



# Corporate Liability for Environmental Law: A Tale of Three Dislocations

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# The argument

- After decades of frustration with effective access to environmental justice for people in the Global South, we have some meaningful indications of improvement
  1. A duty of vigilance // CSDD
  2. *FOCUS OF THIS PRESENTATION*: Improved conditions of admissibility of transnational environmental claims in Global North jurisdictions
- This is cause for optimism, BUT new developments are also disruptive // DISLOCATING



# DISLOCATION

- Dynamic whereby the application of legal doctrines and judicial interpretation results in a question being removed from its original context and assigned to a different space for deliberation and decision making
  - Epistemic dislocation
  - Jurisdictional dislocation
  - Adjudicative dislocation
  - Both productive and disruptive
  - Opportunity to ask fundamental questions and contemplate long-term, sustainable change
- 



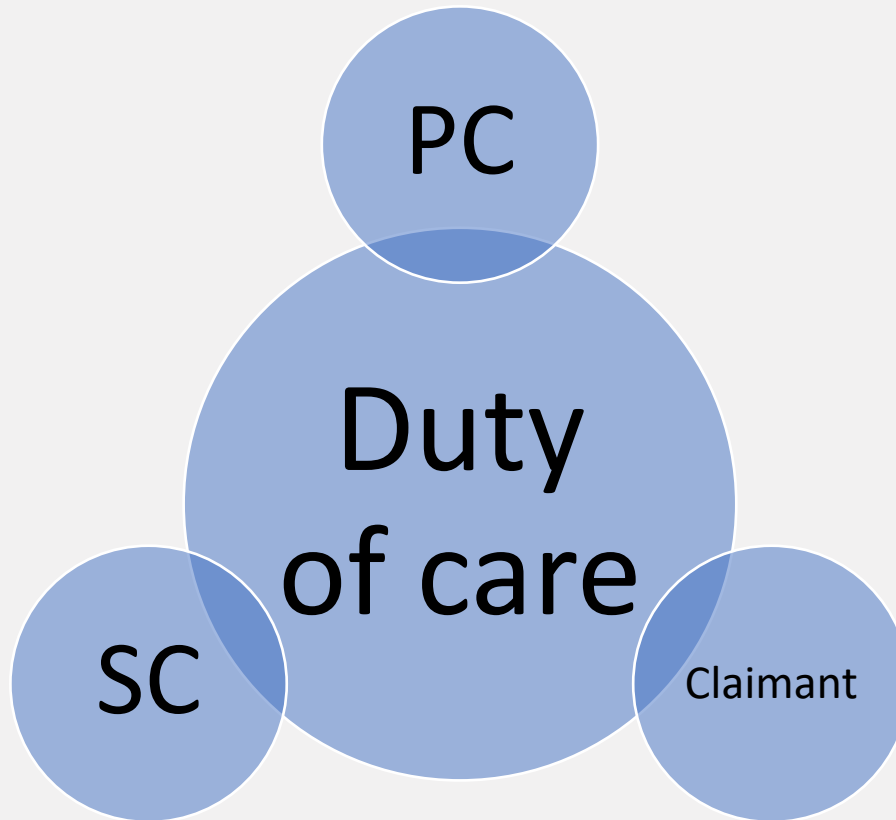
# The context

Separation principle

*Forum non conveniens*

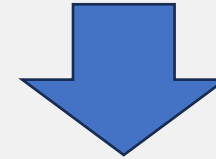
No real prospects to obtain justice at home

# DISLOCATION 1: FROM OPERATIONAL TO REGULATORY CONTROL



*Caparo:*

1. Reasonably foreseeable
2. Proximity
3. Attribution is fair, just and reasonable



CONTROL

*Chandler (2012):*  
Operational control

*Vedanta (2019):*  
Regulatory control

**EPISTEMIC  
DISLOCATION**



# DISRUPTION: EXAMINING THE NORMATIVE FOUNDATIONS OF RESPONSIBILITY IN CORPORATE GROUPINGS

- *Vedanta* para. 53: Even where group-wide policies do not of themselves give rise to such a duty of care to third parties, they may do so if the parent does not merely proclaim them, but takes active steps, by training, supervision and enforcement, to see that they are implemented by relevant subsidiaries. Similarly, it seems to me that the parent may incur the relevant responsibility to third parties if, **in published materials**, it holds itself out as **exercising that degree of supervision and control** of its subsidiaries, **even if it does not in fact do so**. In such circumstances its very omission may constitute the abdication of a responsibility which it has publicly undertaken.
- Tom Goodhead: BHP is a **multinational** that generates **huge profits** in the regions where it operates, and it is **only right that** the company ... is **held directly accountable** at its headquarters.
- European Commission re: the CSDDD proposal: The new rules will ensure that [*large*] businesses address adverse impacts of their actions, including **in their value chains** inside and outside Europe.

# DISLOCATION 2: JURISIDCTIONAL DISLOCATION

Substantive justification for joining the claims

Risk of irreconcilable judgments

No real prospects for claimants to obtain justice

JOINING  
CASES  
IN  
THE  
GLOBAL  
NORTH

# PRODUCTIVE AND DISRUPTIVE IMPACTS OF JURISDICTIONAL DISLOCATION

DISTANCE

EXPERTISE

RESOURCES

VISIBILITY

EMANCIPATION /  
DECOLONISATION

FLOODGATES

COMPLEXITY



# BEYOND DISLOCATION

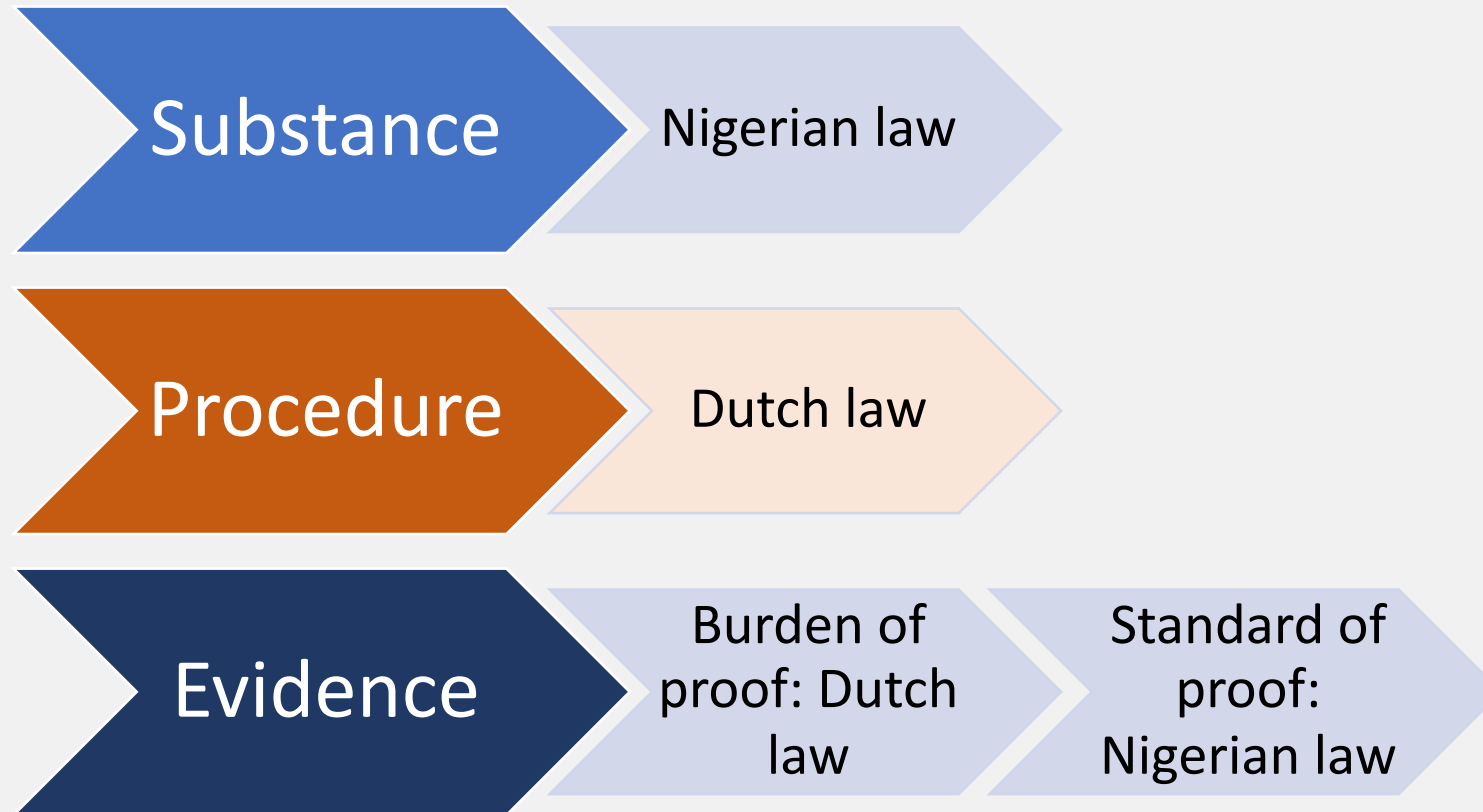
- Transnational courts, potentially digital
- Transnational inter-jurisdictional cooperation



# DISLOCATION 3:

## DISLOCATION OF ADJUDICATION

Example:  
*Efanga*





# RISKS OF ADJUDICATIVE DISLOCATION

- Getting the law wrong
- Paralysis caused by fear of getting the law wrong



# BEYOND DISLOCATION

- Transnational law of torts
- Transnational judicial cooperation

