

Seeking justice: the rising tide of court cases against Shell

Introduction



global witness



This briefing intends to inform shareholders about the increasing litigation and liability risks facing Royal Dutch Shell and associated entities (hereafter referred to as “Shell”) and the societal and environmental issues underlying the legal claims. It suggests questions for investors to ask Shell on these issues.

Based on a review of Shell’s latest Annual Report, it appears that the information that Shell is providing shareholders concerning legal investigations and proceedings is incomplete. For example, 6 of the cases included in this briefing (cases 10, 11, 14, 15, 16, 17) are not mentioned. In addition, case number 12 was announced when the Shell Annual Report went to print and case number 9 was announced on May 9. While this briefing does not provide an exhaustive overview of all court cases and investigations, it aims to provide a more complete picture of lawsuits and investigations Shell is facing, so that shareholders can adequately consider material risks. In addition, it intends to support shareholder engagement on the topic in order to reduce financial risk and environmental and societal harm.

In its latest Annual Report Shell writes that it does not expect that ongoing legal proceedings will have material adverse impact on Shell’s Consolidated Financial Statements¹. However, it warns that there remains a “*high degree of uncertainty*” around these lawsuits and their impacts on future earnings. Shell warns that “*if such claims ... were successful, the costs of implementing the remedies sought in the various cases could be substantial.*” This would also affect Shell’s shareholders².

Accordingly, investors should consider the financial and reputational risks facing investee companies associated with ongoing legal proceedings on issues including climate change, environmental damage, and harm to communities.

Shell faces increasing litigation and investigations from communities and governments. New legal challenges against the company are launched every year. Since 2017, Shell is facing 11 new lawsuits in the United States concerning climate impacts. Some of the plaintiffs, which include San Francisco and New York among other municipalities, are suing for compensation to cover billions of US dollars of infrastructure

¹ Royal Dutch Shell (2018). Annual report 2017. Available at: <https://reports.shell.com/annual-report/2017/>
² Ibid

improvements needed to protect citizens from the increasing impact of climate change. In Italy, in what has been named the “biggest corporate bribery trial in history”³, the public prosecutor has charged Shell for its role in a bribery scheme that deprived the Nigerian people of over a billion dollars. In the Philippines, Shell is subject to investigation by the Human Rights Commission because of alleged human rights violations resulting from climate impacts. In the Netherlands, Shell was sued in 2017 because of alleged complicity in the execution of nine Nigerian activists in 1995, and in April 2018 Friends of the Earth Netherlands announced that if Shell does not align its business model with the climate goals of the Paris Agreement, then it will file a lawsuit.

These recently-launched cases collectively add to growing legal pressure on Shell. Since 2017 there has been a rapid increase in climate change cases in which the courts might award substantial damages, require changes to business practices, or open the door for greater regulation. These cases are part of a growing global movement for environmental, economic and social justice which in addition to carrying potential financial and regulatory risks, also impose significant reputational risk.

A snapshot of ongoing court cases and investigations against Shell

Shell is being sued for and subject to investigations because of:

- Pollution and human rights violations in Nigeria;
- Climate change in the United States, the Philippines and the Netherlands;
- Corruption in Nigeria;
- Earthquakes caused by gas extraction in the Netherlands;
- Environmental pollution.

Below you can read summaries of these ongoing cases and investigations against Shell.

³ Hodsgon, C. (2017). Former Shell executives charged in \$1.1 billion case – the biggest corporate bribery trial in history. Business Insider, 20 December 2017: <https://www.businessinsider.nl/shell-eni-executives-charged-alleged-bribery-2017-12/?international=true&r=UK>



Pollution and human rights related litigation risks in Nigeria

Hundreds of oil spills occur in the Niger Delta every year, causing significant environmental damage as well as undermining people's economic and social rights. Decades of pollution linked to the oil industry have destroyed people's livelihoods, abused their rights to clean water and food, and put their health at serious risk. In 2011, the United Nations Environment Programme confirmed the massive scale of pollution in a landmark report based on a scientific assessment of Ogoniland⁴.

Shell is both the operator of, and a major shareholder in, the largest joint venture in Nigeria. It has been extracting oil there since 1958. It has a clear responsibility to address the adverse environmental and human rights impacts of its operations⁵. Its decades-long failures to do so has led to many court cases against the company in Nigeria⁶, and also increasingly abroad.

In 2015, in a case in the UK, Shell announced a 55 million pounds settlement for two massive operational oil spills from pipelines at Bodo in 2008. In the case, Shell admitted that it had previously downplayed both the volume of the spills as well as the area impacted. In addition, the judge also clarified that Shell could be legally liable to pay compensation not just for operational spills but also for spills caused by illegal bunkering, if it failed to take reasonable measures to protect, maintain or repair its infrastructure⁷.

As such, all the 1,010 spills (reported by Shell since 2011) along the network of pipelines and wells that it operates in the Niger Delta create potential legal risks⁸.

There are currently three cases against Shell in the Netherlands and UK related to the Niger Delta:

1. Nigerian farmers vs Shell: In 2008, four Nigerian farmers, supported by Friends of the Earth Netherlands, sued Shell because of oil pollution in three Nigerian villages. This case was the first in which a Dutch company, together with its subsidiary, had been sued in a Dutch court for damage caused abroad. The farmers demanded that Shell: 1) clean up the oil spills; 2) pay compensation for the damages caused; and 3) improve the maintenance of its pipelines and installations to prevent future spills⁹. In 2013 the District Court ruled that Shell is responsible for the oil spills in one of the villages, Ikot Ada Udo, and thus will have to pay damages, but not for the spills in the other two villages. Both parties have appealed this decision.

4 UNEP (2011). Environmental Assessment of Ogoniland. UNEP: Nairobi. Available at: https://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf

5 Shell's failures to both prevent oil spills and then respond to them in line with Nigerian government regulations and international standards have been widely documented by many organizations. See Amnesty International's reports: Amnesty (2018). Negligence in the Niger Delta (Index AFR 44/7970/2018). Available at: <https://www.amnesty.org/en/documents/afr44/7970/2018/en/> and Amnesty (2015). Clean It Up: Shell's False Claims about Oil Spill Response in the Niger Delta (Index: AFR 44/2746/2015). Available at: <https://www.amnesty.org/en/documents/afr44/2746/2015/en/>

6 To give some examples: Anaro and ors v. SPDC [2015] 6 MJSC (Pt.1) 42; Agbara v. SPDC and ors (2015) LPELR-25987(SC), Arthur John and ors v. SPDC (2011) 2 NWLR (Pt. 1231); Oruambo v. SPDC and ors (2011) LPELR-4954 (CA); Tiebo and ors v. SPDC (2005) 9 NWLR (Pt. 931); Edamkue v. SPDC (2009) 14 NWLR (Part 1160) 1; Ambah v. SPDC (1999) 1 NWLR (Part 593).

7 Business and Human Rights Resource Centre. Shell Lawsuit (re oil spills & Bodo community in Nigeria):

<https://www.business-humanrights.org/en/shell-lawsuit-re-oil-spills-bodo-community-in-nigeria>; Amnesty (2016). Shell faces further lawsuits for Nigeria oil spills. Available at: <https://www.amnesty.org/en/latest/news/2016/03/shell-faces-further-lawsuits-for-nigeria-oil-spills/>

8 Amnesty (2018). Negligence in the Niger Delta: Decoding Shell and ENI's poor record on oil spills. Available at: <https://www.amnesty.org/download/Documents/AFR4479702018ENGLISH.PDF>

9 Milieudéfensie (no date). Milieudéfensie's lawsuit against Shell in Nigeria: <https://en.milieudéfensie.nl/shell-in-nigeria>

In a landmark decision in 2015 the Court of Appeal ruled that the Dutch Courts have jurisdiction to decide on oil spills in Nigeria and that Royal Dutch Shell could be liable for oil spills involving its subsidiary in Nigeria. In addition, the court ordered Shell to provide access to documents relevant to the case. The question whether Shell is liable for the oil spills is subject of continuing litigation¹⁰. Pipeline investigators are currently researching available documentation to establish whether the spills have been caused by sabotage or poor maintenance.

2. Kiobel et al. vs Shell: In 2017, Nigerian national Esther Kiobel brought a case against Shell¹¹ in the Netherlands, accusing the company of complicity in the unlawful arrest, detention and execution of her husband Barinem Kiobel after an unfair trial. He was hanged by the Nigerian military government on 10 November 1995 along with the writer and human rights activist Ken Saro-Wiwa and seven other men, collectively known as the Ogoni Nine. The executions of the Ogoni Nine marked the culmination of Nigerian military's brutal campaign to crush protests against environmental devastation caused by Shell in Ogoniland. Esther Kiobel is bringing the civil case along with three other women, Victoria Bera, Blessing Eawo and Charity Levula, whose husbands were also executed. The women are demanding damages for harm caused by Shell's unlawful

actions, and a public apology for the role that Shell played in the events leading to the deaths of their husbands¹². The first hearing is expected to take place at the end of 2018 or beginning of 2019.

3. Okpabi vs Shell: More than 42,000 people from the Ogale and Bille communities in Nigeria's Rivers State brought a case in the UK in 2016, demanding that Royal Dutch Shell and its subsidiary in Nigeria clean up the contamination from oil spills. The communities have suffered from decades of systemic and ongoing oil pollution from Shell's pipelines. The United Nations Environment Programme (2011) reported serious contamination of agricultural land and waterways in the Ogale community as well as its groundwater, exposing inhabitants to serious health risks.

It identified clean water to the Ogale community as the most urgent priority required to respond to the widespread pollution in Ogoniland. Residents of Bille have traditionally relied on fishing to sustain their way of life, but devastating oil spills destroyed their livelihood. After the High Court and the Court of Appeal ruled that an English court did not have jurisdiction, the communities are seeking to bring the case to the Supreme Court¹³. If successful in the Supreme Court, Royal Dutch Shell could be potentially liable for the pollution generated by its Nigerian subsidiary and may result in many more cases being brought by Nigerian communities in the UK.

¹⁰ Rechtspraak.nl (2015). Dutch courts have jurisdiction in case against Shell Nigeria oil spills. Available at:

<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Gerechtshoven/Gerechtshof-Den-Haag/Nieuws/Paginas/Dutch-Courts-have-jurisdiction-in-case-against-Shell-Nigeria-oil-spills.aspx>

¹¹ Specifically 1) Shell Petroleum Development Company of Nigeria, limited. 2) Shell Petroleum N.V. 3) Shell Transport and Trading Company, limited. 4) Royal Dutch Shell

¹² Amnesty (2017). Nigeria: Shell complicit in the arbitrary executions of Ogoni nine as writ served in Dutch court. Available at:

<https://www.amnesty.org/en/latest/news/2017/06/shell-complicit-arbitrary-executions-ogoni-nine-writ-dutch-court/>

¹³ Leigh Day (2018). Nigerian villagers vow to take Shell to the Supreme Court. Available at:

<https://www.leighday.co.uk/News/News-2018/February-2018/Nigerian-villagers-vow-to-take-fight-over-Shell-oil-spills/>



Climate-related litigation risks

Following the adoption of the Paris Agreement on climate change in 2015, Shell has publicly stated that it, “*fully supports the Paris Agreement’s goal to keep the rise in global average temperature this century to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5°C,*” and that “*[i]n pursuit of this goal, [it] also supports the vision of a transition towards a net-zero emissions energy system*”¹⁴.

In December 2017, Shell presented its climate ambition to halve the net carbon footprint of its energy production by 2050 and to reduce it by 20% by 2035.¹⁵ While Shell claims that this ambition is “*in step with society’s drive to align with the Paris Agreement goals,*” a closer analysis of this ambition shows that it is not aligned with the goals of the Paris Agreement¹⁶.

Since 2016 a group of shareholders, coordinated by the Dutch NGO Follow This¹⁷, has filed climate resolutions at the Shell Annual General Meetings requesting the company to align its business model with the climate goals of the Paris Agreement.

Despite claiming to support the Paris Agreement, Shell has year after year advised its shareholders to vote against these resolutions. Regardless, institutional investor support¹⁸ for these resolutions has risen over time¹⁹.

According to Milieudefensie (Friends of the Earth Netherlands), Shell has a legal duty to align its business model with the climate goals of the Paris Agreement under Dutch law. By continuing to contribute to dangerous climate change and undermining the goals of the Paris Agreement, Shell is violating its duty of care to prevent unacceptable and avoidable harm to individuals, society and the environment. The failure to take preventive measures to avoid unnecessary and unacceptable harm can be challenged in Dutch court as hazardous negligence, a tortious act under Dutch law (in Dutch: “onrechtmatige daad”). On that basis, the NGO sent a letter to Royal Dutch Shell plc in April 2018 calling on Shell to act on climate change²⁰. If Shell fails to meet Friends of the Earth Netherlands’ demands, and its legal obligations, then it will be sued.

¹⁴ Royal Dutch Shell (2018). Annual Report 2017.

Available at: <https://reports.shell.com/annual-report/2017/servicepages/disclaimer.php>

¹⁵ Shell (2017). Management day 2017: Shell updates company strategy and financial outlook, and outlines net carbon footprint ambition. Available at:

<https://www.shell.com/media/news-and-media-releases/2017/management-day-2017-shell-updates-company-strategy.html>

¹⁶ Shareaction (2018). Comparative analysis of Shell’s November ambition and the 2018 Follow This resolution. Available at:

<https://shareaction.org/wp-content/uploads/2018/03/InvestorBriefing-FollowThisResolution.pdf>

¹⁷ Follow This (2017). New Follow This resolution test case for Shell’s new course. Available at: <https://follow-this.org/en/press-release/test-case/>

¹⁸ Aegon, 17 April 2018. Aegon will vote in favor of resolution Follow This. Available at:

<https://www.aegon.com/en/Home/Investors/News-releases/2018/aegon-will-vote-in-favor-of-resolution-follow-this/>

¹⁹ Shareaction (2018). Comparative analysis of Shell’s November ambition and the 2018 Follow This resolution. Available at:

<https://shareaction.org/wp-content/uploads/2018/03/InvestorBriefing-FollowThisResolution.pdf>

²⁰ Milieudefensie (2018). Milieudefensie’s notice letter to Royal Dutch Shell. Available at: <https://en.milieudefensie.nl/news/noticeletter-shell.pdf/@download/file/noticeletter-shell.pdf>

In addition, Shell, along with other “Carbon Majors”, is facing 10 lawsuits in the United States by several cities and counties. The lawsuits all allege that Shell and other fossil fuel corporations have been knowingly discharging large quantities of greenhouse gas emissions in the atmosphere, are planning to continue to do so, and that Shell and other corporations have been spreading misinformation and refusing to disclose the negative impacts of the continued use of fossil fuel on global warming since at least 1980. The plaintiffs in these cases are claiming billions of dollars of damages for the costs of adapting the cities and counties to the impacts of climate change. Their requests stem from the desire that Shell and other parties who have profited from externalizing the responsibility for the negative effects of global warming should bear the large costs of those impacts on the cities and counties instead of the plaintiffs, taxpayers, residents and public at large. Whereas the cases filed by US cities and counties are seeking recover the costs for climate adaptation measures, the investigation being conducted by Commission of Human Rights of the Philippines and the legal threat by Friends of the Earth Netherlands seek to align Shell’s business model with climate goals to prevent further harm.

In April 2018, a new trove of internal Shell documents became publicly available that provide documentary evidence that Shell had early knowledge and repeated and urgent

notice of potential climate change risks linked to its products and operations. These documents will likely be used as evidence to establish Shell’s wrongdoing in a number of jurisdictions and under various causes of action, including tort, non-contractual liability, and human rights law.²¹ With Shell facing climate legal challenges in a growing number of jurisdictions, these documents carry great significance.²²

Below summaries are provided of the climate court cases and investigations against Shell in the United States, the Philippines and the Netherlands:

4. City of New York vs Shell et al.: On 9 January, 2018, the City of New York brought a lawsuit against Shell and four other large oil and gas companies²³. The City of New York is claiming that the defendants knowingly discharged large quantities of greenhouse gas emissions that accumulate and remain in the atmosphere for centuries. The city is also asserting that the oil corporations orchestrated a long-standing “campaign of deception and denial” to delay the regulation of the fossil fuel industry,²⁴ despite knowing since the late 1970s or early 1980s that averting dangerous climate change required reducing the use of their fossil fuel products. The City of New York is claiming costs for remediation for current damages suffered by the city because of climate change, as well as the future costs of protecting the city from climate change impacts, based on public and private nuisance and trespass.

²¹ CIEL (2018). A crack in the Shell. Available at: <http://www.ciel.org/reports/a-crack-in-the-shell/>

²² Ibid

²³ City of New York v BP P.L.C, Chevron Corporation, ConocoPhillips, Exxon Mobil Corporation and Royal Dutch Shell PLC, Case No. 18 cv 182, Complaint filed 01/09/2018 and available at: http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20180109_docket-118-cv-00182_complaint-1.pdf

²⁴ Ibid at para 6

5. City of San Francisco & City of

Oakland vs Shell et al.: On 19 September, 2017, the Cities of Oakland²⁵ and San Francisco,²⁶ on behalf of the people of the State of California, filed two separate public nuisance actions in California state courts against Shell and four other of the largest investor-owned fuel companies in the world. They allege that the defendants are liable for public nuisance by knowingly producing fossil fuels since 1980 and still planning future production, thus causing and exacerbating global warming and associated sea level rise. The cities also claim that despite their knowledge on the effects of fossil fuel on climate change and associated sea-level rise, the corporations engaged in large-scale misrepresentation to “portray the use of fossil fuels as environmentally responsible and essential to human well-being”²⁷. The cities demand that the corporation pay into a fund to cover the cost of adapting public infrastructure in Oakland and San Francisco to global warming impacts such as sea level rise²⁸.

6. City of Richmond vs Shell et al.: On 22 January, 2018, the City of Richmond on behalf of the people of California, filed a lawsuit in California state court against Shell and 28 other fossil fuel companies for their contribution to climate change²⁹. The claim for damages for the city’s costs of adaptation to the effects of climate change and associated sea level rise is based on

public nuisance on behalf of the people of California, strict liability for failure to warn and design defect, private nuisance, negligence and trespass. The city claims that the defendants’ “*coordinated, multi-front effort to conceal and deny their knowledge of the threat of the continued use of fossil fuel and efforts to discredit the scientific evidence*”³⁰, while profiting from a massive increase in the extraction and consumption of fossil fuels, has caused the foreseeable and avoidable increase in global greenhouse gas pollution.

7. City and County of Santa Cruz vs Shell

et al.: On 12 December, 2017, the County³¹ and City of Santa Cruz³² filed a lawsuit in California Superior Court against Shell and 28 other fossil fuel companies, alleging that the greenhouse gas emissions from the production and use of the Defendants’ products played a direct and substantial role in the rise in greenhouse gas emissions and the Defendant’s knowing misrepresentation and “concealment of the products’ known hazards” caused injuries to the City and the County³³. The claim for damages for the city’s costs of adaptation to the effects of climate change and associated sea level rise is based on public nuisance on behalf of the people of California, strict liability for failure to warn and design defect, private nuisance, negligence and trespass. The plaintiffs also demand punitive damages. The Defendants have removed the two claims from state court to federal court.

25 The People of the State of California (City of Oakland) v BP PLC, Chevron Corporation, ConocoPhillips Company, Exxon Mobil Corporation and Royal Dutch Shell PLC, RG17875889 Cal. Super. Ct, Complaint filed 09/19/2017 and available at:

http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170919_docket-RG17875889_complaint.pdf

26 The People of the State of California (City of San Francisco) v BP PLC, Chevron Corporation, ConocoPhillips Company, Exxon Mobil Corporation and Royal Dutch Shell PLC, CGC-17-561370, Cal. Super. Ct, Complaint filed 09/19/2017 and available at:

http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170919_docket-CGC-17-561370_complaint.pdf

27 The People of the State of California (City of San Francisco) v BP PLC et al, *ibid* at page 2

28 Since then, the two lawsuits have been removed to a federal court, which requested a tutorial on climate change. The federal court has yet to decide on the defendants’ separate motions to dismiss on personal jurisdiction grounds and a joint motion to dismiss for failure to state a claim for relief under federal common law. The plaintiffs then filed an amended complaint, asserting nuisance claims under both federal and California law, to which defendants also amended their notices to dismiss.

29 The People of the State of California (City of Richmond) v Chevron Corp et al, Superior Court of the State of California, County of Contra Costa, C18-00055 01/22/2018 available at:

http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20180122_docket-C18-00055_complaint.pdf

30 The People of the State of California (City of Richmond) v Chevron Corp et al, *ibid* at page 1

31 The People of the State of California (County of Santa Cruz) v Chevron Corp et al, Superior Court of the State of California, 17CV03242 12/20/2017 available at:

http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20171220_docket-17CV03243-complaint.pdf

32 The People of the State of California (City of Santa Cruz) v Chevron Corp et al, Superior Court of the State of California, 17CV03243 12/20/2017 available at:

http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20171220_docket-17CV03243-complaint.pdf

33 The People of the State of California (County of Santa Cruz) v Chevron Corp et al, *ibid* at page 4

8. County of San Mateo, County of Marin & City of Imperial Beach vs Shell et al.:

On 17 July, 2017, three local governments in California filed separate lawsuits against Shell and other major fossil fuel companies in the California Superior Court³⁴. The Plaintiffs claim that the Defendants knowingly caused an increase in greenhouse gas emissions as a result of the use and production of their products, resulting in past and future injuries to the Plaintiffs, such as severe floodings and sea level rise. The Plaintiffs allege that the oil corporations misrepresented and concealed the known hazards of their products. The claims for damages for the Plaintiffs' costs of adaptation to the impacts of climate change are based on public nuisance on behalf of the people of California, strict liability for failure to warn and design defect, private nuisance, negligence and trespass. The Plaintiffs also demand punitive damages. The Defendants have removed the three claims from state court to federal court.

9. King County vs Shell et al.

On 9 May, 2018, King County, Washington brought a lawsuit against Shell and four other large oil and gas companies³⁵.

King County is claiming that the defendants are responsible and knowingly contributing to climate change and putting the residents of King County at risk of floods, landslides, ocean acidification, sea level rise, and other impacts. The county seeks an order requiring the oil and gas companies to fund the costs of adapting infrastructure such as storm water management, as well as salmon recovery and protecting public health.

These costs could be hundreds of millions of dollars³⁶.

10. Conservation Law Foundation vs

Shell: On 8 August, 2017, the Conservation Law Foundation (CLF) filed a citizen suit against Shell alleging failure to comply with the Clean Water Act, the Resource Conservation and Recovery Act and the Rhode Island Pollutant Discharge Elimination System at Shell's Providence Terminal, a bulk storage and fuel terminal³⁷. CLF claims that Shell had knowingly disregarded the risks caused by climate change impacts, particularly coastal flooding and storm surges for the Providence Terminal, and in turn failed to protect its Providence Terminal and the nearby communities. CLF requests an injunctive relief to prevent further violations to the Clean Air Act, an order of civil penalties for the violations of the Clean Air Act, and environmental restoration and compensatory mitigation for the past violations committed by Shell. Shell is seeking to have the case dismissed.

11. Typhoon Survivors vs Shell et al: On 5 December 2015, Greenpeace and the Philippine Rural Reconstruction Movement filed a petition on behalf of the survivors of Typhoon Haiyan, asking the Commission on Human Rights of the Philippines to investigate whether Shell and 46 other investor-owned Carbon Producers breached their responsibilities to respect the human rights of the Filipino people because of their contribution to climate change³⁸.

³⁴ The People of the State of California (County of Marin) and County of Marin v Chevron Corp et al, CIV1702586 California Supreme Court, 07/17/2017 available at: http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170717_docket-CIV1702586_complaint.pdf; The People of the State of California (City of Imperial Beach) v Chevron Corp et al, CIV17-01227 California Supreme Court, 07/17/2017 available at: http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170717_docket-C17-01227_complaint.pdf; The People of the State of California (County of San Mateo) v Chevron Corp et al, CIV17-03222 California Supreme Court, 07/17/2017 available at: http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170717_docket-17CIV03222_complaint.pdf

³⁵ Constatine, D., (2018). King County sues oil companies for climate change impacts. Available at: <https://www.kingcounty.gov/elected/executive/constantine/news/release/2018/May/09-climate-lawsuit.aspx>

³⁶ Ibid.

³⁷ Conservation Law Foundation Inc v Shell Oil Products US, Shell Oil Company, Shell Petroleum Inc, Shell Trading (US Company), Royal Dutch Shell plc and Motiva Enterprises LLC, United States District Court 1:17-cv-00396, 08/28/2017 available at:

http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170828_docket-117-cv-00396_complaint-1.pdf

³⁸ In re Greenpeace Southeast Asia and Others, Philippines Commission on Human Rights, Case No. CHR-NI-2016-0001, available at:

<http://climatecasechart.com/non-us-case/in-re-greenpeace-southeast-asia-et-al/>

On 11 December, 2017, the Commission on Human Rights accepted the petition and confirmed that they would investigate the issue, starting with fact-finding missions and public hearings in Manila, New York and London in 2018. Until now, Shell has not officially participated in the hearings, despite having received invitations to attend. This type of action is highly replicable in other countries, and a positive outcome for the petitioners could provide grounds for civil claims in the Philippines or in countries where companies are based. Unlike lawsuits seeking compensation for damages, the investigation could result in a recommendation to policymakers and legislators to put in place accountability mechanisms that victims of climate-related harms can easily access.

12. Friends of the Earth NL and

co-plaintiffs vs. Shell: On April 4th 2018, Friends of the Earth Netherlands sent a notice of intent to sue Shell to Royal Dutch Shell plc³⁹. Friends of the Earth NL claims that Shell is violating its duty of care and breaching human rights by contributing to dangerous climate change globally. The NGO demands that Shell takes action to prevent further harm to the climate by aligning its business model with the goals of the Paris Agreement, planning to phase-out its oil and gas production activities and reducing its greenhouse gas emissions to zero by 2050. Shell has been given until 30 May 2018 to respond to the letter. If Shell fails to act on climate change, Friends of the Earth NL will go to court at the end of 2018, along with thousands of co-plaintiffs⁴⁰.



Corruption-related litigation risks

Shell has an anti-bribery commitment and states that it does “*not tolerate the direct or indirect offer, payment, solicitation or acceptance of bribes in any form*”. To prevent or detect and remediate potential violations, Shell has developed a global Anti-bribery and Corruption programme.⁴¹ However, in April 2017, internal Shell emails unearthed by Global Witness suggest that Shell’s senior executives knowingly took part in a vast bribery scheme⁴².

13. Milan prosecutor vs Shell: Shell and the Italian oil company Eni, together with current and former senior executives have been charged with international corruption offences by the Milan Public Prosecutor who alleges that \$520 million of a \$1.1bn payment made by Shell and Eni in a 2011 deal for Nigerian oil block OPL 245 was converted into cash and was intended to be paid to Nigerian officials. The prosecutor further alleges that money was also channelled to Eni and Shell executives in kickbacks. The criminal trial will start at June 20, 2018. A Shell subsidiary has also been charged with official corruption related to the deal by Nigerian authorities, and the case is subject to investigations in the Netherlands, United Kingdom, United States and Switzerland. The investigations could lead to criminal charges. In Italy there is potential for prison time and a fine for the companies as well as possible damages for Nigeria which has been nominated as the victim in the case⁴³.

³⁹ Milieudefensie (2018). Milieudefensie’s notice letter to Royal Dutch Shell. Available at: <https://en.milieudefensie.nl/news/noticeletter-shell.pdf/@download/file/noticeletter-shell.pdf>

⁴⁰ Friends of the Earth International (2018). Shell faces historic legal action in the Netherlands for its failure to act on climate change:

<https://www.foei.org/press/shell-legal-action-netherlands-climate-change>

⁴¹ Shell.com, no date. Transparency and anti-corruption: <https://www.shell.com/sustainability/transparency/transparency-and-anti-corruption.html>

⁴² Global Witness (2017). Shell Knew. Available at: <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-knew/>

⁴³ Global Witness (2018). Unprecedented corporate bribery trial begins against Shell, ENI, CEO and executives. Available at:

<https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/unprecedented-corporate-bribery-trial-begins-against-shell-eni-ceo-and-executives/>



Litigation risks related to earthquakes in the Netherlands

Shell and Eni are planning a \$13.5bn development of the OPL 245 block even though industry analysts have warned their hold on the license is “at risk”, thus threatening Shell’s ability to add to its reserves⁴⁴.

The Nederlandse Aardolie Maatschappij (NAM), a subsidiary of Royal Dutch Shell (50%) and Exxon Mobil (50%), has extracted natural gas from the Groningen gas field in the north of the Netherlands since the 1960s. This has caused soil subsidence and earthquakes, leading to serious damage: houses crack and inhabitants suffer from physical and mental health issues from living in unsafe conditions. More than 100,000 people have reported earthquake-related damage to their homes. In response, the Dutch government has imposed caps on gas production and is planning to end production from the Groningen field by 2030. Regarding the earthquakes Royal Dutch Shell’s chief executive, Ben van Beurden, has said: *“We are talking about multibillion-dollar potential bills for years to come because these earthquakes will continue to occur unfortunately. They are small earthquakes but nevertheless they will continue to cause some damage here and there”*⁴⁵. Shell Netherlands believes that the NAM is able to cover the damages, but amidst concerns regarding responsibilities for financial compensation it has recently indicated that Shell Netherlands will *“continue to do everything in its power as a shareholder to support NAM meeting its obligations and is of course prepared to issue*

*guarantees for this”*⁴⁶.

14. Groninger Bodem Beweging vs Shell:

The Groninger Bodem Beweging (GBB, ‘Groningen Soil Movement’) asserts that willingly and knowingly continuing gas extraction activities is a criminal act committed by NAM, for which the company must be prosecuted and convicted. The GBB and a number of individual complainants have requested the Public Prosecution Service in 2015 to start a criminal prosecution against NAM. Lawyer Gerard Spong provides legal assistance. The request was initially denied by the Public Prosecution Office. Through an Article 12 procedure of the Wetboek van Strafvordering (Code of Criminal Procedure), initiated by the GBB and the individual complainants, the Court of Arnhem-Leeuwarden ordered the Public Prosecution Office to start a criminal investigation. This investigation is now in progress. The complainants will soon be heard⁴⁷.

15. WAG vs Shell:

Over 3,500 residents in Groningen are suing NAM for loss of the monetary value of their houses due to earthquakes. An estimated number of 100,000 houses in Groningen, have together lost an estimated €1bn in value due to seismic activity⁴⁸. In 2018, the Dutch Court of Arnhem-Leeuwarden granted homeowners the right to claim their damages at NAM⁴⁹.

44 Offshore-technology.com, no date. Zabazaba and Etan integrated development project. Available at:

<https://www.offshore-technology.com/projects/zabazaba-etan-integrated-development-project/>; <http://www.c-resource.com/2017/05/17/ratings-update-shell-nigeria/>

44 Offshore-technology.com, no date. Zabazaba and Etan integrated development project. Available at:

<https://www.offshore-technology.com/projects/zabazaba-etan-integrated-development-project/>; <http://www.c-resource.com/2017/05/17/ratings-update-shell-nigeria/>

45 Vaughan, A. (2018). Shell doubles profits but faces multibillion dollar Dutch quake bill. The Guardian, 1 February 2018. Available at:

<https://www.theguardian.com/business/2018/feb/01/shell-doubles-profits-but-faces-multibillion-dollar-dutch-quake-bill>

46 Shell (2018). Shell Nederland staat achter de NAM. Available at:

https://www.shell.nl/media/2018-media-releases/shell-nederland-staat-achter-nam/_jcr_content/par/textimage.stream/1517390736532/6a73d8571595e68632b338ee14e7cad504296b-f2929c24170cc46c00b262bfo/shell-nederland-strongly-supports-nam-english-version.docx

47 GBB v Nederlandse Aardolie Maatschappij BV. Complaint available at:

<http://www.groninger-bodem-beweging.nl/images/pdf/Aangifte-Spong.pdf>;

<http://www.groninger-bodem-beweging.nl/images/pdf/Klaagschrift.pdf>.

Decision available at: <http://www.groninger-bodem-beweging.nl/images/pdf/uitspraak-gerechtshof.pdf>

48 Boffey, D., (2018). Gas field earthquakes put Netherlands’ biggest firms on extraction notice. The Guardian, 23 January 2018. Available at:

<https://www.theguardian.com/environment/2018/jan/23/gas-field-earthquakes-put-netherlands-biggest-firms-on-extraction-notice>

49 Stichting Waardevermindering door Aardbevingen Groningen: <https://www.stwag.gr/>



Environmental pollution

16. Groningers vs Shell:

Residents in Groningen can claim immaterial damages suffered due to earthquakes. The mass claim is open to homeowners as well as tenants. The Dutch court of Assen⁵⁰ decided in 2017 that NAM is liable for immaterial damage (disturbance of welfare at home and psychological suffering). Thousands of residents can join the claim against NAM via www.aardbevingen.nl.⁵¹

17. Acosta et al. vs Shell: Residents from Westgate Subdivision in Hobbs, New Mexico brought a tort action against Shell Western Exploration and Production, Inc. and Shell Oil Company for environmental contamination. From the 1920s through 1993, the Defendants engaged in oil and gas operations in Hobbs, New Mexico, which resulted in environmental contamination discovered years later. Over two hundred residents of the contaminated area sued Shell for negligence, strict liability, nuisance, and trespass and alleged that they had suffered injuries from their exposure to contamination from Shell's oil operations, including autoimmune disorders. The district court excluded the testimony of an expert witness establishing causation between the inhalation, ingestion, and absorption of the combination of various toxins from Shell's oil and gas operations caused or aggravated the Plaintiffs' autoimmune disorders and granted Shell a summary judgment, which the Court of Appeals affirmed⁵². However, on 3 March, 2016, the Supreme Court of the State of New Mexico reversed those decisions and held that the expert witness' testimony

and studies he relied on were probative of causation and should have been admitted. The Supreme Court reversed the summary judgment and remanded the case to the district court⁵³.

18. Water purveyors vs Shell: Shell has been sued in 35 cases by water purveyors alleging responsibility for groundwater contamination caused by applications of chemical pesticides. Most of these lawsuits assert various theories of strict liability and seek to recover actual damages, including water well treatment and remediation costs. All of the suits assert claims for punitive damages⁵⁴. In its Annual report 2013, Shell only reported 10 of such cases, now these have grown to 35⁵⁵.

⁵⁰ Rechtspraak.nl (2017). NAM aansprakelijk immateriële schade inwoners Groningenveld. Available at:

<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Noord-Nederland/Nieuws/Paginas/NAM-aansprakelijk-immateriele-schade-inwoners-Groningenveld.aspx>

⁵¹ de Haan (2017). De Haan helpt Groningers met claim tegen de NAM. Available at: <https://www.dehaanlaw.nl/nieuws/de-haan-helpt-groningers-met-claim-tegen-de-nam?ref=crosslink>

⁵² Acosta v Shell W. Expl. & Prod., Inc., 2013-NMCA-009, available at <https://cases.justia.com/new-mexico/supreme-court/2016-33-884.pdf?ts=1457028644>

⁵³ Acosta v. Shell Western Exploration & Production, Inc., No. S-1-SC-33884, slip op. (N.M. Sup. Ct. March 3, 2016, available at

<https://law.justia.com/cases/new-mexico/supreme-court/2016/33-884.html>

⁵⁴ Royal Dutch Shell (2018). Annual Report 2017.

Available at:

<https://reports.shell.com/annual-report/2017/servicepages/disclaimer.phphttp://reports.shell.com/annual-report/2017/consolidated-financial-statements/notes/25-legal-proceedings.php>

⁵⁵ <http://reports.shell.com/annual-report/2013/consolidated-financial-statements/notes-21-29/25-legal-proceedings.php>

Recommendations to investors:

We recommend that investors engage with Shell in order to ensure that the company is adequately addressing the financial and reputational risks arising from the legal proceedings set out in this briefing, and the company is taking steps to reduce the risk of future litigation and living up to corporate commitments to human rights and environmental protection.

Investors can do so by:

- Requesting that Shell provide full disclosure on all legal proceedings pending against the company and subsidiaries;
- Asking what provisions Shell has made for the possible damage it has to pay to the plaintiffs of the different legal proceedings related to oil pollution and human rights abuses in the Niger Delta;
- Asking what provisions the company has made for the possible cost of cleaning up all oil spills in the Niger Delta;
- Asking what provisions the company has made for the possible damages awarded by US courts in city and county climate cost recovery cases;
- Asking when Shell will fully disclose to the public, shareholders, and consumers what the company knew about climate change, when, and what it did in response;
- Requesting Shell to develop a strategy to prevent future climate litigation against the company by aligning its business model with the Paris goals;
- Asking what provisions the company has made for the possible penalties and confiscations that could result from the corruption allegations relating to the OPL 245 deal;
- Asking what provisions the company has made for the possible financial penalties arising from the earthquake related legal proceedings in Groningen, the Netherlands.

Contacts

Amnesty International
Jeanet van der Woude
j.vanderwoude@amnesty.nl
+31 (0)6 4148 7145

Milieudefensie/Friends of the
Earth Netherlands
Laurie van der Burg
laurie.van.der.burg@
milieudefensie.nl
+31 (0)6 39020914

Global Witness
Barnaby Pace
bpace@globalwitness.org
+44 (0)207 4925 820
+44 (0)7525 592 738

Greenpeace Netherlands
Kees Kodde
kees.kodde@greenpeace.org
+31 (0)6 5362 3818

About Amnesty International

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

About Friends of the Earth Netherlands

Friends of the Earth Netherlands/Milieudefensie is the Dutch member of the Friends of the Earth federation, the largest grassroots environmental network worldwide. Friends of the Earth Netherlands has 80,000 members and donors and works across five thematic campaigns: food, forests, energy, economic justice and transport. These campaigns are jointly working towards climate justice and a just energy transition.

About Global Witness

Global Witness is a non-governmental organisation based in London and Washington, that investigates and campaigns to prevent natural resource related conflict and corruption, and associated environmental and human rights abuses. It carries out hard-hitting investigations, exposes abuses, and campaigns for change. Global Witness is independent, not-for-profit, and works with partners around the world in our fight for justice.

About Greenpeace Netherlands

Greenpeace is an independent global campaigning organisation that acts to change attitudes and behavior, to protect and conserve the environment and to promote peace. It comprises 26 independent national/regional offices in over 55 countries across Africa, Europe, the Americas, Asia and the Pacific, as well as a coordinating body, Greenpeace International.

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