Stichting Onderzoek Multinationale Ondernemingen
Centre for Research on Multinational Corporations

Royal Dutch Shell

Overview of controversial business practices in 2009

SOMO

May 2010

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Introduction

This brief company profile is a joint initiative of SOMO (Centre for Research on Multinational Corporations) and the VBDO (Vereniging van Beleggers voor Duurzame Ontwikkeling). It provides an overview of business practices that may be considered unsustainable, irresponsible, or controversial and that took place or were addressed in 2009. In the context of the upcoming annual general meetings (AGMs) of shareholders of Dutch corporations, the overview aims to provide additional information to Shell's shareholders and other stakeholders on potentially controversial issues that may or may not be detected or reported by the company itself. By highlighting such issues, the overview can be used to identify areas of the company's corporate responsibility policies and practices that need improvement and to formulate a more informed assessment of a company's corporate responsibility performance.

The range of sustainability and corporate responsibility issues eligible for inclusion in this overview is broadly based on the issues and principles identified in the OECD Guidelines for Multinational Enterprises, which is one of the leading global normative standards for responsible business behaviour and which is applicable to all Netherlands-based companies by virtue of the Dutch government's membership in the OECD. Rather than an exhaustive analysis of Shell's corporate responsibility policies, operational aspects of corporate responsibility management, implementation systems, reporting and transparency, or total performance on any issue, the overview provides a descriptive depiction of a limited number of corporate responsibility-related issues and cases that might merit further attention or reflection. Shell's positive sustainability achievements in 2009 are not addressed here.

The research methodology for this overview involved primarily desk research methods, relying on information from SOMO's global network of civil society organisations, the company's own website and publications, media reports, and company information databases. All sources are cited in footnotes in the text. As per SOMO's standard research methodology, Shell was informed about the research in advance and was given two weeks to review a draft report and provide specific comments and corrections of any factual errors in the draft version prior to publication. Shell, however, declined to use this opportunity, noting in an email response to the draft profile that while the profile was a "nicely readable piece", the company did not agree with the description of the issues or the suggestions made in the profile, and therefore declined to provide specific comments. A second attempt to encourage Shell to provide at least some elements of a more detailed reaction were unsuccessful.

The overview has been researched and drafted by SOMO. SOMO is an independent research organisation that was founded in 1973 to provide civil society organizations with knowledge on the structure and organisation of multinationals

Controversial Business Practices in 2009

1. Oil spills and gas flares in Nigeria

Summary

For the past 3 years, SOMO has tabled the problems and controversies related to Shell's oil extraction in Nigeria, particularly with regard to oil spills in the Niger Delta and gas flares. With respect to oil spills, although information on spill volumes in 2009 is not yet any publicly available, two recent reports by the University of Alaska and Amnesty International indicate that Shell's operations in Nigeria remained out of line with internationally recognized human rights and environmental standards throughout 2009. In addition, a negligence case filed by Nigerian farmers and fishermen against Shell at a Dutch court remained pending in 2009, with an important decision on the court's jurisdiction coming in December 2009. Shell maintains that the Niger Delta is an extremely difficult environment in which to operate and asserts that most oil spills are caused by sabotage and theft.

With regard to gas flaring, Shell admits that it made little progress in reducing gas flaring in 2009, primarily, the company claims, due to the problematic security situation. Below, first the issue of oil spills, then that of gas flaring, is explained in greater detail.

Context – Oil spills

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. The oil spills "have destroyed natural resources central to local livelihoods".[1] A June 2009 report by Amnesty International (AI) describes the numerous human rights and environmental problems related to oil spills and documents several examples of specific spills, noting, "People living in the Niger Delta have to drink, cook with and wash in polluted water. They eat fish contaminated with oil and other toxins – if they are lucky enough to be able to still find fish. The land they farm on is being destroyed. After oil spills the air they breathe smells of oil, gas and other pollutants. People complain of breathing problems and skin lesions – and yet neither the government nor the oil companies monitor the human impacts of oil pollution".[2]

Shell's role – Oil spills

In Nigeria, Shell operates through three separate joint ventures, the largest of which is the Shell Petroleum Development Company of Nigeria Ltd (SPDC). SPDC is also Nigeria's largest oil and gas joint venture. Most of its oil production takes place onshore in the Niger Delta.[3] In the period 2003-2007 Shell Nigeria experienced an average of 250 oil spills per year, leading to 13 million litres of oil being leaked into the wetlands and creeks of the Niger

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1 United Nations Development Programme, "Niger Delta human development report", 2006, <http://web.ng.undp.org/reports/nigeria_hdr_report.pdf> (15 April 2010), p.3.

2 Amnesty International, "Nigeria: Amnesty International says pollution has created human rights tragedy in the Niger Delta", 30 June 2009, press release based on the report *Petroleum, Pollution and Poverty in the Niger Delta*, <http://www.amnesty.org/en/for-media/press-releases/nigeria-amnesty-international-says-pollution-has-created-human-rights-tr>, (14 April 2010).

3 The Shell Petroleum Development Company of Nigeria Ltd (SPDC) operates Nigeria's largest oil and gas joint venture on behalf of government-owned Nigerian National Petroleum Corporation (55%), Shell (30%), Total (10%) and Agip (5%). See "Royal Dutch Shell Plc, sustainability report 2008", <http://sustainabilityreport.shell.com/2008> (15 April 2010), p.20.

Delta. In 2008, the volume of oil spilled spiked to nine million litres in that one year alone.[4] Information on the volume of oil spills in 2009 is not yet publicly available. SPDC claims that two-thirds of the leakages from its installations are due to sabotage by third parties.[5]

In its 2009 report, AI sharply criticized Shell, noting, "Despite its public claims to be a socially and environmentally responsible corporation, Shell continues to directly harm human rights through its failure to adequately prevent and mitigate pollution and environmental damage in the Niger Delta".[6] Shell responded to the AI report, stating: "We hope people recognise that the employees and contractor staff of [SPDC}…have to carry out their work against a backdrop of crime, violence, threats of kidnap and community actions." The company continued, noting that "By far the most significant cause of oil spills and pollution today is the activities of heavily-armed militant groups who attack and blow-up the SPDC joint venture's wells and pipelines and criminal gangs who tap into oil pipelines to steal crude oil".[7]

While it must be acknowledged that Nigeria, particularly the Niger Delta, is an extremely difficult environment for any company to operate, Professor Richard Steiner of the University of Alaska argues that there remains much room for improvement in Shell's operations with respect to human rights and the environment in Nigeria. Professor Steiner claims that the rate of serious pipeline spills in the Niger Delta is far below standards of good practice in other countries, beyond what can be accounted for by sabotage. In a November 2008 report written for Friends of the Earth Netherlands, Professor Steiner concludes 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".[8] Steiner bases this conclusion on what he sees as the following shortcomings in Shell's operations in Nigeria:

- "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;

4 Shell Companies in Nigeria, briefing note "Environmental performance, managing oil spills", May 2009, <http://www-static.shell.com/static/nga/downloads/pdfs/briefing_notes/environmental_performance.pdf>, (15 April 2010).

5 R. Steiner, "Double standards?: International Best Practice Standards to Prevent and Control Pipeline Oil Spills, Compared with Shell Practices in Nigeria", November 2008, <http://www1.milieudefensie.nl/globalisering/publicaties/rapporten/rapport%20double%20standards.pdf> (15 April 2010), p.57.

6 Amnesty International, "Nigeria: Amnesty International says pollution has created human rights tragedy in the Niger Delta", 30 June 2009, press release based on the report *Petroleum, Pollution and Poverty in the Niger Delta*, <http://www.amnesty.org/en/for-media/press-releases/nigeria-amnesty-international-says-pollution-has-created-human-rights-tr>, (14 April 2010).

7 Shell, response to AI report *Petroleum, Pollution and Poverty in the Niger Delta* , 8 July 2009, <http://www.business-humanrights.org/Documents/ShellNigeria>, (14 April 2010)

8 R. Steiner, "Double standards?: International Best Practice Standards to Prevent and Control Pipeline Oil Spills, Compared with Shell Practices in Nigeria", November 2008, <http://www1.milieudefensie.nl/globalisering/publicaties/rapporten/rapport%20double%20standards.pdf> (15 April 2010), p.6.

- 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".[9]

Relevant normative/legal standards – Oil spills

Based on his findings, Professor Steiner concludes that Shell Nigeria is in violation of Nigerian law, international standards such as the OECD Guidelines, and Shell's own Business Principles.[10] With regard to the OECD Guidelines, Chapter V 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 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". Professor Steiner concludes that Shell has not fulfilled the requirements of the OECD Guidelines in this respect.

Amnesty International also concludes in its June 2009 report that the oil spills from Shell's pipelines in the Niger Delta are a violation of several internationally recognized human rights as stipulated by the United Nations such as the right to food, the rights to work and to an adequate standard of living, the right to health and the right to a healthy environment.[11] Chapter II of the OECD Guidelines stipulates that enterprises should respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments. Nigeria is a signatory to the International Covenant on Economic, Social and Cultural Rights, meaning that, under the OECD Guidelines, Shell Nigeria must respect the right to food, the rights to work and to an adequate standard of living, the right to health and the right to a healthy environment. According to Amnesty International, this is unfortunately not the case.

In addition to these relevant international normative standards, in May 2008, four Nigerian farmers and fishermen, in conjunction with Friends of the Earth Netherlands, filed a suit against Royal Dutch Shell plc (the parent company) and SPDC in a Dutch court for damages suffered from the oil spills and Shell's negligence in allowing them to happen.[12] The plaintiffs claim that the oil spills have prevented them from being able to fish or farm the land, which is their only source of livelihood. In response to the filing of the suit, Shell denied any wrongdoing and denied that the parent company has the authority and control to ensure that its oil spills in Nigeria are prevented and cleaned up. In May 2009, additional summons were

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[9] Ibid, p.6-7.
[10] Ibid, p.6-7.
[11] Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta*, June 2009, <http://www.amnesty.org/en/library/asset/AFR44/017/2009/en/e2415061-da5c-44f8-a73c-a7a4766ee21d/afr440172009en.pdf>, (14 April 2010).
[12] Friends of the Earth Netherlands (Milieudefensie), fact sheet "The people of Nigeria versus Shell, the case: step by step", March 2010, <http://www1.milieudefensie.nl/english/publications/Timeline%20Shell%20courtcase.pdf> (14 April 2010)

served for more information on the leaks. In response, Shell claimed that SPDC is a Nigerian company and thus not required to appear before a Dutch court. However, in December 2009, the court in The Hague ruled that the case is within its jurisdiction and that it is authorised to rule on the actions of Shell Nigeria and SPDC. The case remains pending with sessions on Shell's alleged negligence in the cases of the oil spills scheduled to take place throughout 2010.[13]

Context – Gas flaring

Crude oil is often found mixed with natural gas, which must be separated from the oil during extraction. While it is technically possible to capture and utilize the separated natural gas, in Nigeria the associated gas is generally combusted and flared in the open air. There are currently approximately 100 continuously burning gas flares in the Niger Delta and just offshore, some of which have been burning since the early 1960s.[14] Based on satellite data, the US National Geophysical Data Center estimated that Nigeria flared 15.1 billion m³ of natural gas in 2008, second only to Russia.[15] Gas flares are a significant source of greenhouse gas emissions and emit 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 may suffer from serious health problems including respiratory illness, asthma, blood disorders and cancer. Although a Shell spokesman disputed the health impacts of the gas flares in 2009[16], the UNDP has declared that gas flares destroy natural resources and local livelihoods, alienate people from their land, and "adversely affect human development conditions".[17] In additional to the negative environmental effects, gas flaring is inefficient from an economic point of view. The Nigerian government has estimated that it loses about $2.5 billion in revenues annually due to not selling the gas.[18]

In January 2010, the House of Representatives of Nigeria met to discuss a new legislative framework regarding gas flaring. The House of Representatives agreed "that 31st December, 2012 shall be the terminal date of gas flaring in Nigeria".[19] Companies not meeting the deadline would have to pay stiff penalties. However, the Federal Republic of Nigeria has often set and then shifted deadlines to stop the gas flares, and this new legislative framework is still under deliberation.

Shell's role – Gas flaring

Through its subsidiaries, primarily SPDC, Shell was responsible for the emission of 7.7 million tonnes of greenhouse gases (CO_2-equivalent) from gas flaring in 2008,[20] over 10% the

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[13] Friends of the Earth Netherlands (Milieudefensie), fact sheet "The people of Nigeria versus Shell, the case: step by step", March 2010, <http://www1.milieudefensie.nl/english/publications/Timeline%20Shell%20courtcase.pdf> (14 April 2010)

[14] Environmental Rights Action/Friends of the Earth Nigeria, fact sheet: harmful gas flaring in Nigeria, November 2008. <http://www.foe.org/pdf/GasFlaringNigeria_FS.pdf>, (15 April 2010)

[15] Earth Observation Group, NOAA National Geophysical Data Center, report "Improving Satellite Data Estimation of Gas Flaring Volumes, Year Two Final Report to the GGFR, August 2009, <http://www.ngdc.noaa.gov/dmsp/interest/flare_docs/NGDC_flaring_report_20090817.pdf> (15 April 2010), p. 42.

[16] De Volkskrant, opinion "Fakkels" Shell spokesman Wim van de Wiel, 6 August 2009, <http://www.milieudefensie.nl/actueel/nieuws/schone-schijn>, (15 April 2010)

[17] United Nations Development Programme, "Niger Delta human development report", 2006, <http://web.ng.undp.org/reports/nigeria_hdr_report.pdf> (15 April 2010), p.11.

[18] Vanguard, "Nigeria loses $150 bn to gas flare in 36 yrs", 15 July 2008, statistics released by the President of the Nigerian Gas Association (NGA).

[19] House of Representatives of the Federal Republic of Nigeria, "votings and proceedings", 13 January 2010, <http://www.nassnig.org/house/votes.php?page=2>, (15 April 2010)

[20] De Volkskrant, opinion "Fakkels" Shell spokesman Wim van de Wiel, 6 August 2009,

company's total greenhouse gas emissions globally that year.[21] Figures for 2009 emissions are not yet publicly available. It should be noted that Shell is not the only oil company flaring natural gas in Nigeria; ExxonMobil and Chevron, and to a lesser extent Total and Agip, also flare.

In 2007, 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",[22] a promise that has not been fulfilled. Nevertheless, the company claims that since 2002 SPDC has spent over $3 billion to install gas-gathering equipment, reducing continuous flaring by more than 30%.[23] However, the company had already achieved this result in 2005, and there has been little progress from 2006 onwards.[24] Shell's 2009 Annual Report claims that, "The security and funding situation has hindered progress," and that at least another $3 billion is needed for another programme to put out more flares.[25] However, even if the funds for the planned programme can be raised, the company only expects to be able to capture 85% of the total associated gas produced by its operations, meaning that some flaring will continue.[26]

Relevant normative/legal standards – Gas flaring

Shell's inability to halt the flaring of gas appears to be out of line with the OECD Guidelines' stipulations that enterprises should 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).

2. Income taxes and presence in "secrecy jurisdictions"

Summary

Royal Dutch Shell distinguishes three business segments: upstream (the extraction of oil and gas), downstream (refining, distribution, sales) and corporate (non-operating activities and central functions). For its 2009 activities in the upstream segment, Shell paid a high income tax rate (approximately 50%). A high tax rate on upstream activities is common for oil companies. In the downstream and corporate segment, however, Shell paid a very low income tax rate of only 7.6% (averaged over the 2007-2009 period). This is much lower than the corporate income tax rates in developed countries, which are usually within the range of 25-40%. Shell does not explain how it is able to achieve such low tax payments in its downstream and corporate segments. One of the reasons may very well be that the company

<http://www.milieudefensie.nl/actueel/nieuws/schone-schijn>, (15 April 2010)

21 Royal Dutch Shell Plc, sustainability report 2008", <http://sustainabilityreport.shell.com/2008> (15 April 2010), p. 36. The total greenhouse gas emissions of Royal Dutch Shell were 75 million tonnes CO_2-equivalents in 2008.

22 Shell Nigeria, "Shell Nigeria Annual Report 2006", 2007.

23 Royal Dutch Shell plc, Annual Report and Form 20-F for the year ended December 31, 2009, <http://www-static.shell.com/static/investor/downloads/financial_information/reports/20f/2009_annual_report_20f_sec.pdf> (15 April 2010), page 122.

24 Royal Dutch Shell Plc, Sustainability Report 2008, <http://sustainabilityreport.shell.com/2008> (15 April 2010) and Royal Dutch Shell plc, Annual Report and form 20-F for the year ended December 31, 2009, <http://wwwstatic.shell.com/static/investor/downloads/financial_information/reports/20f/2009_annual-report_20f_sec.pdf> (15 April 2010), p. 122.

25 Royal Dutch Shell plc, Annual Report and Form 20-F for the year ended December 31, 2009, <http://www-static.shell.com/static/investor/downloads/financial_information/reports/20f/2009_annual_report_20f_sec.pdf> (15 April 2010), page 122.

26 Shell Companies in Nigeria, briefing note "Harnessing Nigeria's gas", May 2009, <http://www-static.shell.com/static/nga/downloads/pdfs/briefing_notes/harnessing_gas.pdf>, (15 April 2010)

has situated some specific business activities in countries with no or low taxes such as Bermuda, Switzerland and Singapore. It is also noticeable that, through its numerous subsidiaries, Shell had a significant presence in 2009 in countries that the Tax Justice Network (TJN) refers to as “secrecy” jurisdictions, such as Bermuda, Switzerland and the US state of Delaware. According to TJN, secrecy jurisdictions are countries/regions that provide a financial environment that encourages and facilitates illicit financial flows and tax evasion. There is no evidence that Shell is involved in any wrongdoing related to its presence in secrecy jurisdictions. However, the company provides little public information about its reasons for having so many subsidiaries located in such jurisdictions or in general about financial payments to governments that could dispel assumptions.

Context – Financial Secrecy Index and “secrecy jurisdictions”

According to the Tax Justice Network, “secrecy jurisdictions” provide an environment that encourages and facilitates illicit financial flows and tax evasion. In 2009, the TJN constructed a Financial Secrecy Index (FSI) to highlight how secrecy jurisdictions undermine transparency in the global financial markets. In the FSI, jurisdictions are ranked on the basis of an “opacity score” and, to a lesser extent, a “weighting score”. The opacity score assesses how aggressive a jurisdiction has been in providing secrecy in international finance and shunning co-operation with other jurisdictions and is based on 12 key financial secrecy indicators including laws, regulations, and cooperation with information exchange processes. The weighting score comprised the scale of cross-border financial services activity and is based on either data of cross-border trade in financial services or, where that data was not available, estimates of holdings of foreign portfolio assets. It is important to note that secrecy jurisdictions are not necessarily low-tax countries, but that secrecy jurisdictions are often used in tax avoidance through inter-company loans and transfer pricing. The detailed methodology used in the Financial Secrecy Index and the full list of jurisdictional/country rankings can be found on the network’s website.[27]

Shell’s role – Income tax payments

Table 1 below reveals the income taxes paid by Shell’s various business segments for the years 2007-2009. The upstream segment comprises primarily the company’s oil and gas extraction and production activities. In general, oil companies upstream activities are subject to high, specific income tax rates in the host countries where the oil and gas is located.[28] It is thus logical that the majority of income tax paid by Shell is found in the upstream segment. In the 2007-2009 period, Shell’s upstream income tax rate was 48.5% of income before taxation. In contrast, Shell’s downstream (i.e. refining, distribution and marketing activities for oil products and chemicals) and corporate (i.e. holdings and treasury, headquarters, central functions and Shell’s insurance activities) segments pay little taxes on their income. In the period 2007-2009 Shell’s income before taxation amounted approximately US$20 billion in the downstream and corporate segment. In the same period, income tax payments in these two segments amounted to only 7.6% of income. This is a small percentage compared to the income tax rate of an average developed country. Their tax rates are usually within the range 25 - 40 percent.[29] In the Netherlands - where Shell headquarters are located - the corporate income tax rate is 25.5%.

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[27] Tax Justice Network, "the methodology of the Financial Secrecy Index", 2009, <http://www.financialsecrecyindex.com/documents/FSI%20-%20Methodology.pdf>, (13 April 2010)

[28] See for example: PricewaterhouseCoopers, report “Working together. Energy Sector Income Tax Benchmarking Study”, March 2009, <http://www.pwc.com/en_GX/gx/energy-utilities-mining/pdf/global-energy-effective-tax-rate.pdf> (28 April 2010)

[29] OECD Tax Database, Taxation of corporate and capital income, <http://www.oecd.org/document/60/0,3343,en_2649_34533_1942460_1_1_1_1,00.html#cci> (28 April 2010)

Table 1: Income taxes paid by Royal Dutch Shell, by business segment, 2007-2009[30]

(all figures in US$ billion)	2009	2008	2007	2007-2009
Upstream segment				
Income before taxation	17.3	51.7	33.8	102.8
Income tax (% of income)	8.9	25.2	15.7	49.8 (48.5%)
Total upstream profit	8.4	26.5	18.1	53.0
Downstream and corporate segment				
Income before taxation	3.7	-0.8	16.8	19.7
Income tax paid (% of income)	-0.6	-0.8	2.9	1.5 (7.6%)
Total downstream and corporate profit	4.4	0.0	13.8	18.2
All segments				
Income before taxation	21.0	50.8	50.6	122.4
Income tax paid (% of income)	8.3	24.3	18.7	51.3 (41.9%)
Total profit all segments	12.7	26.5	31.9	71.1

While it is not immediately clear why the downstream and corporate segments paid such a low income tax rate, the low tax rate may be due to the fact that some of Shell's specific business activities - like finance, insurance, pension funds, shipping and trademarks – are officially conducted in countries with no or little income tax such as Bermuda, Switzerland and Singapore (see Table 2 below). From these countries the Shell Group may charge its subsidiaries in high-tax countries for the services rendered, which would allow the subsidiaries to write off these costs in the high-tax country. Another possibility is that the company may be making use of loans between various subsidiaries or business units in different countries. In some countries there are no taxes on interest generated by loans; from these countries, companies may issue loans to subsidiaries in countries with a higher income tax rate. The interest paid by the subsidiary in the high-tax country can be written off of that subsidiary's taxes, while the interest received by the lending company in the low-tax country remains untaxed. While there is no evidence that Shell is involved in any wrongdoing related to these practices, the lack of public information on taxes and financial payments does little to dispel assumptions.

Shell's role – Presence in "secrecy" jurisdictions

It is also noticeable that, through its numerous subsidiaries, Shell had a significant presence in 2009 in countries that the Tax Justice Network refers to as "secrecy" jurisdictions, i.e. countries/regions that provide a financial environment that encourages and facilitates illicit financial flows and tax evasion. Table 2 below indicates the presence of Shell subsidiaries located in tax secrecy jurisdictions.[31] The table reveals that the majority (124 out of 189) of the significant Shell subsidiaries are present in the top 15 "secrecy" jurisdictions on the TJN's Financial Secrecy Index. It is of course logical that Shell, an Anglo-Dutch company, has a significant presence in the Netherlands and the UK. Yet even if the Netherlands and UK are excluded, a full 30% (56 of 189) of the company's significant subsidiaries are located in other secrecy jurisdictions. Perhaps most noticeable is that nearly half (14 of 33) of significant subsidiaries in the corporate segment are located in non-Dutch, non-UK secrecy jurisdictions,

[30] SOMO calculation based on Annual Reports of Royal Dutch Shell plc, consolidated figures, <www.shell.com> (13 April 2010).

[31] The ranking of "secrecy" jurisdictions/countries in Table 1 is based on Tax Justice Network, "Financial Secrecy Index, 2009 results", <http://www.financialsecrecyindex.com/2009results.html>, (13 April 2010); and the number and location of "significant" Shell subsidiaries is based on Shell's 2009 Annual Report, exhibit 8, <http://www.annualreportandform20f.shell.com/2009/servicepages/downloads/files/all_shell_20f_09.pdf> (15 April 2010).

such as Luxembourg, Switzerland and Bermuda. Again, there is no evidence that Shell is involved in any wrongdoing related to its presence in secrecy jurisdictions, but the company provides little public information about its reasons for having so many subsidiaries located in such jurisdictions.

Table 2: Number of major Shell subsidiaries in top-15 "secrecy" jurisdictions, by country of registration, 2009

FSI Ranking	Country of registration	Total	Upstream segment	Downstream segment	Corporate segment
1	USA (Delaware)	27	13	10	4
7	Bermuda	10	5	1	4
8	Singapore	6	1	4	1
3	Switzerland	3	0	1	2
2	Luxembourg	3	0	1	2
6	Ireland	3	1	2	0
10	Hong Kong	2	0	1	1
9	Belgium	1	0	1	0
12	Austria	1	1	0	0
	Presence in top-15 "secrecy" jurisdictions excluding NL and UK	56	23	21	14
15	Netherlands (NL)	38	22	10	6
5	UK (City of London)	30	12	7	11
	Presence in top-15 "secrecy" jurisdictions, including NL and UK	124	55	38	31
	Major subsidiaries in other countries	65	27	36	2
	Total major subsidiaries	189	82	74	33

Below, Shell's presence in a number of the secrecy jurisdictions is examined in greater detail.

Delaware, USA (FSI rank #1)

All of Shell's significant subsidiaries in the United States are registered in the state Delaware.[32] These consist of the following fully-owned subsidiaries:

- Upstream: SCOGI LP; Shell Deepwater Royalties Inc.; Shell Energy North America (US) LP; Shell Exploration & Production Company; Shell Frontier Oil & Gas Inc.; Shell Gulf Of Mexico Inc.; Shell Offshore Inc.; Shell Oil Company; Shell Onshore Ventures Inc.; Shell Trading North America Company; ShellWindenergy Inc.; SWEPI LP; Pecten Cameroon Company LLC (80% share).
- Downstream: Equilon Enterprises LLC; Jiffy Lube International, Inc; Pennzoil-Quaker State Company; Shell Chemical LP; Shell Chemicals Arabia LLC; Shell Pipeline Company LP; Shell Trading (US) Company; SOPC Holdings East LLC; SOPC HoldingsWest LLC; TMR Company.
- Corporate: Criterion Catalysts & Technologies LP; Pecten Victoria Company; Shell Petroleum Inc.; Shell Treasury Center (West) Inc.

[32] Delaware State of U.S., "Department of State: Division of Corporations", <https://delecorp.delaware.gov/tin/GINameSearch.jsp>, (16 April 2010)

The tax rate applied to Shell subsidiaries in Delaware depends on the type of company and the source of income of the particular company.[33] If the company is a registered as a corporation, the US federal income tax rate of approximately 34% and the Delaware state corporate income tax rate of approximately 7% apply. However, if the company is registered as a limited liability company (LLC) or limited partnership (LP) not doing business in Delaware, the company may be subject neither to US federal income tax nor Delaware state income tax. According to David Spencer, Senior Advisor to the Tax Justice Network, "There are valid reasons why companies may be organized in Delaware. However, the present taxation system in the United States and Delaware permits companies (such as limited liability companies and partnerships, deriving foreign source income) to be organized in that state but not be subject to any taxation on its income".[34]

Bermuda (FSI rank #7)

Bermuda is essentially a zero-tax jurisdiction. No corporate, income, capital gains or withholding taxes are paid to the Bermuda government by international companies incorporated in Bermuda. Profits can be accumulated, and it is not necessary to pay dividends. However, reasons for incorporating in Bermuda extend beyond its zero-tax regime. For one, the construction may prevent double taxation; some home countries of oil companies may not have double taxation treaties with the host country where the oil is found. Companies would then have to pay taxes in the host country as well as in the home country. Secondly, offshore incorporation may provide some protection against politically unstable countries. Thirdly, incorporation in Bermuda may have the benefit of more relaxed tax planning. When profits go up, companies do not suddenly have to make extra costs/investments in order to pay less tax.[35]

Shell has approximately 40 subsidiaries registered in Bermuda.[36] In the upstream segment, Shell is present in Bermuda through the companies Shell Qatar GTL Ltd. (Shell share 100%) and Sakhalin Energy (Shell share 28%). Other significant subsidiaries in the upstream segment are Shell Deepwater Borneo Ltd, Shell International Trading Middle East Ltd, Shell Oman Trading Ltd and Shell South Syria Exploration Ltd. Oil companies often use countries such as Bermuda to incorporate their country-based units operating in Africa, South America, the Middle East and Asia. The Bermuda presence of Shell in the upstream segment may provide some protection against politically unstable countries.[37]

In the downstream sector Shell Saudi Arabia (Refining) Ltd is registered in Bermuda. In the corporate segment, the most important companies are Shell Bermuda (Overseas) Ltd, Shell Holdings (Bermuda) Ltd, Shell Overseas Holdings (Oman) Ltd (all fully-owned Shell subsidiaries) and Solen Insurance Ltd. (99.9%). Several different types of Shell Group businesses are incorporated in Bermuda including shipping, pension funds and insurance. Bermuda is renowned for the incorporation of companies owning and operating ships.[38] Shell tankers may be registered at Shell Bermuda (Overseas) Ltd.[39] Shell Trust (Bermuda) Limited

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[33] D. Spencer, tax law expert and senior advisor to the Tax Justice Network, e-mail to SOMO, 1 May 2010.
[34] Ibid.
[35] Dow Jones Newswires, By Benoit Faucon, "Tax Havens Ease Fiscal, Legal Risk On Global Oil Cos", 22 September 2006, <www.taxresearch.org.uk/Documents/DowJonesOil.pdf>, (12 April 2010)
[36] Bermuda, Registrar of Companies (ROC), <https://www.roc.gov.bm>, (12 April 2010)
[37] Dow Jones Newswires, By Benoit Faucon, "Tax Havens Ease Fiscal, Legal Risk On Global Oil Cos", 22 September 2006, <www.taxresearch.org.uk/Documents/DowJonesOil.pdf>, (12 April 2010)
[38] Appleby Global, advisors on offshore law " Guide to Bermuda Ship Registration and Finance", November 2001, <http://www.applebyglobal.com/uploaded/Publication/362_File_5.pdf> (12 April 2010)
[39] See for instance <http://www.nlng.com/NLNGnew/operations/Shipping.htm> (12 April 2010)

is the Trustee of the Shell Overseas Contributory Pension Fund (SOCPF).[40] Bermuda also hosts numerous insurance companies that collect the insurance fees from company subsidiaries abroad. It is not clear whether Shell mainly makes use of its Bermuda-registered company Solen Insurance Ltd. for this purpose.[41]

Singapore (FSI rank #8)

Shell's significant fully-owned subsidiaries in Singapore are:

- Upstream: Shell Tankers (Singapore) Private Ltd
- Downstream: Shell Chemicals Seraya Pte. Ltd; Shell Eastern Petroleum (Pte) Ltd; Shell Eastern Trading (Pte) Ltd; Shell Seraya Pioneer (Pte) Ltd.
- Corporate: Shell Treasury Centre East (Pte) Ltd.

In 2009, the corporate income tax rate in Singapore was 18%, and the Singaporean tax system also offers some additional tax incentives.[42] The country's shipping exemption may be applicable to Shell Tankers. The tax incentive for finance and treasury centers (10% income tax) may be applicable to Shell Treasury Centre East[43], as well as the incentive for oil trading companies (10% income tax) to Shell Eastern Trading (Pte) Ltd.[44] Shell has a large integrated refinery and petrochemicals complex in Singapore, in which it has invested heavily in recent years.[45] These investments may have also been subject to tax incentives.[46]

Luxembourg (FSI rank #2)

Two significant Shell corporate segment subsidiaries are located in corporate-friendly Luxembourg: Shell Finance Luxembourg Sarl and Shell Treasury Luxembourg Sarl.

Switzerland (FSI rank #3)

In December 2003, Shell Brands International AG registered in the low-tax canton of Zug, Switzerland. Since then, the Shell subsidiary has acquired legal ownership of the trademarks of Royal Dutch Shell and is entitled to charge royalties for their use to other Shell companies. The canton has corporate tax rates as low as 8%, with personal tax for expatriate executives at a similar level. Shell stated in 2009 that the brand shift was for "entirely commercial" reasons. According to Shell, control of the brands had been "very fragmented", but now there

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40 Royal Dutch Shell website, <http://66.102.9.132/search?q=cache:bYEXGbbaGLcJ:www-static.shell.com/static/gbr/downloads/pensions/reports/spt_webcast_qanda_1.doc+Shell+Company+of+Bermuda+Ltd.+2009&cd=26&hl=nl&ct=clnk&gl=nl> (12 April 2010)

41 Shell also has a Swiss-based insurance company, Solen Versicherungen AG.

42 PricewaterhouseCoopers, report "Tax Facts & Figures 2009 Singapore", 2009, <http://www.pwc.com/en_SG/sg/tax-facts-and-figures/assets/tff200912.pdf> (1 May 2010)

43 PricewaterhouseCoopers, report "Tax Facts & Figures 2009 Singapore", 2009, <http://www.pwc.com/en_SG/sg/tax-facts-and-figures/assets/tff200912.pdf> (1 May 2010)

44 Singapore, Income Tax Act, <http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_getdata.pl?actno=2008-REVED-134&doctitle=INCOME+TAX+ACT%0A&date=latest&method=part&segid=1199928369-010653> (1 May 2010)

45 Royal Dutch Shell, "Factsheet Shell Chemicals in Singapore", <http://www.shell.com/home/content/chemicals/aboutshell/media_centre/factsheets/shell_chemicals_singapore/facts_shell_chemicals_singapore.html> (1 May 2010)

46 Chia Siow Yue, Singapore Institute of International Affairs, "The Singapore Model Of Industrial Policy: Past Evolution And Current Thinking", November 2005, <http://www.adbi.org/files/2005.11.28.cpp.singapore.industrial.policy.pdf> (1 May 2010)
And: PetroMin Pipeliner, "Singapore's strategic location at the entrance to the Strait of Malacca, through which roughly one-third of global sea commerce passes each year, has helped it become one of the most important shipping centers in Asia", January – March 2010, <http://www.pm-pipeliner.safan.com/mag/ppl0310/cr58.pdf> (1 May 2010)

would be "more effective and consistent management of the Shell trademarks".[47] Shell Brands International AG is part of the downstream segment of the Royal Dutch Shell group. In the corporate segment, two significant subsidiaries are located in Switzerland: Shell Finance Switzerland AG and Solen Versicherungen AG. Both are also registered in the low-tax canton of Zug.

Netherlands (FSI rank #15)

Royal Dutch Shell is incorporated in the UK with its corporate headquarters and tax residence in The Hague, Netherlands. On 20 July 2005, the Shell Group moved to a single capital structure, creating a new parent company: Royal Dutch Shell plc. As to the reasons for the unification, a senior adviser to the company stated in 2005 that, “There was a tax advantage to having the headquarters in The Hague, which made no sense to give up. To the extent that you needed to pacify political interests in the Netherlands, that clearly served the purpose. Equally, having a UK listing played to the UK gallery”.[48]

In 2008, a high-level Dutch tax official stated that of the twenty largest multinational companies in the Netherlands, only five were paying income tax.[49] From the reporting on income tax payments in Shell’s annual report, it is not clear whether Shell belongs to the 5 income-tax-paying companies or to the 15 non-income-tax-paying companies.

Relevant normative standards – GRI sustainability reporting

While it bears reiterating that there is no evidence of wrongdoing related to Shell’s heavy presence in so many secrecy jurisdictions, the company’s lack of transparency and forthrightness about its reasons for locating in such jurisdictions and about its financial payments to individual governments does not help to dispel the suspicions associated with unethical tax practices secrecy jurisdictions. While Shell consistently scores well on the Global Reporting Initiative’s sustainability reporting guidelines,[50] there is one core indicator that Shell refuses to report on: Core Indicator 4 on tax transparency and significant financial assistance received from governments. Shell claims that this performance indicator is “not material,” continuing, “We do not aggregate or track this information centrally for all our operations in more than 100 countries. That is because tax and royalty schemes in government agreements are often confidential and/or competitively sensitive information. Valuation of indirect financial benefits is different in each country or region, and host governments’ contributions can differ significantly by business and location. We therefore do not consider this valuable information to be aggregated at Group level”.[51]

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47 The Guardian, article by the Tax gap reporting team, Tuesday 3 February 2009, <http://www.guardian.co.uk/business/2009/feb/03/3>, (12 April 2010)

48 Financial Times, "Marriage after a century of cohabitation: Shell prepares for the next merger round", Tuesday 28 June 2005.

49 NRC Handelsblad, "Moet het fiscale beleid voor multinationals strenger worden?", 21 February 2008, <http://weblogs.nrc.nl/discussie/2008/02/21/moet-het-fiscale-beleid-voor-multinationals-strenger-worden> (12 April 2010)

50 Shell received the GRI’s top score, an A+, for its 2008 reporting.

51 Website Royal Dutch Shell plc, "Reporting in line with the Global Reporting Initiative – 2008", <http://www-static.shell.com/static/environment_society/downloads/our_approach_to_reporting/reporting_against_gri/shell_gri_2008.pdf> (13 April 2010)

3. Canadian oil sands

Context

The oil sands (also known as tar sands) in Canada's province of Alberta constitute the second largest oil resource in the world, second only to Saudi Arabia's reserves. The environmental and social impacts of running oil sand operations, however, are high. The oil sands' hydrocarbons are in the form of bitumen, which is an oily tar mixed with sand, clay, and water. Bitumen 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.[52] As a result of this energy-intensive process, the extraction of oil from oil sands is one of the most carbon-intensive ways to extract oil. According to research by the US-based National Energy Technology Laboratory, the well-to-tank emissions of oil from oil sands are two times greater than the emissions from extracted oil in Saudi Arabia or conventional oil from Venezuela and Canada.[53] However, Shell often cites the figure that on a well-to-wheels basis, the greenhouse gas emissions from oil sands are approximately 5 to 15 percent higher than the average crude oil consumed in the United States. This calculation is based on a report from 2009 of the Cambridge Energy Research Associates (CERA).[54] Other experts note that most life-cycle carbon studies do not include the effects of destruction of carbon sinks in peatlands or of land disturbance caused by drilling for natural gas, the key fuel for tar sands production.[55]

The high degree of carbon-intensity, however, is not the only negative social and environmental issue relate to oil sands production. Licences have been issued to divert an amount of water from the Athabasca River sufficient for a city of three million people, and the extraction operations entail the creation of huge tailings (mining waste) lakes filled with toxins. Oil sands extraction has also negatively impacted the traditional livelihoods of certain First Nation and Métis peoples in Alberta. The destruction of hunting and fishing habitats, high levels of air pollution, and negative health impacts have led certain communities to commence litigation claiming breaches of treaty rights protecting their traditional livelihood.[56]

Shell's role

Shell is one of the largest investors in and developers of the Canadian oil sands. It has a 60% stake in the Athabasca Oil Sands Project (AOSP). Shell's oil sands mining produced 78,000 barrels per day in 2009, while the daily production from oil sands through in-situ recovery comprised some 20,000 barrels. Together, the oil sands operations in Alberta accounted for some 3% of Shell's total 2009 oil and gas production. Shell expects that its oil sands mining production will increase to around 150,000 barrels per day in the next few years. The

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[52] Shell, "Responsible energy: The Shell Sustainability Report 2007", <http://sustainabilityreport.shell.com/2007> (16 April 2010), p.11.

[53] National Energy Technology Laboratory. "An Evaluation of the Extraction, Transport and Refining of Imported Crude Oils and the Impact on Life Cycle Greenhouse Gas Emissions", DOE/NETL-2009/1362, 27 March 2009, <http://www.netl.doe.gov/energy-analyses/pubs/PetrRefGHGEmiss_ImportSourceSpecific1.pdf> (16 April 2010)

[54] IHC CERA (Cambridge Energy Research Associates), "Growth in the Canadian Oil Sands: Finding the New Balance", 2009, http://www.ihscera.com/aspx/cda/filedisplay/publicFileDisplay.ashx?KID=228&CID=9864&PK=36759 (16 April 2010)

[55] A. Nikiforuk, "Dirty Oil: How the tar sands are fueling the global climate crisis", Greenpeace, September 2009, <http://www.greenpeace.org/raw/content/france/presse/dossiers-documents/dirtyoil.pdf> (16 April 2010)

[56] Fair pensions, "investor briefing Shareholders resolution Royal Dutch Shell", <http://www.fairpensions.org.uk/sites/default/files/uploaded_files/InvestorBriefing.pdf>, (16 April 2010)

company also states there is potential to expand production from both in-situ and mining activities, subject to future investment decisions.[57]

In January 2010, Fair Pensions, a coalition of investors and NGOs, produced a resolution to be discussed at Shell's 2010 annual shareholder meeting. The resolution calls on Shell to answer questions about its involvement in tar sands, particularly with regard to clarity on the macro-economic assumptions being made by Shell in deciding to allocate capital to the acquisition and development of oil sands resources and with regard to concerns about the social and environmental impacts of the oil sand projects. The resolution has the support of a large coalition of investors, including pension funds, fund managers, foundations, faith groups and individuals.[58] In March 2010, Shell produced a paper on its oils sands operations that it claims answer the questions in the resolution.[59] In the paper, Shell claims that it is committed to ongoing dialogue with all stakeholders concerning the development of the oil sands and that it is actively managing social and environmental impacts.[60]

Relevant normative standards

Despite Shell's reassurances, many stakeholders remained convinced that Shell's oil sands operations are out of line with 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. 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 claimed that Shell agreed to come up with specific targets for cuts to greenhouse gas emissions at the mine sites, but then refused to quantify its GHG cuts, deciding instead to wait for the federal government to come up with regulations on emissions.[61] While Shell claims that it is implementing cutting-edge technology to lower GHG emissions from oil sands production and that it "is one of the lowest CO_2 intensity operators among all mineable oil sands projects",[62] the company does not deny that its overall GHG emissions are expected to rise as a result of its oil sands operations.

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57 Royal Dutch Shell Plc, "report on Royal Dutch Shell Plc & oil sands", March 2010, <http://www-static.shell.com/static/investor/downloads/news_and_library/report_royaldutchshell_oil_sands_march2010.pdf> (15 April 2010)

58 Website Fair pensions, http://www.fairpensions.org.uk/tarsands/resolutions, (16 April 2010)

59 Royal Dutch Shell Plc, "report on Royal Dutch Shell Plc & oil sands", March 2010, <http://www-static.shell.com/static/investor/downloads/news_and_library/report_royaldutchshell_oil_sands_march2010.pdf> (15 April 2010)

60 Ibid.

61 S. Haggett, "Green Groups Want Shell Oil Sands Permits Rescinded", Reuters, 9 April 2009, <http://planetark.org/wen/52394> (19 April 2010).

62 Royal Dutch Shell Plc, "report on Royal Dutch Shell Plc & oil sands", March 2010, <http://www-static.shell.com/static/investor/downloads/news_and_library/report_royaldutchshell_oil_sands_march2010.pdf> (15 April 2010)