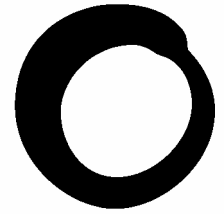


June 2006



**Friends of
the Earth**

Briefing

Broken promises

How Shell's non-compliance with the OECD Guidelines harms people and the environment.

UK company Shell is a household name, one of our biggest companies and one whose operations extend across many parts of the world. For many years, Friends of the Earth has been raising awareness about various aspects of Shell's activities – from its historic role in oil-rich Nigeria to its current and future plans for extracting increasing amounts of fossil fuels in areas like Sakhalin Island, Russia.

These campaigns have sometimes resulted in successes, with Shell changing its policies or amending its plans. Yet, as this briefing shows, there are unfortunately still many instances where Shell's operations abuse the environment and communities. This briefing outlines some of the areas where Shell is not complying with the OECD Guidelines for Multinational Enterprises. It demonstrates why voluntary self regulation is not enough to protect the environment and communities from the activities of companies like Shell.

Friends of the Earth inspires solutions to environmental problems, which make life better for people.

Friends of the Earth is:

- the UK's most influential national environmental campaigning organisation**
- the most extensive environmental network in the world, with almost one million supporters across five continents and over 60 national organisations worldwide**
- a unique network of campaigning local groups, working in over 200 communities throughout England, Wales and Northern Ireland**
- dependent on individuals for over 90 per cent of its income.**

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Friends of the Earth, 26-28 Underwood Street, London N1 7JQ

Tel: 020 7490 1555 Fax: 020 7490 0881 Email: info@foe.co.uk Website: www.foe.co.uk

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It is because of companies like Shell that Friends of the Earth is calling for changes to company law to make UK companies more accountable for the social and environmental impacts of their operations. The UK Government published its Company Law Reform Bill in November 2005. The Bill is the biggest shake-up of company law for 150 years and it is being considered by Members of Parliament this June. It is a rare and important opportunity to make the legal framework for business fit for the 21st century.



We are judged by how we actⁱ



Shell's non-compliance with the OECD Guidelines

Shell supports, on paper at least, the OECD (Organisation for Economic Co-operation and Development) Guidelines for Multinational Enterprises.

The OECD Guidelines are acknowledged by those governments within the OECD as a set of key benchmarks for the standard of operations conducted by big business across the world.ⁱⁱ Although they have been criticised by many in civil society and NGOs for their relative lenience and inadequate mechanisms for sanctioning and enforcement, they do at least provide some benchmark of acceptable standards of operating.

This briefing is not meant to be a comprehensive list, but rather an illustrative guide which draws on Friends of the Earth's experiences working with a wide range of communities directly affected by Shell's operations. It also cites information from two recent (and as yet unresolved) complaints to the Dutch National Contact Point for the OECD Guidelines about Shell's operations in Manila, the Philippines, and in Saõ Paulo, Brazil.

Relevant OECD Guidelines are listed in **bold** with an indication of areas of non-compliance detailed below each guideline.

II (1) Enterprises should contribute to economic, social and environmental progress with a view to achieving sustainable development.

Sustainable development is commonly defined as providing resources for the needs of people today in a manner that ensures that the needs of future generations can be met adequately.

- In coastal Louisiana, USA, the local fishing industry is threatened by Shell's underwater liquefied natural gas terminal and Shell refuses to employ a system which would prevent many of the detrimental impacts.
- Work on the Sakhalin II project in Russia is expected to cause damage to wild salmon spawning areas and the last remaining western Pacific grey whales.
- Oil spills and severe air pollution due to gas flaring in the Niger Delta, Nigeria, have resulted in loss of aquatic life and mangroves.
- Shell is now seeking permission to drill for oil in the Arctic National Wildlife Refuge, a pristine unspoilt conservation area, held sacred by the Native American Gwich'in people and home to wildlife species including caribou, polar bear and over 130 species of migratory birds.

II (2) Enterprises should respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

The Universal Declaration of Human Rights states that "Everyone has the right to life, liberty and security of person ... Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family". Shell has turned its back on these fundamental principles in many areas, threatening the health and security of local communities.

- Gas flaring in Nigeria has severe health consequences. In November 2005 a Nigerian court in a case against Shell ruled favour of local resident Mr Jonah Gbemre and the Iwherekan community, and found the gas flaring in their locality to be a violation of their constitutionally-guaranteed rights of life and dignity. Shell has appealed and the case is ongoing.
- Shell's joint venture Motiva refinery in Port Arthur emits massive quantities of toxins known to damage the human cardiovascular and respiratory systems. 80 per cent of West Port Arthur residents suffer from heart conditions and respiratory problems, compared to 30 per cent of people who do not live near an oil refinery.ⁱⁱⁱ
- In the year that a new environmental law adopting the air quality guidelines established by the World Health Organisation was introduced in Durban, South Africa, SAPREF (Shell's joint venture with BP) would have violated the law 117 times, had it come into force.
- The exposure of Shell workers to toxic pesticides and oil waste in São Paulo, Brazil, has resulted in severe medical problems amongst workers. In 2005 Shell was forced to submit to a government order to take steps to protect workers by providing medical examinations. However, the company still does not guarantee treatment for conditions discovered as a result of the examinations.

II (5) Enterprises should refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.

- Shell sought and achieved exemption from local law when it executed a Memorandum of Understanding with the City of Manila which enabled it to continue operating in a residential area.
- The OECD Guidelines complaint about Shell in Brazil states that Shell has sought and achieved exemption to law with the Terms of Compromise and Practice Adjustment (TAC) it has agreed with the Public Ministry of the State of São Paulo and the Labour Public Ministry in relation to its operations there.

II (11) Abstain from any improper involvement in local political activities.

- Shell convened local village chiefs, or barangay captains, in Pandacan to persuade them to sign a position paper that would support the retention of its oil terminal.

V Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

V (1a) Collect and evaluate adequate and timely information regarding the environmental, health, and safety impacts of their activities.

- Shell's air-monitoring programme has not detected the sulphur compounds present in the air in Norco, coastal Louisiana.
- In Sakhalin Island, Russia's Far East, independent scientific studies showing that the presence of a drilling platform has endangered the last remaining population of western Pacific grey whales, and that the construction of pipelines through streams has threatened local wild salmon spawning areas, have been ignored.
- Lord Oxburgh, Shell director and ex-CEO, admitted in a meeting with Durban residents that he was "embarrassed" by SAPREF's (Shell's plant in Durban) under-reporting of its sulphur dioxide emissions. These were under-estimated by approximately 12 tonnes per day over a five year period.
- The OECD Guidelines complaint about Shell in Brazil states that Shell has failed to collect and evaluate adequate information about the impact of its operations on the local community, including the health impacts of workers.

V (2b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.

- Shell highlights attempts at stakeholder consultation in some of the problem areas mentioned. In reality these occasional, short meetings merely pay lip-service to the concept of open dialogue and communities have found them to be an ineffective mechanism to bring about any meaningful change.
- When questioned by communities impacted by Shell's operations, Chief Executive Jeroen Van der Veer has consistently referred community representatives back to local managers. Other than in Durban, South Africa, attempts at local dialogue have been unsuccessful. Local managers have either failed or have refused to engage on real issues, instead applying diversionary tactics such as engaging only in broader social forums. Communities have outlined major flaws in Shell's local engagement strategy, including the clear conflict of interest created by the fact that many of the people recruited to engage in Shell's local panels receive direct or indirect financial benefit from Shell, its foundations or other related processes.
- The OECD Guidelines complaint about Shell in the Philippines states that Shell has concealed information about a) the risk factors of the company continuing its operations, b) the health risks associated with higher levels of benzene in the area where its oil terminal is situated and c) the fact that it was storing large quantities of flammable and volatile fuel materials in the midst of this densely populated community.

V (5) Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.

- Major oil spills in the Niger Delta, Nigeria, and Durban, South Africa, have not been dealt with in an effective way. In some cases, a clean-up involves turning the soil over so that oil is just below the surface and not clearly visible.
- The OECD Guidelines complaint about Shell in the Philippines states that Shell has violated local law through: the absence of an automatic fire suppression system and smoke/heat detector at the LPG filling plant; the failure to secure a storage permit for inflammable/combustible materials; the absence of a storage permit for the LPG system stored in a pressure vessel; and the failure to secure a permit for above ground tanks of flammable combustible and non-combustible materials.

V (6) Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:

V (6a) Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise.

- Oil spills in the Niger Delta are often caused by the ageing, rusting network of oil pipelines.
- The OECD Guidelines complaint about Shell in the Philippines states that without the existence of a buffer zone between Shell's oil depot and the local community, Shell is not conforming to best practice. Instead, Shell constructed a small 'green zone' which it then turned into a recreational park, entirely defeating the object of a buffer zone.
- Inadequate disposal of toxic waste in São Paulo, Brazil, does not reflect company best practice
- Communities have persistently lobbied Shell to upgrade its plants in areas such as Durban, South Africa, to bring them up to the same standard as its refinery in Denmark, accusing Shell of double standards and racism. Shell has now agreed to replace some ageing infrastructure in Durban, but the plant still will not reflect best practice.

V (6b) Development and provision of products or services that have no undue environmental impacts; are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely.

- Despite Shell's self-lauded interest in renewable energy forms such as solar and wind power, its investment into these clean forms of energy production in fact amounts to only 1.1 per cent of total capital investment.
- While the company boasts of reducing CO₂ emissions from its own operations, it continues to develop its oil and gas portfolio, fuelling climate change.
- Earnings in Shell's exploration and production division – the division that explores for and extracts oil – increased by 45 per cent this year and Shell added 160 thousand square kilometres of exploration acreage to its portfolio, with new exploration licences in 14

countries. It also has announced the intention to expand its operations, aiming to increase production by 9-14 per cent by 2009 and approximately 30-40 per cent by 2014^{iv}.

V (6c) Promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise.

- Shell's attempt to address the crucial issue of climate change has focussed on the argument that "the greatest part of the energy needed will continue to come from fossil fuels"^v. It fails to observe that endorsing the continued use of fossil fuels has contributed to a lack of momentum in developing cleaner technologies at affordable prices.

VI Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Nor should enterprises be solicited or expected to render a bribe or other undue advantage.

- The OECD Guidelines complaint on Shell in the Philippines states that Shell intervened in the signing of a position paper by the barangay captains to support the retention of its Pandacan oil terminal, with the following incentives and promises in exchange for the pledge of support for the oil terminal's retention: educational scholarship, gainful employment, regular conduct of medical and dental outreach, support to sports development activities, donation of fire trucks and fire fighting equipment, and gifts on Christmas, Holy Week and similar occasions.

Conclusion

If Shell, with its massive environmental and social impacts, is considered to be a leader in responsible business, this does not bode well for UK plc as a whole. Shell and other companies claim that they will improve the social and environmental impacts of their business practices voluntarily and that no formal regulation is needed to ensure that they do this. The communities who suffer as a result of Shell's operations would disagree.

There is an opportunity to make some small but incredibly significant changes to company law in order to provide greater transparency about the impacts of company operations and to place some basic minimum obligations on company directors in relation to these. These changes would not tie up companies like Shell in red tape, but rather tie them down to ensure they begin to make real efforts to deliver on the commitments that they have already made.

Friends of the Earth is calling for MPs to support amendments to the Company Law Reform Bill to make UK companies:

- **Transparent** – by comprehensive reporting of their social and environmental impacts;
- **Responsible** – by giving company directors a duty to take reasonable steps to minimise the damage their company causes to communities and the environment;
- **Accountable** – by giving legal rights of redress in this country to people harmed by a UK company's operations where they are unable to access justice in the country of violation.

Further information:

- Friends of the Earth's campaign on the Company Law Reform Bill can be found here: www.corporates.org.uk
- A case study on why the voluntary approach will not work for Shell can be found here: http://www.foe.co.uk/campaigns/corporates/case_studies/shell/index.html
- Flagship or failure? The UK's implementation of the OECD guidelines and approach to corporate accountability. http://www.foe.co.uk/resource/reports/flagship_or_failure.pdf
- Lessons not learned: The other Shell report 2004. http://www.foe.co.uk/resource/reports/lessons_not_learned.pdf

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- i Shell's Business Principles
 - ii 'They provide voluntary principles and standards for responsible business conduct consistent with applicable laws ... the Guidelines clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises.'
(<http://www.oecd.org/dataoecd/56/36/1922428.pdf>)
 - iii Jim Atkinson, Bad Air Days, Texas Monthly (Austin, Texas, USA) 1 August 2003
 - iv Royal Dutch Shell Plc - Annual Report 2005 and The Shell Sustainability Report 2005 both available on Shell's website www.shell.com
 - v Royal Dutch Shell Plc - Annual Report 2005 and The Shell Sustainability Report 2005 both available on Shell's website www.shell.com