Unofficial translation of the Dutch original

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Royal Dutch Shell plc
Attn Mr B.C.A.M van Beurden
Carel van Bylandtlaan 30
2596 HR 's-Gravenhage

Subject: liability for inadequate climate policy

Wednesday April 4th, 2018

Dear Mr Van Beurden,

Friends of the Earth Netherlands (hereinafter "Milieudefensie") is addressing you as the CEO of Royal Dutch Shell plc.

In this letter, Milieudefensie will explain why it is of the position that Shell, through its corporate activities and corporate strategy, is breaching its legal duty of care by causing climate damage across the globe and undermining the ambitions of the Paris Agreement.

As this violation of the law constitutes wrongful conduct vis-á-vis Milieudefensie and the public interest it represents, Milieudefensie is holding Shell to account. In Milieudefensie's opinion, Shell must remedy this unlawful situation by aligning its corporate activities and investment decisions with the global climate targets.

I Introduction

Recent research shows that Shell has been aware of the seriousness of climate change and the substantial role its products play in the root causes of this problem since at least 1986.[1] In an educational film from 1991, which outlines the catastrophic dangers of climate change, Shell even warned "taking action now is the only safe insurance that we have".[2]
Despite this call to immediate action over 25 years ago, Shell has to date taken insufficient action to help prevent dangerous climate damage. The production of oil and gas continues to remain the cornerstone of Shell's growth strategy.[3] The company is planning to invest only 1 to 2 billion dollars in more sustainable technologies out of its annual investment volume of 25 to 30 billion.[4] However Shell is keenly aware that meeting the climate goals laid down in the Paris Agreement demands that the use of fossil fuels be phased out as soon as possible and that the bulk of all known oil, gas and coal reserves must remain in the ground.[5]

This is the only way to ensure that by 2050 net global greenhouse gas emissions will have been fully eliminated – an absolute prerequisite for reaching the Paris climate goals.[6] Shell has previously declared its support for the ambition to reach a "net-zero emissions world by 2050".[7]

Despite this awareness and declared support, Shell's corporate strategy remains based on a future scenario in which at least 50% of the world's primary energy demand is met by fossil fuels.[8] This is incompatible with the objective of the Paris Agreement that seeks to limit the increase in the global average temperature rise to well below 2˚C, and to pursue efforts to limit the temperature increase to 1.5˚C.

Reaching this target is of vital importance, as it aims to prevent the most dangerous and even catastrophic impacts of climate change for mankind, as well as the associated extensive human rights violations.[9] However, through its current corporate activities and strategy, Shell continues to contribute to a world which will experience a more than 2˚C rise in temperature, resulting in major risks for humankind.

World-wide, the serious impacts of climate change have already begun to manifest themselves. Scientific research shows that the impacts of climate change are already being felt on all continents and across the oceans.[10] Global warming is causing changes to our living environment worldwide. This, according to scientists, constitutes a danger to human populations, public health, property and family life, the ecosystems that humankind depends upon and the global economy.[11] Sea levels are rising, ice caps are melting and oceans are acidifying. There is a mounting risk of a substantial share of animal and plant species becoming extinct and there is an increase in the frequency and/or intensity of socially disruptive storms, torrential rains, flooding, heat waves and wildfires.[12] These and other impacts of climate change, such as food and water shortages, are set to become more serious as the production and use of fossil fuels continues and the planet continues to heat up as a result.[13]

By continuing to contribute to catastrophic climate change of around two degrees or more and by failing to phase out its fossil fuel activities in accordance with the Paris climate objectives, in full knowledge of the above-stated facts, Shell is breaching its legal responsibility according to national law. According to Milieudefensie, Shell's reluctance to phase out its fossil fuel activities is a wrongful act vis-á-vis Milieudefensie and the public interest it defends, which constitutes the basis for Milieudefensie's decision to hold Shell to account.

II Liability

According to Milieudefensie, Shell is liable for its substantial contribution to climate change and for the associated social and environmental damages. Milieudefensie requests submission of a written response on behalf of Shell within eight weeks of the date of this letter, addressing the following demands:

i) That Shell accepts legal responsibility to amend its corporate strategy and investment decisions and to align them with the global climate objectives as laid down in the Paris Agreement;

ii) That Shell will phase out its oil and gas production and will reduce the emissions associated with its energy products (scope 3 emissions) to zero by 2050 in order to contribute to the objective of a "net-zero emissions world by 2050"[14];

iii) That Shell comes to an agreement with Milieudefensie to further elaborate, implement, embed and publicly report on this critical challenge, including by adopting interim emission reduction targets.

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In the absence of a response within eight weeks, Milieudefensie will conclude that Shell refuses to comply with this request. This will leave Milieudefensie no other option than to sue Shell and request the competent court to compel Shell to take the required action.

III Further substantiation of Shell's liability

Milieudefensie is a legal persona as defined in article 3:305a of the Dutch Civil Code. This implies it has standing to demand collective legal protection for the social interests it represents pursuant to its articles of association.

Milieudefensie is an association with 80,000 members and donors. Pursuant to its articles of association, its main objective is to contribute, in the widest sense, to solving and preventing environmental problems and to work towards a sustainable society at the global, national, regional and local level, for both present and future generations. Counteracting world-wide climate change and severe social and environmental damage, is part of Milieudefensie's statutory remit.

The liability claim contained in this letter is addressed to Royal Dutch Shell and the Shell Group as a whole (jointly referred to in this letter as "Shell").

Milieudefensie targets Royal Dutch Shell plc as the parent company of the Shell Group, in charge of determining the Group's unlawful (climate) policy and hence bearing legal responsibility.[15] As Royal Dutch Shell is headquartered in the Netherlands and Shell's climate policy is determined by the board of Royal Dutch Shell, Shell's climate policy is subject to Dutch jurisdiction and Dutch law.[16]

Dutch law places Shell under a legal obligation to respect human rights and to act responsibly, in accordance with the applicable due diligence standard enshrined in Dutch law.[17] If Shell breaches these obligations, the company is guilty of unlawful conduct vis-á-vis parties (at risk of) suffering harm as a consequence. This may result in a liability to pay out compensation, but also in a court order requiring the company to cease the wrongful actions, in order to avoid or limit harm as much as possible. Milieudefensie is aiming for the latter.

Due diligence enshrined in Dutch law is an open legal standard to be substantiated on the basis of the circumstances of the case at hand. The standard is determined, inter alia, on the basis of scientific findings and treaty provisions. This so-called consequential effect of treaty provisions and science on the elaboration of the due diligence norm is generally recognised in jurisprudence and legal literature.[18] It is by this effect that treaty provisions and objectives of the Paris Agreement may determine what ought to constitute socially responsible behaviour on the part of Shell according to Dutch standards, even if Shell is not a party to the treaty.

This consequential effect also extends to provisions of, for example, the UN Framework Convention on Climate Change (UNFCCC) and the European Convention on Human Rights (ECHR), which refer to, inter alia, the precautionary principle, which determines that taking measures may not be postponed until there is full scientific certainty. Hence, the precautionary principle can also be taken into account in determining Shell's obligations under its duty of care.

It is, among other things, because of this consequential effect – as well as because of the application of the *Kelderluik* criteria ('Trapdoor criteria') – that the District Court of The Hague in the Urgenda case ruled that the climate policy of the Dutch State was in breach of its duty of care and hence unlawful.[19] The State was subsequently ordered by the court to amend and improve its climate policy. Like the State, Shell must accept this consequential effect and Milieudefensie is of the opinion that this should have consequences for Shell's current climate strategy.

A further elaboration of the due diligence norm under Dutch jurisprudence is that Shell may not cause unnecessary risks to third parties if such risks – in this case the risk of global warming of around 2 degrees or more – can be prevented through measures taken by Shell. Additional necessary criteria for liability are that the risks are or should have been known by Shell; that there is a sufficiently real expectation that these risks may in fact materialise; and that the danger is serious enough to demand action from Shell, taking into consideration the possible negative impacts of taking action for the company.[20]

The due diligence obligation also applies in cases, such as in the case of climate change, in which Shell is not solely responsible for generating the risk, but where multiple parties bear a joint responsibility. A prerequisite is that Shell's part in this jointly generated risk is substantial enough for it to not be deemed negligible.[21]

The facts presented below show that said criteria for liability are met and that Shell is failing to act in accordance with its legal responsibilities in relation to the climate issue:

a) Shell has been aware that fossil fuels lead to climate change for a long time;
b) Shell has been aware that climate change has severe consequences for a long time;
c) Shell substantially contributes to climate change;
d) Shell has been aware that global warming must remain well below 2°C for a long time;
e) Shell has been aware that it needs to take (precautionary) measures for a long time;
f) Shell has been on a collision course with global climate objectives since 2007;
g) Shell is misleading the general public with regard to the (un)sustainability of its business;
h) Shell is basing its strategy on the assumption that the climate ambitions will not be realised;
i) Shell's climate ambitions are insufficient;
j) Shell continues to invest in fossil resources which must remain in the ground;
k) Shell is hampering the energy transition;

Milieudefensie will elaborate on each item and conclude with closing remarks.

<u>a) Shell has been aware that fossil fuels lead to climate change for a long time</u>

Shell has been producing and selling fossil fuels since it was established in 1890. Greenhouse gases are emitted, *inter alia*, in the production, transport and use (combustion) of fossil fuels. The most important of these greenhouse gases is carbon dioxide (CO_2). CO_2 that has been released into the atmosphere remains present in the Earth's atmosphere for hundreds or up to a thousand years and, when concentrations of CO_2 reach a certain level, this has the highly dangerous effect of changing our global climate.[22]

Shell has been aware of the causal relationship between the production and combustion of fossil fuels and climate change since at least 1986, as evidenced by an internal Shell report from that year in which Shell climate researchers confirm that CO_2 contributes to global warming and that the use of fossil fuels is a primary source of CO_2 emissions.[23] That the use of fossil fuels is causing climate change has since remained Shell's formal position.

It is probable that Shell was already aware of this causal relationship well before 1986. Already in 1968, the American Petroleum Institute (API), an industry organisation of which Shell was (and is) a member, issued a report which notes the causal relationship between fossil fuels and climate change.[24] In 1972, a Shell director co-authored a report which referred to the 1968 report as a sound study, compiled by renowned scientists.[25]

b) Shell has been aware that climate change has severe consequences for a long time

The severity of the impacts of climate change was also known to Shell since at least 1986. The above-mentioned report from 1986 warns for "significant changes in sea level, ocean currents, precipitation patterns, regional temperature and weather" and indicates that these changes may exceed any changes in climate that have occurred over the last 12,000 years (since the end of the last Ice Age). The report warns: "Such relatively fast and dramatic changes would impact on the human environment, future living standards and food supplies and could have major social, economic and political consequences". The Shell report continues: "It is possible that the environment will be affected to such an extent that some parts of the earth may become uninhabitable."[26]

This knowledge prompted Shell to take measures. In 1989, for example, Shell decided to adapt the design of its "Troll A" gas production platform to rising sea levels and the more powerful waves and storms Shell is expecting as a result of climate change during the more than 70 years' exploitation period foreseen for this platform, the adaptation costing several tens of millions of dollars.[27]

Shell is so acutely aware of the severity of the situation that in 1991 it decides to produce an educational film, entitled "Climate of Concern". In this film Shell warns viewers of the dangers of climate change. According to Shell, abnormal weather conditions could become the norm in every country in the world. According to the film, changes to the climate could come about so rapidly that society would not be able to adapt. Among other things, Shell warns of climate refugees losing their homes and everything they own as a result of rising sea levels and catastrophic changes to their living environment. Shell concludes its film with the warning: "taking action now is the only safe insurance that we have".[28]

Because of the severe consequences of climate change for humankind and the environment, which Shell foresaw decades ago, the Human Rights Council of the United Nations stated in a resolution adopted in 2009 that climate change leads to the violation of human rights world-wide, including violations of the right to life, to health and to respect for family life.[29] By continuing to contribute to climate change, Shell, together with the other major fossil fuel multinationals, bears a special responsibility for (the projected rise in) such human rights violations as a result of imminent climate change.

c) Shell substantially contributes to climate change

There is a clear and measurable relationship between the activities of Shell and global warming and the resulting climate change. A scientific study published in 2017,[30] as well as earlier studies published in scientific journals, shows that since its establishment in 1890, Shell has been one of the largest individual contributors to the increased amounts of CO_2 in the atmosphere. 1.8% of the total increase is directly attributable to Shell's corporate activities. Half of the emissions attributable to Shell have taken place since 1986, which is to say, after Shell was demonstrably aware of the fact that the use of fossil fuels leads to climate change.[31] In addition, 1.6% of the measured rise in temperature and 1.4% of the measured rise in sea levels can be traced back to Shell's corporate activities.[32]

According to Shell, the company began to measure and report on the amount of greenhouse gases linked to its corporate activities and the use of its products by consumers in 1997.[33] For the year 2002, Shell reported that on this basis the company was the source of the equivalent of 3.6% of the world-wide CO_2 emissions in that year.[34] This shows that Shell has been aware for quite some time of the fact that its activities and the products it produces generate a substantial and measurable contribution to global warming.

For comparison: based on the above percentages, Shell's contribution to global emissions is significantly higher than the 0.5% contribution to global emissions by the Dutch State, for which it was held responsible by the District Court of The Hague in 2015.[35] This implies that Shell's contribution to climate change is sufficiently substantial to hold Shell legally accountable for it.

Given the fact that the bulk of human greenhouse gas emissions is attributable to the products of a small number of fossil companies, Milieudefensie does not believe that everybody is equally responsible for climate change and that hence no one might be held individually responsible. Because of Shell's substantial contribution to climate change, Shell has a major and special responsibility to stop causing dangerous climate change.

Given its special responsibility, Milieudefensie believes that Shell should be held accountable for its contribution to climate change and the significant climate damages caused by climate change across the globe. As you know, among others, the cities of New York and San Francisco have recently instituted legal proceedings against Shell, claiming that Shell, along with four other oil and gas companies, is liable for the damages caused in both cities by stronger storms and hurricanes, increased heat waves and rising sea levels.[36] The claimants argue that Shell is liable for the huge costs the cities' administrators have already incurred and will need to cover to redesign their cities to adequately protect their cities and their populations from the future effects of climate change. These city councils base their action on the fact that Shell's contribution to climate change constitutes a threat to, *inter alia*, public order, safety and health.

d) Shell has been aware that global warming must remain below 2°C for a long time

Given Shell's early knowledge of the severity of climate change, given the reports written by its own climate scientists, the close relationships between Shell and, among others, the Dutch

government (and its departments), and Shell's involvement in the annual climate conferences,[37] it can be established that Shell has known or should have known that global warming needs to be limited to less than two degrees Celsius to avert major social and environmental risks.

In 1990, an international climate study was compiled with the participation of the Dutch Ministry of Housing, Spatial Planning and the Environment (VROM) and the Dutch National Institute for Public Health and the Environment (RIVM), which concludes that a rise of the average global temperature by 1°C may already lead to significant damages world-wide and that a global average temperature rise of 2°C must be avoided at all costs and must be viewed as the absolute upper limit.[38]

Based on the scientific findings of the Intergovernmental Panel on Climate Change (IPCC), since 1996, the EU's policy objective has been to limit global warming to below 2°C to prevent dangerous climate change.[39] In the 1990s, it becomes widely accepted that, according to scientific research, this requires limiting the concentration of carbon dioxide in the atmosphere to less than 550 ppm (parts per million).[40]

In subsequent years, science progresses and it becomes clear that the situation is more serious than previously thought. Limiting global warming to 2°C requires that the concentration of carbon dioxide in the atmosphere must be kept much lower than the 550 ppm initially assumed. It turns out that the concentration of carbon dioxide in the atmosphere must be kept below 450 ppm, and even in this 450-scenario there is only a 50% chance that global warming will be limited to 2°C.

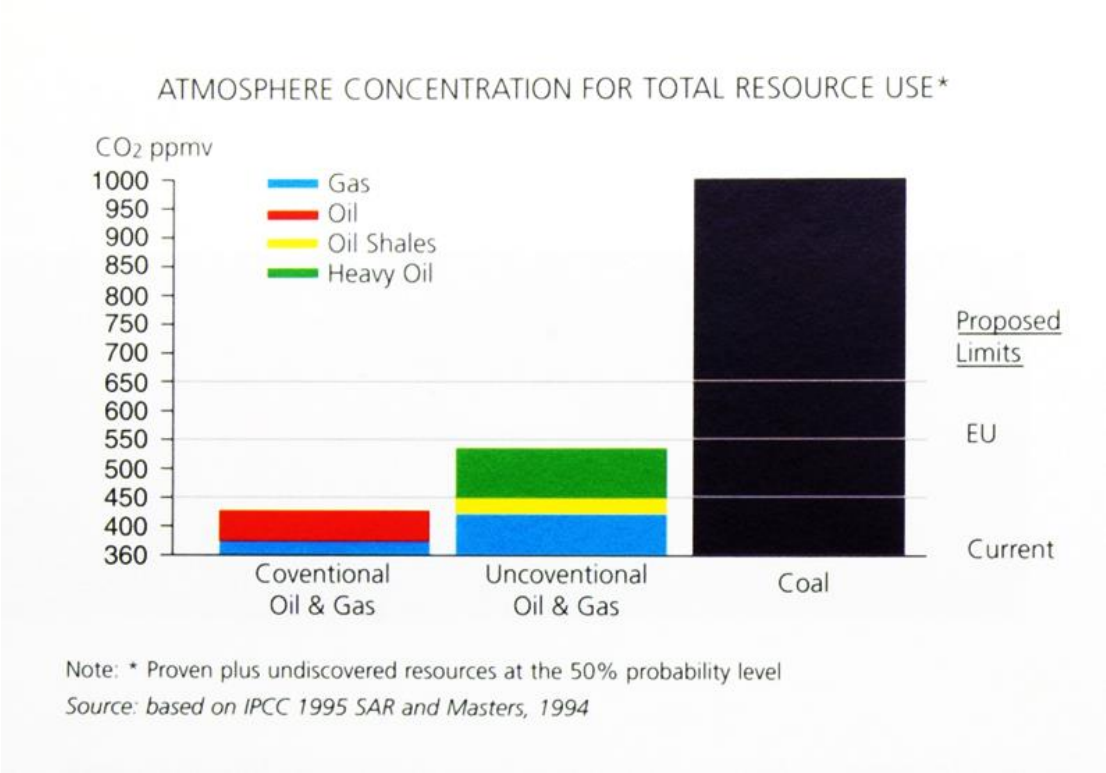
The 450ppm-scenario was enshrined in the so-called Bali Action Plan at the annual UN climate conference in 2007, with the additional explanation that this scenario requires urgent and deep emission reductions.[41] Since 2007, the EU has also been committed to the 450-scenario. A communication of the European Commission from that year states: "The EU's objective is to limit the global average temperature increase to less than 2°C. By stabilising long-term concentrations at around 450 ppm CO_2 eq. there is a 50% chance of meeting this target."[42]

This climate objective (<2°C/<450 ppm) is confirmed at every subsequent annual UN climate conference, and the global climate targets are further refined in the 2015 Paris Agreement. This is done based on the latest scientific insights, which demonstrate that the severity of a 2°C rise in the average global temperature is even more grave than previously thought.[43] Since the adoption of the Paris Agreement, the consensus is that in order to avoid detrimental climate change, global warming must be limited to well below 2°C and preferably to 1.5°C.[44] This also implies a need to remain well below 450 ppm.

The above shows that Shell knew or should have known at least since the 1990s that a rise in the average global temperature of around 2°C is highly dangerous and that this has since repeatedly been reconfirmed, both in scientific circles and at the UN conferences.

e) Shell has been aware that it needs to take (precautionary) measures for a long time

In 1998, Shell already knew that a 450-scenario implies that there are severe limits on fossil fuel extraction. This is demonstrated by Shell's own brochure from that time, entitled "Climate Change, what does Shell think and do about it" (March, 1998).[45] This brochure contains the following figure:



In this figure, Shell depicts the 450-scenario with a horizontal line. The figure shows that in 1998 the atmospheric CO_2 concentration already stood at 360 ppm (in 2018, the level has risen to over 400 ppm).[46] The graph also shows:

- that if all conventional oil and gas reserves in the world alone were to be used that the atmospheric concentration of CO_2 would rise to almost 450 ppm. To which would have to be added the additional CO_2 concentration deriving from the continued use of coal and unconventional oil and gas;

- that if all unconventional oil and gas reserves (shale gas, tar sand oil, etc.) were to be used, the atmospheric concentration of CO_2 would rise to almost 550 ppm. To which would have to be added the additional CO_2 concentration deriving from the continued use of coal and conventional oil and gas;

- that if all coal reserves in the world were to be used up, CO_2 concentrations would rise to 1,000 ppm. To which would have to be added the additional CO_2 concentration deriving from the continued use of conventional and unconventional oil and gas.

Even though a 550-scenario was still on the books in 1998, Shell was already aware that it had to take into account a 450-scenario. At least, this seems to be the reason that this scenario was included in the figure. In any case, both scenarios clearly show that the amount of extractable fossil fuels would have to be limited in order to limit the atmospheric concentration of CO_2.This means

that it was equally clear that the company would have to change its business model to support global climate goals.

Shell was well aware of this. The brochure states that Shell realises that global energy markets are changing and that all Shell companies will have to move with the times, take precautionary measures and meet their corporate social responsibility: "They must play their part in the necessary precautionary measures to limit greenhouse gas emissions…in their own operations as well as helping their customers to do the same."[47]

Thus, Shell knew as early as 1998 that precautionary measures would be necessary to fulfill its duty of care. In addition, it realised that it beared responsibility for the emissions associated with the use of its products by consumers.

In that same year, Shell establishes a new division, called Shell International Renewables, Shell's renewable energy branch. In 1999, Shell made its intentions clear in a major advertisement in the Financial Times in which Shell declared: "Shell is playing a major part in the move from oil and gas, and now we're planting the seeds of renewable energy with Shell International Renewables, a new business committed to making renewable energy viable."[48]

This is irrefutable evidence that Shell was very much aware of the need to step away from oil and gas ("the move from oil and gas") and to transform into a sustainable energy company. It also proves that this corporate transformation was feasible in the eyes of Shell – even if, in Shell's view, renewable energy was not yet "viable" at the time and therefore not yet cost-effective. Shell was apparently of the opinion that the company would have to contribute to making sustainable energy viable.

In 2004, Shell reiterates that climate change makes it necessary for the company to not only reduce its own emissions, but to also ensure that its customers' emissions are reduced. For this reason, Shell indicates in its 2004 sustainability report that, in addition to conventional gas (as the least polluting fossil fuel) , it will need to focus on wind, solar, hydrogen, biofuels and CCS (carbon capture and storage) as part of its future, sustainable portfolio.[49]

When, in 2007, the Bali Action Plan and the IPCC report of that year made clear that the 450-scenario would have to be abided by, it was obviously apparent to Shell that urgent (precautionary) measures would need to be taken, that is to say if Shell didn't want to become responsible for contributing to a dangerous global warming of 2°C or more.

f) Shell has been on a collision course with global climate objectives since 2007

Given the developments in scientific research and internationally accepted climate objectives, from 2007, Shell should have rigourously reinforced the transition it had already embarked upon. However, Shell failed to do so. Instead, from 2007, Shell embarked on a diametrically opposite course. Since 2007, Shell has reduced its investments in sustainable energy and strengthened its investments in fossil fuels. Notably, from 2007, Shell initiated large-scale investments in some of the most polluting and most CO_2 intensive unconventional fossil fuels, such as tar sand oil, shale oil and shale gas.

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In this very year, Shell purchased tar sands in Canada for the sum of 2.4 billion dollars in order to begin the extraction of highly polluting tar sand oil. The previous year, Shell had already invested 7.4 billion dollars in Canada for that same purpose.[50] In its 2007 annual report, Shell explicitly voices the ambition to become the global market leader in tar sand mining.[51] Shell succeeded in this ambition, which in 2009, earned it the dubious honour of being the most CO_2 intensive oil company in the world.[52]

Confronted with the contradiction between the necessity, long recognised by Shell, to embark on a more sustainable course and the substantial investments in tar sands, Shell's CEO at the time, Jeroen van der Veer, demonstrated in a disconcerting interview that he is fully aware that tar sands are highly CO_2 intensive, but that the responsibility for Shell's investments in tar sands lies with the Canadian government, as they are making it possible for Shell to mine and commercially exploit these resources.[53]

In 2009, Shell announced that it would focus on fossil fuels and no longer invest in wind, solar and hydrogen, having decided to pull out of its sustainable energy division. The rationale: its polluting conventional fossil fuel activities are yielding higher profits.[54] This remains Shell's position to this day.[55]

g) Shell is misleading the general public with regard to the (un)sustainability of its policies

In order to cover up the highly polluting nature of unconventional oil and gas extraction and to maintain its green image, which it carefully construed in the previous years, Shell made use of a misleading PR strategy to placate the general public. In 2008, Shell was reprimanded for a misleading advertisement in the Financial Times by the British Advertising Standards Authority, in which Shell suggested that investing in tar sand oil ensures a sustainable future and helps combat climate change.[56]

A year earlier, in 2007, Shell was already reprimanded by the British and the Dutch Advertising Standards Authorities because of misleading environmental claims regarding the re-use of CO_2.[57] This was followed, in 2011, by another reprimand by the Dutch Advertising Code Authority, this time over a misleading ad in which Shell claimed that natural gas is clean and that natural gas reserves provide sufficient supply for the next 250 years. According to the Advertising Cody Authority, both statements were false.[58]

These examples show that Shell not only embarked upon a disastrous climate strategy, but also engaged in efforts to mislead the public by branding fossil fuels as sustainable with the likely objective to ensure a continued high demand for fossil fuel products.

In 2009, a former Shell PR manager stated in *Vrij Nederland* magazine that Shell's PR policy consists of disingenuous campaigns, condemned "as a parade of lies and half-truths" by every objective analyst.[59]

h) Shell is basing its strategy on the assumption that the climate ambitions will not be realised

While Shell, from 2007 onward, misleadingly puts itself forward as a sustainable company, claiming to take serious efforts to combat climate change, the company's corporate strategy – initially behind closed doors – is being based on the assumption that the required global climate objective will not be met. This emerged from your board's open letter of May 2014 to Shell's shareholders, in which your board elaborated on Shell's corporate strategy.[60] This open letter came at the request of several shareholders and investors concerned about the financial risks for Shell associated with the so-called carbon bubble, which is expected if global warming is indeed kept below 2°C and fossil fuel reserves will have to be written off as a result.

In this open letter your board of directors stated in 2014 that it does not expect that Shell will be negatively affected by a carbon bubble, because it does not expect that the global climate goal will be realized. According to the letter, global warming will far exceed 2°C, in the absence of effective international regulation to keep Shell and other fossil companies in check. In addition, your board of directors expects that new rules and regulations (for example, the possible introduction of a global carbon price) will not materialize or be implemented in time to effectively limit Shell's expansion of its oil and gas activities.[61]

It is this premise of a lack of (future) international regulation on which Shell has, for quite some time, been basing its future strategies. Shell apparently assumes that, despite international climate commitments, it will be able to continue to produce oil and gas without limitation for a substantial amount of time. According to the letter written to its shareholders, Shell operates on the assumption that even by the year 2050, more than 50% of global primary energy demand will be met by fossil fuels.[62] For this reason, Shell sees no compelling reason to start reducing its oil and gas activities. As your own CEO put it so eloquently in 2016: "I'll pump up whatever I can in order to meet demand."[63]

i) Shell's climate ambitions are insufficient

Firmly convinced that the Paris global climate objective can only be met if Shell does not pump up whatever it can, but instead begins to phase out its fossil fuel-based activities, a group of climate-conscious Shell shareholders, operating under the name 'Follow This', submitted a shareholder resolution in 2017. The resolution called on the Board to align Shell's corporate strategy with the Paris climate commitment, to incorporate the necessary emission reduction targets and to periodically publish progress reports. The focus was primarily on reduction of the emissions resulting from third-party use of the fossil fuels produced and marketed by Shell (the so-called scope-3 emissions).

In response, your Board unanimously advised shareholders against supporting this May 2017 resolution. You noted that although Shell supports the objectives of the Paris Agreement, aligning the company's activities with these objectives would not be in the (financial) interest of Shell and its shareholders,[64] as this would imply a reduction in its fossil fuel activities, while Shell is in favour of expansion.[65] The shareholders' meeting opted in large majority to heed this advice.

In its response to the shareholders' resolution mentioned above, your Board clearly stated its support for the Paris climate objectives and the ambition to reach a "net-zero emission world by 2050".[66] However, at the same time, your corporate strategy apparently remains based on the

assumption you voiced in 2014, i.e. that in 2050 more than 50% of all energy demand will continue to be met by fossil fuels.[67] In line with this assumption, you indicated in November 2017 that Shell has the ambition to reduce the carbon footprint (i.e. the CO_2 intensity) of its aggregate energy products by (only) 50%.[68] By doing, you follow your own expectations regarding the societal steps to meet the Paris goals, but not what is required to meet the climate objectives as laid down in the Paris Climate Agreement.

Milieudefensie applauds that with this ambition Shell appears to take responsibility for the emissions resulting from third-party use of the company's fossil fuels (the aforementioned scope-3 emissions). In Milieudefensie's opinion, this is indeed Shell's responsibility, as it is in Shell's power to determine to what extent its products will (continue to) contribute to climate change. Shell has full control over the volume of fossil fuel products it produces and sells, now and in the future. If its production of oil and gas increases, Shell's contribution to climate change will too. Should Shell limit its production, its contribution to climate change will decrease accordingly, which is vital to preventing detrimental climate change.[69]

The climate ambition to reduce the CO_2 intensity of its products by 50% in 2050 is insufficient to keep the climate objectives within reach. It is important to note that Shell in its climate ambition remains silent on the necessity to scale down its fossil fuel activities, even though this is a prerequisite to meet the global climate targets, which require urgent and deep emission reductions.[70] Shell's climate ambition, however, is phrased in such a way that its fossil activities (and the associated emissions) can continue to grow, even until 2050 (and beyond): Shell could fulfill the ambition to halve its CO_2 intensity in 2050 by ensuring that by 2050 the volume of its (increased) production in fossil products is counterbalanced by the realization of an equal trade volume in the production of sustainable emission-free energy. In this way, the CO_2 footprint of the total tradable volume will have been halved, while in absolute terms, Shell's fossil activities and emissions may have increased.

Hence, Shell's recently announced 'climate ambition' offers no hope for improvement. This is even more so the case since Shell indicates that "this is an ambition for Shell, not a target."[71] One cannot even rest assured that Shell will indeed effectively pursue this (all too meager) ambition.

j) Shell continues to invest in fossil resources that must remain in the ground

In addition, Shell is committed, for the near future, to only invest 1-2 billion per annum out of its total investments of 25-30 billion per annum in more sustainable alternatives.[72] Shell's continued focus on investments in fossil fuel infrastructure (drilling platforms, pipelines, refineries, LNG vessels, new oil and gas fields, etc.) which increases its oil and gas production, constituting a grave danger to the energy transition. This has to do with the typical characteristics of this infrastructure, which involves billion dollar investments and depreciation periods that span decades. With every investment in new fossil fuel infrastructure, Shell commits the world to extra greenhouse gas emission for many decades to come.[73] Shell is unlikely to want to write-off these investments prematurely and accordingly is likely to resist regulation which involves accelerated depreciation and an associated financial disadvantage for Shell. The longer Shell continues to invest in its fossil fuel infrastructure, the more substantial Shell's interest becomes in slowing down the speed of the energy transition.

Given the proposed investments, Milieudefensie is not surprised that Shell, two months after releasing its climate ambition, in January 2018 announced it would go full throttle on shale oil and gas. As you stated, "we are very keen to swiftly expand these activities".[74] The aim is to double Shell's shale production before the end of the decade.[75] In addition, your fellow Board member Maarten Wetselaar indicated in April 2017 that the fossil industry should jointly ensure that natural gas is seen as part of the solution to the climate issue instead of as part of the problem, and that the industry would do well to actively boost the demand for gas: "we must relentlessly open up new markets for gas: new countries as well as new sectors."[76] The above quotes fit seamlessly into the overall picture of Shell's real intentions for the future.

With its objective to actively enlarge the market for fossil fuels, Shell also ignores scientific findings which indicate that gas can only play a very limited role as a transition fuel and that at least 52% of all known gas reserves, 88% of known coal reserves and 35% of the oil reserves must remain in the ground if the global climate objective is to be met at all.[77] Shell's suggestion that by substantially expanding its gas production it would contribute to the reduction of global emissions because this allows the replacement of coal-fired power plants with gas-fired plants is incorrect.[78] Replacing coal-fired plants with gas-fired plants, based on the premise that gas will remain a feasible option until well into the second half of this century, is not a solution to the climate problem. Furthermore, Shell has no control over whether the owners of coal-fired plants will indeed close down and switch to natural gas instead (why would they not immediately make the switch to sustainable energy?), and the extraction of shale oil and shale gas will serve to enlarge the CO_2 footprint of Shell's activities, as shale extraction is much more CO_2 intensive than the extraction of conventional oil and gas reserves.[79]

k) Shell hampers the energy transition

All of the above brings Shell's business model in sharp conflict with the global climate objective. The two are incompatible and only one can prevail. Either the corporate model maintained by Shell (and other fossil companies) will prevail and the global climate objectives will not be realised, or these global targets are met when companies such as Shell phase out the extraction and production of fossil fuels, as Shell already foresaw in 1999 and announced in the Financial Times.

Shell evidently has a vested interest in the climate objectives not being met. Therefore, it comes as no surprise that Shell publicly advocates in favour of regulation, but in effect deploys lobby tactics, including via industry organisations, to obstruct or water down climate policies to prevent the energy transition from affecting its business.

For example, Shell has resisted a proposal of the European Commission to reduce the emissions of transport fuels, and opposed efficiency standards for refineries and restrictions on emissions from gas flaring.[80] In addition to resisting such sector-specific EU regulations, Shell has also opposed emission reductions that are not sector-specific and would be applicable for the EU as a whole.[81] The same goes for Shell's resistance to country-specific (post-2020) EU targets for the expansion of sustainable energy and enhanced energy efficiency. Shell's lobbying against such targets has contributed to the failure to establish them for the post-2020 period.[82] At the same time, Shell and other oil companies engaged in intensive lobbying to promote natural gas as the fuel of the future.[83]

In the same way that Shell opposed all these EU initiatives, Shell has also resisted similar climate policies in the United States.[84] In this way, Shell actively blocks progress in combating climate change and deploys its power and influence as one of the largest corporations in the world to enrich itself, both at the expense of society and at the expense of future generations.

IV Closing remarks

It is evident from our analysis above that Shell has been aware, at least since the 1980s, of the major climate risks associated with its fossil fuel activities. In the 1990s, Shell concluded that it is contributing substantially to climate change, that it needed to take precautionary measures to prevent those risks from materialising and that it has a duty of care in relation to the emissions resulting from the use of its products by its customers. Shell was to move away from the production of oil and gas and to build a sustainable energy division. Shell even deemed it important to deploy its sustainable division to contribute to making sustainable energy viable.

But even before this change in course could translate into a phasing-out of its fossil fuel activities, this new more sustainable direction was abandoned in 2007. From 2007 onward, Shell has embarked upon a largely fossil fuel based trajectory, entrenching itself ever deeper into the production of and trade in some of the most polluting fossil fuels.

Given the insights and facts that Shell had at its disposal in 2007, Milieudefensie holds that since then Shell has been knowingly contributing to the onset of catastrophic climate change of 2°C warming or more. Shell's methods include actively stimulating demand for fossil fuels, obstructing government initiatives aimed at regulating Shell's activities and talking 'green' but acting 'fossil' and as such misleading the general public with regard to Shell's true intentions. Shell can be held fully culpable and responsible for these actions. The company's recently announced climate ambitions are insufficient to protect our climate and are not an effective remedy.

Shell's activities and business model constitute a profound risk for humankind, human rights, future generations and the environment. Milieudefensie holds that this makes Shell's actions unlawful, as they violate the legally binding due diligence norm as substantiated by the Supreme Court in the *Kelderluik* criteria for hazardous practices. In view of these criteria, it may be concluded that the nature and scope of the damages as a result of detrimental climate change must be labeled as very severe, that Shell must be attributed with awareness and foreseeability of these damages. Furthermore, in the case of no or belated action on the part of Shell and other companies in its sector, there is a substantial risk that the Paris climate goals will not be met and these dangers will hence materialise.

In light of the global consensus regarding the imminent danger of a global average temperature rise that exceeds the limits agreed in the Paris accord, one cannot maintain that society would still accept the use of fossil fuels as a systemic risk and that therefore Shell's fossil fuel-based business model would still be justified. On the contrary, global public opinion is unequivocally clear: dangerous climate change must be prevented. This implies that Shell only has a limited social "license to operate" and should only be allowed to operate within the boundaries of this global

objective. Shell therefore has a substantial duty of care to take preventive measures to avert the risks.

In the interest of humankind, the environment and future generations, Shell will have to fully meet its social responsibility and duty of care. It follows that Shell will have to bring its corporate activities and investment decisions in line with the Paris climate goals forthwith and ensure that the greenhouse gas emissions associated with its products are reduced to zero by 2050.

The required transformation, which was already foreseen and deemed feasible by Shell in the 1990s must now be implemented by Shell with every immediacy and urgency. Much precious time has already been lost and much damage has already been inflicted, so action to begin steering the right course must happen very quickly. This liability action urges and admonishes Shell to do just that.

Milieudefensie looks forward to receiving your response within eight weeks. In the interim, Milieudefensie is available for consultation.

Yours sincerely,

On behalf of Milieudefensie,
Friends of the Earth Netherlands

Donald Pols
Director

P.S. This notice letter is also available on our website: https://en.milieudefensie.nl

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16 This follows from Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0001:0032:En:PDF; Regulation (EG) no. 864/2007:Rome II Regulation on the applicable law; and Dutch procedural law (Code of Civil Procedure).

17 Article 6:162 CC describes, inter alia, that acting in contravention of what, according to customary law, is considered acceptable in society, must, in the absence of an objective justification, be considered an unlawful action.

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19 District Court of The Hague, 24 June, 2015, ECLI:NL:RBDHHA:2015:7145. https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:7145&showbutton=true&keyword=urgenda. This case is currently under appeal.

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