



# **milieudefensie**

**anders kijken, anders kiezen**

## **The summons of the climate case against Shell summarized in 4 pages**

On 5 April 2019, Shell received a summons because of its responsibility for dangerous climate change. Milieudefensie, 17,200 co-claimants and 6 other organizations (ActionAid NL, Both ENDS, Fossilvrij NL, Greenpeace NL, Young Friends of the Earth NL, Waddenvereniging) demand that Shell must contribute to achieving the global climate goal to keep global warming below 1.5 degrees.

This document provides a short summary of the evidence and argumentation used and of Milieudefensie et al.'s demands.

In the summons, lawyer Roger Cox argues on behalf of the claimants (Milieudefensie et al.) that Shell's business model poses a threat to the climate goals of the Paris Agreement. Shell is violating its legal duty of care and is endangering human rights and lives. Shell is therefore acting unlawfully.

### **The court in The Hague has jurisdiction**

The worldwide climate policy of the Shell group is developed at their head office in The Hague. Therefore, the Court of Appeal in The Hague has jurisdiction to decide on the consequences of Shell's actions.

### **Warming beyond 1.5°C is dangerous**

Since the start of the industrial revolution, the concentration of greenhouse gases in the atmosphere, such as CO<sub>2</sub>, has risen significantly, particularly due to the combustion of fossil fuels. This causes climate change. The temperature of the earth has already increased by about 1°C. The consequences of this temperature rise are felt all around the world.

In the Paris Agreement of 2015, world leaders agreed to limit global warming to well below 2°C and preferably to 1.5°C to prevent a catastrophic and irreversible climate change. The UN Intergovernmental Panel on Climate Change (IPCC) has been ringing the alarm for years already and in its 2018 report, it again emphasized that the risk of irreversible climate changes beyond an increase of 1.5°C global warming. Every extra bit of warming that can be prevented is therefore of vital importance.

### **Reasons for concern**

The UN Climate Panel identifies a number of crucial reasons for concern with regard to the liveability of the earth.

1. Both natural eco systems and cultural systems will have to adapt considerably to a changing climate. Many important systems are unable to do this and will disappear. All people, but also animals and plants, depend on these systems for their basic needs, such as food and clean water.
2. Weather extremes will increase, both in frequency and in intensity. Drought, extreme heat and



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flooding will occur more often and it is expected that hurricanes will get stronger.

3. The effects are not evenly spread across the globe. Societies and countries that are already weaker and marginalized will be hit harder by the impacts of climate change.

4. Additional global warming can cause processes that will further increase the destruction caused by climate change. Most important are the tipping points. These are (abrupt) changes in the climate system that are irreversible in most cases. The permanently frozen soil of Siberia is an example. When this permafrost thaws, greenhouse gases are released from the soil. This causes additional warming. The risk that these tipping points occur already exists at a global warming of 1.5°C to 2°C.

### **Climate change in the Netherlands**

In the Netherlands, climate change impacts will also become more severe. Water issues are evolving towards both extremes: flooding and water shortages at different times and places. In addition, heat stress will become a bigger problem in summer and winters will become milder on average.

Sea level rise is also a major risk for the Netherlands. Depending on the temperature rise and possible tipping points, sea levels may rise from centimetres to many meters in the long run. The existing infrastructure and coastal protection in the Netherlands are not prepared for this.

### **Shell causes climate damage**

Historically, Shell has is responsible for 1.8% of all CO<sub>2</sub> emitted by humans. A significant proportion of the greenhouse gases emitted since the late 1980s can be traced back to just 25 companies, including Shell. Today, Shell's activities and products are responsible for around 1% of global emissions every year.

As Shell is a major contributor to climate change, it has a social duty of care to take climate action.

By continuing to invest tens of billions in oil and gas every year and by not reducing emissions, Shell is putting international climate goals at risk, and therefore also the inhabitants of the Netherlands.

### **Shell is breaching its duty of care**

Under Dutch law, Shell is not allowed to cause a major danger to others when measures can be taken to prevent that danger from occurring. This is referred to as unlawful endangerment (article 6:162 of the Dutch Civil Code) (in other jurisdictions this is often referred to as "hazardous negligence"). On the basis of this legal norm, In the Urgenda case, the Dutch state was found guilty of endangering Dutch citizens because it was taking inadequate action to reduce CO<sub>2</sub> emission in the Netherlands. The Dutch state's share in global emissions is 0.5% and therefore much lower than Shell's share in global CO<sub>2</sub> emissions.

Unlawful endangerment is established on the basis of a number of criteria. The danger itself must be significant enough, as shown in the previous paragraphs. In addition, Shell must be sufficiently aware of the problem and there must be alternatives pathways available for Shell. Below, we further explain that Shell meets the criteria.



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### **Shell knew**

Internal and external documents show that Shell has known about climate change at least since the 1950s and has been aware of its large-scale and serious consequences at least since 1986. The company even warned of changes that could be so drastic that parts of the world would become uninhabitable, and called for action in reports and a documentary.

Shell also had a clear picture of its own contribution to climate change. The same publications also show that Shell was well aware of the measures needed to prevent dangerous climate change.

### **Shell is not taking adequate climate action**

Although Shell knew, it has not taken any serious steps to minimize its share in climate change.

Instead, Shell is on a collision course with the global climate goals, as it hampers the energy transition. Although Shell seemed to be heading for a more sustainable pathway in the late 1990s, the company abandoned this course completely around 2007. From that moment, Shell focused on some of the most polluting fossil fuels, tar sands and shale gas, among other things. In addition, the company invested in PR campaigns that misled the public about Shell's real intentions. Behind the scenes, the company lobbied against ambitious climate action and climate policies.

Today, Shell continues to invest heavily in new fossil fuel projects. In 2014, the board indicated that the Paris targets are unlikely to be achieved and that, for that reason, Shell would not have to change its business model. In 2018, the company announced that it would start to invest more in shale gas, and in 2019 Shell CEO Ben van Beurden assured that Shell's core business is, and will remain in the near future, oil and gas: "Shell's core business is, and will be for the foreseeable future, very much in oil and gas".

### **It is possible for Shell to align its business model with climate goals**

In 2018, the IPCC concluded that it is still possible to limit global warming to less than 1.5°C, provided that immediate large-scale action is taken to reduce CO<sub>2</sub> emissions. This requires changes at all levels of society, in all sectors and especially in the energy sector. The energy transition to renewable energy must speed up and the use of fossil fuels must be drastically reduced.

The costs and damage due to climate change will be so significant that it goes against any sense of justice to choose short-term corporate profits over protection against global damage. However, it is not only necessary for Shell to take adequate climate action, it is also possible for Shell to do so. In the 1980s, Shell itself recognized the opportunities for the sector to take responsibility with respect to climate change. And also today there are examples of how it can be done. In 2017, the Danish energy company Danish Oil and Natural Gas (DONG) announced that it would transform from a fossil-based to a renewable energy company, under a new name: Ørsted. This has proved to be successful: the company is growing rapidly and their emissions are decreasing rapidly. Their goal is to reduce their emissions by 96% by 2035.



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### **Shell violates human rights**

According to the UN Human Rights Council, climate change is a major threat to human rights, including the right to life, health and basic needs. According to Milieudefensie et al., Shell's breach of its duty of care is therefore also a threat to human rights. In the Urgenda case, the Court of Appeal of The Hague ruled that insufficient action against climate change is indeed contrary to the European Convention on Human Rights (ECHR). Companies must also respect human rights. This means that Shell can be held responsible for violating human rights.

Shell has voluntarily joined international treaties in which companies declare that they adhere to human rights (including the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises). On the Shell website, the company states that it is committed to respecting human rights. With its current policy, Shell does not live up to this commitment.

### **Zero CO<sub>2</sub> emissions by 2050**

The IPCC has clarified that global CO<sub>2</sub> emissions must be reduced by 45% by 2030 and to net zero by 2050, compared to 2010 in order to maintain a 50% chance of staying below a global temperature rise of 1.5°C. This also gives a 85% chance of staying below 2°C. Milieudefensie et al. refer to this particular IPCC scenario because it will reduce the risk of a temporary overshoot of the 1.5°C limit and limits the dependency on negative emission technologies, that are supposed to artificially remove CO<sub>2</sub> from the atmosphere. These technologies are still highly unreliable, not yet widely applicable and carry significant risks.

### **Shell's climate ambition is inadequate**

Shell presented a climate ambition in 2017. The company wants to reduce its carbon intensity (or relative CO<sub>2</sub> emissions) by 20% by 2035 and reduce it by 50% by 2050. This is far from sufficient to achieve the 1.5°C target or even the 2°C target. Firstly, this ambition is not about absolute emission reductions, but relative reductions in Shell's emissions. Under this goal, Shell could reduce the carbon intensity of its products simply by making additional investments in renewable energy. By doing so, Shell could achieve its goals without actually reducing its production and sale of fossil fuels. This ambition therefore offers no guarantee that Shell's emissions will actually drop.

Secondly, even if Shell halves its absolute emissions, a 50% reduction in CO<sub>2</sub> emissions by 2050 is inadequate to meet climate goals. As described above, the IPCC requires that in 2050, CO<sub>2</sub> emissions must be reduced to zero and not by 50%.

### **This is what Milieudefensie et al. demand from Shell**

Shell is a multinational, worldwide operating company. That is why Milieudefensie et al. believe Shell should follow the global emission reduction pathway of the IPCC.

Milieudefensie et al. demand that Shell immediately starts reducing its CO<sub>2</sub> emissions to at least 45% by 2030 (compared to 2010) and to net zero in 2050. Only if Shell follows this emission reduction pathway, can it truly contribute to preventing catastrophic climate change.



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### **Background of this case**

#### **Run-up to the Shell Climate Case**

The first steps for this lawsuit were taken on 4 April 2018. On that day, Milieudefensie sent Shell a notice letter. In this letter, Milieudefensie set out the legal obligations that Shell has in relation to climate change. Milieudefensie argued that Shell's current policies do not meet these obligations. Milieudefensie therefore demanded that Shell cease its unlawful conduct by aligning its activities with the goal of the Paris Climate Agreement to prevent dangerous climate change.

On 28 May 2018, Milieudefensie received a response from Shell, in which the board indicated that they did not believe that Shell's demands had merit. They also indicated that courts were not the right forums to promote the global energy transition.

As announced in the notice letter, Milieudefensie then decided to go to court. Since then, over 17,200 individual co-claimants and 6 Dutch organisations (Action Aid NL, Both Ends, Fossilvrij NL, Greenpeace NL, Jongeren Milieu Actief and the Waddenvereniging) (Action Aid NL, Both Ends, Fossilvrij NL, Greenpeace NL, Jongeren Milieu Actief and the Waddenvereniging) joined the case.

#### **About the claimant organisations**

Milieudefensie et al. are foundations or associations (in accordance with Article 3:305a of the Dutch Civil Code) that are committed to protect the environment and climate. According to this article, foundations and associations have the right to protect social interests by taking legal action, if these organisations defend those interests according to their articles of association. The individual coclaimants are defending their own rights.



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