

Shell

Overview of controversial business practices in 2008

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Amsterdam, May 2009

Colophon

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Cover Design: Annelies Vlasblom

Funding
This publication is made possible with co-funding from the Vereniging van Beleggers voor Duurzame Ontwikkeling (VBDO)

Published by



Stichting Onderzoek Multinationale Ondernemingen
Centre for Research on Multinational Corporations

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Introduction

This company briefing has been prepared by SOMO (Centre for Research on Multinational Corporations). It provides an overview of business practices that could be considered unsustainable or irresponsible and that occurred or have been addressed in 2008. The overview below describes only controversial practices that were identified, not the positive achievements of a company in the same year. Information on a Shell's positive achievements can be found in its annual and/or sustainability report and on the company's website. The purpose of this report is to provide additional information to the company's shareholders and other stakeholders on controversies that may or may not be detected and reported by the company itself.

This report does not contain an analysis of Shell's corporate responsibility policies, operational aspects of corporate responsibility management, implementation systems, reporting and transparency, or total performance on any issue. For some controversies, it is indicated which standards or policies may have been violated and a brief analysis is presented. Apart from this, the report is mainly descriptive. The range of sustainability and corporate responsibility issues eligible for inclusion in this overview is relatively broad. The assessment is mainly based on issues and principles as outlined in the OECD Guidelines for Multinational Enterprises, which Shell endorses as a benchmark standard for its performance.¹ The OECD Guidelines are thus used as a general frame of reference for responsible corporate behaviour.

Sources of information are mentioned in footnotes throughout the report. The main sources were obtained through SOMO's global network of civil society organisations, including reports, other documents, and unpublished information. Media and company information databases and information available via the Internet are used as secondary sources where necessary. As per SOMO's standard operating procedure, Shell was informed about the research process in advance and was given two weeks to review a draft report and provide corrections of any factual errors in the draft version. While other companies in this overview series provided valuable comments within the review period, Shell simply responded that it does not believe the report presents a representative picture of Shell's activities, without providing any specific comments on or corrections to the content of the report. Given that Shell was offered but declined the opportunity to review the draft overview and provide corrections, SOMO cannot assume responsibility for any factual inaccuracies in the report.

The overview of controversial practices in this report is not intended to be exhaustive. Instead, it focuses on a limited number of issues and cases that might merit further attention or reflection. Where information about the latest developments, either positive or negative, was unavailable, it is possible that situations described in the overview have recently changed. Taking into account these limitations, SOMO believes that the briefing can be used to address areas that need improvement and for a more informed assessment of a company's corporate responsibility performance.

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¹ Shell, "Shell 2005 Sustainability Report", p. 6.

Controversial Business Practices in 2008

Lack of cooperation and commitment by Sakhalin Energy to protecting endangered whales off Sakhalin Island, Russia

The Sakhalin II project on Russia's Sakhalin Island is the world's largest integrated oil and gas production project. Sakhalin II was designed and constructed by the Shell-managed Sakhalin Energy Investment Company, Ltd., (Sakhalin Energy). In April 2007, Russia's Gazprom acquired a controlling share of the project, but Shell retains control over most day-to-day management decisions, particularly those related to environmental issues.²

Sakhalin II is situated adjacent to the principle feeding grounds of the critically endangered western gray whale, of which only approximately 130 individuals remain. In 2004, at the insistence of prospective project financiers, Sakhalin Energy agreed to commission the International Union for the Conservation of Nature (IUCN) to assemble an expert Independent Scientific Review Panel (ISRP) to review the project's impacts on the western gray whale. Since then, the ISRP and its successor panel, the Western Gray Whale Advisory Panel (WGWAP), have consistently warned that Sakhalin II and other projects in the area "pose potentially catastrophic threats to the [Western Gray Whale] population", and have expressed concern that Sakhalin Energy has not provided adequate and timely data to the scientific panels.³ Chapter III.1 of the OECD Guidelines states that enterprises should ensure that adequate and timely information regarding their activities, performance, and foreseeable risks are disclosed.

However, in December 2008, the WGWAP met for the fifth time (WGWAP-5) and sharply criticized the chronic lack of cooperation by Sakhalin Energy:

"[The WGWAP Chairman] Reeves expressed the Panel's disappointment at the lack of progress toward implementation of recommendations from WGWAP-4 and the failure of Sakhalin Energy to provide expected meeting documents in a timely manner, particularly in the context of the constructive interactions that had taken place at previous WGWAP meetings and in the task forces. There is a notable difference in the number of new recommendations in the present report compared to previous WGWAP reports. This should not be interpreted as a sign of progress. Instead, it is a reflection of the fact that the Panel was provided with relatively little new information or analyses that could form the basis of judgments leading to new advice and recommendations".⁴

² The agreement saw Shell's share in the Sakhalin Energy joint venture reduced from 55% to 27.5%. See Shell, "Responsible energy: The Shell Sustainability Report 2007", <<http://sustainabilityreport.shell.com/2007/>> (6 April 2009), p.33.

³ For more on the impacts of the Sakhalin II project, see the Pacific Environment website <<http://www.pacificenvironment.org/section.php?id=135>> (7 April 2009) and ISRP, "Impacts of Sakhalin II Phase II on Western North Pacific Gray Whales and Related Biodiversity: Report of the Independent Scientific Review Panel", 2005, <http://cmsdata.iucn.org/downloads/impacts_of_sakhalin.pdf> (7 April 2009).

⁴ WGWAP, "Report Of The Western Gray Whale Advisory Panel At Its Fifth Meeting", February 2009, <http://cmsdata.iucn.org/downloads/wgwap_5_report_final_040209.pdf> (6 April 2009), p.4.

The WGWAP has also strongly criticised Sakhalin Energy for failing to adopt many of the expert panel's key recommendations. In 2007 and 2008, Sakhalin Energy claimed to make some changes in response to the Panel's recommendations, such as reducing the speed and noise levels of ships, and strengthening its response programme for oil spills.⁵ However, in December 2008 the WGWAP-5 report revealed the number of western gray whales off Sakhalin Island in 2008 was "unexpectedly low" and that it had "urgent concern" that the low numbers may be related to "industrial activity" in the area.⁶ As a result, the WGWAP-5 recommends "a moratorium on all industrial activities, both maritime and terrestrial, that have the potential to disturb gray whales in summer and autumn on and near their main feeding areas" as a precautionary measure.⁷ Chapter V.4 of the OECD Guidelines requires that companies apply the Precautionary Principle where there are threats of damage to the environment.

WGWAP scientists noted particular concern about Sakhalin Energy's apparent plans to proceed with seismic testing in the summer of 2009 despite the scientists' warning and lack of adequate environmental review or proven effective mitigation measures. Seismic testing can disturb whale feeding patterns. The WGWAP emphasises, "[I]t would be precautionary for the planned Astokh 4-D seismic survey to be put on hold until more information is available about industrial activities and whale distribution in 2008, and preferably also until data from 2009 are available".⁸

The WGWAP-5 report also criticises other oil and gas companies operating off Sakhalin Island, including the ExxonMobil-led ENL joint venture. According to WGWAP-5, if ENL and Sakhalin Energy do not cooperate, "the effectiveness of the Panel and Sakhalin Energy's stated commitment to western gray whale conservation will be severely compromised".⁹

Sakhalin Energy's lack of cooperation and commitment to putting protection of the western gray whale population before profits led the WGWAP-5 to question the future of the Panel's important work:

"The lack of recent progress on various matters, primarily as a result of inadequate provision of data and information, has led Panel members to question whether the process is serving its central purpose: to promote the necessary protection for this critically endangered whale population and thus improve its chances for full recovery. As a result, unless there is significant and immediate improvement, members are increasingly reluctant to continue investing their time and energies in a process that seems to be of questionable effectiveness".¹⁰

⁵ Shell, "Responsible energy: The Shell Sustainability Report 2007", <<http://sustainabilityreport.shell.com/2007/>> (6 April 2009), p.33.

⁶ WGWAP, "Report Of The Western Gray Whale Advisory Panel At Its Fifth Meeting", February 2009, <http://cmsdata.iucn.org/downloads/wgwap_5_report_final_040209.pdf> (6 April 2009), p.12, 34.

⁷ Ibid, p.32.

⁸ Ibid, p.33

⁹ Ibid, p.36

¹⁰ Ibid, p.34

Oil spills and gas flaring continue in Nigeria

Oil Spills in the Niger Delta

In Nigeria, Shell operates through three separate joint ventures, the largest of which is the Shell Petroleum Development Company of Nigeria Ltd (SPDC).¹¹ On 5 November 2008, four Nigerian citizens and Friends of the Earth (FoE) Netherlands and Nigeria filed a lawsuit against Shell in a Dutch court for damages suffered due to oil spills from SPDC's oil production in Nigeria.¹² According to the UNDP, more than 400,000 tonnes of oil have spilled into the creeks and soils of the Niger Delta over the past 30 years, the vast majority of these spills resulting from ageing facilities, inadequate maintenance, and human error. These oil spills have "have destroyed natural resources central to local livelihoods. The alienation of people from their land and resources has led to the inefficient use of remaining resources and poor or inequitable land-use practices".¹³ In the more than 50 years that Shell has been active in Nigeria¹⁴, approximately 500 oil spill-related cases have been filed against Shell Nigeria in Nigerian courts, but many of these cases have been left pending for years and few judgements have been handed down.¹⁵ The Nigerian citizens and FoE decided to raise their November 2008 complaint at a Dutch court because the Shell parent company, Royal Dutch Shell plc, is headquartered in the Netherlands. The complainants in the "People of Nigeria versus Shell" lawsuit assert that Royal Dutch Shell is aware of the damage caused by the oil spills of its fully-owned subsidiary in Nigeria, but has neglected to act and is therefore responsible for the damage.

One example of the issues raised in the complaint is the case of the village of Oruma in the Niger Delta.¹⁶ In June 2005, an oil spill from a high-pressure oil pipeline operated by Shell Nigeria contaminated fish ponds and trees in Oruma, thereby destroying the livelihoods of the villagers. Despite being aware of the leaking pipeline, oil continued to flow through the pipeline for 12 days, exacerbating the contamination and causing it to spread to other villages. Four months after the spill, Shell Nigeria brought in a team to clean up the spill, but villagers claimed that the clean up only caused further damage to their land and water. Shell has not paid any compensation to the affected villagers because the company claims that the spill was a result of sabotage, but it has not made public the results of the internal investigation on which this claim is based. Contrary to Shell Nigeria's claims, villagers who witnessed the spill and the clean-up maintain that insufficient and overdue maintenance of the pipeline caused it to corrode, which eventually led to the spill.

¹¹ SPDC is Nigeria's largest oil and gas joint venture and is operated by Shell on behalf of the Nigerian National Petroleum Corporation (55%), Shell Nigeria (which is a fully-owned subsidiary of Royal Dutch Shell plc.) (30%), Total (10%) and Agip (5%). See Shell, "Responsible energy: The Shell Sustainability Report 2007", <<http://sustainabilityreport.shell.com/2007/>> (6 April 2009), p.25.

¹² Milieudéfensie, "The People of Nigeria versus Shell", <<http://www.milieudéfensie.nl/english/shell/the-people-of-nigeria-versus-shell>> (7 April 2008).

¹³ United Nations Development Programme, "Niger Delta human development report", 2006, <http://web.ng.undp.org/reports/nigeria_hdr_report.pdf> (7 April 2009), p.3.

¹⁴ Shell, "Responsible energy: The Shell Sustainability Report 2007", <<http://sustainabilityreport.shell.com/2007/>> (6 April 2009), p.24.

¹⁵ J.G. Frynas, "Legal Change in Africa: Evidence from Oil-Related Litigation in Nigeria", *Journal of African Law*, Vol. 43, No. 2. (1999), pp. 121-150.

¹⁶ For more information on the allegations in the complaint, including a series of fact sheets for each of the three affected Nigerian villages, see Milieudéfensie, "The People of Nigeria versus Shell", <<http://www.milieudéfensie.nl/english/shell/the-people-of-nigeria-versus-shell>> (7 April 2008).

Shell Nigeria itself had identified the need to replace the pipeline in 2003¹⁷, but this had not been done by the time of the spill.¹⁸

Chapter V of the OECD Guidelines states that “Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate,...conduct their activities in a manner contributing to sustainable development”, and in particular prevent “serious environmental and health damage from their operations, including accidents and emergencies”. Furthermore, Chapter V.6 of the OECD Guidelines requires that enterprises “adopt technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise”. However, in a November 2008 report, Richard Steiner of the University of Alaska concluded that “Shell Nigeria continues to operate well below internationally recognized standards to prevent and control pipeline oil spills, and thus is out of compliance with Nigerian law”.¹⁹ Steiner determined that Shell Nigeria was in violation of Nigerian law, international standards, the OECD Guidelines and Shell’s own Business Principles for the following reasons:

- ❑ *“lack of implementing ‘good oil field practise’ with regard to pipeline integrity management (particularly the U.S. IM regulations, API standards, and Alaska’s Best Available Technology requirements);*
- ❑ *delay in initiating an Asset Integrity Review and Pipeline Integrity Management System (PIMS) for Shell Nigeria. Shell Nigeria admits it has a backlog in its asset integrity program;*
- ❑ *questionable adequacy of Shell Nigeria’s Asset Integrity Review and PIMS, and lack of independent oversight;*
- ❑ *lack of reference to and attention by Shell Nigeria to the Niger Delta as a High Consequence Area for oil spills;*
- ❑ *lack of adequate attention by Shell Nigeria to the Niger Delta as an area in which oil facilities are susceptible to Intentional Third Party Damage, requiring enhanced pipeline integrity and monitoring procedures;*
- ❑ *exceptionally high number, extent, and severity of oil pipeline spills in the Niger Delta before, during, and after their Asset Integrity Review and PIMS;*
- ❑ *lack of transparency in Shell Nigeria – the Asset Integrity Review, Pipeline Integrity Management System (PIMS), Joint Operating Agreement, and its Oil Spill Contingency Plan (OSCP) should submit to independent third-party evaluation; and*
- ❑ *lack of adequate oil spill response capability and performance of Shell Nigeria”.*²⁰

Missed deadlines and continued gas flaring

Flaring of natural gas mixed with crude oil during oil production has long been a practice of Shell and other oil companies operating in Nigeria. Nigeria accounts for two-thirds of Shell’s gas flaring globally.²¹ According to US National Geophysical Data Center, 23 billion m³ of natural gas are

¹⁷ Shell Nigeria refers to the replacement of the Kolo Creek/Rumuekpe Trunk Line Replacement in it’s 2003 annual report. See

Shell Nigeria, “Annual Report 2003: People and the Environment”, 2004, p. 8.

¹⁸ Milieudefensie, “The case Oruma: Spill from a high pressure pipeline”, <<http://www.milieudefensie.nl/english/publications/Oruma-english.pdf>> November 2008,

¹⁹ R. Steiner, “Double standards?: International Best Practice Standards to Prevent and Control Pipeline Oil Spills, Compared with Shell Practices in Nigeria”, November 2008, <<http://www.milieudefensie.nl/globalisering/publicaties/rapporten/rapport%20double%20standards.pdf>> (7 April 2009), p.6.

²⁰ Ibid, p.6-7.

flared in Nigeria each year, the second largest quantity of any country but Russia.²² This flaring emits as much greenhouse gas each year as 18 million European cars. Along with coal power stations in South Africa, gas flaring in Nigeria is the main source of CO₂ emissions in Sub-Saharan Africa.

In addition to its impacts on climate change, gas flaring emits particulate matter, sulphur dioxide, nitrogen dioxide, as well as carcinogenic substances such as benz[a]pyrene, dioxin, benzene and toluene, which can have severe health effects for local populations and cause environmental problems. Those residing near the flaring sites have suffered from serious health problems including respiratory illness, asthma, blood disorders and cancer, and flared gas has been identified as a major cause of acid rain, which pollutes creeks and streams, damages vegetation and corrodes roofs. The UNDP has declared that gas flares destroy natural resources and local livelihoods, alienate people from their land, and “adversely affect human development conditions”.²³ In November 2005 a Federal High Court in Nigeria ordered SPDC to immediately stop flaring gas near the village of Iwhrekan, noting that gas flaring is a ‘gross violation’ of the rights to life and dignity of the Nigerian people. The case is still pending at the Nigerian Supreme Court.

Shell has missed numerous deadlines to phase out gas flaring in Nigeria. In response to local and international pressure, the Nigerian Federal Government pledged to halt gas flares in and set 1 January 2008 as zero flare date. When it became clear that that deadline would not be met, the Government, on 17 December 2007, announced a postponement, this time with a deadline fixed for 31 December 2008, and Shell Nigeria promised “to shut down production from any fields where there is no prospect of a solution for gathering the associated gas by 2009”.²⁴ However, that deadline has come and gone, and Shell (as well as other oil companies) continue to flare. Outside Nigeria, Shell claims to have effectively met its goal of ending continuous flaring by 2008;²⁵ unfortunately, this is not the case in Nigeria.

Shell’s inability to halt the flaring of gas appears to be out of line with the OECD Guidelines’ stipulations that enterprises should comply with host country laws and regulations (Chapter V), contribute to sustainable development (Chapter V), prevent environmental and health damage from their operations (Chapter V.4) and employ practices throughout all operations that reflect the best performing part of the enterprise (Chapter V.6).

²¹ Shell, “Responsible energy: The Shell Sustainability Report 2007”, <<http://sustainabilityreport.shell.com/2007/>> (6 April 2009), p.19.

²² US National Geophysical Data Center, “A twelve year record of national and global gas flaring volumes estimated using satellite data, final report to the World Bank”, May 2007, <http://www.ngdc.noaa.gov/dmsp/interest/gas_flares.html> (7 April 2009).

²³ United Nations Development Programme, “Niger Delta human development report”, 2006, <http://web.ng.undp.org/reports/nigeria_hdr_report.pdf> (7 April 2009), p.11.

²⁴ Shell Nigeria, “Shell Nigeria Annual Report 2006”, 2007.

²⁵ Shell, “Responsible energy: The Shell Sustainability Report 2007”, <<http://sustainabilityreport.shell.com/2007/>> (6 April 2009), p.19.

Investment in GHG-intensive Canadian tar sands; Freeze on investment in renewables

The tar sands of Alberta, in western Canada, represent the world's second-largest reserves oil, but their development and exploitation has a high environmental impact. The oil sands' hydrocarbons are in the form of bitumen, which is an oily tar mixed with sand, clay, and water. Bitumen is near the surface can be dug up in open-pit mines, with warm water then used to separate out the oil. However, for tar sands that are deeper underground, the bitumen must be heated "in situ" to make the oil flow to the surface through conventional wells.²⁶ Shell is one of the largest investors in and developers of the Canadian oil sands with three operational projects – Athabasca Oil Sands²⁷, Peace River Complex²⁸ and Cold Lake-Orion – and a fourth, the Grosmont Venture, in the testing phase. At the start of 2008, Shell's total production capacity from its oil sands operation was 155,000 barrels of oil a day, with construction under way to expand by another 100,000 barrels of oil per day.²⁹ The Shell-managed Athabasca Oil Sands project alone has filed regulatory permits to increase bitumen production to 770,000 barrels per day and to increase upgrading capacity to 690,000 barrels per day. It is thus clear that Shell plans to substantially increase its investment in and production of oil from the Canadian tar sands.

A January 2008 report by the WWF and Pembina Institute emphasises that "the technologies used to mine, extract and upgrade the bitumen [from the tar sands] to synthetic crude make the product among the most environmentally costly sources of transport fuel in the world".³⁰ The production of one barrel of oil from the tar sands requires the extraction and processing 2,000 kilograms of oil-saturated sand. Large amounts of natural gas are required to heat and separate the bitumen from the sand in a process called "upgrading" and to power refineries and other operations. As a result, the equivalent of one barrel of oil is required to produce just three barrels of oil from the tar sands, meaning that the production of one barrel of oil from the tar sands emits between three and five times more climate changing greenhouse gasses (GHGs) than producing a barrel of conventional oil. Furthermore, large amounts of water are needed to process the bitumen; one barrel of oil mined from the oil sands requires between two and 4.5 barrels of water to produce. Shell's Muskeg River Mine is the largest consumer of fresh water in Alberta.³¹ There is also evidence of negative social and health impacts of the tar sands exploitation. The water used to process the bitumen becomes contaminated with toxic chemicals and is stored in large tailings ponds. The diagnosis of several members of the adjacent Fort Chipewain community with a rare type of bile duct cancer and the observance of strange mutations in fish from the Athabasca River has led local environmentalists and medical doctors to believe that contaminated water containing arsenic and mercury from the tailing ponds is leaking into the river and groundwater.³² The Alberta government requires companies to restore the land to "equivalent land capability". However, despite nearly 40 years of oil sands development, not a single hectare

²⁶ Shell, "Responsible energy: The Shell Sustainability Report 2007", <<http://sustainabilityreport.shell.com/2007/>> (6 April 2009), p.11.

²⁷ The Athabasca Oil Sands Project, which is a joint venture with 60% Shell ownership, is a surface mining project includes the Muskeg River Mine and its associated bitumen facilities and the Scotford Upgrader and Refinery.

²⁸ The Peace River Complex is an in situ and cold operations project 100% owned by Shell Canada.

²⁹ Shell, "Responsible energy: The Shell Sustainability Report 2007", <<http://sustainabilityreport.shell.com/2007/>> (6 April 2009), p.11.

³⁰ S. Dyer, J. Moorhouse, K. Laufenberg, and R. Powell, "Under-mining the Environment: The Oil Sands Report Card", (Drayton Valley, Alberta and Toronto: Pembina Institute and WWF, January 2008), <<http://pubs.pembina.org/reports/OS-Undermining-Final.pdf>> (8 April 2009), p.vii.

³¹ Ibid.

³² J. Harikson, "Tar Wars", Mother Jones, (May-June 2008), p.66.

of land has been certified as restored by the Government of Alberta.³³ Shell's current land reclamation rate averages approx 1.36% of the total land per year the company uses for its mining, drilling and waste (tailings) storage operations, meaning that the company's planned expansion of tar sands operations far exceeds operations far exceeds its reclamation rate.³⁴

Shell's heavy investment in the CO₂-intensive and environmentally-damaging tar sands, coupled with the company's recent freezing of investment in renewable sources of energy such as wind, solar and hydropower³⁵, seems to be far out of line with the OECD Guidelines' requirement that enterprises contribute to "social and environmental progress with a view to achieving sustainable development" (Chapter II.1), as well as the company's own pledges to reduce the climate change impact of its activities.³⁶ On 8 April 2009 a coalition of Canadian environmental groups requested that Canadian regulators rescind approvals for Shell's planned expansion of its tar sands operations, alleging that the company broke a binding negotiated agreement to significantly cut the output of greenhouse gases from the expansion of its Muskeg River and Jackpine oil sands mines. The groups claim that Shell agreed to come up with specific targets for cuts to greenhouse gas emissions at the mine sites, but now refuses to quantify its GHG cuts, deciding instead to wait for the federal government to come up with regulations on emissions.³⁷

The British Advertising Standards Authority (ASA) recently reprimanded Shell for a series of advertisements in which Shell called the oil sands a "sustainable energy source". The ASA declared in it's ruling, "Because we had not seen data that showed how Shell was effectively managing carbon emissions from its oil sands projects in order to limit climate change, we concluded that the ad was misleading".³⁸ At a time when governments, civil society, and many businesses around the world are concerned with reducing their CO₂ emissions, Shell "expect[s] an increase in CO₂ emissions resulting from the company's operations over the coming decade," primarily due to increased production from tar sands.³⁹ In response to questions about increased greenhouse gas emissions from the tar sands, a Shell representative responded, "We didn't put the oil there".⁴⁰

In addition to the negative environmental and social impacts, Shell's increasing investment in the carbon-intensive tar sands may become a financial and political liability. Internationally, low-carbon fuel quality standards, such as those in the EU Fuel Quality Directive⁴¹ and similar

³³ J. Grant, D. Woynillowicz, and S. Dyer, "Fact or Fiction: Oil Sands Reclamation", (Drayton Valley, Alberta: Pembina Institute, May 2008), <<http://www.oilsandswatch.org/pub/1639>> (17 April 2008), p.7.

³⁴ S. Dyer, J. Moorhouse, K. Laufenberg, and R. Powell, "Under-mining the Environment: The Oil Sands Report Card", (Drayton Valley, Alberta and Toronto: Pembina Institute and WWF, January 2008), <<http://pubs.pembina.org/reports/OS-Undermining-Final.pdf>> (8 April 2009), p.22.

³⁵ Note that Shell has pledged to continue and increase investment in biofuels. See T. Webb, "Shell dumps wind, solar and hydro power in favour of biofuels", Guardian, 17 March 2009 <<http://www.guardian.co.uk/business/2009/mar/17/royaldutchshell-energy>> (8 April 2009).

³⁶ Shell, "Responsible energy: The Shell Sustainability Report 2007", <<http://sustainabilityreport.shell.com/2007/>> (6 April 2009), p.11.

³⁷ S. Hagggett, "Green Groups Want Shell Oil Sands Permits Rescinded", Reuters, 9 April 2009, <<http://planetark.org/wen/52394>> (9 April 2009).

³⁸ Quoted in C. Arsenault, "OIL SANDS-PART 1: Showdown at Ft. McMone", IPS, 16 October 2008, <<http://ipsnews.net/news.asp?idnews=44299>> (15 April 2009).

³⁹ Shell, "Responsible energy: The Shell Sustainability Report 2007", <<http://sustainabilityreport.shell.com/2007/>> (6 April 2009), p.39.

⁴⁰ J. Annesley, Manager, Communications - Oil Sands at Shell Canada Limited, quoted in C. Arsenault, "OIL SANDS-PART 1: Showdown at Ft. McMone", IPS, 16 October 2008, <<http://ipsnews.net/news.asp?idnews=44299>> (15 April 2009).

⁴¹ D. Urbaniak, "Extracting the truth: Oil industry efforts to undermine the Fuel Quality Directive", April 2008 <http://www.foeeurope.org/corporates/Extractives/Extractingthetruth_April08.pdf> (15 April 2009).

regulations being developed in Canada and the US, prohibit fuels with lifecycle CO₂ emissions “well to wheel” greater than those from conventional fuels, indicating that access to Shell’s leading markets may be restricted for fuels derived from tar sands.⁴² A 2008 report by WWF-UK and a group of socially responsible investors emphasised that, “ultimately, it is not in investors’ interests to support industries [such as oil sands and oil shale extraction] that are exacerbating a problem with such far-reaching consequences as climate change, and they will increasingly be reluctant to have their names associated with these activities”.⁴³

Local community objects to Corrib Gas Pipeline Project in Ireland

The Corrib natural gas project comprises a gas processing plant and a pipeline to transport untreated natural gas from 80 km offshore to a processing plant on the west coast of Ireland.⁴⁴ The Corrib gas field is located in North West County Mayo, Ireland, and is controlled by a consortium including Shell E&P Ireland (45%), Statoil Exploration Ireland (36.5%) and Marathon International Petroleum Hibernia Limited (18.5%).

In the years prior to 2008, there was widespread opposition to the project from local communities and environmentalists, and in 2006 Shell agreed to alter the proposed pipeline route in response to concerns that it was too close to populated areas.⁴⁵ The alternative route (known as the Glink siting option) was approved by independent auditors Accufacts, who noted “Glink is a vastly superior location option concerning health, safety, and environmental issues. Serious questions should be raised as to why this site was not evaluated when identifying site alternatives for possible consideration from the Corrib gas field”.⁴⁶ In April 2008 Shell submitted an application for the new route, but on 22 August 2008, the Pobal Chill Chomáin Community, which is located adjacent to the Corrib project, filed an OECD Guidelines complaint against Shell for violations of the OECD Guidelines.⁴⁷ Specifically, the complaint alleges that Shell has violated the environment (Chapter V) and human rights (Chapter II) provisions of the OECD Guidelines.⁴⁸ According to the complaint, the pipeline would pass houses, bogs and farmland and go through an area prone to landslides. The Corrib pipeline has the potential to operate under very high pressures with unknown gas compositions. This, coupled with the instability of peat in some areas the pipeline is expected to pass, seriously increases the likelihood of pipe failure. The gas doesn’t smell, which is risky considering the potential for pipe failure. Given these issues the complainants believe that the proposed pipeline routes still pass too close to populated areas.

Furthermore, the location of the refinery poses a risk to the only source of potable water for 10,000 people because the gas processing terminal is based in, a catchment area for a major water supply. The route of the pipeline would pass through three ecologically sensitive areas, thus representing a threat to local wildlife.

⁴² J. Leaton, “Unconventional Oil: Scraping the bottom of the barrel?”, May 2008, <http://assets.wwf.org.uk/downloads/scraping_barrell.pdf> (15 April 2009), p.21.

⁴³ Ibid, p.44.

⁴⁴ Shell, “Responsible energy: The Shell Sustainability Report 2007”, <<http://sustainabilityreport.shell.com/2007/>> (6 April 2009), p.26.

⁴⁵ Ibid.

⁴⁶ R.B. Kuprewicz, President, Accufacts Inc., letter to J. Murray, Coordinator, Afri, 31 October 2008.

⁴⁷ L. Siggins, “OECD to offer mediation in Corrib gas dispute”, Irish Times, 07 March 2009, <<http://www.irishtimes.com/newspaper/ireland/2009/0307/1224242448347.html>> (8 April 2009).

⁴⁸ The full OECD Guidelines complaint is available here: <<http://www.asso-sherpa.org/index.php?page=industrie&ssmenu=actions&id=11>> (8 April 2009).

The Pobal Chill Chomáin Community thus alleged that Shell is in violation of Chapter V of the OECD Guidelines for failing “to operate in consideration of relevant international agreements, principles, objectives and standards” (V), failing to “collect, evaluate and provide the public with adequate and timely information on the potential environmental, health and safety impacts of the activities of the enterprise” (V.1.a), and failing to “assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes” (V.3). With regard to human rights, the complainants allege that during the Corrib gas project development Shell has failed to respect the community’s right to private life and the right to a clean environment, the right to private property, and the right to the disclosure of information⁴⁹, and that these failures represent a breach of Chapter II of the OECD Guidelines, which encourage companies to respect the human rights of those affected by their activities and act in partnership with the local community. Ireland’s Minister of Energy, Eamon Ryan, has noted that “undoubted mistakes were made with respect to the Corrib gas project, including a failure to consult the local community adequately at the outset. Had such consultation taken place then, the project would not have reached the current stage of ‘chaotic development’”.⁵⁰ On 19 February 2009, the Irish and Dutch National Contact Points (NCPs) for the OECD Guidelines declared Pobal Chill Chomáin’s complaint admissible as a specific instance under the OECD Guidelines.

In March 2009, two Irish government ministers opened a forum of mediation between Shell and Pobal Chill Chomáin, but the talks broke down after two meetings due to a “fundamental disagreement” between Shell and the community. Shortly after the breakdown of direct talks Shell’s environmental management plan for the project was approved by Ireland’s Ministry of Energy, and Shell, along with its consortium partners, declared that it was “preparing for activities to commence” on the pipeline, despite the unresolved issues with the community groups and the pending OECD Guidelines specific instance.⁵¹

Environmental health and safety issues at refinery in Argentina

In Argentina, Shell operates through its subsidiary Shell Capsa. The company’s primary activities in Argentina are the transportation and distribution, via river, of products derived from oil, the sale of fuels and lubricants designed for aviation, the sale and distribution of chemical products, the sale of liquid petroleum, the commercialization of natural gas and the marine transportation of crude oil. On 28 May 2008, two Argentine NGOs, El Instituto para la Participación y el Desarrollo de Argentina (INPADE) and Amigos de la Tierra Argentina, filed an OECD Guidelines case against Shell, alleging that the company had breached the Preface, Chapter II (General Principles), Chapter III (Disclosure), and Chapter V (Environment) of the OECD Guidelines.⁵²

The groups claim that Shell Capsa has ignored the Argentinean government’s policies regarding environmental protection and sustainable development and has therefore serially violated domestic law. In September 2007, Shell Capsa’s facilities were inspected and thereafter

⁴⁹ These human rights are defined in the European Convention for the protection of Human Rights and Fundamental Freedoms, Article 8, Article 1 of Protocol 1, and Article 10, respectively.

⁵⁰ Quoted in L. Siggins, “New effort on Corrib gas awaited after talks breakdown”, Irish Times, 8 April 2009, <<http://www.irishtimes.com/newspaper/ireland/2009/0408/1224244212585.html>> (15 April 2009).

⁵¹ Quoted in L. Siggins, “Shell set to restart laying offshore gas line”, Irish Times, 11 April 2009, <<http://royaldutchshellplc.com/2009/04/11/shell-set-to-restart-laying-offshore-gas-line/>> (15 April 2009).

⁵² FOCO and Amigos de la Tierra, “OECD Guidelines Specific Instance With Respect to the Activities of SHELL CAPSA at the Polo Petroquímico Dock Sud – Argentina”, 28 May 2008, <<http://www.cedha.org.ar/en/docs/sel.pdf>> (16 April 2009).

preventively shut down by government authorities from the National Environmental Authority of Argentina (SAyDS) for failure to comply with national environmental laws, specifically “unsatisfactory management of special and/or dangerous waste”, “failing to comply with the Water Code of the Province of Buenos Aires”, and numerous other violations. According to the government inspectors, there were “confirmed losses and spills of dangerous waste”, and “soil tests also confirmed contamination”.⁵³

The OECD Guidelines complaint further states that Shell Capsa has put the health of hundreds of neighbouring residents in danger. Shell Capsa’s facilities are located adjacent to Villa Inflamable, a community of low socio-economic status and high environmental health vulnerability. Residents of Villa Inflamable claim that they have been suffering from the irresponsible behaviour of Shell and other companies in the Dock Sud area for years. The community wants Shell to repair the damage it has caused and finance the relocation of inhabitants to an environmentally safe location.⁵⁴ On 23 September 2008, the OECD Guidelines case was declared admissible by the Argentine NCP and is currently pending.

Shell Capsa claims that other companies in the Dock Sud industrial site, not Shell, are responsible for the pollution of the area and that Shell “does neither contribute nor can be held responsible by any means for the pollution of the Matanza-Riacheulo River basin”.⁵⁵ However, following the closure of its refinery by the environmental authorities, Shell signed an agreement to correct its violations and invest US\$80 million to improve its environmental management.⁵⁶ In November 2007, as required by the environmental authorities, Shell submitted a Corrective Action Plan in which it addressed the SAyDS’ reasons for the closure of the refinery. Shell is also currently pursuing an administrative claim against the environmental authorities in which the company claims that the closure was “arbitrary and illegal”.⁵⁷

Resistance to municipal ordinances and Supreme Court rulings regarding the Pandacan oil depot in Manila, the Philippines

In the Philippines, Shell’s local subsidiary, Pilipinas Shell Petroleum Corporation (PSPC) is a joint operator of the Pandacan oil depot in Manila.⁵⁸ When it was originally constructed, the depot lay outside the city of Manila, but it has since been surrounded by municipal development and now lies in the middle of a densely-populated residential area. This has caused concern among many Manila residents and elected officials about the safety of the local population given the hazardous chemicals stored in the depot, and on 28 December 2001 the Manila City Council enacted Ordinance 8027, which rezoned the land on which the depot is located and required PSPC and the other oil companies to cease their operations there within six months.⁵⁹ On 26 June 2002, two

⁵³ CEDHA, “Shell Denounced Internationally for Human Rights and Environmental Violations in Argentina”, 29 May 2008, <http://www.cedha.org.ar/en/more_information/sel3.php> (16 April 2009).

⁵⁴ INPADE website, “Fue Aceptada La Denuncia Contra Shell Presentada Por Foco Y Fundación Amigos De La Tierra”, no date, <<http://inpade.org.ar/presentacion%20OCDE.htm>> (15 April 2009).

⁵⁵ J.J. Aranguren, CEO, Shell Capsa, and A. Garde, Environment Manager, Shell Capsa, personal communication with (presentation to) the author, Buenos Aires, Argentina, 26 November 2008.

⁵⁶ CEDHA, “Shell Denounced Internationally for Human Rights and Environmental Violations in Argentina”, 29 May 2008, <http://www.cedha.org.ar/en/more_information/sel3.php> (16 April 2009).

⁵⁷ J.J. Aranguren, CEO, Shell Capsa, and A. Garde, Environment Manager, Shell Capsa, personal communication with (presentation to) the author, 26 November 2008.

⁵⁸ The Pandacan depot is jointly operated by PSPC, Caltex (a subsidiary of Chevron-Texaco, USA), and Petron (Philippines).

⁵⁹ City Council of Manila, Ordinance No. 8027, Section 3, Manila, 13 December 2001.

days before Ordinance 8027 was to take effect, PSPC and the other oil companies entered into a Memorandum of Understanding with the City of Manila and the Philippine Department of Energy, postponing the departure date for another six months.⁶⁰ After the oil companies failed to meet that deadline, on 4 December 2002 two Manila residents and lawyers filed a case at the Third Division of the Supreme Court to compel the Mayor to enforce Ordinance 8027 and order the immediate removal of the oil depot.

On 7 March 2007 the Supreme Court of the Philippines ruled in favour of Manila residents that had filed the December 2002 complaint and ordered the Mayor of Manila, as part of his “mandatory legal duty”, to immediately enforce Ordinance 8027 and remove the oil depot.⁶¹ Of the Supreme Court’s decision, Manila’s then-Mayor Atienza commented that he is happy he can finally implement the City Council’s ordinance “without the Energy Department breathing down our neck”, that the city will “move for the removal of the depot”, and that the oil companies “should be ready to go”.⁶² However, PSPC and the other companies, along with the Energy Department, asked the Supreme Court to reconsider, claiming that the more recent Ordinance 8119 of 2006 superseded and repealed Ordinance 8027. The then-Mayor of Manila disagreed with the oil companies, stating, “While there may have been a change in the designation of the land use of the Pandacan oil depot in Ordinance 8119, the intention is still to continue what was established in Ordinance 8027”.⁶³ The Supreme Court also disagreed with PSPC, so much so that in its 13 February 2008 ruling on the oil companies’ motion for reconsideration, the Court felt compelled to rebuke PSPC’s inconsistency and bad faith in its attempt to find an exemption to Ordinance No. 8027, noting:

*“...[[I]t is the oil companies which should be considered estopped. They rely on the argument that Ordinance No. 8119 superseded Ordinance No. 8027 but, at the same time, also impugn it (8119’s) validity. We frown on the adoption of inconsistent positions and distrust any attempt at clever positioning under one or the other on the basis of what appears advantageous at the moment. Parties cannot take vacillating or contrary positions regarding the validity of a statute or ordinance”.*⁶⁴

In its 13 February 2008 decision, the Supreme Court of the Philippines thus upheld its 7 March 2007 ruling that the Mayor of Manila must enforce Ordinance No. 8027, which implies the orderly removal of the Pandacan depot.⁶⁵ In the same ruling, the Supreme Court dedicated its “Final Word” to highlighting the danger that the Pandacan depot continues to pose and the inadequacy of the oil companies’ measures to mitigate the risks, noting,

⁶⁰ Through Resolution 19 (25 July 2002) and Resolution 13 (30 Jan 2003), the City Council of Manila extended the ultimate deadline for shutting down activities at the oil depot until 30 April 2003.

⁶¹ Decision of the First Division of the Supreme Court of the Philippines, 7 March 2007, available at <<http://www.supremecourt.gov.ph/jurisprudence/2007/march2007/156052.htm>> (7 April 2007), p.7.

⁶² L. Atienza, former Mayor, City of Manila, quoted in T. Torres, “Manila Mayor to oil firms: Prepare to leave,” Inquirer.net, 7 March 2007, <http://newsinfo.inquirer.net/breakingnews/metro/view_article.php?article_id=53498> (16 April 2009).

⁶³ L. Atienza, former Mayor, City of Manila, quoted in L. Salaverria, “Manila’s Atienza firm about Pandacan oil depot closure,” 24 April 2007, Inquirer.net.

⁶⁴ J. Corona, First Division of the Supreme Court of the Philippines, “Resolution: G.R. No. 156052”, 13 February 2008, <<http://www.supremecourt.gov.ph/jurisprudence/2008/feb2008/156052.htm>> (13 February 2008), p.18.

⁶⁵ Ibid.

*“On Wednesday, January 23, 2008, a defective tanker containing 2,000 liters of gasoline and 14,000 liters of diesel exploded in the middle of the street a short distance from the exit gate of the Pandacan Terminals, causing death, extensive damage and a frightening conflagration in the vicinity of the event. Need we say anything about what will happen if it is the estimated 162 to 211 million liters of petroleum products in the terminal complex which blow up?...Essentially, the oil companies are fighting for their right to property. They allege that they stand to lose billions of pesos if forced to relocate. However, based on the hierarchy of constitutionally protected rights, the right to life enjoys precedence over the right to property. The reason is obvious: life is irreplaceable, property is not. When the state or LGU’s exercise of police power clashes with a few individuals’ right to property, the former should prevail”.*⁶⁶

PSPC again disagreed with the Supreme Court’s decision and on 28 February 2008 filed another Motion for Reconsideration against the Court’s decision, elevating the case to the *en banc*, i.e. highest level, of the Supreme Court. On 13 May 2008 PSPC and the other oil companies submitted a preliminary relocation plan as ordered by the Court, but PSPC maintains that it “cannot accept that the court-ordered relocation deadlines” until the Court’s decision is resolved with finality.⁶⁷ The final decision of the *en banc* is still pending.

In May 2006, an OECD Guidelines complaint was filed against Shell at the Dutch National Contact

Point (NCP) by the Philippines-based Fenceline Community for Human Safety and Environmental Protection together with Friends of the Earth Netherlands (Milieudefensie) and Friends of the Earth

International. The complaint alleges, among other things, that Shell/PSPC violated the OECD Guidelines for Multinational Enterprises Chapter II.5 for “seeking exemptions to the statutory and regulatory framework”, and Chapter V for failing to comply with the “framework of laws, regulations and administrative practices in the countries in which they operate”. The OECD Guidelines complaint was accepted as a specific instance by the Dutch National Contact point and remained pending throughout the entirety of 2008.⁶⁸

Lawsuits and local opposition to drilling plans in Alaska

On 6 February 2008 Shell obtained the drilling rights to 275 lease blocks offshore northwest Alaska.⁶⁹ Shell has claimed that Alaska has the “potential of becoming a new heartland for Shell” and has engaged in extensive public relations and advocacy for opening the Bering Sea’s Bristol Bay to drilling.⁷⁰ Bristol Bay is a biodiversity-rich region situated on the eastern edge of the Bering Sea, the world’s most productive marine ecosystem, and is a designated critical habitat for several endangered species, including the eastern stock of the North Pacific Right Whale, the world’s most endangered whale population.⁷¹ The Chukchi Sea provides important feeding

⁶⁶ Ibid, p.43, 41.

⁶⁷ J. Robles, “Big Three plans move”, Manila Standard, 17 April 2009, <http://www.manilastandardtoday.com/?page=jojoRobles_april17_2009> (17 April 2009).

⁶⁸ The OECD Guidelines Pandacan case remains pending at the Dutch NCP as of April 2009.

⁶⁹ Shell website, “Shell Expands Alaska Exploration Portfolio,” 7 February 2008, <http://www.shell.us/home/content/usa/aboutshell/media_center/news_and_press_releases/2008/alaska_lease_020708.html> (20 April 2009).

⁷⁰ D. Lawrence, Executive Vice President Exploration, Shell, quoted in R.J. Learsy, “Royal Dutch Shell’s ‘New Heartland,’ Alaskan Drilling Rights, The Abject Surrender of Our National Patrimony,” The Huffington Post, 25 February 2008, <http://www.huffingtonpost.com/raymond-j-learsy/royal-dutch-shells-new-_b_88250.html> (20 April 2009).

⁷¹ Pacific Environment website, “Hook, Line and Trawler,” 15 August 2005,

grounds for Pacific walrus, birds, and fish, and the sea's unique open-water leads offer feeding grounds for bowhead and beluga whales and winter habitat for migrating mammals and birds, including a critical habitat for threatened spectacled eiders. These waters also sustain the indigenous Aleut and Inupiat peoples.⁷²

Oil exploration and development pose serious risks in the Arctic. The intense noise of seismic exploration and drilling has already damaged fish eggs and larvae and pushed marine mammals farther out to sea.⁷³ According to the National Academy of Sciences and reports from Inupiat subsistence hunters, drilling has already changed the migratory patterns of endangered bowhead whales by as much as 30 miles.⁷⁴ In addition to drilling noise, oil spills are a common occurrence in Arctic oil drilling. The Alaska Department of Environmental Conservation reported 77 offshore spills of toxic substances during just two years of offshore drilling and exploratory activities. And the oil industry itself reported 4,534 spills across Alaska's North Slope and Beaufort Sea from 1996 to 2004, involving more than 1.9 million gallons of diesel fuel, oil, acid, biocide, ethylene glycol, drilling fluid, and other materials.⁷⁵

Shell claims that it has undertaken steps to minimize the negative environmental and social impact of its exploration and drilling such as hiring local Inupiat observers, signing a conflict avoidance agreement with the Alaska Eskimo Whaling Commission in which the company agreed not to drill during certain areas during specific time periods to limit impacts on migrating whales and other species, and having specialist ships ready to react in case of an oil spill during exploratory drilling in the Beaufort Sea.⁷⁶

Despite these measures, Shell was sued in 2007 by a coalition of Alaska Native organisations and conservation groups to stop the company from conducting exploratory drilling in the Beaufort Sea between 2007 and 2009, claiming that the company's plans to send icebreakers, drill ships and vessels to conduct seismic surveys might harm bowhead whales. In the summer of 2007, a preliminary injunction was issued preventing Shell from implementing its exploration plan, and in November 2008 a court overturned the Bush administration's approval of Shell's plan because of a failure to adequately evaluate the environmental impacts.⁷⁷ Shell appealed the ruling, but in March 2009, the court issued a new order vacating its prior decision. The order dismissed the pending Shell petition for rehearing as moot and said the Court will be issuing a new opinion.

In 2008, Shell cancelled plans to drill at its Sivulliq prospect in Camden Bay⁷⁸, but proceeded with plans to drill in both the Beaufort and Chukchi Seas despite the continued objections of tribal

<http://www.pacificenvironment.org/article.php?id=206> (20 April 2009).

⁷² Shell, "Responsible energy: The Shell Sustainability Report 2007", <http://sustainabilityreport.shell.com/2007/> (6 April 2009), p.21.

⁷³ P. Matthiessen, "Alaska: Big Oil and the Inupiat-Americans," *The New York Review of Books*, 52 (25 October 2007), <http://www.nybooks.com/articles/20835> (20 April 2009).

⁷⁴ National Resources Defense Council website, "The Beaufort and Chukchi Seas: Protecting America's Arctic," June 2007, <http://www.nrdc.org/land/files/drilling.pdf> (20 April 2009), p.2.

⁷⁵ Ibid.

⁷⁶ Shell, "Responsible energy: The Shell Sustainability Report 2007", <http://sustainabilityreport.shell.com/2007/> (6 April 2009), p.21.

⁷⁷ In the case, *Alaska Wilderness League v. Dirk Kempthorne*, the court ruled that "The U.S. Minerals Management Service did not properly consider the risks of oil spills, disturbance to migrating whales, disruptions to the traditional hunting lifestyle of Inupiat Eskimos and other potential harms from Shell's program to drill at a prospect known as Sivulliq".

⁷⁸ A. Bailey, "Hoping to drill: Shell and ConocoPhillips outline Beaufort and Chukchi Sea offshore plans," *Petroleum News* 14 (12 April 2009), <http://www.petroleumnews.com/pntruncate/813119114.shtml> (20 April 2009).

leaders, local governments and conservation groups.⁷⁹ However, on 17 April 2009, the District of Columbia Court of Appeals ruled that the US Department of Interior's Minerals Management Service failed to meet its legal obligation to balance offshore oil development with protection of the environment and coastal communities. The ruling invalidated the Minerals Management Service's five-year plan for offshore drilling from 2007-2012, of which Shell's plans were a part.⁸⁰ Local groups claim that if it wasn't for the efforts of the Native communities and conservation organisations, Shell would have proceeded with exploration and development of the offshore leases in the Chukchi and Beaufort Seas without adequate environmental review and with the very real possibility of irreversible harm to the fragile Arctic environment and to the subsistence lifestyle of the Native peoples on the North Slope.

⁷⁹ Shell website, "About Shell in Alaska", no date, <http://www.shell.us/home/content/usa/aboutshell/strategy/major_projects/alaska/about/about_alaska.html> (20 April 2009).

⁸⁰ N. Pickler, "Court Ends Alaska Offshore Drilling Plan", Anchorage Daily News, 17 April 2009, <<http://www.adn.com/money/industries/oil/story/762894.html>> (17 April 2009).