – is no longer possible and many people no longer have access to clean drinking water.

14 April 2012: Shell submits its written reply (rejoinder) to the court in The Hague

Shell's lawyers deny any and all liability in the rejoinder. They state that all the spills were caused by sabotage, which Shell is in no way to blame for. They also revive a number of procedural obstacles, including the argument that the case should be tried by a Nigerian court.

14 December 2011: The lawyers for Milieudefensie and associates submit their rejoinder to the court

In this rejoinder they argue that the spills were the result of poor maintenance. They also state that in the three villages, Shell did not maintain the pipelines, did not protect them adequately from sabotage and scarcely cleaned up the spilled oil, while according to Nigerian law clean-up is always compulsory – regardless of the cause of the spill.

4 August 2011: Publication of the 'Environmental Assessment of Ogoniland' report by UNEP, the United Nations Environmental Programme

This report shows that Shell did not adequately clean up the pollution it has caused in Ogoniland – the part of the Niger Delta where the village of Goi is located. UNEP concludes that Shell's operations in Nigeria have not led to 'environmental restoration nor legislative compliance, nor even compliance with its own internal procedures'. Milieudefensie's lawyers

have since submitted the UNEP report to the court as important evidence.

14 September 2011: Decision announced in the so-called request for submission by Milieudefensie and associates

Shell is not required to allow the court access to internal documents. These internal documents could shed more light on the circumstances surrounding spills from Shell's oil pipelines in Nigeria and the involvement of the parent company located in the Netherlands. Milieudefensie's lawyers are only allowed to inspect a few subcontractor reports on the village of Goi. The court ruled in the same incident that Milieudefensie and the farmers can continue to substantiate the case. Shell's request that Milieudefensie no longer be allowed as party in the procedure (obstacle 2) is rejected.

19 May 2011: Hearing on request for submission in the three cases

Court session on the request by Milieudefensie and associates to gain access to Shell documents.

2 December 2010: Shell objection on Ikot Ada Udo case dismissed by court

Shell's argument that the Ikot Ada Udo case should be postponed (obstacle 3) on the basis of 'Lis pendis' (a pending court case brought by one of the four farmers in Nigeria) is rejected by the court.

24 March 2010: Milieudefensie lawyer calls for inspection of internal Shell documents

The lawyer for Milieudefensie and associates had already requested access to evidence in Shell's possession in the liability claim made in May 2008. After the company repeatedly denied access (obstacle 4), the lawyer for Milieudefensie and associates file a request for submission to force Shell to disclose the documents.

30 December 2009: Decision in the jurisdiction question in the Oruma case

The court dismisses Shell's argument that the Dutch court is not competent to rule on Shell Nigeria. Shell is disappointed; Milieudefensie and associates consider this their first victory. Because separate decisions on competence must be made in the Goi and Ikot Ada Udo cases, it is not until 24 February 2010 that there is definitive confirmation that the court is competent in all cases. By raising this jurisdiction question, Shell

caused a delay of over ten months.

3 December 2009: First session

This session exclusively focuses on court jurisdiction in the Oruma case.

13 May 2009: Shell contests jurisdiction of the court in The Hague over Shell Nigeria (Oruma)

Shell states that Shell Nigeria is a Nigerian company and thus is not required to appear before a Dutch court, even though Shell Nigeria is a 100 per cent subsidiary of Royal Dutch Shell, the parent company located in the Netherlands.

20 June 2008: Shell's response to liability claim

Shell denies having made mistakes and furthermore states that Royal Dutch Shell, the Shell parent company, is not liable for the wrongdoings of its Nigerian subsidiary (obstacle 5). The plaintiffs, however, stand by their claim that the headquarters is in fact responsible for its Nigerian subsidiary, because it disposes of a variety of instruments to manage its subsidiaries.

9 May 2008: Liability claim

The four victims of oil spills in the Nigerian villages of Goi, Ikot Ada Udo and Oruma and Milieudefensie hold Shell liable for damage to the environment and economic damages suffered.

Milieudefensie, 5 juni 2009

Friends of the Earth Netherlands

