

# Shell

## Two unresolved CSR issues in 2011



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**SOMO**

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## Colophon

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May 2012

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## Introduction

This company profile has been written by SOMO (Centre for Research on Multinational Corporations) and provides an analysis of two particular unresolved corporate social responsibility issues that occurred or were addressed in 2011. In the context of the upcoming annual general meeting (AGM) of shareholders for Shell, this document aims to provide additional information to shareholders and other stakeholders of Shell regarding the company's CSR performance.

The research methodology for this overview primarily involved 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 comments and corrections of any factual errors in the draft version prior to publication.

This company profile is part of a joint project of SOMO and the VBDO (*Vereniging van Beleggers voor Duurzame Ontwikkeling* - Dutch Association of Investors for Sustainable Development).

Energy and petrochemical company Royal Dutch Shell plc. has 1200 subsidiaries and operates worldwide. In this report, two controversial cases are described: Shell's role in the oppression of the indigenous Guarani people in Brazil, and Shell's choice to operate in the vulnerable environment of the Arctic.

### About SOMO

SOMO is an independent, non-profit research and network organisation working on social, ecological and economic issues related to sustainable development. Since 1973, the organisation has been investigating multinational corporations and the consequences of their activities for people and the environment around the world. SOMO supports social organisations by providing training, coordinating networks and generating and disseminating knowledge on multinational corporations in a context of international production, trade, financing and regulation.

## Shell: two controversial cases

### First issue: Shell sourcing from indigenous people's land, Brazil

#### **Summary**

Through its business relationship with ethanol producer Cosan in the joint venture 'Raízen' in 2011, Shell became involved in serious human rights violations. Raízen, 50% owned by Shell, is sourcing ethanol produced from sugar cane grown on the indigenous territories of the Guarani Kaiowá Indians in Brazil. The Guarani Kaiowá are unlawfully and violently removed from their territories by private security guards hired by plantation owners. According to the United Nations Guiding Principles on Business and Human Rights, OECD Guidelines for Multinational Enterprises, and other internationally recognised standards and principles, Shell should take responsibility in mitigating the adverse human rights impacts that it is contributing to through its activities in Brazil.

#### **Context**

In 2010/2011, Shell International Petroleum Co. Ltd. and Brazilian sugar and ethanol company Cosan S.A. Indústria e Comércio<sup>1</sup> formed a joint venture. Both partners own 50% of the joint venture. The new enterprise, a fuel company called Raízen, started operating in 2011. The company combines the infrastructure from both parent companies: Cosan's sugar cane production and processing facilities, among which 24 mills, are thus linked with Shell's fuel stations. For Shell, this is the first time it is involved in the production of biofuels. The company invested €1.7 billion in Raízen.<sup>2</sup>

Since its start, Raízen has been one of the largest ethanol producers worldwide. Shell announces that Raízen is expected to produce and sell 2 billion litres of ethanol from sugar cane annually. Through 4500 fuel stations, Raízen is expected to distribute both biofuel as well as an additional 20 billion litres of industrial and transport fluids annually.<sup>3</sup>

#### **Controversy**

Cosan, before it formed the Raízen joint venture with Shell, was involved in at least two serious social and human rights issues. Since the formation of Raízen at least one of these – the company's association with severe human rights violations at sugar cane plantations – has become a major critical issue for Shell, too.

#### **Cosan and labour conditions**

Before Cosan started its collaboration with Shell, it had been associated with labour problems on various occasions. In 2009, Cosan was included in the Portaria 540 'Dirty List', which is published by the Brazilian Ministry of Labour and Employment on a regular basis. The list includes all employers who are guilty of treating their employees as slaves. The inspection resulting in Cosan's inclusion in the list took place at the Junqueira processing plant in Igarapava, where 42 workers were freed from

<sup>1</sup> See article Bloomberg BusinessWeek, February 16, 2011. Viewed 17 April 2012.

<http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=5503830>

<sup>2</sup> Shell Annual Report and Form 20-F 2011, p.38

<sup>3</sup> Shell press release, June 2, 2011. Shell Media Relations Netherlands.

slave-like conditions in 2007. However, Cosan's lawyers claimed that these ill-treated workers were contracted by an outsourced company, not by Cosan itself, and Cosan's name was removed from the Dirty List.<sup>4</sup>

Recently, Cosan was fined €439,000<sup>5</sup> by the court in Jaboticabal for labour violations. Cosan's cane cutters had worked 'excessive work hours'<sup>6</sup> and minimum intervals between shifts were not respected.

### ***Denial of land rights by Raízen supplier***

#### *Human rights violations in Cosan supply chain*

Before the Cosan/Shell merger, Cosan was supplied by Nova América Agriculture S.A., which operates in the state of Mato Grosso Do Sul, in South West Brazil. Here, it produces ethanol from its own plant at Caarapó. Nova América does not own land here. Instead, it leases land for sugar cane plantations. Sugar cane that is used at Nova América's plant in Caarapó is mostly sourced from 9,000 hectares of plantations in Guyraroká. Since the formation of Raízen, Raízen inherited Cosan's supply contracts with Nova América.

Of the land upon which these sugar cane plantations in Guyraroká are exploited, 4,000 hectares form part of the 11,400 hectares which were declared by the Ministry of Justice in 2009 to be indigenous territories of the Guarani Kaiowá people. The decree by the Ministry of Justice gives the Guarani exclusive usufruct of the territory, under Article 231 of the Brazilian Constitution.

However, the land is occupied by sugar cane plantation owners. The Guarani Kaiowá are unable to exercise their right to use the territory, as the territory has not yet been formally demarcated and registered. Demarcation and formal registration can be delayed for decades in Brazil, especially if commercial interests are obstructing proceedings. While waiting for demarcation, the Guarani Kaiowá are deprived of their only means of subsistence, while plantation owners are exploiting their land.

#### *The consequences of the violations*

The use of Guarani Kaiowá territories for agricultural purposes has led to outbreaks of violence in Guyraroká. There have been reports of private security guards, hired by the plantations, shooting at Guarani Kaiowá people on various occasions. Among the victims is one eleven-month old Guarani baby, who died in one of these shooting incidents.

The widespread oppression of indigenous people such as the Guarani who are evicted from their land to make way for commercial farmers has led to malnutrition, violence, homicide, assassination, suicide, and exploitation in the work place.<sup>7</sup> Many tribe leaders have been killed or have disappeared in the past decade. In a 2009 country report on Brazil, from the Special Rapporteur on the rights of indigenous peoples of the Office of the United Nations High Commissioner for Human Rights, the rapporteur writes:

'A problem often to be confronted in the process of recognizing and securing indigenous land is non-indigenous occupation of the land. This problem is especially pervasive in areas outside of the Amazon region where there is heavy non-indigenous settlement, including in the

<sup>4</sup> See report *Dutch companies and land investments in Africa, South America and Asia*. Quick scan. Published by SOMO, October 2010.

<sup>5</sup> Chemical News & Intelligence, March 2, 2012. *Cosan fined \$585,000 for labour violations*.

<sup>6</sup> Santander, March 2, 2012. *Cosan é condenada em R\$ 1 milhão por irregularidades trabalhistas*. [http://portalinvestsantander.clientes.ananke.com.br/aqui\\_voce\\_pode/noticias\\_do\\_mercado/tpl\\_noticia.asp?CDUID=2359470](http://portalinvestsantander.clientes.ananke.com.br/aqui_voce_pode/noticias_do_mercado/tpl_noticia.asp?CDUID=2359470)

<sup>7</sup> Source: Survival International, March 2010.. *Violations of the rights of the Guarani of Mato Grosso Do Sul state, Brazil*.

agribusiness belt in south-western Brazil. Tensions between indigenous peoples and non-indigenous occupants have been especially acute in the State of Mato Grosso do Sul, where indigenous peoples suffer from a severe lack of access to their traditional lands, extreme poverty and related social ills, giving rise to a pattern of violence that is marked by numerous murders of indigenous individuals as well as by criminal prosecution of indigenous individuals for acts of protest.<sup>8</sup>

Although the Brazilian state has recognised indigenous territories and has appointed them to indigenous communities, the territories have not been demarcated properly. This has created an opportunity for ruthless farmers to claim the land and threaten the indigenous communities. Many Guarani live in overcrowded reserves or live alongside roads, while farmers are using their land to grow cattle or sugar cane. Suicide rates in these communities are the highest among all indigenous communities worldwide: on average, every two weeks, a Guarani teenager commits suicide due to lack of perspective and miserable living conditions.

#### *Violations known to Shell even before Raízen formation*

The violations of the rights of the Guarani Kaiowá by plantation owners existed and were widely known before Raízen was formed. Months before Shell and Cosan merged, in July 2010, the Public Federal Ministry of Mato Grosso do Sul noted that Nova América's factories had sourced sugar cane that had been grown illegally on indigenous land.<sup>9</sup> In May 2010, the Federal Public Ministry criticised Cosan for sourcing from the land of the Guarani Kaiowá people. In a 'Note of Clarification', the prosecutor wrote:

'The fact is that the Cosan group, which owns the assets of the Nova América, uses raw materials produced in an area recognized by the Union as a traditional Indian occupation which is in the process of demarcation.

The purchase of raw materials derived from indigenous areas demonstrably contradicts the official discourse of the company, demonstrates the lack of social and environmental criteria for selecting suppliers and is disrespectful to the second largest indigenous population of the country - about 70,000 people.<sup>10</sup>

Cosan declared before the Public Federal Ministry in 2010 that it will not review supply contracts with the suppliers in Guyraroká.

Since the formation of Raízen, human rights organisations such as Survival International have pointed out the problems existing in Mato Grosso Do Sul to Shell. The Brazilian Public Prosecutor asked Shell in September 2010 to reconsider its ethanol production due to exactly these human rights violations.<sup>11</sup>

Until today, Raízen has continued to source from the occupied land.

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<sup>8</sup> Cited from the Report on the situation of human rights of indigenous peoples in Brazil by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya. 26 August 2009.

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A.HRC.12.34.Add.2.pdf>

<sup>9</sup> See report *Sugar Cane and Indigenous People*, Ethical-Sugar, November 2010. [http://www.sucree-ethique.org/IMG/pdf/Sugarcane\\_and\\_indigenous\\_people.pdf](http://www.sucree-ethique.org/IMG/pdf/Sugarcane_and_indigenous_people.pdf) Viewed 30 April 2012.

<sup>10</sup> Public Federal Ministry website, 17 May 2010, *Note of Clarification*. <http://www.prms.mpf.gov.br/servicos/sala-de-imprensa/noticias/2010/05/nota-de-esclarecimento/?searchterm=cosan> Viewed 30 April 2012.

<sup>11</sup> NRC Handelsblad, *Kritiek op biobrandstoffen Shell in Brazilië*, 29-09-2010. [http://vorige.nrc.nl/economie/article2625219.ece/Kritiek\\_op\\_biobrandstoffen](http://vorige.nrc.nl/economie/article2625219.ece/Kritiek_op_biobrandstoffen) Viewed 30 April 2012.

## Role of Shell

The problems of the Guarani Kaiowá in Guyraroká have been known for years. When performing due diligence before entering agreements with Cosan on Raízen, the issue should have been discovered and solved. Instead, even until today, Shell has allowed the human rights violations to continue.

## Normative standards under threat

Even though Shell itself is not violating the rights of the Guarani Kaiowá, the company is working with partners who do. According to international standards, Shell, owning 50% of Raízen shares, does have responsibility for the supply chain of Raízen. Shell is breaching various international standards by allowing human rights violations in its supply chain. These standards are:

- ❑ The **United Nations Declaration on the Rights of Indigenous Peoples**. In article 26, the Declaration states:  
 ‘Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied, or otherwise used or acquired. Indigenous peoples have the right to own, use, develop, and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.’<sup>12</sup>
- ❑ The **OECD Guidelines for Multinational Corporations**, which state:  
 ‘Enterprises should:

  - Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.<sup>13</sup>
  - Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.<sup>14</sup>
  - Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.<sup>15</sup>
- ❑ The **Global Business Initiative**: Shell has joined this voluntary, business-led initiative, which aims to enhance business respect for human rights. A backbone to the work of GBI is the:
- ❑ **United Nations Framework on Business and Human Rights**, developed by the UN Special Representative of the Secretary General on Business and Human Rights. The *Protect, Respect and Remedy* framework includes clear guidance on practical steps businesses should take.<sup>16</sup>

The Special Representative on business and human rights of the United Nations Secretary-General, Mr. John Ruggie, has defined the appropriate corporate response to managing the risks of infringing on the human rights of others as exercising *due diligence*, whereby companies become aware of, prevent, and mitigate adverse human rights impacts.<sup>17</sup> Because

<sup>12</sup> UN Declaration on the Rights of Indigenous Peoples, 2007, article 26, 1) and 2).

<sup>13</sup> OECD Guidelines for Multinational Enterprises 2011 Edition, OECD 2011. Chapter IV. Human Rights; 2.

<sup>14</sup> OECD Guidelines for Multinational Enterprises 2011 Edition, OECD 2011. Chapter IV. Human Rights; 3.

<sup>15</sup> OECD Guidelines for Multinational Enterprises 2011 Edition, OECD 2011. Chapter IV. Human Rights; 5.

<sup>16</sup> Description from United Nations Global Compact website.

[http://www.unglobalcompact.org/Issues/human\\_rights/global\\_business\\_initiative.html](http://www.unglobalcompact.org/Issues/human_rights/global_business_initiative.html) Viewed 20 April 2012.

<sup>17</sup> United Nation’s Secretary-General’s Special Representative on business and human rights, “Mandate Consultations

the *due diligence* process is a means for companies to address their responsibility to respect human rights, it must go beyond simply identifying and managing material risks to the company itself to include the risks a company's activities and associated relationships may pose to the rights of affected individuals and communities. Moreover, a primary purpose of due diligence regarding human rights is to enable companies to demonstrate that they respect rights, and therefore a measure of transparency and accessibility to stakeholders will be required.

Shell could have been aware of the problems in Guyraroká before it formed the joint venture with Cosan and could have drawn its conclusions. Now, Shell should immediately take action in this matter and act in accordance with the aforementioned international standards.

The UN Guiding Principles on business and human rights<sup>18</sup> explicitly state the responsibilities of businesses:

- 'The responsibility to respect human rights requires that business enterprises seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships<sup>19</sup>, even if they have not contributed to those impacts.'<sup>20</sup>
- 'In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.'<sup>21</sup>
- 'Human rights due diligence should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships.'<sup>22</sup>
- 'Human rights due diligence should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements, and may be inherited through mergers or acquisitions.'<sup>23</sup>
- 'In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.'<sup>24</sup>
- 'In this process, business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at

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Outline", October 2010, <http://www.reports-and-materials.org/Ruggie-consultations-outline-Oct-2010.pdf> viewed 20 April 2012.

<sup>18</sup> Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. Advance Edited Version, 21 March 2011. Office of the High Commissioner for Human Rights website: [http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31\\_AEV.pdf](http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf)

<sup>19</sup> 'its "business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-State entity directly linked to its business operations, products or services.' From: commentary to Principle 13.

<sup>20</sup> Guiding Principle 13 b.

<sup>21</sup> Guiding Principle 15 c.

<sup>22</sup> Guiding Principle 17 a.

<sup>23</sup> Guiding Principle 17, commentary.

<sup>24</sup> Guiding Principle 18 b.

heightened risk of vulnerability or marginalization, and bear in mind the different risks that may be faced by women and men.<sup>25</sup>

- ‘In assessing human rights impacts, business enterprises will have looked for both actual and potential adverse impacts. Potential impacts should be prevented or mitigated through the horizontal integration of findings across the business enterprise, while actual impacts – those that have already occurred – should be a subject for remediation (Principle 22).<sup>26</sup>
  - ‘Where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity, the situation is more complex. [...] The more complex the situation and its implications for human rights, the stronger is the case for the enterprise to draw on independent expert advice in deciding how to respond. If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors.<sup>27</sup>
  - ‘In any case, for as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection.<sup>28</sup>
  - ‘Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.<sup>29</sup>
- **Shell General Business Principles and Shells Statement on Indigenous Peoples**, which state that ‘[we] work with others to enhance the benefits to local communities, and to mitigate any negative impacts from our activities<sup>30</sup> and ‘we strive to reduce our impact on traditional activities such as subsistence whaling, hunting, fishing, agriculture and herding.<sup>31</sup>

## **Response Shell**

When given the opportunity to review the SOMO text on the human rights violations of the Guarani Kaiowá, Shell did respond, while stating that the company would not provide any detailed comments on the matter. The full reaction on the Raízen case is copied below.

‘One item is concerning a company which is a separate joint venture in which Shell is a shareholder and cannot speak for – Raízen. The issue you refer to is complicated and not the single sided -story that is presented. Both claimants feel strongly that they have legitimate claims to the land and there are a number of parties involved in seeking to resolve the dispute. There are a number of similar ongoing disputes in Brazil and the legal process can take several years. With support from its shareholders, Shell and Cosan, Raízen is engaging all the relevant parties, including Survival International, FUNAI and the Public Attorney’s office in

<sup>25</sup> Guiding Principle 18, commentary.

<sup>26</sup> Guiding Principle 19, commentary.

<sup>27</sup> Guiding Principle 19, commentary.

<sup>28</sup> Guiding Principle 19, commentary.

<sup>29</sup> Guiding Principle 22.

<sup>30</sup> Shell General Business Principles 2005, Principle 6.

<sup>31</sup> Shell Working With Indigenous People, 2011.

Mato Grosso do Sul, who are seeking to find a solution acceptable to the two main claimants. For further information you should contact Raizen.<sup>32</sup>

As is clearly described in the aforementioned international standards for multinational enterprises, Shell, with a 50% ownership of Raizen, does have responsibility for the violations. The violations are acknowledged by the Federal Public Ministry, who criticised Cosan for sourcing from the land of the Guarani Kaiowá people. Shell cannot and should not hide behind long-lasting legal processes while in the meantime the violations of the rights of the Guarani Kaiowá are continuing.

### **Recommendations**

Shell should recognise its responsibility throughout its business relationships and its supply chain and acknowledge the responsibility it has in mitigating the adverse impacts in this issue. Shell's General Business Principle 3 states that 'Shell companies insist on honesty, integrity and fairness in all aspects of our business and expect the same in our relationships with all those with whom we do business.'<sup>33</sup> Shell should actively live up to its own principles, and search for a solution to enable positive change.

According to the Guiding Principles on Business and Human Rights, Shell should:

- ❑ Seek to mitigate adverse human rights impacts that are directly linked to its operations.<sup>34</sup>
- ❑ Enable the remediation of the adverse human rights impacts to which it contributes.<sup>35</sup>
- ❑ Conduct ongoing due diligence, by assessing actual human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.<sup>36</sup>
- ❑ Identify and assess any actual human rights impacts with which it may be involved as a result of its business relationships, while meaningful consultation with potentially affected groups and other relevant stakeholders is involved.<sup>37</sup>
- ❑ Draw on independent expert advice in deciding how to respond.<sup>38</sup>
- ❑ Provide for or cooperate in remediation of adverse impacts through legitimate processes.<sup>39</sup>
- ❑ And, in case Shell feels it lacks sufficient leverage to mitigate the adverse human rights impact, it should find ways to increase its leverage.<sup>40</sup>

As the Guiding Principles have foreseen, simply terminating supply contracts will not suffice, as that does not lead to any immediate improvements for the situation of the people whose rights have been violated. Shell can make a major contribution to the survival of the Guarani Kaiowá. With retroactive effect, Shell could use its influence to improve the situation of the Guarani Kaiowá throughout the entire province of Mato Grosso do Sul: Shell could play a powerful and positive role in assisting the Guarani Kaiowá to actually obtain their rightful land.

Yet even if Shell is not willing to make a grand gesture for the Guarani Kaiowá, it should still actively enter a remediation process, to find a solution with the plantation owners and the indigenous communities. Involvement of all internal and external stakeholders (plantation owners, indigenous

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<sup>32</sup> Cited from email communication from Shell, 2 May 2012.

<sup>33</sup> Shell General Business Principles 2005, Principle 3.

<sup>34</sup> Guiding Principle 13 b.

<sup>35</sup> Guiding Principle 15 c.

<sup>36</sup> Guiding Principle 17.

<sup>37</sup> Guiding Principle 18.

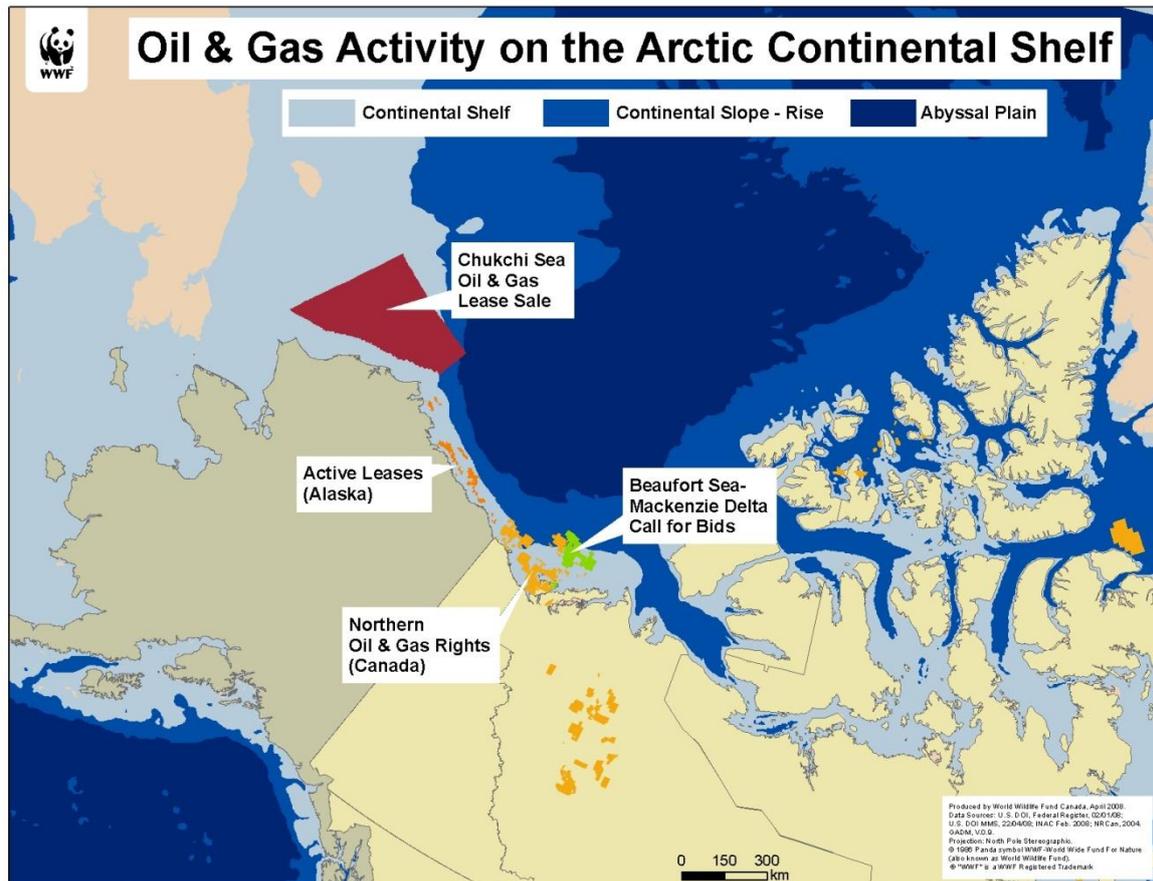
<sup>38</sup> Guiding Principle 19, commentary.

<sup>39</sup> Guiding Principle 22.

<sup>40</sup> Guiding Principle 19, commentary.

communities, government representatives and the Public Prosecutor as well as external experts) is of great importance.

## Second issue: Shell prospecting the North Pole



Picture: WWF

### Summary

Shell is about to launch its program for Arctic oil prospecting. These operations are contested, as the pristine environment of the North Pole is at risk of being polluted, and any oil spills would have disastrous effects. The Arctic operations oppose provisions of the OECD Guidelines for Multinational Enterprises as well as UN Global Compact principles.

### Context

In the summer of 2012, Shell Oil Co. is planning to start prospecting Arctic oil, using deep drilling at two sites in the Beaufort Sea, North of Alaska. The company has recently received permission to do so from the Department of the Interior of the United States. It also aims to start prospecting in the Chukchi Sea, which borders the Beaufort Sea North of Alaska, this summer, by drilling at three sites.<sup>41</sup> Environmental groups oppose Shell's decision to operate in the Arctic, as environmental risks are high.

<sup>41</sup> <http://www.pressherald.com/business/Shell-may-soon-start-arctic-drilling-for-oil.html> Viewed 20 April 2012.

## **Controversy**

### **Risk of accidents**

BP's Deepwater Horizon oil spill in the Gulf of Mexico in 2010 has demonstrated the risks of deepwater drilling. Deep drilling poses a risk in itself, and in the Beaufort and Chukchi Seas of the Arctic conditions are particularly harsh. Complicating factors include extreme weather conditions (hurricanes, cold, ice), remote potential drilling sites that have limited response and poor support infrastructure, and drilling spots that are inaccessible for most of the year due to ice formation. The combination of these factors means that in case of an accident, the company risks a major oil spill that cannot easily be stopped.

Shell has developed containment plans in case a blowout up to three times the size of the Deepwater Horizon occurs. However, these plans in no way guarantee an effective cleanup of the escaping oil or a way to stop the spilling immediately. If a deploy cap would fail, Shell's alternatives include dropping dispersants, burning oil, skimming it off the surface, or drilling a relief well. However, ice formation can render all these options unrealistic. Dispersants will only disperse the oil more, which renders it more difficult to remove the oil from the sea. Skimming and drilling are virtually impossible as soon as the Arctic winter starts, in, or possibly even before, October. According to scientists<sup>42</sup>, it is not known whether oil-degrading microbes and methane gas associated with oil can assist in cleaning up any oil spills in the Beaufort Sea; and any oil that gets under the ice, will not be degraded by sunlight or bacteria – it will just remain there.

The U.S. National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling investigated the British Petrol disaster in 2010. Their report was commissioned by President Obama. After finishing their report, the members of the commission formed the Oil Spill Commission Action, which seeks to advance the recommendations in their report. In their report of April 17, 2012, 'Assessing Progress: Implementing the Recommendations of the National Oil Spill Commission', the writers give special attention to Arctic drillings and write:

'The Coast Guard has made it clear in Congressional testimony that they are not yet prepared to deal with a serious drilling incident in the Arctic. The commission members note that substantial controversy remains over:

1. the adequacy of the information provided by Shell and required by DOI [Department of the Interior - Ed.] on spill response and containment;
2. the adequacy of the spill response plans and containment capability in the region, including the ability to protect important ecological areas along the shoreline and elsewhere; and,
3. the length of the seasonal drilling restrictions imposed.'<sup>43</sup>

### **Air pollution**

Apart from the high risks of drilling in the Arctic, there are serious concerns about air pollution. In April 2012, members of the U.S. Energy and Commerce Committee and members of the Natural Resources Committee wrote a letter to the U.S. Department of the Interior, asking for new regulations on offshore drilling off the North coast of Alaska. According to the members of the committees, the

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<sup>42</sup> Arne Jernelöv at the Institute for Futures Studies in Stockholm, Sweden, and David Valentine of the University of California, Santa Barbara. Cited from a New Scientist article, April 7, 2012. *Arctic oil hunt promises treasure but risks tragedy.*

<sup>43</sup> Oil Spill Commission Action, report 'Assessing Progress: Implementing the Recommendations of the National Oil Spill Commission', 17 April 17, 2012. [http://oscaction.org/wp-content/uploads/FINAL\\_OSCA-booklet-for-web-URLs-hotlinked.pdf](http://oscaction.org/wp-content/uploads/FINAL_OSCA-booklet-for-web-URLs-hotlinked.pdf)  
Viewed 24 April 2012

rules which were applied by the Department of the Interior to grant permission to Shell, are not meant for, and cannot simply be applied to, the Arctic environment. In their letter, the members write:

'We offer the following recommendations for new rules to control air pollution from offshore drilling operations in the Arctic and other coastal areas:

1. Require all major offshore drilling operations to meet specific air pollution requirements.
2. Require offshore drilling operations to account for emissions from drilling support vessels.
3. Measure air quality impacts at the source of the pollution, not onshore.
4. Ensure opportunities for public comment on a drilling applicant's air pollution analysis.
5. Ensure the Arctic's unique characteristics and vulnerabilities are accounted for in permitting regulations.'<sup>44</sup>

## **Biodiversity**

The U.S. federal government has, under the Endangered Species Act, designated 484,000 square kilometres along Alaska's north coast as 'critical habitat' for the polar bear.<sup>45</sup> The area is vital, and not only for the threatened polar bear. Endangered species, such as bowhead whales and other whale species which have their habitats in the Beaufort and Chukchi Seas, depend on the safeguarding of the region.

However, the federal government is also allowing drilling for oil in this particular habitat.

Many groups<sup>46</sup>, such as Resisting Environmental Destruction of Indigenous Lands, Alaska Wilderness League, Center for Biological Diversity, Natural Resources Defense Council, Northern Alaska Environmental Center, Oceana, Pacific Environment, Sierra Club, the Wilderness Society, and Greenpeace oppose the U.S. government's decision to allow Shell's activities in the area. The pristine environment will inevitably be affected. Native Alaskan groups and individuals such as Goldman Prize winner Caroline Cannon<sup>47</sup> also oppose the commercial activities in the region.

## ***Normative standards under threat***

By starting its operations on the North Pole, Shell is directly at risk of breaching various internationally recognised standards and principles:

- The **OECD Guidelines for Multinational Corporations** begin with a general principle that inspires the entire guidelines: 'Enterprises should contribute to economic, environmental and social progress with a view to achieving sustainable development.'<sup>48</sup> The Guidelines further state that: 'there should not be any contradiction between the activity of multinational enterprises (MNEs) and sustainable development.'<sup>49</sup>

<sup>44</sup> Letter can be obtained from <http://democrats.energycommerce.house.gov/index.php?q=news/energy-and-commerce-and-natural-resources-committee-ranking-members-urge-the-department-of-inte> Viewed 24 April 2012

<sup>45</sup> [http://www.biologicaldiversity.org/news/press\\_releases/2010/polar-bear-11-24-2010.html](http://www.biologicaldiversity.org/news/press_releases/2010/polar-bear-11-24-2010.html) Viewed 24 April 2012

<sup>46</sup> International Business Times News, April 3,2012. *Shell moving closer to Arctic drilling.* <http://www.ibtimes.com/articles/323471/20120403/arctic-shell-oil-exploration-boem-bsee-permits.htm> viewed 20 April 2012

<sup>47</sup> The News Tribune, April 16,2012. *Inupiat tribal leader wins prize for opposing offshore drilling.* <http://www.thenewstribune.com/2012/04/15/2109420/inupiat-tribal-leader-wins-large.html> viewed 24 April 2012.

<sup>48</sup> OECD Guidelines for Multinational Enterprises, 2011 edition. Chapter II, principle 1.

<sup>49</sup> OECD Guidelines for Multinational Enterprises, 2011 edition. Chapter II, commentary on General Policies, 3.

In an era of global change, while the pristine Arctic environment is particularly vulnerable to high-impact commercial operations, and the international community is striving to achieve a radical decrease in CO2 emissions, Shell's Arctic adventures are a major contradiction with sustainable development.

❑ **The UN Global Compact Environmental Principles:**

'Businesses should support a precautionary approach to environmental challenges; undertake initiatives to promote greater environmental responsibility; and encourage the development and diffusion of environmentally friendly technologies.'<sup>50</sup>

Instead of supporting a 'precautionary approach to environmental challenges' or 'promoting environmental responsibility', Shell chooses to take tremendous risks by working in the Arctic. Also, the imperative of 'encouraging and diffusing environmentally friendly technologies' is entirely disregarded by Shell Oil Co.

### ***Response Shell***

When Shell was provided the opportunity to review this SOMO report, Shell stated it did not wish to provide SOMO with any detailed comments. In a general reaction on the North Pole issue, the company stated:

'Another which is a general issue which does not address any of the fundamentals of the safeguards to be used while drilling nor the massive response capabilities which will be put in place by Shell in the unlikely case of an accident. Your analysis ignores the worlds growing energy demand and the investment needed to support the development of-hundreds of millions of people in currently developing nations. Exploring for oil and gas responsibly does not contravene the guidelines you quote.'<sup>51</sup>

The issue described in this report does not discuss the world's energy demand. It discusses whether or not Shell breaches international standards with its Arctic operations. In its answer, Shell has not indicated in which the above-mentioned guidelines are respected by the company.

### ***Recommendations***

Shell should respect the OECD Guidelines and the UN Global Compact Environmental Principles. Shell should terminate its Arctic operations immediately and respect OECD Guidelines and UN Principles by investing in projects that do contribute to sustainable and environmentally responsible development.

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<sup>50</sup> UN Global Compact, Principles 7-9. <http://www.unglobalcompact.org/aboutthegc/thetenprinciples/index.html>

<sup>51</sup> Cited from email communication Shell, 2 May 2012.