



Productie 1

Amsterdam, 13 januari 2022

Betreft: De wereld is veranderd. Nu u nog.

Geachte CEO,

Het klimaat vraagt nu om actie. De tijd van vrijblijvendheid is voorbij. Voor de wereld, voor Nederland, en ook voor uw onderneming. Een gezond bedrijf heeft een klimaatplan. Daarom willen wij van u horen wat u gaat doen om gevaarlijke klimaatverandering te helpen voorkomen.

U ontvangt deze brief, omdat u leiding geeft aan een onderneming met controle en invloed op een omvangrijke CO<sub>2</sub>-uitstoot. Een onderneming die kan en moet bijdragen aan de systeemverandering die noodzakelijk is om gevaarlijke klimaatverandering te voorkomen.

In onze strijd tegen gevaarlijke klimaatverandering richt Milieudefensie de aandacht op grote ondernemingen zoals de uwe. In deze brief leggen we uit hoe we dat gaan doen, en wat we van uw onderneming verwachten.

## **Actie is niet langer een keuze**

Uit het VN-Klimaatverdrag en het Klimaatakkoord van Parijs volgt dat de opwarming van de aarde moet worden beperkt tot 1,5 °C. Alle landen van de wereld zijn het daarover eens en die politieke consensus is gebaseerd op de best beschikbare klimaatwetenschap, zoals vastgelegd in de rapporten van het VN-Klimaatpanel (IPCC). Het IPCC heeft in 2018 berekend dat er in 2030 mondiaal gemiddeld 45 procent minder CO<sub>2</sub> moet worden uitgestoten (ten opzichte van 2010) om een reële kans te houden om die noodzakelijke doelstelling te verwezenlijken en een existentiële crisis te voorkomen. In 2021 is de urgentie van die opgave nogmaals bevestigd in het meest recente rapport van het IPCC, dat de noodzaak van onmiddellijke, vergaande en bestendige emissiereducties verder onderstreept. Zonder die maatregelen is het resterende koolstofbudget om gevaarlijke klimaatverandering te voorkomen binnen 10 jaar op. Een doelstelling om in 2050 uit te komen op nul emissies is daarom ook betekenisloos als die niet gepaard gaat met absolute emissiereducties tussen nu en 2030.

De energietransitie die noodzakelijk is om de 1,5 °C-doelstelling te behalen vraagt om een systeemverandering. Zonder de proportionele bijdrage van belangrijke systeemspelers wordt het behalen van deze opgave onmogelijk.

Het vonnis in de rechtszaak tussen Milieudefensie en Royal Dutch Shell bevestigt dat niet alleen landen, maar ook bedrijven een deelverantwoordelijkheid hebben om gevaarlijke klimaatverandering te voorkomen.

De rechtbank oordeelde dat Royal Dutch Shell zijn activiteiten in lijn moet brengen met een reductiepad behorend bij het 1,5°C-doel van Parijs door haar controle en invloed te gebruiken om de wereldwijde uitstoot die wordt veroorzaakt door de Shell-groep in de komende 9 jaar bijna te halveren. Dit geldt voor alle uitstoot, inclusief de uitstoot die samenhangt met het gebruik van de door Shell verkochte producten (scope 1, 2 en 3).

De conclusie is onafwendbaar: er moet nú worden gehandeld, zonder aarzeling en met alle mogelijke middelen, om achterstanden in te lopen en de ergste gevolgen van klimaatverandering te voorkomen. Er is geen sprake van vrijblijvendheid. Actie is een verplichting. En systeemspelers, zoals uw onderneming, hebben daarbij een bijzondere verantwoordelijkheid. De samenleving verlangt actie van u, de wereldgemeenschap verwacht dat van u, en het recht eist dat van u.

## **Wat wij van u vragen**

Een gezond bedrijf heeft een klimaatplan. Uit het vonnis in de zaak tegen Royal Dutch Shell volgt volgens Milieudefensie dat iedere grote uitstoter minstens een verplichting heeft om zijn emissies te reduceren in lijn met de mondiale opgave die volgt uit het Klimaatakkoord van Parijs. En dat is wat wij van u vragen. Hoe geeft uw onderneming (of de groep waarvan uw onderneming deel uitmaakt) concreet en verifieerbaar invulling aan de vereiste veranderingen tussen nu en 2030? Door uitvoering van dit plan, vermindert de CO<sub>2</sub>-uitstoot (scope 1, 2 en 3 van uw bedrijf of van de groep waarvan uw bedrijf deel uitmaakt) in 2030 met minimaal 45% ten opzichte van 2019. Wij verwachten van u dat uw plan klimaatrechtvaardig is. De deadline voor dit klimaatplan is 15 april 2022.

## **Wat u van ons kunt verwachten**

Uw onderneming is niet de enige die wij vandaag aanschrijven. In totaal 29 Nederlandse ondernemingen ontvangen deze brief. Het gaat om bedrijven actief in diverse sectoren. Bedrijven die allemaal een grote bijdrage leveren aan het veroorzaken van gevaarlijke klimaatverandering door substantiële uitstoot van broeikasgassen in hun hele keten. De inzet van deze ondernemingen bepaalt in belangrijke mate of we de strijd tegen gevaarlijke klimaatverandering gaan winnen of verliezen.

Voor de beoordeling van het klimaatplan van uw onderneming en dat van alle andere bedrijven is Milieudefensie een samenwerking aangegaan met het gerenommeerde internationale New Climate Institute. New Climate Institute rekent alle plannen door en beoordeelt ze op hun kwaliteit en uitvoerbaarheid. In juni 2022 publiceren wij de resultaten en een rangschikking.

In een wereld waarin gevaarlijke klimaatverandering bedrijven dwingt tot actie, is het in onze ogen onvermijdelijk dat bestuurders, investeerders, financiers, verzekeraars, accountants en andere adviseurs de risico's en aansprakelijkheden voortkomend uit dit risico meewegen in hun eigen dagelijkse activiteiten. Dit begint zich te tonen in de opstelling van grote pensioenfondsen, maar ook in die van accountants middels de International Sustainability Standards Board. Wij zullen als maatschappelijke organisatie ook deze partijen wijzen op hun verplichtingen, risico's en eigen verantwoordelijkheden.

## **Bent u een koploper of een achterblijver?**

Deze brief is naast een aankondiging vooral een uitnodiging. Want het is niet ons doel noch onze wens om een juridische strijd aan te gaan met alle grote uitstoters van Nederland. Veel liever gaan wij met u het gesprek aan over de invulling van een rechtvaardige klimaattransitie. Ons doel is dat alle systeemspelers, zoals uw onderneming, hun bijdrage leveren. Koplopers zullen wij erkennen en indien nodig zelfs steunen, achterblijvers kunnen rekenen op onze niet aflatende druk.

Het is mogelijk dat wij geen kennis hebben genomen van uw meest recente klimaatplan. Zoek dan vooral contact met ons.

Wij kijken hoe dan ook uit naar uw spoedige reactie.

Met vriendelijke groet,

Donald Pols  
directeur Milieudefensie

Neele Boelens  
voorzitter Jongeren Milieu Actief (JMA)

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Productie 2

# HOW WE DEFEATED SHELL

## Milieudefensie et al. v. Royal Dutch Shell PLC – a peek behind the scenes

*"We took on one of the largest companies in the world. What was considered impossible 5 years ago, has become reality today. Even the biggest polluters are not immune to the green transition. On May 26, 2021 at 3 p.m., when the District Court in The Hague ruled that one of the world's largest polluters, Royal Dutch Shell, must stop causing dangerous climate change, we witnessed a historic tipping point. This is a tremendous victory for our climate, for the millions of people around the world threatened by dangerous climate change. A victory for generations to come. A giant leap forward for a safe and healthy Earth."*



**milieudefensie**  
Friends of the Earth Netherlands

Amsterdam, November 2021



# Colophon

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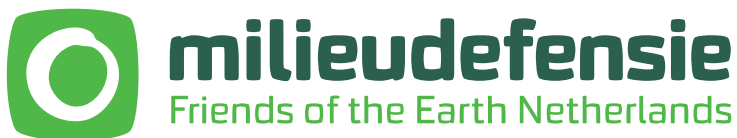
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# 1. Introduction

This publication tells the story of how Milieudefensie – the Dutch branch of Friends of the Earth Netherlands -, together with six other NGOs and over 17,000 individual claimants took on one of the world's giant oil corporations...and won! In a landmark ruling, the judge in the climate case brought by Milieudefensie et al. has ordered Shell to adjust its corporate policy and stop causing dangerous climate change. Human rights played a key role in the verdict reached. The judge relied on 'the widespread international consensus that human rights offer protection against the impacts of dangerous climate change and that companies must respect human rights'.<sup>1</sup> The court found that, on these grounds, Shell has a responsibility to act in accordance with the climate goals laid down in the Paris Agreement. The ruling is ground-breaking in that this is the first time that a corporate actor is held directly liable for its share in the emission of greenhouse gases causing dangerous climate change. It creates a new reality in which the pressure is on oil and gas companies and other major climate polluters to take meaningful climate action. If they do not, they may be next in having to defend themselves in court.



Milieudefensie is happy to share its experiences so that others who are planning strategic climate litigation may use them to their advantage. There are many valuable lessons to be drawn, both from the preparation stages, our actions and communication strategy, our fundraising efforts and the litigation itself. This publication aims to provide an insight into the strategic considerations, the substance and the stumbling blocks we encountered on our way to this historic victory. We hope our experience can help inspire others to keep up the good fight in our struggle to stop global warming and keep the world a safe and inhabitable place for generations to come.

1 <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339>, par. 4.1.3.



## A note to the reader:

The legal and factual discussions in this case are underpinned by the exchange of over 500 pages in procedural documents and thousands of pages of factual corroboration, culminating in a four-day court hearing. This is a highly complex case and it is beyond the scope of this paper to discuss all of the issues raised, let alone all of the nuances involved.

While recognising that the sum of all of the themes in all of their detail and the underlying strategic choices decide a case such as this, this paper can provide no more than a summary of the main arguments.

We recommend that anyone seriously considering launching a similar case to get in touch to discuss in the necessary detail the main topics touched upon in this publication. We can be reached at:

[teamshell@milieudefensie.nl](mailto:teamshell@milieudefensie.nl)



## 2. Case history and timeline – in brief



“The Shell climate case is a landmark ruling for other climate change litigation cases. The Court has made clear that Shell cannot sit back and wait for climate laws to evolve in countries in which it operates: As a large contributor to greenhouse gas emissions, Shell has an individual responsibility to take action to help avert dangerous climate change. This verdict has the potential to be a real game-changer. It must be read as not only an order against Royal Dutch Shell, but also as a concrete warning to all large CO<sub>2</sub> polluting companies and their directors. It should serve as an eyeopener to the directors, shareholders, investors, financiers, accountants and insurers of large fossil companies that the future will have to be sustainable. I would go so far as to say that every board chairman in the world who runs a large CO<sub>2</sub>-polluting company and refuses to take a climate-friendly course, must now perforce take into account the liability of his company for the climate damage that it has caused.

*Roger Cox, Milieudefensie's lawyer in the Shell climate case*

Milieudefensie – the Dutch branch of Friends of the Earth – began preparing its already iconic climate case against Shell in 2016, but it wasn't until 2018 that Milieudefensie first presented Royal Dutch Shell – the Shell Group's parent company - with an official letter holding the Shell Group liable for contributing to dangerous climate change. In 2019, together with six other NGOs – [ActionAid Netherlands](#), [BothEnds](#), [Fossielvrij NL](#), [Jongeren Milieu Actief](#), [Waddenvereniging](#) and [Greenpeace](#) – and joined by over 17,379 individual claimants, Milieudefensie asked the Dutch Courts for an injunction against Shell.

Milieudefensie et al. asked the court to rule on Royal Dutch Shell's social responsibility to significantly reduce the Shell Group's contribution to potentially dangerous climate change. Milieudefensie based its case on the 'duty of care' enshrined in Dutch law. On 26 May 2021, the District Court in The Hague [ruled](#) that Royal Dutch Shell PLC, as a major emitter of the greenhouse gases that are warming up our atmosphere with





hazardous impacts on the world's ecosystems and human life, is partially responsible for climate change. The Court ordered Shell to reduce its carbon emissions by 45% by 2030 from 2019 levels – much faster than Shell itself had planned.

The court clarified that the ruling applies to the entire Shell group, which is headquartered in The Hague and incorporated in the U.K., with operating companies all over the world.

Shell will now have to radically speed up its current climate and decarbonisation policies to reach the target set by the court.



The ruling is ground-breaking because it requires Shell to change its policies for the future rather than pay compensation for damage already done.

On May 26, 2021 at 3 p.m., when the District Court in The Hague ruled that one of the world's largest polluters, Royal Dutch Shell, must stop causing dangerous climate change, we witnessed a historic tipping point. This is a tremendous victory for our climate, for the millions of people around the world threatened by dangerous climate change. A victory for generations to come. A giant leap forward for a safe and healthy Earth."

**Donald Pols**, *director of Milieudefensie*



## A turning point in history?

"This is a turning point in history. This case is unique because it is the first time a judge has ordered a large polluting corporation to comply with the Paris Climate Agreement. This ruling may also have major consequences for other big polluters."

**Roger Cox, lawyer for Milieudefensie**

The Dutch Court's ruling against Shell was immediately labelled 'historic'. It made international headlines as the first time a company has been legally obliged to align its policies with the Paris climate agreement. The fact that a court has ordered a company to change its climate policy to prevent damage being done rather than paying compensation after the fact, is something new and revolutionary.



"This is a landslide victory for climate justice. Our hope is that this verdict will trigger a wave of climate litigation against big polluters, to force them to stop extracting and burning fossil fuels. This result is a win for communities everywhere who face devastating climate impacts now."

**Sara Shaw, from Friends of the Earth International**

Shell's CEO Ben van Beurden, responded to the court order, saying<sup>2</sup>:

"For Shell, this ruling does not mean a change, but rather an acceleration of our strategy. We have a clear target to become a net-zero emissions business by 2050...We will seek ways to reduce emissions even further in a way that remains purposeful and profitable."





However, on 20 July 2021, [Royal Dutch Shell confirmed that it would appeal the ruling](https://www.shell.com/media/news-and-media-releases/2021/20-july-press-release.html) “because a court judgment, against a single company, is not effective”.<sup>3</sup>

In its press release announcing its decision to appeal, Shell stresses the need for “clear, ambitious policies that will drive fundamental change across the whole energy system”, emphasising that “climate change is a challenge which requires both urgent action and an approach that is global, collaborative and encourages coordination between all parties.” The ruling states nothing that contradicts this or prevents Shell from tailoring its corporate policies to collectively agreed frameworks and targets. The ruling simply requires Shell to intensify its efforts to reduce emissions. Shell’s own CEO confirms the ruling signifies an acceleration of Shell’s strategy. Then why waste time and money on an appeal that can take years? This energy would be much better spent on complying with the ruling and investing in innovation and clean energy expansion.



The big plus is that Shell cannot use the appeal to stall; the court has ruled Shell that must immediately start implementing the court's order and an appeal will not have a suspensory effect.

The Shell ruling sets a precedent for holding other major greenhouse gas emitters individually liable for their contribution to global warming and dangerous climate change. It ups the pressure on companies to step up their efforts to make haste with the energy transition and deliver on the internationally agreed 'Paris' climate targets.



On paper, all of the leading oil and gas companies have embraced the goals and ambitions to keep global warming within the 1.5 -2°C bracket that may ensure that the risks associated with climate change remain addressable. However, The Big Oil Reality Check<sup>4</sup> – a 2020 report by Oil Change International, with support from Milieudefensie and others - shows how, in practice, the major oil companies' climate plans continue to fall short. Shell has since updated its climate policy, but Shell's latest plans do not change the essence of the conclusions drawn in this report.

The demands for a sustainable energy transition from society, the mounting pressure from activist shareholders and investors and now the revolutionary ruling in the Shell climate case should galvanise all actors in the oil and gas industry into taking swift, real and decisive climate action.

A more extensive, documented timeline of Milieudefensie's climate case against Shell can be found here:

<https://en.milieudefensie.nl/climate-case-shell/timeline>





### 3. Considering climate action? Here's a mini-toolkit

Are you considering bringing a case against a climate offender? Milieudefensie is happy to share some of the lessons learned from the Shell case.

A couple of disclaimers:

- What we share here is not intended as legal advice. We hope our experience can be inspirational and informative for anyone who decides to take on climate litigation against a corporate actor like Shell. However, anyone proceeding with a climate case should seek appropriate legal counsel in their own jurisdiction.
- The mini-toolkit we publish here can only cover so much of the practical knowledge, resources and materials we might share. So please contact us at [teamshell@milieudefensie.nl](mailto:teamshell@milieudefensie.nl), if you have more questions or want to delve deeper into the issues we mention here.

#### ***General advice***

##### **Do your research and prep well**

Take your time to prepare. Good groundwork will serve you well during later stages.

Consider:

- Applying a SWOT analysis to map your strengths and weaknesses, opportunities and threats.
- Conducting a force field analysis to identify forces driving and opposing the change you are looking for. Who are your allies and opponents and what are their influences? A good force field analysis is essential to determine where to focus your energy and decide on the best course of action to achieve the desired results.
  - Use your SWOT and force field analysis to decide which approach/strategy tallies best with the strengths and weaknesses of your organisation and the kind of change you're looking for.
  - Use your force field analysis to identify potential allies sharing your values that can help tackle the issue.
  - Identify the desired results and determine the best course of action to get there, keeping the influence of your allies and opponents in mind.
    - Remember, this does not necessarily have to be litigation. There may be other ways to hold a climate offender to account that better suit the strengths of your organisation.
- Once you have determined the best course of action, invest in a detailed strategy outlining how you propose to get there. Try to plan for every eventuality, as much as possible. Clear strategic planning will help you throughout the entire project and avoid that you are caught unaware. A good strategic plan will provide all those involved with a clear overview of where things are headed and instil confidence.
  - This should not just include your legal options, but also your wider communication strategy aimed at enhancing visibility and gathering support for your cause.





- Keep referring to your strategic plan to guide your tactical interventions throughout the process to ensure they best serve your goals.

### Obtain legal advice

Once you have determined your desired course of action, a next vital step would be obtaining more detailed legal advice regarding your chances of success. Taking into account the experience and jurisprudence from other climate cases can help to pre-assess the merit of your case. A quick internet search throws up a number of climate change litigation websites. [www. climate-laws.org](http://www.climate-laws.org), for example, offers a database searchable by date, country, keyword, status, etc.

It also helps to get in touch with organisations and legal teams who have been involved in cases similar to your own to share experiences and expertise.

Organisations like [ClientEarth](#) and [Action4Justice](#) work to improve access to justice for individuals, communities and non-governmental organisations in their struggles to uphold human rights, protect the environment and avert dangerous climate change.



### Secure financing

Dedicate time to secure the funding to hire expert lawyers to prepare and argue your case. Lawyers generally do not work for free, although some may take on a social cause pro bono or at a reduced rate. A rule of thumb is: legal procedures cost money. Funding facilities like the [Climate Justice Fund](#) may be interested in contributing financially to worthy causes. Another, complementary avenue to secure the necessary funds is crowdfunding, asking sympathisers to chip in towards the legal costs of your case. [CrowdJustice](#) is an online platform for raising funds for legal matters, from initial advice or legal assistance.





### **Deciding on confidentiality during the preparatory stages**

You will have to make a choice whether or not, and when you want to go public with your intention to charge a company. Announcing that you are preparing a case, can be part of a strategy to up public pressure and can prompt a company to move towards complying with your public interest demands.

On the other hand, forewarned is forearmed, and you may not want to alert the company you will be charging that you are preparing a case ahead of time.

Only go public when you feel you are ready to do so.

Whichever road you choose to go down, it is advisable to keep the legal substance of what you're doing in the preparation phase as confidential as you can. Here at Milieudefensie, we chose to give Shell a code name, referring to the company as 'Henk' (a common Dutch first name). It is wise to limit the amount of people who are 'in the know', and to make sure that you keep all your documents in a safe place. Ensure that you share docs with your lawyers or external experts through a secure channel only. Also, and now this is beginning to read a bit like a spy novel, but it is important because you never know who might be listening in: make sure to remove all mobile phones from the room during meetings.

### **Going public**

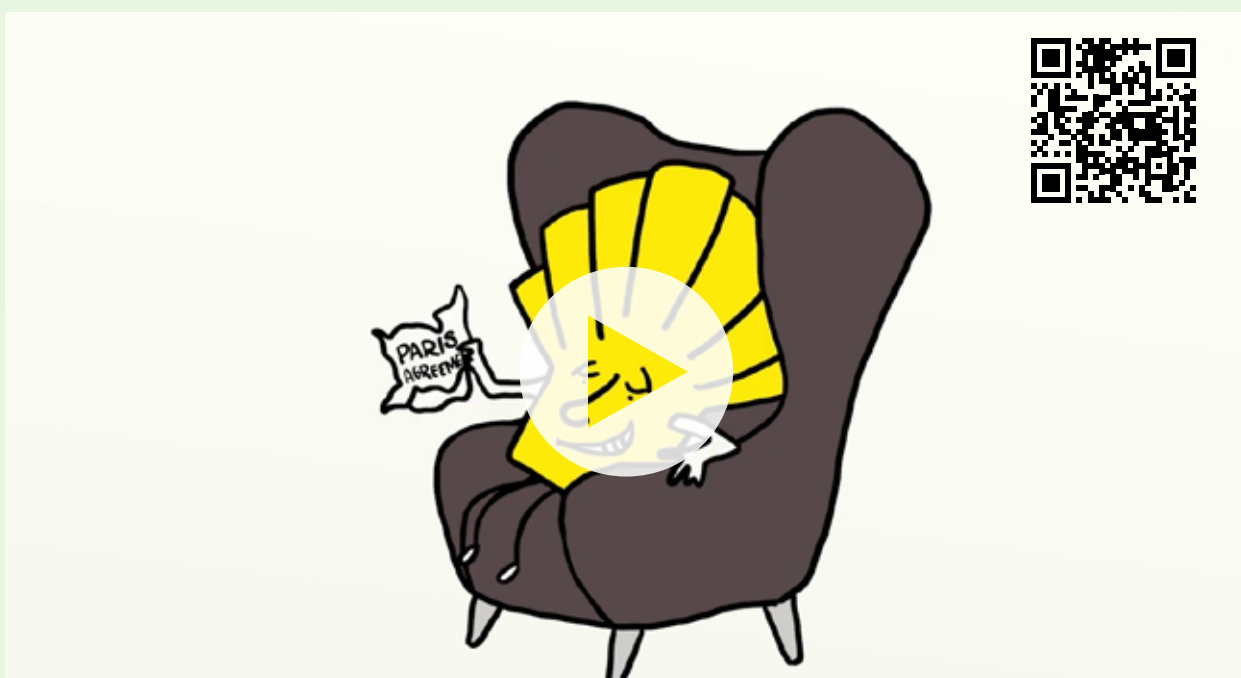
When you and your legal experts feel confident that you have a strong case, the time is ripe to announce it to the world. Make a big deal out of it! When our lawyer delivered the letter to Shell announcing that we would be taking them to court, we simultaneously staged a press conference which was attended by all the major news broadcasters and newspapers. We also broadcast the press conference ourselves, through our Facebook channel. By doing, the case becomes a part of the public debate.





### Organise support and energise your community

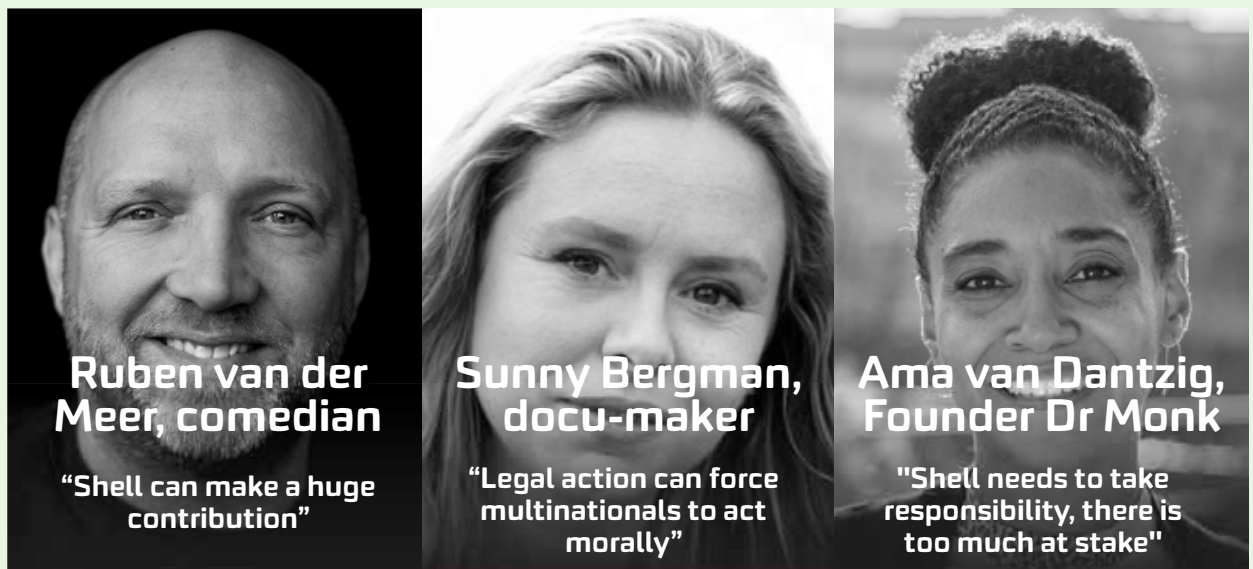
Invest in a good communication strategy to inform the public and organise support. Showing that there is broad-based support can help to ensure the courts will take on a case. A good communications strategy serves to win people over to your initiative and keep your cause in the public eye during a potentially long drawn-out legal process.



Communication is not just about informing people, but also about galvanising people into action. Use your communication strategy to create a community of motivated people that you can call upon to take action when needed. Empower people by showing them what they can do to help. This was a pivotal element in 'organising' over 17,000 people to come forward as co-claimants in our case against Shell.







### Invest in communication and media strategies

A well-thought-through communication strategy is of crucial importance to a) bring co-claimants on board, b) raise funds and c) influence public opinion and convince the general public of your cause.

### Messaging

It is vital to think carefully about your key messages and the way you frame things. Think about the image you want to project in your communication around your climate case. You want to win over the people's hearts and minds. You want to alert the public to injustice and wrong-doing and bring them over to your side. It is perfectly fine to show indignation. But being too aggressive in your communication may scare people off. When you stay reasoned and reasonable, neither the company you're suing nor the general public will be able to easily dismiss you as a 'bunch of radicals'. Also, make sure that nothing you say or publish can be used against you in court. We had a team of climate and legal experts double-check all our media releases and public messaging.



## Train your spokespersons

It is important to train your spokespersons to put across your messages as succinctly and poignantly as possible. This should be an ongoing focal point in your prepping throughout your campaign. Invest in developing statements and frames that are original and speak to your audience's imagination. Always make sure your facts tally and can be verified. Keep your slogans short and sweet.

## Engaging the press

Start building your press network at an early stage. Invest in your relationships with journalists. Identify 2 or 3 leading journalists (including those who are not sympathetic to your cause) and have people high up in your organisation engage with them. This is a tactical move that pays off! Keep the press interested throughout the proceedings by staging regular webinars to keep them informed of new developments.

## Ensuring visibility

Make sure to regularly publish press releases with news-worthy facts or stage mediagenic public actions in support of your cause. Timing is important: Plan ahead to keep generating media attention and not let the case slip from the public's mind. Consider how to space your messaging and public actions so that your case and cause remain 'visible' in the many months of legal procedures and nitty-gritty that are less likely to capture the imagination of the wider public and the media.

A legal battle is a lengthy process. Keep your supporters motivated by sharing intermediate achievements and successes. Celebrating even small wins creates a positive atmosphere that will inspire more people to join your cause.



## Means of communication

A website that's frequently updated is pivotal in keeping your supporters informed. Social media, petitions, public debates, actions and advocacy can all help to gather support for the battle you're fighting in court.

Think about using videos, photos and images in your communication strategy: these can



have more immediate impact than written texts. Videos are a quick, accessible means to inform an audience with an issue and provide the solutions you propose. Videos can also be used for further explanations or instructions. It is important to strategically consider who your target group is and what the message is that you wish to get across. Tip: keep it short and simple, lengthy videos are rarely watched all the way to the end.



Social media is important to touch base with your followers. Make sure to interact with your followers on Twitter, Instagram, Facebook, etc. to create a sense of community. NB. Always remain gracious, even to disrespectful opponents. Be aware in all your media appearances and actions that negative attention can harm your case.

### 3.1 Sharing experiences from the Shell case

#### **Be prepared to invest a lot of time, money and energy!**

A case like the Shell Climate Case does not materialise overnight.

When Milieudefensie announced the case in 2018, we and our lawyers had already been preparing the case for two years.

When we issued our intent to sue Shell for not doing enough to avert dangerous climate change, we offered the company a way to avoid the courts. The case we were preparing would be dropped if Shell would immediately and convincingly align its corporate policy to the 'Paris' climate goals. Shell was asked to commit to phasing out the production of oil and gas and to reduce its greenhouse gas (GHG) emissions to zero by 2050. Plus, Shell would have to agree a detailed roadmap, intermediate objectives and a public reporting method with Milieudefensie.





Knowing full well that Shell was unlikely to comply, we used the time between the letter announcing our intent to sue and the deadline we set Shell to meet our demands, to continue to prepare the substance of the case. We also used this time for fundraising (cases such as these are expensive!) and to generate wider public support. We brought on board six more civil society organisations and over 17,000 individuals as co-claimants.

As expected, Shell declined to meet our demands, and in 2019, we served Shell with the detailed summons we had prepared. Shell took seven months to [respond to the summons](#). It is important to note that we jointly agreed to this exceptionally long response time, because we were keen to get an in-depth response to the issues we raised.

Both parties were then given time to prepare the case, ahead of four days of hearings in court, end 2020.

The court's ruling against Shell wasn't issued until May 26th 2021. Shell then had a three-months' time frame to decide whether to lodge an appeal. On July 20th, Shell confirmed it would.

Shell's decision to appeal will extend the legal process and emphasises the need for a follow-up strategy: If you charge a company, you must have a plan to ensure that you have the manpower and the funds to fight an extended legal battle.





### Showing your case has broad public support helps

We wanted to show from the start that this case against Shell was not just something Milieudefensie cared about, but that it had a much wider public support. Hence the decision to team up with a number of other civil society organisations, representing different constituencies. The choice to ask individual Dutch citizens to join our case against Shell was to highlight this was not just an NGO thing, but an issue of concern for a wide cross-section of Dutch society. In terms of our media strategy, we made a big deal of the fact that there were six more NGOs joining our case. This served to generate renewed media attention six months' after we first announced our intent to take Shell to court. We made sure we reappeared in the media, with a press statement on the 17,379 private individuals joining our case, just before issuing Shell with our summons.





## **Co-claimants can strengthen your case...**

### **But it's also a big responsibility and a lot of work**

The presence and number of co-claimants is unlikely to influence the ruling of the court in any legal sense. However, a large number of co-claimants sends a powerful message to Shell, other energy companies and investors and policymakers that there is broad support for holding fossil fuel producers to their responsibility to protect the climate. So bringing in individual co-claimants was a strategic choice which helped to gain exposure for the case. However, it also involved a lot of work.

In practical terms, when teaming up with co-claimants, it is important to agree on who will have the lead. In our case against Shell, it was agreed from the start that the legal decisions would be made by Milieudefensie and our team of lawyers.

Legally, we found that for the organisations involved, it is important that their statutes show that advocacy for our climate, human rights, environmental protection and/or sustainable development is part of their mission. As a legal requirement, they must also be able to demonstrate activities in these areas. Otherwise, a judge may throw out their claim as inadmissible.

There were also practicalities to tackle: We had to provide the correct personal data that the court required for each claimant. We found that a relatively easy and swift way to do this, was to ask people to register via a form on our website leaving their name, address and telephone number. To further verify that they were genuine, we asked them to donate one euro, so that we could link them to a bank account. Should Shell question in court whether our co-claimants are real people, we might use these data as proof.

And lastly, there were responsibilities to consider, as co-claimants are exposed to legal risks and liabilities. Milieudefensie felt a responsibility to ensure that the individuals seeking to strengthen our case by joining as co-claimants would be safeguarded from any negative legal impacts. To this end, we drew up legally valid terms and conditions for them to sign. This document ensured all risks would be borne by Milieudefensie. Documents of this kind should always be reviewed by a competent lawyer.

### **Invest in inventive ways to raise funds**

A climate case such as the case we brought against Shell is a costly affair. So a good funding strategy is required. We reserved a budget for the initial preparations. We also applied to funding organisations, asking them for subsidies to help fund the expected long and expensive legal proceedings.

We asked our registering co-claimants to donate 1 euro. Many donated much more than that, 7.5 euros on average. With 17.139 people registered, this constituted a significant contribution to our available funds.

We developed a crowd-funding strategy: We kept our members informed of the case and asked them for a contribution. We also posted ads on social media asking people to chip in and hired influencers with a large audience to amplify our call through their social media channels.

Lastly, we emailed major donors individually with requests to help fund specific elements such as the translation of legal texts.





### Inventive fundraising – an example

To entice people to up the donated amount, we came up with a 'gift ladder':

- People donating €15 received stickers
- People donating €50 received a T-shirt.
- Those who donated €200 or more, were invited to a meet & greet with our lawyer Roger Cox.

People could tick a box whether or not they wanted to receive a gift. This strategy helped to raise the average amount donated.

### Ja, ik help jullie nog een keer te winnen van Shell

Kies een bedrag voor je eenmalige donatie \*

- ☐ € 15 = Geen cadeau  
☐ € 30 = E-book Greta  
☒ € 50 = T-shirt  
☐ Ander bedrag  
☐ Ik wil geen cadeau ontvangen

Ontvang een T-shirt voor je donatie \*

Kies de maat van je T-shirt



Jouw cadeau: Klimaatzaak T-shirt

### Stay in the public eye with an clever media strategy

Our case against Shell has really helped to sway public opinion on Shell and climate change. Five years ago, the general public was not convinced of the urgency of climate change. When we launched the case, commentaries in leading Dutch newspapers were sceptical and even downright negative. Two years later, this mood had shifted: [Trouw, a](#)



[leading Dutch newspaper, now took the stance that this case was ground-breaking and long overdue.](#) This was important to our success in court. Judges will not be swayed by public opinion, but are not indifferent to the mood in society either.



Of course, in the five years since we launched our case, the climate crisis has continued to climb to the top of the agenda, making the media and public opinion more conducive to our cause. But the attention for our case must also, in large part, be attributed to our well thought out media strategy. We invested a lot of time and energy in keeping up a steady stream of web articles and published videos on our own media channels at regular intervals. We also published several research papers on the activities and carbon emissions of Shell. This generated media attention that helped to get our message out to a broader audience. We invested in providing a larger audience with more in-depth insights into the substance of the case in lectures in schools, universities and businesses. The naked facts we presented also helped to convince the general public of the merits of our case.

To get our message out, we brought on board influencers to disseminate our content. We organised webinars for journalists to provide them with in-depth information about the case, as we neared the dates of the hearings and the ruling. In addition to a steady stream of press releases, we gave several journalists exclusive access 'behind the scenes'. This helped to get newspapers and magazines to write about the case. We had two teams of documentary makers following the case and several current affairs programmes reporting on it.

On our social media channels, we used specific hashtags to help our audience to easily access your information and create a snowball effect. We also carefully monitored Shell's corporate media releases so that we could follow up with our own publications about Shell's policies. We also made sure to publish articles and opinion pieces in response to news about Shell.



## Be visible with public actions

When there is a lull in the legal process, actions can help to generate extra media exposure.

Some of our public actions included street actions to call on people to join us as co-claimants; pub quizzes to raise money for the case; delivering a larger-than-life summons to Shell's headquarters in the Hague to create a photo opportunity for the press; setting up the summons and placards with photos of individual co-claimants outside the court house on the day of the ruling.

- A note of caution: Ensured protest actions support your case, not damage it! As we were engaged in a litigation process, we had to be very careful to not show ourselves in a bad light by engaging in any illegal actions against Shell. We only engaged in actions for which we had obtained official permission.



## Last but not least: look for a driven and passionate legal team...

To argue the case, Milieudefensie teamed up with the law firm of Roger Cox. Cox litigated the '[Urgenda](#)' case, in which proceedings were brought against the Dutch government by the Dutch environmental NGO Urgenda and 886 Dutch citizens.



In 2015, the Dutch District Court, in a landmark ruling, upheld by the Supreme Court in 2019, ruled that the Dutch government – and, by implication, other governments worldwide – is under a legal duty of care to prevent dangerous climate change. According to the Dutch courts, states' human rights obligations demand that they urgently and significantly reduce dangerous greenhouse gas emissions. The Urgenda



ruling placed the Dutch government under an obligation to cut its emissions by at least 25% by the end of 2020 (compared to 1990 levels) – based on the climate commitments it has signed up to in the Paris climate agreement.



Roger Cox and Milieudefensie were eager to test whether a similar ‘duty of care’ might apply to a major polluter like Shell, whose emissions easily outweigh those of more than one signatory to the Paris Agreement including the Netherlands. In court, we said that Shell’s emissions were almost double those of the Netherlands. In the meantime, Shell’s reporting has improved allowing us to make a more exact calculation. It turns out that Shell’s emissions are not two, but nine (!) times those of the Netherlands.

### ...and plan for a follow-up strategy

There is no leaning back, even when a case is won! After the ruling, Shell immediately announced its intention to lodge an appeal and confirmed its decision to take the case before a higher judge on 20 July 2021.<sup>5</sup> This means an on-going legal battle that will require manpower and funds.

You must also be prepared to keep the pressure on to ensure the company cannot get away with side-stepping the ruling. There is a real risk the company will step up greenwashing its activities, rather than fundamentally change its ways.



## 4. Milieudéfensie et al. v. Shell<sup>6</sup> -substance, legalities and process

In this section, we will go into a number of issues, including:

- Why did Milieudéfensie et al. decide to take Shell to court in the first place?
- What did we ask of Shell?
- How did Milieudéfensie et al. argue their case?
- What were the elements that Shell brought in as a defence that needed to be countered?
- How did the court weigh the arguments?

We also provide a brief analysis of the Court ruling and a perspective on universal underlying principles, elements and arguments that might be used in other climate cases.

### 4.1 The decision to take Shell to court

According to Shell, both parties agree on the imperative to combat climate change. In court, Shell underscored that, as a company, it fully embraces the climate goals outlined in the Paris Climate Agreement. Shell reiterated in court that it ‘wants to work together with broad coalitions of businesses, governments and other parties, sector by sector, to identify and facilitate low-carbon pathways’<sup>7</sup> If Shell is the forward-looking oil company it claims to be, why then did Milieudéfensie decide to take Shell to court?

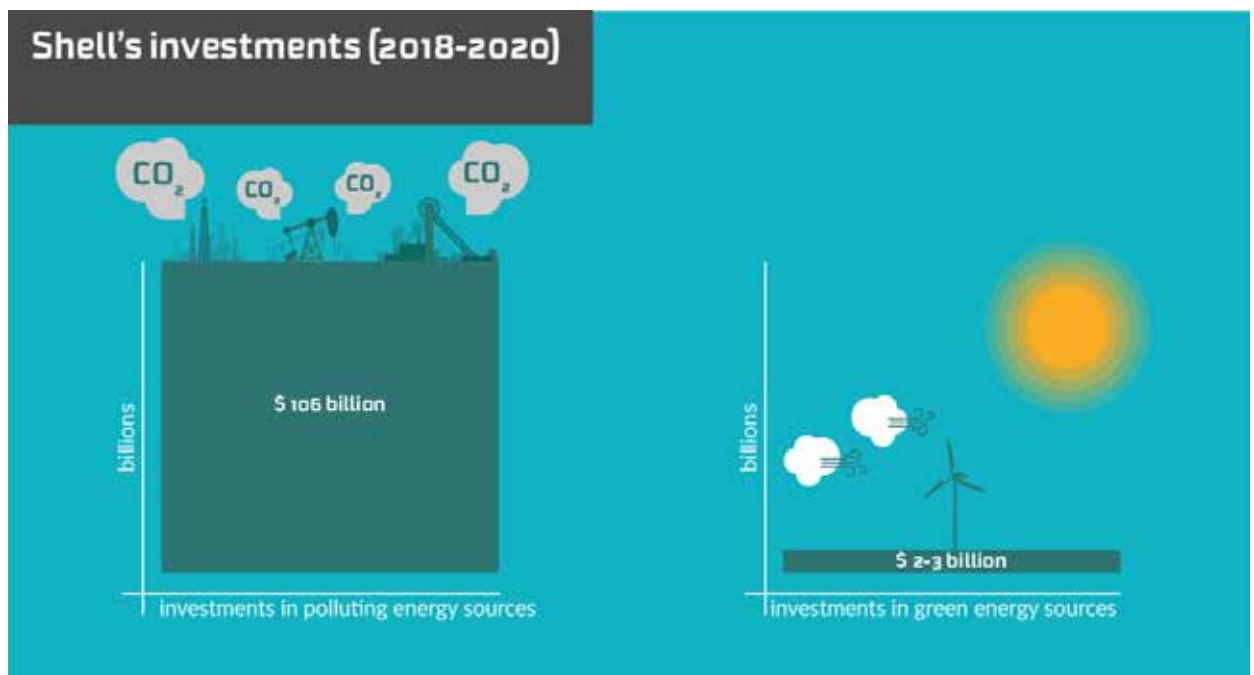
The simple answer is [that the climate ambitions outlined by Shell are nowhere near enough to prevent further global warming](#). Shell is misleading the public by projecting a green and climate-conscious image. The Shell Group by itself is responsible for 1% of global CO<sub>2</sub> emissions annually. And despite Shell’s climate promises, the Shell Group’s emissions have continued to increase in recent years. Shell continues to invest in and drill for fossil fuels. It has no plans to end oil and gas extraction, although it is clear that a phase-out of fossil fuels is needed if we are to achieve the climate targets of the Paris Agreement.

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6 We brought our claim against Royal Dutch Shell as the parent company of the Shell Group and responsible for the group’s overall policy. It is important to make the legal distinction between Royal Dutch Shell and the Shell Group it governs

7 [https://www.shell.nl/media/nieuwsberichten/2020/hoe-denkt-shell-over-de-klimaatzaak/\\_jcr\\_content/par/textimage\\_1795252256.stream/1621505960546/59359bec735508922fb43f4f29aca21ca304abc2/20201201PleadingnotesRDSPartIIntroduction\(unofficialtranslation\).pdf](https://www.shell.nl/media/nieuwsberichten/2020/hoe-denkt-shell-over-de-klimaatzaak/_jcr_content/par/textimage_1795252256.stream/1621505960546/59359bec735508922fb43f4f29aca21ca304abc2/20201201PleadingnotesRDSPartIIntroduction(unofficialtranslation).pdf) page 9





Shell is also keeping the door open for a further increase in emissions: Shell is not looking to reduce its emissions in absolute terms. Shell's objective is a 'relative' or 'net' emissions reduction, that will allow Shell to keep increasing its overall emissions as long as these are compensated by planting trees or carbon capture and storage technologies.

Meanwhile, Shell continues to lobby against effective climate action. This includes a [lobby to delay](#) implementation of the targets agreed in the Paris climate deal. Shell has also lobbied against making the [Emissions Trading Scheme](#), which regulates the emissions allowances for companies in the EU, more ambitious and effective.



So instead of proactively reducing its greenhouse gas emissions to help avoid dangerous climate change, Shell continues to put the breaks on real policy change. In the absence of binding government regulation, Milieudefensie was compelled to turn to the courts, as a last resort, to force Shell to bring its corporate strategy in line with the climate objectives of the Paris Agreement aimed at keeping global warming below the 1.5 – 2 degrees bracket.





## 4.2 The summons

[On 5 April 2019, Milieudefensie and its co-claimants issued Shell with an official summons](#) to defend itself in court. This legal document, comprising 236 pages, outlined all the legal and scientific arguments to hold Shell accountable for its lack of climate action. The summons was the bedrock of our case. The solid substantive and legal research that went into this document served to make the case admissible before the court and helped us to successfully argue our case in court. Be sure to dedicate sufficient funds, manpower and expertise to this preparative stage in the proceedings.

Naturally, Shell's response was to say Milieudefensie's claim could not and should not succeed. This was the start of a legal battle in which both parties spent four days in court arguing their case before the District Court in The Hague.



## 4.3 The relief sought by Milieudefensie et al.

In our summons, we asked that the Court would confirm a legal obligation for RDS as the parent company of the Shell Group to reduce their own emissions and those of their end users, in line with global reduction scenarios aimed at limiting global warming to 1.5 – 2 degrees.

We sought to have Shell bound to an absolute reduction of CO<sub>2</sub> emissions by 2030 of at least 45%, or alternatively 35%, or 25%.

**Why these three different demands?** In our summons, we asked the Court to bind RDS (and as a result the Shell Group) to an absolute reduction (relative to the year 2019) of 45% by 2030, 72% in 2040 and 100% in 2050 - in line with what the UN Panel on Climate Change (IPCC) puts forward as a feasible scenario to keep global warming within the 1.5 – 2 degrees bracket which may still allow the world to avert dangerous climate change. We put forward that, Shell, as a company with emission levels equalling those of entire countries, has a responsibility to proportionally contribute to reaching this target.





**Why we asked for a reduction obligation relative to 2019** 2019 is the year in which Milieudefensie/Friends of the Earth NL presented the Shell group with its official summons. It is also the year in which Shell published its then most recent sustainability report, so that Shell might be held accountable relative to publicly available data.

**The decision to settle for less in court** We decided to drop our demand to bind Shell to the 72% target for 2040 and the 100% target for 2050. We considered that these dates are so far into the future that the Court might struggle to come to a ruling on this. We did ask the Court to bind Shell to the 45% target for 2030, to keep the climate goal of the Paris Agreement (and hence the targets for 2040 and 2050) within reach.



**Why we added secondary claims** We added the secondary claims of 35% and 25% for 2030, to provide the judges with an alternative should they feel our primary claim of 45% was too high-reaching. This was a strategic move. Of course we wanted the Court to place the Shell Group under an ambitious (but necessary) obligation. But we felt it was equally important to set a precedent by having a court issue a climate-related injunction against a corporate actor. Presenting the court with secondary demands was a way to increase the chance of setting this much-needed precedent: the court ruling against Shell paves the way for similar cases against other corporate actors.

**Absolute versus 'at least net' reduction obligations** We also submitted a priority and a secondary claim in relation to absolute versus net reduction targets. We primarily asked for a ruling to bind Shell to an absolute emissions reduction: A relative or 'net' emissions reduction allows Shell to increase its overall emissions as long as these are compensated by planting trees or carbon capture and storage technologies. Our secondary demand was to bind Shell to an 'at least net' emissions reduction. This would force Shell to view its net reduction ambitions as the bare minimum of what it is required to do.





Read more  
on why  
compensation  
schemes cannot  
suffice in  
chapter 4.4.1.5

### ***Why we are critical of to CO<sub>2</sub> compensation through tree-planting or carbon capture***

On the face of it, planting trees sounds good. But planting trees in carbon offsetting schemes is not the same as maintaining ecosystems and biodiversity. Offsetting schemes often boil down to monoculture plantations that can be exploited commercially.

Also, and quite important, there is a time lag: these trees tend to be planted after the emissions have taken place and it will take years before they have captured the amount of emissions that they were planted for. Carbon capture relies on technologies that are still being developed and that are currently still very expensive. So they are simply not a feasible solution yet. Carbon storage comes with its own problems, not least the risk of stored carbon leaking back into the atmosphere.



## **4.4 The hearings**

### ***4.4.1 Milieudefensie and its co-claimants' core arguments***

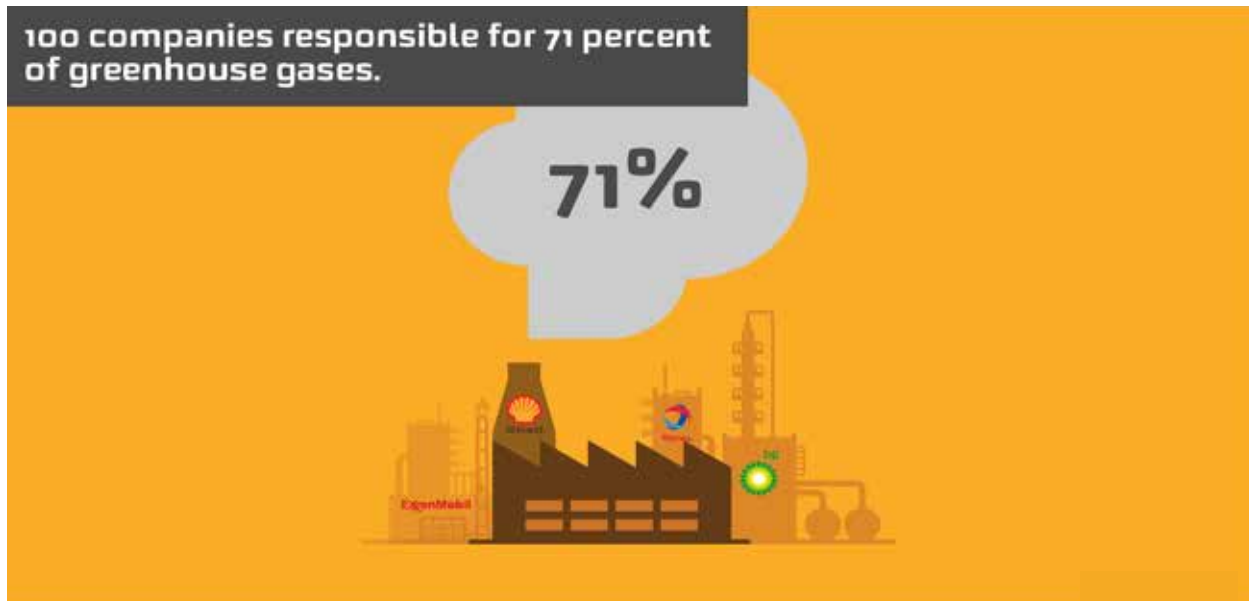
In court, we primarily argued the case along the lines of what had already been outlined in our summons.

In short, we put to the court that when Shell, as one of the world's fossil fuel giants, continues to expand its oil and gas exploration it is guilty of hazardous negligence by not decisively addressing the way the Shell Group contributes to dangerous climate change as an imminent danger that can still potentially be avoided if the world acts decisively now.

Milieudefensie et al. asked the court to rule Shell to stop knowingly putting the world in danger, and to significantly speed up the rate at which it is cutting its CO<sub>2</sub> emissions. This due to the fact that Shell is a major emitter of the greenhouse gases that are warming up our atmosphere, potentially hazarding the world's ecosystems and human life.



In its arguments in Milieudefensie's climate case, Shell continued to demonstrate how it relies on governments, consumers and wider society to make the necessary changes and adjustments, while it continues to pump up oil and gas. Milieudefensie hopes that the ruling in the Shell case will signal to the oil industry and investors that a true transition must involve a real and substantial reduction in our reliance on fossil fuels. It is very helpful that the judge emphasised that the ruling addresses not just Shell, but that every major emitter is proportionally responsible for reducing its own emissions. If global actors like Shell fail to do so, we reasoned that, limiting global warming to 1.5 degrees Celsius will become undoable in the next decade and will increase the likelihood of irreversible climate change.



#### **4.4.1.1 Building our case**

In Court, we started out by arguing that climate change threatens the liveability of the earth. We based this on the findings of the UN Climate Panel (IPCC), which, in its 2018 report emphasized the risk of irreversible and dangerous climate change should global warming exceed 1.5 °C.

We highlighted the 2015 Paris Agreement, in which world leaders agreed on the necessity to limit global warming to well below 2°C to avoid catastrophic climate change, inter alia by drastically curbing greenhouse gas emissions. We argued that the broad consensus on limiting global warming counts as a universal safety norm and should therefore also have implications for major emitters like Shell.







We specifically addressed the projected impacts of climate change in the Netherlands: water issues, heat stress and rising sea levels for which existing infrastructure and coastal protection are unprepared. This line of argument was necessary to demonstrate to the court that the claimants, acting on behalf of Dutch citizens, had sufficient legal interest to warrant the case to be heard.

We also had to build the legal case to show that the Dutch courts had jurisdiction to decide on the consequences of Shell's actions. We put to the court that, since the worldwide climate policy of the Shell group is developed at their head office in The Hague, the Dutch courts were competent to try the case.



In terms of substance, we argued that Shell is a major contributor to climate change: Shell is one of the world's leading fossil fuel companies, with an emission volume larger than that of various countries. The Shell Group is responsible for around 1% (!) of the world's emissions annually.

We used these figures to underline Shell's legal duty of care, arguing that by failing





to take meaningful climate action Shell is putting the climate goals at risk, and, by implication, endangering the inhabitants of the Netherlands.

Dutch law forbids 'unlawful endangerment', also known as 'hazardous negligence'. We argued that hazardous negligence on the part of Shell could be established because

- a) The danger of climate change in itself is significant;
- b) Shell is a major contributor to the danger;
- c) Shell is sufficiently aware of the problem;
- d) Shell has the means to significantly limit the danger.

In proving the danger, we could rely on the fact that the dangers of climate change have been widely and convincingly established by the global scientific community, resulting in the world-wide adoption of climate goals to limit global warming.

We argued that Shell's own publications show that the company knew about climate change since the 1950s as a result of the studies it conducted to locate exploitable oil and gas reserves, and was well aware of the role of fossil fuels in global warming, its own contribution to climate change and the measures needed to prevent its potentially disastrous impacts on the liveability of our planet.



We argued that Shell could and should be held liable for its contribution to climate change and should be ordered to adapt its corporate strategy to reduce the harm caused by its operations because of

- A) Shell's long standing awareness of both climate change and its own measurable and substantial contribution to the problem,
- B) the fact that Shell is perfectly able to make an operational transition to reduce its carbon footprint



#### 4.4.1.2 Demonstrating that Shell knew about climate change

We highlighted that, in the late 1950s, scientists were already warning Shell that a 10% rise of CO<sub>2</sub> in our atmosphere would lead to melting of the ice caps, flooding our coastal cities. And we showed that in the 1980s, oil companies like Exxon and Shell conducted internal assessments of the greenhouse gases emissions associated with the use of fossil fuels which touched upon the impacts of these emissions on our climate.

##### **Shell knew**

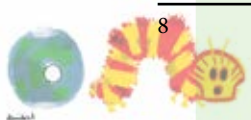
In 1959, the American Petroleum Institute, the U.S. trade association for the oil and natural gas industry, at that time chaired by the 1959 CEO of Shell, organised a symposium entitled 'Energy and Man'. During that symposium, Edward Teller, an American physicist, gave a lecture on the link between fossil fuels, CO<sub>2</sub> and the greenhouse effect. Teller warned that oil and gas companies had to start looking for alternative energy sources to replace oil, gas and coal. According to Teller, a 10% increase in atmospheric CO<sub>2</sub> would, in time, result in a rise in temperature that would be enough to melt ice caps and to submerge New York.<sup>8</sup>

In 1962, Marion King Hubbert, the head of the geological department of Shell, warned: "There is evidence that the greatly increasing use of the fossil fuels, whose material contents after combustion are principally H<sub>2</sub>O and CO<sub>2</sub>, is seriously contaminating the earth's atmosphere with CO<sub>2</sub>. Analyses indicate that the CO<sub>2</sub> content of the atmosphere has increased 10% since 1900. Since CO<sub>2</sub> absorbs long-wavelength radiation, it is possible that this is already producing a secular climatic change such as higher average temperatures. This could have profound effects both on the weather and on the ecological balances." Hubbert, in 1962, already advised on investigating the development of solar energy.

And in 1988, Shell published The Greenhouse Effect, an internal report about climate change, that highlighted the scientific agreement that the increase of greenhouse gases is leading to global warming and called attention to the major social, economical and environmental consequences that rising sea levels and changing weather patterns will have on the human environment, future living standards and food supplies. This report indicated that the consequences anticipated by Shell could be of such magnitude that some areas on earth may become inhabitable to such an extent that it can only lead to migration and displacement. In the report, Shell stresses the need to take preventive action, stating that 'by the time the global warming becomes detectable it could be too late to take effective countermeasures to reduce the effects or even to stabilise the situation.' Shell took the outcomes of this report seriously enough to begin adapting its infrastructure to the anticipated climate change.

The 1991 documentary 'Climate of Concern' in which Shell warns of the dangers of climate change provides further evidence that Shell was aware of the seriousness of the situation.

<https://cleantechnica.com/2018/01/03/edward-teller-warned-oil-industry-carbon-dioxide-climate-change-6-decades-ago/>





Shell even warns that climate change might happen so fast that society will not have time to adjust and concludes the film with the statement that “taking action now is the only safe security we have”.

For more corroborative sources showing that Shell knew read [Milieudefensie's summons](#).



We submitted this as evidence that Shell has been demonstrably aware for decades that the extraction and use of fossil fuels serve to accelerate the concentration of CO<sub>2</sub> in our atmosphere. Yet, we argued, Shell has taken insufficient responsibility for its own role in the ongoing acceleration of global warming. [Shell is investing in renewables, but this budget is dwarfed by the amount of money the company continues to direct towards fossil fuels.](#)



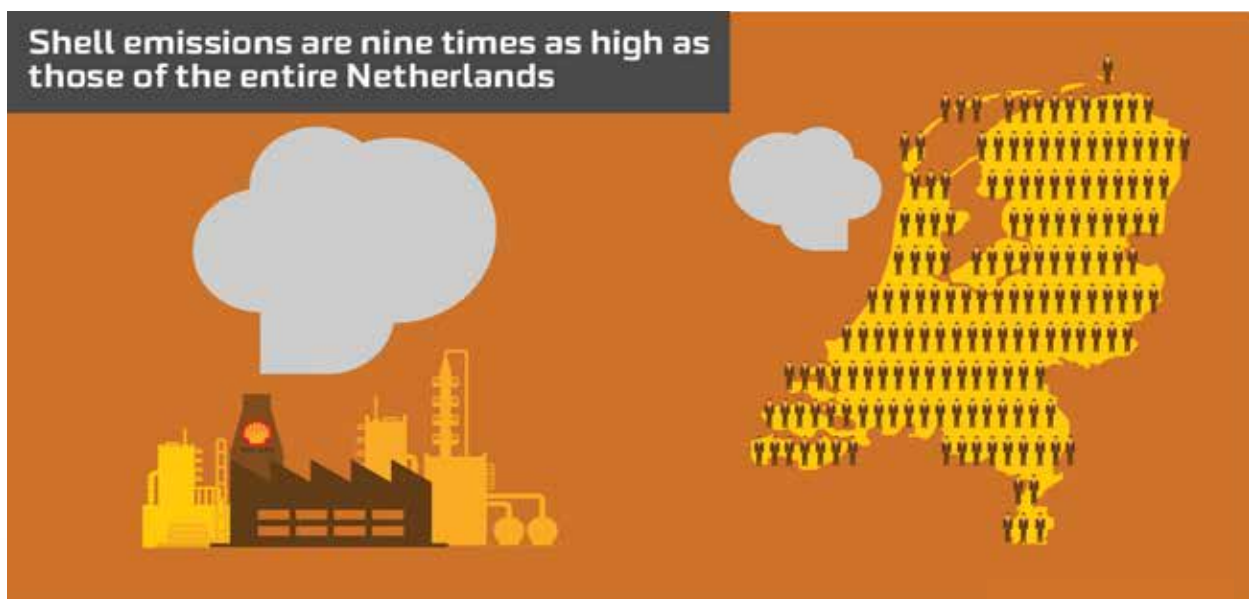
#### **4.4.1.3 Proving that Shell was aware of its own contribution to global warming**

Besides from providing irrefutable proof that “Shell knew”, we also demonstrated in court that Shell has long been aware of its own substantial contribution to climate change. Shell’s aforementioned internal report *The Greenhouse Effect* puts Shell’s contribution to global CO<sub>2</sub> emissions at 4% in 1984. Shell’s own data on the annual amount of greenhouse gases connected to its operating activities and to the use of its products by its customers show that in 2002, Shell was responsible for the equivalent of 3.6% of global CO<sub>2</sub> emissions. Based on available data, 1.8% of the global CO<sub>2</sub> increase since the company’s incorporation in 1890 can be traced back to Shell’s operating activities. Half of these emissions have taken place since the mid-1980s, when there was irrefutable proof that Shell was aware of the link between fossil fuels and dangerous climate change. Other scientific research lists Shell as the 9th biggest individual climate polluter, responsible for 1.7% of all industrial greenhouse gas emissions between 1988 and 2015.

Extrapolating from the available data, 1.6% of measured rises in temperature and 1.4% of measured rises in sea level can be traced back to Shell’s activities.<sup>9</sup>

In court, we argued that Shell’s evident significant contribution to climate change constitutes sufficient grounds to place Shell under an obligation to devise and implement a detailed roadmap to promptly reduce its CO<sub>2</sub> emissions, in line with the globally accepted climate goals as formulated in the Paris Agreement.

We argued that the state of the Netherlands, which contributes 0.5% to global emissions – less than half of Shell’s contribution, was ordered by the courts – in the trailblazing *Urgenda* case - to intensify its greenhouse gas reduction efforts in order to avert dangerous climate change. Shell is one of the 25 global companies in the world that are collectively responsible for half of all climate damage. Shell alone emits 9 times more CO<sub>2</sub> than the whole of the Netherlands put together – which should be sufficiently substantial to hold Shell to account for its contribution. We asked the court to confirm Shell’s considerable and special responsibility to contribute to combating dangerous climate change.





## Duty of care - the link to the Urgenda case

The so-called Urgenda case established that states have a duty to prevent dangerous climate change. Milieudefensie invoked 'Urgenda' to extend the responsibility for addressing climate change to private economic actors like Shell, on the ground that large private actors like Shell are responsible for more greenhouse gas emissions than many smaller countries.

Shell's counter argument: We live in a fossil society and change is needed. The transition must also be accelerated, Shell agrees. But strictly speaking, it is states that have entered into climate obligations, and hence, these obligations do not legally apply to private parties like Shell.

Shell also raised arguments of a more ethical and democratic nature: Addressing climate change and turning the energy system around requires enormous adjustments from society as a whole and choices that are so fundamental and extensive that Shell should not be making those choices. The overall direction should be left to governments to determine. Shell's reasoning: The countries in which Shell operates must decide how they want to reach their climate goals. Shell must not anticipate the outcome of this political process, but follow the course that these countries decide upon.

However, the judge ruled that the duty of care that applies to states should also apply to Shell as a major emitter of greenhouse gases. Shell's emissions substantially contribute to dangerous climate change impeding human rights. Since companies have a duty to respect human rights, the judge reasoned, this means that Shell could and should be held to a reduction target that aligns its corporate policy with the climate goals of the Paris Agreement. Within that target, Shell retains full freedom to make considerations in relation to meeting climate objectives. In other words: Shell must do its bit in bringing down greenhouse gas emissions, but is free to decide how to go about this and to tailor its strategies to the climate policy choices of the countries in which the Shell companies operate.

### 4.4.1.4 Showing Shell's lack of action

We went on to show that Shell has not taken the necessary meaningful steps to limit its own contribution to the climate problem. On the contrary, Shell continues to lobby against ambitious climate action and keeps investing in even the most dirtiest of fossil fuels, including tar sands and shale gas. Indeed, in 2014, Shell's management decided to take the position that the Paris targets were unlikely to be achieved and that, therefore, there was no need for Shell to change its business model. Shell continues to underscore that even during and after the energy transition that climate change demands, the world will still need oil and gas and Shell will continue to meet this demand.



# EU lobbyists working on behalf of Shell and its lobby groups:



Number of lobbyists self-declared in the EUTR employed by Shell and its declared lobby groups

#FossilFreePolitics

Shell, in its public messaging, puts on a 'green' face, pledging its support to the Paris Climate Agreement and blowing its own trumpet regarding its substantial investments in clean energy, natural ecosystems and a low-carbon future. However, the money Shell puts towards the energy transition is a mere fraction of the billions the company continues to invest in oil and gas.

## ► Shell's investment in renewables is lagging...

Shell planned to invest around 6 billion USD in renewables development between 2016-2020, but only spent around a third of this.<sup>10</sup> At 2-3 billion USD annually, the company's new projected spending on renewables is less than the company's marketing budget, and only a fraction of the 19-22 billion USD it spends on the production of oil and gas.

## ... but Shell is in 'good' company

Shell is not alone in what at best amounts to 'sustainable wishful thinking' and at worst to 'greenwashing'. By 2020, Europe's five largest oil companies – Shell, BP, Total, Eni and Equinor – had spent only an aggregate total of 5.5 billion USD on renewable energy projects, compared with a combined total budget of almost 90 billion USD in 2019 alone.<sup>11</sup>

In 2020, an industry analysis by the Institute for Energy Economics and Financial Analysis (IEEFA) pointed to Shell as one of the oil companies likely to fall well short of its own sustainable investment objectives. Although the IEEFA lists Shell as one of the oil companies most aligned with the Paris Agreement, it underscored that the company is only spending a fraction of its revenue on reducing its emissions. The IEEFA said Shell is spending just 3-5 percent of its capital in renewables and is certain to miss its target of \$4-6 billion annually devoted to green energy projects by 2020.<sup>12</sup>

10

<https://www.theguardian.com/business/2020/jan/03/royal-dutch-shell-may-fail-to-reach-green-energy-targets>

11

<https://www.theguardian.com/business/2020/jan/03/royal-dutch-shell-may-fail-to-reach-green-energy-targets>

12

<https://www.france24.com/en/20200723-energy-majors-spend-90-on-fossil-fuels-despite-climate-pledges>



Shell's on-going investment in the dirtiest of fossil fuels, such as oil sands and shale gas have exposed the company as [the world's most carbon-intensive fossil fuel company](#). Shell's green image is doubly misleading, as the company also continues to lobby actively to weaken legislation and regulation to combat climate change.

#### **4.4.1.5 Arguing Shell's obligation and means to address its contribution to the problem**

We looked at the latest climate ambitions as presented by Shell, only to come to the conclusion that firstly, what the company proposes to do is not nearly enough to meet the Paris climate goals, and that, secondly, Shell leaves the door open to intensifying its greenhouse emissions: Shell does not propose an absolute emissions reduction. Instead, Shell's ambition largely relies on achieving what it calls 'net zero emissions' – [offsetting](#) its own emissions by funding projects that save emissions elsewhere. This means Shell might even grow its emissions volume, as long as these emissions are compensated for.

#### **➡ Why compensation schemes cannot suffice**

Shell cannot rely on compensation schemes. A more substantive change in course is required. There are some major issues with carbon offsetting: First of all, there won't be enough compensation schemes to go round if the major emitters of this world will simply continue to increase their carbon footprint. Secondly, carbon offsetting projects are not guaranteed to deliver on their climate promises and often fail to meet sustainability criteria, with serious negative impacts for biodiversity and human rights. Companies compensate for today's emissions by buying carbon credits that will only yield results sometime in the future, for example because a tree planted in compensation today, will take 30 years to capture the required compensatory amount of CO<sub>2</sub>. Also, carbon offset projects often do not create sufficient additional climate benefits, for example when carbon credits are issued to protect forests that were never endangered in the first place, when reforestation would have taken place without the company's funding or when projects only run for a limited amount of time.

Shell even thinks it is okay to temporarily overshoot the Paris targets: the company banks on the development of technologies that can remove the excess greenhouse gases from the atmosphere after the fact.

We argued that Shell's lack of climate action directly contravenes both the values of the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, which Shell voluntarily subscribes to. These guidelines and principles commit companies to respecting human rights. We argued that Shell's breach of its duty of care in relation to climate change constitutes a threat to human rights. After all, climate change constitutes a major threat to human rights, including the right to life, health and basic needs.

In our summons, we had already concluded that Shell's climate ambitions are half-hearted at best, misleading at worst, insufficiently ambitious and falling short of what's required to meet the global climate goals. In court, we argued that Royal Dutch Shell, as the parent company of the Shell Group, has the means and the



power to take climate action and steer Shell's operating companies in a more sustainable direction. We therefore asked the court to bind Shell to a clear emission reduction pathway, in line with the recommendations of the IPCC, and to order the company to come up with a clear roadmap on how to get there.



### Business case for climate action

We even showed that a business case can be made for swifter and more meaningful climate ambitions. We quoted the example of The Danish Oil and Natural Gas company, which transformed itself from a fossil fuel company into a renewable energy company. The Danish Oil and Natural Gas company now operating under the name Ørsted, aims to have reduced its emissions by 86% in 2035.

### 4.5 Shell's counter arguments

Shell put a variety of reasons before the Court as to why the claim of Milieudefensie et al. should not be awarded. Shell's arguments centred around [applicable law](#), [admissibility](#), [science](#), [the court's role](#) and the relief sought by Milieudefensie et al.

Key elements in Shell's defence were that a) there is no singular clear-cut global reduction path for 2030, and b) there is no basis for applying a global reduction path proportionally to Shell.

Shell also vehemently objected to being held responsible for the emission reductions of its end users. These so-called scope 3 emissions constitute the lion's share of the emissions attributable to the Shell Group. Shell's objection centred on it being unclear how any efforts to compensate for emissions or capture and store CO<sub>2</sub> by the end users of Shell products would be deducted from Shell's responsibilities, should the Court hold Shell responsible for scope 3 emission reduction.







Shell emphasised that to address and mitigate dangerous climate change should fall within the realm of political decision-making and are beyond the remit of a corporate actor like Shell.

Shell also underscored the ineffectiveness of going after an individual business as other, and possibly less climate-conscious companies would immediately fill the gap.

The main points of Shell's defence are listed in [an introductory pleading notes](https://www.shell.nl/media/nieuwsberichten/2020/hoer-denkt-shell-over-de-klimaatzaak.html) that Shell presented to the Court. All of the legal documents submitted to the court can be found here: <https://www.shell.nl/media/nieuwsberichten/2020/hoer-denkt-shell-over-de-klimaatzaak.html>

#### **4.5.1 Core elements in Shell's line of argument**

##### **4.5.1.1 Shell contested the Court's jurisdiction**

Milieudefensie et al. argued the case could be tried under Dutch law, based on Article 7 of the Rome II Regulation which governs international private law. Milieudefensie's lawyers argued that a case against Royal Dutch Shell could be tried under Dutch law because a) Royal Dutch Shell is headquartered in the Netherlands and b) Royal Dutch Shell determines the policy for the global Shell Group in the Netherlands and c) it is this policy that must be seen as "the event giving rise to the damage" – across the world in general and in the Netherlands in particular - in Milieudefensie et al.'s case against Shell. Shell contested this, saying Royal Dutch Shell has limited control over how its operating companies world-wide deal with the guidelines coming from the group's headquarters. According to Shell, each Shell company is under an obligation from the law of the county it operates in. Therefore, according to Shell, claims like Milieudefensie's should be brought against each individual Shell company and tested against the law of their respective countries of operation.

The Court dismissed this argument on the basis that Milieudefensie adequately proved (including by means of Shell's own annual reports) that Royal Dutch Shell determines the climate policy for the entire Shell Group and controls the Shell



Group's international (dis)investment policy, and agreed the case against Royal Dutch Shell as the parent company of the Shell Group could proceed under Dutch law.

#### **4.5.1.2 Shell claims that the courts deciding on the energy transition in litigations between private parties is undemocratic**

In court, Shell kicked off by emphasising that it endorses the importance of the Paris agreement and fully subscribes to the imperative to act to address climate change. However, Shell questioned whether a private party should be enabled to hold another private party accountable for its contribution to the energy transition, especially because the transition is ongoing and that states, policymakers and legislators are still determining the pathways on how to approach it.

Shell said: "If the court were to go along with the idea that [...] it can direct the energy transition by passing judgment against a private party, then a situation arises in which countless parties can sue each other via the court in relation to their role in the energy transition. This creates a situation in which the court plays a central role in an active and delicate political process in the organisation of society, causing legal uncertainty to arise and a steady stream of lawsuits. The court should not take on that role, and there is no legal rule on the basis of which the court can take on that political role. RDS will moreover be prejudiced if it is already bound at this point by a court judgment which does not apply to other parties, while Milieudefensie et al. do not demonstrate, and cannot prove, that the measures sought will help to achieve the Paris climate targets, among other reasons because other providers of energy products can jump into that gap left behind by Shell." <sup>13</sup>

Tom



The Court addressed the point made by Shell that a reduction obligation will have no effect or even be counterproductive as other, perhaps more polluting companies, would step in to fill the gap. The court underlined that in light of the urgency of addressing climate change, it cannot be assumed that the size of the oil

and gas sector will remain the same and that such arguments do not “absolve RDS of its individual responsibility to do its part regarding the emissions of the Shell group, which it can control and influence”.<sup>14</sup>

Shell argued that the energy transition requires making policy choices that affect the structure of society. It would be undemocratic for the courts to interfere in what is a complex international political-economic and social process: issuing substantive legislation should be reserved for the legislature.

Shell argued that allowing Milieudefensie’s claim to succeed would mean the Court would be acting as the regulator of private parties. According to Shell, the Court should steer clear of taking on this role as it would lead to uncertainty for businesses what to focus on in terms of investments.

Also, if the Court was to award this claim, it would be opening the floodgates: A ruling in favour of Milieudefensie would likely lead to a surge in cases. This, Shell argued, would lead to legal uncertainty that might even delay the energy transition.

### **The Shell ruling – a political ruling?**

The District Court in The Hague has been accused of delivering a political ruling in Milieudefensie’s case against Shell. This is incorrect: Interpretation of the law is the role of the court in a functioning democracy. In the Shell climate case, the court gave an interpretation of the ‘duty of care’ as enshrined in Dutch law, taking its lead from the climate targets internationally agreed by 191 countries and laid down in the Paris Climate Agreement and the international human rights norms applicable to businesses.

We want to emphasise that we see going to court as a last resort option. It would be much better if the government-as-legislator would establish clear, specific and binding climate rules for fossil fuel companies to observe. It might even be deemed ‘failed governance’ if the authorities leave it to the courts to determine the corporate duty of care by creating jurisprudence on a case-by-case basis.

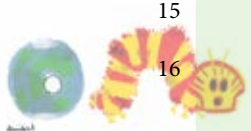
### **The Shell ruling helps to highlight the lack of global governance of multinational corporations**

In its pleading notes, Shell kept coming back to the need for coherent government regulation to speed up the energy transition. Shell implied that the lack of a coherent regulatory framework was holding companies back. Shell’s apparent call for government action begs the question how this tallies with its on-going lobby to undermine climate regulation.<sup>15</sup> A quote from Robert Brulle, a climate denial researcher and professor at Brown University’s Institute at Brown for Environment and Society appears to say it all: “They’re trying to have it both ways, being socially responsible without changing their actual positions.”<sup>16</sup>

14 <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339>, par. 4.4.49 & 4.4.50 on the effectiveness of the reduction obligation.

15 See, for example, ‘Revealed: BP and Shell back anti-climate lobby groups despite pledges’, Unearthed & Huffington Post, 28 September 2020. <https://unearthed.greenpeace.org/2020/09/28/bp-shell-climate-lobby-groups/>

16 Ibid.



Milieudefensie fully agrees with the need for governments to impose (strict) climate regulations on the private sector. It would be great if one of the impacts of the case against Shell would be to persuade governments to take more decisive action.

Rulings like the one in the Shell case are a tool for the global climate movement to keep calling attention to the lack of (global) governance of large, multinational corporations in relation to climate change. This is a governance gap that requires immediate rectification.

#### **4.5.1.3 Shell contested the legal basis for Milieudefensie's case**

One of the other lines of defence Shell used was to question the legal basis for Milieudefensie's case, stating that

- 1) There is no legal rule that make Shell's CO<sub>2</sub> emissions unlawful;
- 2) There is no legal obligation for a private party to meet the emissions reduction demanded by Milieudefensie and its co-claimants.



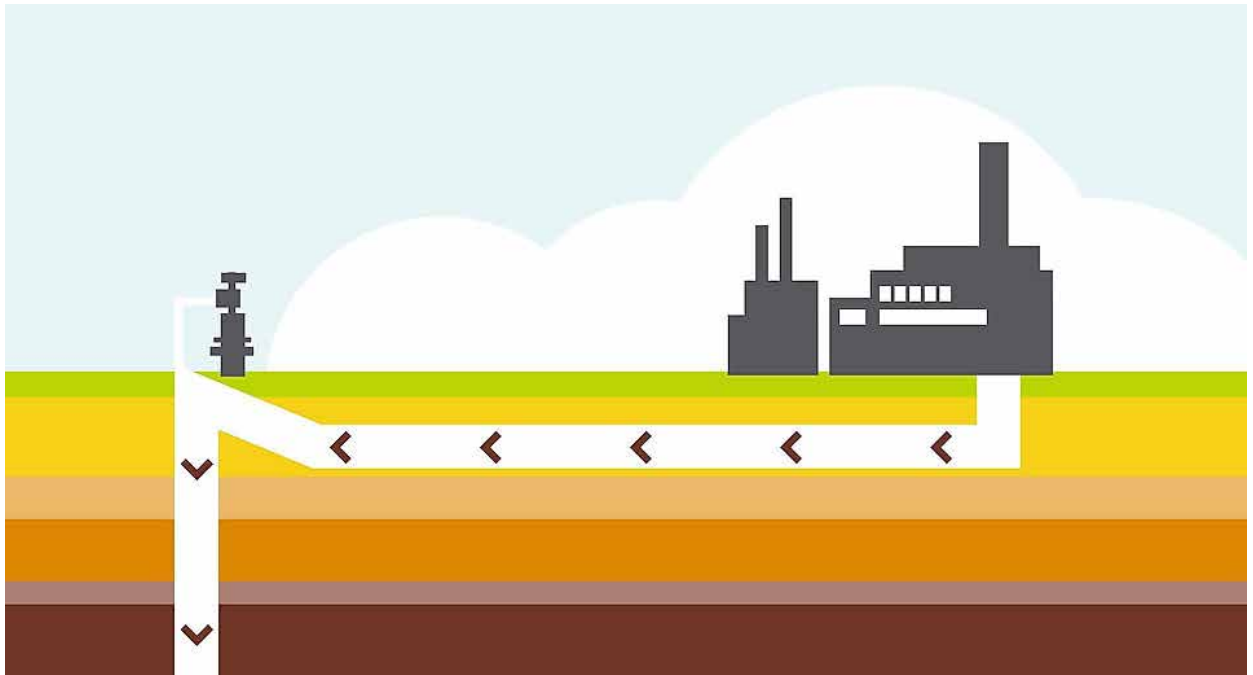
Shell argued that the claim of Milieudefensie et al. should not be able to succeed for lack of a legal basis. According to Shell, there is simply no legal reduction standard that it could be bound to. There is no written or unwritten legal rule that stipulates that Royal Dutch Shell, as the parent company of the Shell Group, is acting unlawfully. Also, Shell maintained, the Paris Agreement cannot be transformed into the source of such a rule: the Paris Agreement is addressed to States and not to private parties.

Shell put to the court that Milieudefensie's claim goes much further than current regulations require. Another reason why, according to Shell, for the claim should not be awarded is that other private parties are not bound by the same requirements as Shell is. The judge countered this by making clear that the order issued may be against Shell, but that other major emitters of greenhouse gases bear a similar proportional responsibility.





In its [assessment](#), the Court confirmed “that RDS is presently not in breach of its reduction obligation, as the claimants argue. RDS has enhanced the Shell group's policy and is working it out in more detail. However, seeing as the policy is not tangible, has many caveats and is based on monitoring social developments rather than the company's own responsibility for achieving a CO<sub>2</sub> reduction, the court finds that there is an imminent breach of the reduction obligation. Therefore, the court has ordered RDS to reduce the emissions of the Shell group, its suppliers and its customers by a net 45%, as compared to 2019 levels, by the end of 2030, through the corporate policy of the Shell group”.



Shell also brought up the argument that its operating companies all acted on permits issued by the countries they operate in and that they all operated within the law of these countries. Any grievances should therefore, according to Royal Dutch Shell, be taken up before the courts in their respective countries of operation. The Court, however, underscored that this did not absolve Royal Dutch Shell of its responsibility as a parent company to bring down emissions throughout the Shell Group.

#### ***4.5.1.4 Shell laid primary responsibility for the energy transition on the doorstep of governments***

In its argumentation in Court, Shell sought to lay the main responsibility for the climate transition on the doorstep of governments and consumers. Shell's main objection, that it continues to reiterate in different wordings throughout its pleading notes, is that you cannot bind one party to the reduction required to limit global warming to 1.5 degrees if it is not clear if the whole of society is going to reach this objective. Requiring Shell to reduce its CO<sub>2</sub> emissions without the required society-wide energy revolution will serve no purpose: others will simply jump into the vacuum to meet continued demand.





Shell pointed to governments bearing the main responsibility for the formation of the policies to shape the energy transition. As a private actor, Shell said, it can only adjust its investments and corporate strategies accordingly. Shell argued first of all that states must make clear choices regarding the energy transition and less greenhouse gas-intensive energy mix. The frameworks must be determined before private parties like Shell can take steps. In Shell's words: 'An effective change in the supply side requires government policy.'<sup>17</sup>

Shell referred to the EU Green Deal 2019, the 2030 Climate Target Plan and the ambition for a climate-neutral EU by 2050 to show that the instruments and responsibilities for bringing about the energy transition are still under development. Shell also referred to the Climate Plan 2021-2030 of the Dutch government to underscore that it is central governments who determine the playing field for private parties.

Shell further underscored that States autonomously determine whether and to what extent natural resources can be exploited, based on their own political reality. Shell called to mind that for many countries, for strategic reasons, do not like to be dependent on other countries for their own energy needs. Many countries depend on the exports of fossil fuels and others view the discovery of fossil fuel reserves in their territories as a chance to boost their economic development and prosperity.<sup>18</sup> Shell asked the Court to consider that if Shell's production were to be eliminated, such countries would simply grant concessions to another company.

17 [https://www.shell.nl/media/nieuwsberichten/2020/hoer-denkt-shell-over-de-klimaatzaak/\\_jcr\\_content/par/textimage\\_1795252256.stream/1621505960546/59359bec735508922fb43f4f29aca21ca304abc2/20201201PleadingnotesRDSPartIIntroduction\(unofficialtranslation\).pdf](https://www.shell.nl/media/nieuwsberichten/2020/hoer-denkt-shell-over-de-klimaatzaak/_jcr_content/par/textimage_1795252256.stream/1621505960546/59359bec735508922fb43f4f29aca21ca304abc2/20201201PleadingnotesRDSPartIIntroduction(unofficialtranslation).pdf)

18 [https://www.shell.nl/media/nieuwsberichten/2020/hoer-denkt-shell-over-de-klimaatzaak/\\_jcr\\_content/par/textimage\\_1795252256.stream/1621505960546/59359bec735508922fb43f4f29aca21ca304abc2/20201201PleadingnotesRDSPartIIntroduction\(unofficialtranslation\).pdf](https://www.shell.nl/media/nieuwsberichten/2020/hoer-denkt-shell-over-de-klimaatzaak/_jcr_content/par/textimage_1795252256.stream/1621505960546/59359bec735508922fb43f4f29aca21ca304abc2/20201201PleadingnotesRDSPartIIntroduction(unofficialtranslation).pdf) p. 24





Shell also argued that, in any case, it is only a small player: the market is dominated by state oil companies from the countries where oil and gas reserves are located; a single judgement against a single actor will not change the system, but only disrupt the level playing field and one-sidedly prejudice the competition. Hence, Shell argued, the judge should show restraint.

The judge did not fall for this argument, noting that [“\[t\]he CO<sub>2</sub> emissions of the Shell group, its suppliers and customers exceed those of many countries”](#) and that Royal Dutch Shell has an “unwritten duty of care” to reduce its emissions in order to help counter “global warming, which causes dangerous climate change and creates serious human rights risks”.

#### **4.5.1.5 Shell pointed a finger at consumers**

Shell also left emission reduction at the consumers doorstep. RDS objected to the fact that Milieudefensie was trying to hold RDS liable for emissions not caused by Shell, but by the end-users of its products (scope3 ). Shell argued that it does not control these and [cannot be held legally responsible](#) (page 33) for the associated emissions. Shell maintains that, while it can and will be offering products with a lower carbon footprint to consumers, it is consumers’ own responsibility to choose the lower carbon options.

Shell argued that many users are not making the necessary contribution towards reducing their own energy consumption. In the words of Shell: consumers are still buying SUVs. In addition, cars that are sold now will be around for a long time and will need oil. Shell says it cannot determine consumer choices. Only governments can, for example by introducing tax measures, promote electric driving. Shell might then facilitate such choices by providing the necessary infrastructure, such as charging stations. Shell can also offer low-carbon energy options. However, according to Shell, the ultimate responsibility lies with the end-users and the product choices they make.



Shell stated that [there are no means of knowing what the demand side of the energy market will look like in 2030](#) (page 44), and, Shell argued, if there is demand, you cannot require Shell to stop supplying the market. In Milieudefensie's view, Shell is too quick to pass the responsibility to consumers. Shell ignores the fact that, as a major energy provider, it plays a significant role in creating both the demand for energy and the type of energy consumers require. We've mentioned it before, but here, once again, we must call attention to Shell's continued oil and gas expansion and its lobbying efforts in favour of the continued use of fossil fuels.<sup>19</sup>

#### **4.5.1.6 "Shell is already ambitiously and proactively taking steps to become more climate-friendly"**

Shell put to the Court that it must shape the role it plays amidst continuously changing circumstances, highlighting that nonetheless, it is already and proactively taking far-reaching steps in support of the energy transition. Shell called attention to its ambition to become a net-zero emission company by 2050 or earlier. Shell's ambition in a nutshell: By 2050, emissions from Shell's activities (scope 1) and the emissions related to the energy that Shell consumes (scope 2) must be net zero. To get there, Shell will shrink the Shell Group's Net Carbon Footprint. This means that Shell will reduce the 'carbon intensity' of its own activities and of the use of Shell products. Among other things, Shell will be marketing more products with a lower carbon intensity: renewables, biofuels and hydrogen. This is how Shell intends to help customers to reduce the emissions they produce when they use energy products bought from Shell (scope 3). But, Shell says, customers also have their own responsibility to lower their carbon footprint: they must choose products with a lower carbon intensity and/or compensate CO<sub>2</sub> emissions.

This sounds good, but there is a catch. An absolute reduction means that the total quantity of emissions has to be decreased. Cutting carbon intensity means that the emissions per production unit are reduced. However, this does not necessarily mean that the total emissions volume will decrease. A company can very well reduce the carbon intensity per product unit while expanding production, causing its overall emissions to increase.

Radical reduction would have to be the cornerstone of a feasible climate ambition. But Shell's climate plans do not revolve around reducing emissions. On the contrary, Shell continues to project that 'investment in new oil and gas production will remain essential to meet society's ongoing demand for oil and gas for decades to come'<sup>20</sup>

### **Shell: the trilemma of environmental protection, energy security and economic development drives ongoing demand for fossil fuels**

Shell has no intention of leaving fossils in the ground to save our climate: Shell says the world will need fossils to foresee in its energy demand for many years to come and banks on the expansion of natural gas as a 'transition fuel' that is cleaner than, for example,

<sup>19</sup> See, for example, <https://corporateeurope.org/en/future-according-shell>  
<sup>20</sup> [https://www.shell.com/energy-and-innovation/the-energy-future/shell-energy-transition-strategy/\\_jcr\\_content/par/textimage.stream/1524757699226/3f2ad7f01e2181c302cdc453c5642c77acb48ca3/web-shell-energy-transition-report.pdf](https://www.shell.com/energy-and-innovation/the-energy-future/shell-energy-transition-strategy/_jcr_content/par/textimage.stream/1524757699226/3f2ad7f01e2181c302cdc453c5642c77acb48ca3/web-shell-energy-transition-report.pdf) p.6





burning coal. In this context, Shell has gone as far as to suggest that without fossils, developing countries would not reach the Social Development Goals (SDGs).

Shell put to Court that Milieudefensie's claim was one-sided and disregarded the 'trilemma' of environmental protection on the one hand, and energy security and economic development on the other.

Shell called attention to the fact that the choices in this trilemma differ from country to country. Shell pointed out that In some countries, the switch to natural gas can be an environmentally friendly choice if it means taking a step away from wood associated with deforestation or more polluting fuels like coal. Countries may also have a growing need for energy to fuel their economic development and lift their populations out of poverty. According to Shell, developing countries in particular, need reliable energy including fossils to meet the SDGs.

According to Shell, fossil fuels will have to remain part of the energy mix for quite some time to come to ensure universal access to energy and energy security as a human right. Shell maintains the world will remain dependent on fossils for industries that produce iron, steel, cement, plastics and chemicals because these cannot easily be electrified. The same goes, says Shell, for part of the transport sector.

However, in this line of argumentation, Shell disregards that countries may take a leap forward and jump straight to renewables to satisfy their energy needs.

#### ***4.5.1.7 Shell focused on creating wiggle room...but it's arguments didn't fly***

In its pleading notes, Royal Dutch Shell continued to affirm its commitment to the climate goals of the Paris Agreement, though at the same time it tried hard to wiggle out of any responsibility regarding the emissions of the Shell group.

In court, Shell argued that a) RDS itself – as the defendant in the case – has virtually no emissions and b) RDS does not have any duty of care in regards to the emissions of Shell companies other than itself.

Shell also came up with the great-sounding argument of pacing its emission reduction efforts to the speed at which society moves towards the Paris climate targets. But what Shell means by this is the opposite of the proactive climate policy that is required: Shell will abide by the rules and regulations that governments set, and cater to the demand their customers bring. In other words, if governments want to move quicker on the energy transition, Shell will up the pace. If governments don't, Shell won't either. If customers want renewables and low-carbon products, Shell will provide. If not, then Shell won't.

In this argument Shell ignores its responsibility as an entity emitting more greenhouse gases than many states. Shell also conveniently ignores that, as a major supplier, Shell has the market power to shape demand.

The court didn't buy into Shell's narrative. It underlined that it is not enough



for companies like Shell, whose emissions exceed that of many companies and countries, including the Netherlands, to simply follow national climate policy in the countries in which Royal Dutch Shell and its holding companies operate. The court ruling makes abundantly clear that large emitters like Shell must align their corporate actions to the wider global climate policy.

## 4.6 The Court's ruling

### 4.6.1. Key points

The most important takeaway from the ruling of 26 May 2021 in Milieudefensie et al.'s climate case against Royal Dutch Shell<sup>21</sup> is that Shell must reduce its CO<sub>2</sub> emissions by 45% within the next 10 years – almost double the target the company had set for itself.<sup>22</sup> The ruling must be considered a game changer: It is the first time in history that a court has held a company liable for contributing to dangerous climate change. This should have a compelling effect on other big polluters across the globe to take responsibility for their actions.

A few main points in summary:

- Shell must reduce its net emissions by 45% by 2030.
- Shell has a direct obligation to adapt its corporate strategy accordingly and must take immediate action.
- The judge ruled Shell is not only responsible for the emissions of the Shell Group (scope 1 and 2), but also for bringing down the carbon footprint of its suppliers and customers (scope 3). The judgment is not suspended by the appeal – this means that during an appeal proceeding, Shell must act in accordance with the reduction obligation.



<sup>21</sup> The (unauthorised translation of the) ruling can be accessed here: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339>

<sup>22</sup> <https://www.worldoil.com/news/2021/5/26/shell-loses-precedent-setting-climate-change-case-in-dutch-court>

#### 4.6.2 The Court's substantiation

In its ruling, the Court started out by underlining that there is no disagreement between the NGOs as the claimants and Royal Dutch Shell as the defendant on the imperative to limit global warming and that, to this end, greenhouse gas emissions must be reduced. There is also a consensus between the parties that the global carbon budget – the total amount of carbon we can emit to limit the temperature increase to 1.5 – 2°C – is almost depleted and that the next 10 years are crucial to prevent irreversible climate change. At the core of the disagreement between the parties lies the question how to get there, the reduction paths.

The Court dismissed Royal Dutch Shell's claim that it had no jurisdiction to rule in this case.

The Court went on to rule that the collective claims of the Milieudefensie cum suis that Shell should do (much) more to reduce CO<sub>2</sub> emissions and avert dangerous climate change were admissible under Dutch law, in as far as they pertained to the impacts on current and future generations of Dutch inhabitants. A claim based on the impacts to the world population as a whole was deemed inadmissible, as the impacts of climate change world-wide should be considered too disparate.

The Court explained that it had to be established whether a) Royal Dutch Shell was under an obligation to reduce its CO<sub>2</sub> emissions and b) there was a violation or an imminent violation of this obligation. Shell's obligation was tested against universally accepted due diligence standards.



The Courts listed as facts that

1. It is Royal Dutch Shell which ultimately determines the direction of the Shell Group. Its subsidiaries have implementation responsibilities.
2. Shell is responsible for CO<sub>2</sub> emissions that exceed those of individual countries, including the Netherlands. As such, Shell is responsible for contributing to





dangerous global warming with far-reaching impacts, including in the Netherlands and the salt-water tidal delta of the Wadden Sea, for today's and future generations.

3. Both the expected negative impacts of climate change on people's health and the rising sea levels constitute a risk to the human rights of the Dutch population.

The Court underlined that human rights law lays an obligation on states to protect individuals and groups against human rights abuses. It does not define a similar direct obligation on the part of companies. At the same time, there is universal agreement that companies are bound to respect human rights. Dutch law outlines an unwritten standard of care (outlined in Book 6 Section 162 Dutch Civil Code) which Shell is bound to observe when determining the Shell group's policy. The UN Guiding Principles on Business and Human Rights set a widely recognised standard for corporate due diligence responsibilities. Accordingly, the Court used these UNGPs as a guideline for the interpretation of the unwritten standard of care in the Dutch Civil Code. The Court concluded that the duty of care in the Dutch Civil Code and the UNGPs' due diligence guidelines constitute a self-standing duty of care for corporations across their entire value chain. This, said the Court, places Shell under an obligation to address climate change as an imminent threat to the human rights of current and future generations of inhabitants of the Netherlands.



In this context, the Court emphasised the importance of establishing the nature and severity of a violation of this responsibility, as well as a company's capacity to remedy. The Court stated it is an established fact that Royal Dutch Shell is responsible for the policy direction of the Shell Group as a whole and as such, exercises influence and control over the emissions (scope 1 and 2) of the group. Through the energy products it sells, Shell also exerts significant influence on suppliers and customers (scope 3 emissions).

As such, the Court ruled, Shell is under a direct obligation to produce results across





the Shell Group, for which it bears responsibility. Shell is also under a best-effort obligation towards its suppliers and customers. In these areas, Shell can and must take decisive action.

Having established Shell's responsibility, the Court moved on to the scope of Shell's reduction obligation. The Court based its decision on the mitigation pathways outlined by the Intergovernmental Panel on Climate Change (IPCC), based on the goals set out in the 2015 Paris Agreement, which must be read as a universally established safety norm in relation to curbing global warming.

Milieudefensie et al. demanded an absolute reduction of 45% in the emissions caused by Shell by 2030. However, the Court took the position that this is not a generally accepted objective, because the pathways outlined by the IPCC are based on a net reduction target of 45% by 2030 and a net 100% reduction by 2050, relative to 2010 levels. The Court therefore ordered Royal Dutch Shell to adjust its corporate strategy and policies to meet this objective in relation to its scope 1 emissions. The Court confirmed that, in its opinion, Royal Dutch Shell, through its corporate policy, has the influence and the means to achieve these reduction levels. In addition, the court placed Shell under a best efforts obligation to reduce its scope 2 and 3 emissions by the same percentage.

### ***Emission scopes 1, 2 & 3***

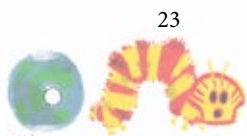
Shell has been ordered to reduce its carbon footprint by reducing its greenhouse gas emissions. These emissions are classified in scope 1, 2 & 3 emissions.

**Scope 1** emissions are the emissions directly resulting from a company's own activities and processes.

**Scope 2** are indirect emissions resulting from the energy consumed by a company, including electricity, heat and cooling.

**Scope 3** emissions are all other indirect emissions in a company's value chain. This category includes not only things like buildings, machinery and purchased goods and services, but also franchises selling the company's products and the emissions generated from the use of a company's products.

The Court noted that the IPCC takes 2010 as the starting point for its trajectories. Yet the court, in this ruling, orders Shell to achieve its 45% reduction relative to 2019. This was the benchmark put forward by Milieudefensie et al. We, as the claimants, took 2019 as a benchmark because from this year on, the data for effectively monitoring Shell's progress in relation to the demanded emission reduction are publicly available.<sup>23</sup> The Court noted that a 45% reduction relative to 2019 already means that Shell will have to make a significant additional effort in the direction of the mitigation pathways as laid out by the IPCC. The Court said it was aware that this is a much steeper reduction than the company's current goal of reducing the carbon intensity of its products by some 20%. The Court noted that Shell is busy adjusting



its climate policy of its own accord. However, the Court underlined that Shell's own stated objectives in this respect continue to remain ill-defined and insufficiently proactive. Hence, the Court felt it was necessary to put Shell under a direct obligation to genuinely up its game. The Court stressed that Shell remains bound by this obligation, even while an appeal procedure is pending.

The Court, in reading out the summary of its ruling, side-stepped to address Shell's earlier objections that it 'cannot do this alone' and that there is no point in placing Shell under a more stringent climate obligation as others will quickly fill the void this leaves. The Court reasoned that Shell won't have to go it alone, because other actors bear their own duty of care – and what others may or may not do does not discharge Shell of its own responsibility. The Court rejected that its ruling to impose a reduction obligation on Shell will lead to unfair competition and a disruption of the level playing field in the oil and gas market. The Court stated that, in the oil and gas sector, a 'business as usual' scenario is not likely to continue, foreseeing that 'other oil and gas companies also limit their investments in oil and gas, voluntarily, under pressure, or due to retreating investors, or as sustainable methods of energy generation become available worldwide, in the aim to meet the targets of the Paris Agreement' and stressed that '[o]ther companies also have to respect human rights'<sup>24</sup>



In relation to the reduction obligation it places on RDS, the Court held that '[d]ue to the serious threats and risks to the human rights of Dutch residents and the inhabitants of the Wadden region, private companies such as RDS may [...] be required to take drastic measures and make financial sacrifices to limit CO<sub>2</sub> emissions to prevent dangerous climate change'. The Court underscored that, as long the Shell group complies with the 45% target for 2030, Shell is free to determine its own reduction pathway in line with its self-determined commercial and competitive interests.

#### 4.6.3 Shell's decision to appeal

The day after the Court ruling, Shell issued a response,<sup>25</sup> emphasising the billions of dollars it is investing 'in low-carbon energy, including electric vehicle charging, hydrogen, renewables and biofuels' and stressing its intention 'to grow demand for these products and scale up our new energy businesses even more quickly'. At the same time, Shell declared it 'fully expect[s] to appeal today's disappointing court decision.'

On 20 July 2021, Shell confirmed that, while it will accelerate its strategy to become a net zero emissions energy business by 2050, it will also appeal the ruling issued by the Court on the grounds that "a court judgement, against a single company, is not effective." Royal Dutch Shell's CEO Ben van Beurden underscored that '[w]hat is needed is clear, ambitious policies that will drive fundamental change across the whole energy system.'<sup>26</sup>

At Milieudefensie, we can agree that there is an urgency for governments to take more decisive action when it comes to climate policies and the energy transition. However, as the Court confirmed, in light of the urgency of the climate issue, the lack of a coordinated (global) government policy cannot exonerate large climate polluters like Shell from their responsibility to proportionally address reducing their greenhouse gas emissions.

In the press release announcing Shell's decision to appeal the ruling, Shell suggests an appeal might be successful because the Court failed to consider Shell's forward-looking Powering Progress strategy because this wasn't published until April 2021, months after the hearings in the Milieudefensie et al. v Shell case. However, Shell's latest strategy document does not herald a new approach. Shell itself highlights that Shell's Powering Progress strategy includes targets to become a net-zero emissions energy business by 2050, in step with society's progress towards achieving the Paris Agreement goal of limiting the increase in the average global temperature to 1.5°C." We have already highlighted the problems with net-zero and the 'in step with society' approach (4.4.1.5 and 4.4.1.6, and 4.5.1.7 respectively). Shell clearly continues to persist with the caveats that the judge referred to in the court ruling. All this suggests that there will be a need to keep scrutinising Shell's behaviour in the years to come, and to keep up public pressure, if necessary backed up by further legal action.

25 [https://www.shell.nl/media/persberichten/media-releases-2021/reactie-shell-op-uitspraak-klimaatzaak.html?utm\\_medium=social&utm\\_content=&utm\\_campaign=-&utm\\_source=twitter&postid=4871707051&linkId=119725215](https://www.shell.nl/media/persberichten/media-releases-2021/reactie-shell-op-uitspraak-klimaatzaak.html?utm_medium=social&utm_content=&utm_campaign=-&utm_source=twitter&postid=4871707051&linkId=119725215)

26 <https://www.shell.com/media/news-and-media-releases/2021/shell-confirms-decision-to-appeal-court-ruling-in-netherlands-climate-case.html>



## 5. Implications of the ruling

The verdict in the Shell climate case can be seen as a turning-point. As this is the first time a company has been held legally liable for its contribution to climate change. It opens up new opportunities to not just challenge governments' climate plans in court, but to hold individual business actors to account for their share in global greenhouse gas emissions. The Dutch court's ruling and reasoning in the Shell case opens the door for similar cases to be brought against other fossil fuel corporations and companies with a high carbon footprint. Technically, the ruling doesn't stand until it is confirmed by the Supreme Court: Shell has already lodged an appeal. However, this process can take years and in the meantime the Court's ruling is enforceable and the Court's argumentation will contribute to setting new standards in climate litigation.

### 5.1 Legal confirmation of the obligation to take preventive action

The Shell Climate Case is unique in the sense that Milieudefensie and its co-claimants did not seek compensation for damage done. We sought, and received, a court order for Shell, as one of the world's leading fossil fuels companies, to change its policy in order to prevent future damage. Shell has been ordered to reduce not only the emissions resulting from its own operations, but must also take responsibility for bringing down its 'downstream emissions', i.e. the emissions resulting from the burning of its products. This is unprecedented and will have a profound effect in holding other large climate polluters to account. Legal recognition of the necessity of damage prevention is an important stepping stone in the struggle to keep global warming within the 1.5 – 2 degrees bracket. The hope is the Shell ruling will cause a ripple effect that will prompt other companies to speed up plans to reduce their emissions. And if not, that this new jurisprudence may help future climate cases aimed at holding business actors to account.

#### Fossil fuels must stay in the ground

There is a growing consensus that we will have to leave fossil fuels in the ground if we are to limit global warming to 1.5 – 2 degrees. A [recent climate study](#) by researchers from the University College London once again confirms that 'nearly 60 per cent of oil and fossil methane gas, and 90 per cent of coal must remain unextracted to keep within a 1.5 °C carbon budget'.

##### 5.1.2 Spin won't cut it

The Court emphasised that Shell's current climate policy is not concrete enough and too full of caveats. The Court's ruling that Shell must concretise its climate policy means that Shell's ambitions will now have to be judged on factual achievements. Shell will no longer be able to get away with greenwashing and spin.

### 5.2 Protection from climate change affirmed as a human right

In its ruling, the District Court in The Hague reaffirmed the interpretation of human rights to include climate change. The Court recognised that, to keep global temperatures below a safe limit, greenhouse gas emissions must be limited to the levels prescribed in the latest UN IPCC's Special Report on Global Warming of 1.5°C . The court made





clear that it is not just States as signatories to climate agreements that have are obliged to meet climate objectives: large corporate emitters are proportionally responsible for their own output and the output caused by the use of their products. With its ruling, the Court has paved the way for potential victims to hold any government, business or organisation accountable for preventing too large a climate change from happening. As such, the ruling has major impacts, not only for Shell, but also for other corporate emitters and for governments.

The IPCC is a team of scientists – more than 2,000 of them – that the United Nations asks for unbiased updates on climate change. In 2018, the IPCC released a report that issued a severe warning that we must limit global warming to 1.5 °C. Some of the impacts the IPCC lists if we are to exceed that level by even half a degree include putting millions more people at risk of flooding; insects pollinating our food crops losing their habitat; and coral reefs vanishing.

### IPCC Report

#### 5.2.1 Extending Shell's obligation to respect human rights to climate change

*"The judgement against Shell shows that there is recourse to human rights law to stop the expansion of oil and gas. The ruling in the Shell case is based on a recognition that human rights must be respected and protected. The right to life, health and wellbeing and other human rights, such as the right to food and drinking water, can only be enjoyed if the earth remains habitable. And this brings with it the imperative to stop global warming."*

**Roger Cox, Milieudefensie's lawyer in the Shell climate case**

The Court ruling explicitly confirms that Shell, as a private business entity, has a responsibility to align its corporate policies with the climate goals as agreed in the Paris Agreement. Technically, as a private actor, Shell is not bound by the obligations under the Paris climate agreement: 'Paris' is a commitment between states. But the judge called to mind that businesses do have an obligation to respect human rights, irrespective of the actions of states.

This 'corporate accountability' of businesses is formulated in [the UN Guiding Principles on Business and Human Rights](#) and other instruments, such as the UN Global Compact and the OECD Guidelines for Multinational Enterprises. Technically, these count as 'soft law', meaning that they are not binding and cannot be legally enforced. But the Court did not hesitate to cite the UNGPs in particular as 'a global standard of expected conduct for all business enterprises wherever they operate.'<sup>27</sup> By relying on the UNGPs to determine Shell's 'duty of care' in relation to climate change, the Dutch court made the UNGPs just a little bit 'harder'. Which is great news, not only in terms of the climate struggle, but also for the protection of human rights and the development of corporate due diligence and accountability legislation.

The Court underscored that ‘the responsibility of business enterprises to respect human rights [...] exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations [...] [a]nd over and above compliance with national laws and regulations protecting human rights.’ The Court made a direct connection between the negative impact of climate change on human rights – in particular the right to life and the right to respect for private and family life – and businesses’ responsibility to take action to mitigate these effects. The Court underscored that ‘it is not enough for companies to monitor developments and follow the measures states take; they have an individual responsibility’.

“Even if states do nothing or only a little,  
companies have the responsibility to respect human rights.”

**Judge Larisa Alwin, in her speech announcing the verdict**



Among many other things, the Court referred to the statements on the Shell Group’s own website, signalling the Group’s commitment to respect human rights and the explicit statement that “[o]ur human rights policy is informed by the UN Guiding Principles on Business and Human Rights and applies to all our employees and contractors”.



So the ruling in fact tells Shell to start putting its money where its mouth is and to back this up with a policy detailing concrete steps of how to get there, instead of stopping at lofty promises and ambitions without a concrete roadmap.

### 5.2.2 Responsibility to reduce scope 3 emissions follows from human rights law

The Court made clear that companies have human rights responsibilities, including an obligation to “address adverse human rights impacts with which they are involved”<sup>28</sup> and that they cannot shift these onto consumers. The Court called to mind that “The UNGP are based on the rationale that companies may contribute to the adverse human rights impacts through their activities as well as through their business relationships with other parties. The duty to respect human rights requires that companies:

1. avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
2. seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”<sup>29</sup>

From this, the Court deduces that Shell has a responsibility for its scope 3 emissions, i.e. the emissions associated with their customers using their products.

The Court acknowledged that Shell cannot be held fully responsible for consumers’ emissions relating to its products. Where the Court saw fit to impose an order on Shell to reduce the scope 1 and scope 2 emissions relating to its immediate business operations, it only issued a ‘significant best efforts obligation’ in relation to Shell’s scope 3 emissions. However, following the Court’s order, Shell will have to be much more proactive towards consumers of its products than it initially planned. The Court underlined that “through the energy package offered by the Shell group, RDS controls and influences the Scope 3 emissions of the end-users of the products produced and sold by the Shell group.” And to effectuate a serious reduction in scope 3 emissions, Shell will have to scale up investments in alternatives to carbon-intensive fossil fuels to offer to its customers.

### **5.2.3 All large emitters have climate obligations**

The Court made very clear that, while its ruling is directed at Shell, the company is not being singled out: The judge underlined that the ruling means that each (large) emitter bears responsibility for proportionally bringing down the amount of greenhouse gases they emit. The Court dismissed Shell's defence that an order against it would lead to unfair competition and a disruption of the level playing field on the oil and gas market, saying that other companies will also have to make a contribution to curbing emissions, including through the necessary reduction of worldwide oil and gas extraction.

Thus, the wider impact of the 'Shell ruling' should prompt all major emitters of the greenhouse gases that contribute to dangerous climate change to take more and faster meaningful steps to cut their emissions.

### **5.2.4 Making it harder to creatively use corporate structures to evade responsibility**

The ruling turns a new page regarding the way we look at accountability of large multinational corporations their accountability: In its ruling against Shell, the Dutch District Court has confirmed they have a responsibility to not endanger others, along their entire value chain.

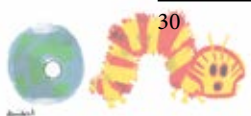
In court, Royal Dutch Shell argued that as the Shell Group's parent company, it did offer guidance on the Shell group's corporate strategy, but could not be held responsible for the actions of its Operating Companies. The Court put an end to this argument, pointing out the close affiliation of the companies of the Shell Group and the policy-setting influence that Royal Dutch Shell as the parent company has to control and influence their emissions. The court hammered that the ruling applies to the entire Shell group, including its operating companies across the world.

### **5.2.5 Clear sign to investors: fossil investments are high-risk investments**

*"The Shell case changes the calculation of whether further investment in fossil fuel has a business case. It weighs against investing in a line of business of which we know will destroy the planet and is also unlikely to bring market profits in a medium-term future. Royal Dutch Shell is given official legal notice that it has a legal responsibility to act in the face of climate change"* <sup>30</sup>

**Christina Eckes is a Professor of EU law at the University of Amsterdam and Director of the Amsterdam Centre for European Law and Governance (ACELG).**

The Shell ruling is a sign on the wall that fossils are increasingly becoming a high(er) risk investment: Climate litigation must be factored in as a financial risk. The ruling in the Shell case contributes to delivering the message to investors that there is no future in fossils. It is yet another clear signal to large greenhouse gas emitters and investors like pension funds that they should speed up divesting from fossils and diversify their portfolio. There are plenty of green and sustainable options for (energy) investments in a sustainable future.







### Momentum for change

In the face of dangerous climate change, investor pressure on big oil companies is mounting because the ambitious climate plans they publish often prove to be much less solid than they want the public to believe. All the major oil companies continue to focus on new oil and gas exploration, disregarding the fact that developing new oil and gas reserves will inevitably push the world beyond the 1.5 – 2.0 °C mark for dangerous climate change. Meanwhile, activist investors are demanding that the oil giants stop procrastinating and come up with genuine, meaningful climate action.

The day after the ruling in the revolutionary Shell climate case, news sources announced Exxon losing board seats to the activist hedge fund Engine No1 in a landmark climate vote. At Exxon's 2021 shareholder meeting, Engine No1 won at least two seats on Exxon's board with an agenda of putting climate change at the heart of the company's business strategy: A historic win for the pro-climate campaign.

Engine No1 was backed by large American pension funds, which shows that large institutional investors want to see Exxon do more to align itself with the transition towards more sustainable energy sources. Exxon has been under sustained criticism for boosting rather than scaling down its fossil fuel investments: Like Shell, Exxon projects that oil and gas demand will continue to grow in the coming decades.

BP, at its annual meeting this May, faced a doubling of shareholder support for the demands of shareholder activist group Follow This, which demands that BP sets climate targets that are aligned with the Paris Agreement. Like Shell, BP pledged to become a net-zero emissions business by 2050, promising a drop in oil and gas production of 40% by 2030 and increasing spending on renewable power generation by a factor 20.

The International Energy Agency (IEA) in its report 'Net Zero by 2050: a Roadmap for the Global Energy Sector' also makes clear that in a net-zero world, there is no room for new investments in oil and gas, projecting that by 2050, demand for fossil fuels will have dropped from four-fifths of the total energy supply today to little over one fifth.

[Download Roadmap](#)



BP has also cut its exploration spending. Follow This argues that these plans do not go far enough, as the emissions of the company will continue to increase until 2030.

In 2020, Total, which says that, as a major energy player, it has 'integrated climate into the core of their strategy', announcing its ambition to move to net-zero emissions across its global production as well as for the energy products used by its customers in Europe by 2050 or sooner. Here too, activist investors are pressing the company to do more, calling for a detailed action plan and an expansion of the zero emissions target to customers globally.

Big players Chevron and Exxon have declined to set net-zero emission goals, but faced resolutions asking for climate related accounting that were backed by a substantial number of their shareholders. Large investors are signalling increasing concerns about fossil investments losing value in the face of stricter climate policies.

These are clear signals that investors expect the major oil companies of this world to come up with detailed responsible transition plans and that they will hold them accountable if they don't. Change is in the air, and the ruling in the Shell case will help it gain momentum.

### ***5.2.6 Underscoring the need for government intervention***

In court, Shell, on several occasions, pointed to the lack of clear guidance from governments in relation to the energy transition to explain its own lack of proactive climate policies. We at Milieudefensie agree that it should not fall to the courts to hold large economic actors like Shell to their social responsibilities in relation to climate change. We would like to see the ruling in the Shell case serve as a prompt to governments to push forward with a coherent Paris-proof regulatory framework, in particular for the energy sector and their end-users, to speed up the energy transition. A clear regulatory climate framework provides clarity and ensures a level-playing field for all actors in the sector.



### 5.2.7 Taking the sting out of ISDS?

The Shell ruling serves to underscore that climate policy is work in progress and that large fossil energy companies can and must anticipate stricter climate measures in the future and a scaling down of fossil fuels in the energy mix. This is important, because it can help take the sting out of the infamous 'investor to state dispute settlement mechanism' (ISDS).

Currently, large, transnationally operating energy companies like Shell can invoke an ISDS clause in the Energy Charter Treaty to claim damages from governments when they take measures that might harm the profitability of their operations and investments. This same clause also appears in many bilateral investment and trade agreements. Companies are able to claim sometimes hundreds of millions in compensation, including for future lost profits. Recent news reports suggest that energy companies [are already suing governments across the world for some 15 billion \(!\) euros over climate policies that threaten their profits](#). Shell has also invoked the ISDS mechanism on four different occasions and is currently, together with Exxon Mobile, embroiled in a (non-ISDS) arbitration with the Dutch government over the closure of Europe's largest gas field, located in the north of the [country](#). [The ISDS mechanism can significantly slow down the energy transition and make climate action much more costly than necessary. ISDS claims have already been filed to demand compensation for climate-justified policy measures and environmental permitting decisions](#). And as climate measures lead to more stranded assets, the number of ISDS climate cases is likely to increase. Filing a successful ISDS claim becomes a lot harder when it is clear that a company might have anticipated government intervention.

### 5.2.8 More climate litigation

In the struggle for more effective climate action from governments and the corporate sector, we are happy to see this ruling contributing to jurisprudence in a new era of climate change litigation ([The Sabin Centre for Climate Change Law has a climate change litigation database](#)). Especially as the judge made short work of Shell's complaint that it was being [singled out as one among many reiterating](#) that what applies to Shell should also apply to other large emitters.



Milieudefensie and its co-claimants expect the approach they took in the Shell climate case to be replicated across the world. Fossil fuel companies and other major polluters anywhere in the world should prepare to defend themselves in court.

“The impact of this victory does not stop in the boardroom of Shell. This ruling is a signal to all major polluters: You can no longer sit back or even work against climate policy. No lawsuits should be needed to protect citizens. But we will continue until everyone does their fair share: Shell is the first but certainly not the last company that will be forced to stop causing the climate crisis. As of today, "climate lawsuits" are a material risk for all major polluters in the world.”

**Donald Pols**, *director of Milieudefensie*





## 6. How do others view the impact of the Shell climate ruling?

[\[The ruling\]](#) in Milieudefensie et al. v Royal Dutch Shell plc will set a precedent that may be used in cases against other companies that are responsible for GHG-emissions, and in cases where a parent company is asked to exert its influence over its group companies as far their activities are concerned. This may relate to environmental issues, but also to other areas affecting human rights, such as child labour.'

**Frans-Jozef Crousén and Louis Bouchez,**  
*Corporate partners at Fieldfisher Netherlands*

'Since the use of human rights-based arguments to compel private corporations to take concrete steps to reduce emissions has now proven to be successful, other large emitters of greenhouse gases may face similar claims relating to their climate policies and their obligations to society more generally. [...] How effective any subsequent claim against other large carbon emitters are will depend to a large extent on where they are brought, as not all jurisdictions are as sympathetic to human rights-based arguments as the Netherlands. Nevertheless, the success of Milieudefensie's claim has created a legal template for future claimants looking to hold private corporations accountable for the impact of their direct and indirect carbon emissions. Moreover, in light of District Court of The Hague's determination that a company's climate obligations with respect to human rights are not optional or passive responsibilities but require substantive and tangible action, all businesses – particularly those responsible for substantial greenhouse gas emissions – would be well advised to carefully consider their climate policies.'

**Mark Clarke and Gwen Wackwitz,**  
*White & Case*

[The court's ruling](#) – that Shell must reduce its corporate emissions, those of its suppliers and customers to 45% below 2019 levels by 2030 – recognises that Shell not only has the capacity, but the responsibility to bring its operations into line with what the science shows is necessary to prevent catastrophic climate change. [...] Significantly for the whole industry, the court explicitly extended this responsibility to include the operations of Shell's subsidiaries around the world and to the full scope of Shell's emissions. [...] And the court recognised that this has immediate and significant implications for where Shell's future investments should be made. This echoes and reinforces the International Energy Agency's warning [...] that investments in new oil and gas developments must end immediately.'

**Carroll Muffett,**  
*President of the Center for International Environmental Law (CIEL)*



[‘It is highly](#) likely that the decision will inspire other legal initiatives and even judicial reasoning in similar cases. [...] [L]itigants around the world are inspired by innovative strategies and legal arguments that have been used in other jurisdictions and the judiciary likewise draws inspiration from climate judgements that have been delivered elsewhere.[...] [T]here is reason to be hopeful about this decision’s potential to mark a new era in rights-based climate litigation, whereby fossil fuel companies are being held to account for disrespecting their human rights obligations and climate goals.’

### **The Global Network for Human Rights and the Environment**

[‘\[I\]t \[is\] unlikely that Shell will simply](#) try to do the bare minimum in terms of compliance. This would create major reputational risk with governments, investors and the general public. In any case, it would be like fighting a losing battle. It is already clear – as we have discussed in The pH Report and in our blog – that Oil markets and OPEC have entered the endgame in the Age of Oil. We [...] expect Shell to take the decision as a signal to become far more proactive in pursuing its evolution away from fossil fuels. We believe it would make good business sense for Shell to now accelerate its transformation. Logically, as well as ethically, it would make perfect sense for Shell to use its influence to ensure that a 45% reduction in CO<sub>2</sub> emissions becomes the globally accepted standard.’

**Daniël de Blocq van Scheltinga** *is a graduate of Leiden University in the Netherlands, with a Master of Law degree and a specialty in International law*

[‘\[T\]he Shell case could lead](#) to other types of human rights challenges against corporations by applying the same reasoning to other impacts. In the Shell ruling, the court integrated UNGPs and other soft law instruments such as the UN Global Compact (UNGC) principles and the OECD Guidelines for Multinational Enterprises into the duty of care, ruling that the responsibility of businesses to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. This has the potential to extend to wider human rights beyond climate litigation, given the court effectively incorporated the UNGPs into Dutch law.’

**Linklaters LLP**

“So happy with this historic ruling against Shell! It’s now abundantly clear that Shell has an obligation to reduce its CO<sub>2</sub> emissions because the impacts of climate change as a result of greenhouse gas emissions constitutes a real threat to the inhabitants of the Wadden Sea region. Shell will have to halt investments in new projects to meet this obligation, and what could be more logical than to scratch gas exploration in the Wadden Sea altogether?

**Lutz Jacobi,**

*Wadden Sea Association (one of our co-plaintiffs in the Shell climate case)*



"This is a turning point in history. This case is unique because it is the first time a judge has ordered a large polluting company to comply with the Paris Climate Agreement. This ruling might also have major consequences for other big polluters."

**Roger Cox,**  
*Lawyer for Milieudefensie*

"This [ruling] is incredibly good news, especially for people in countries like Niger and Bangladesh who face droughts or floods caused by climate change. They have no time to wait until companies like Shell comply with international climate agreement by themselves. This verdict is of vital importance to them."

**Niels Hazekamp,**  
*Senior policy advisor at Both ENDS*

"This is a landmark victory for climate justice. Our hope is that this verdict will trigger a wave of climate litigation against big polluters, to force them to stop extracting and burning fossil fuels. This result is a win for communities in the global South who face devastating climate impacts now."

**Sara Shaw,**  
*Friends of the Earth International*

"[This verdict is a historic victory](#) for the climate and everyone facing the consequences of the climate crisis. [...] Shell cannot continue to violate human rights and put profit over people and the planet. This verdict is a clear signal to the fossil fuel industry. Coal, oil and gas need to stay in the ground. People around the world are demanding climate justice. Today the court confirmed that the fossil fuel industry cannot continue their climate pollution. We can hold multinational corporations worldwide accountable for the climate crisis."

**Andy Palmen,**  
*Interim director of Greenpeace Netherlands*

"[\[T\]he Dutch court said that Royal Dutch Shell](#) has a legal obligation, to reduce its emissions 45% by 2030. If that type of reduction were to be achieved by all of the major oil and gas and fossil fuel corporations, we would be well on our way to actually meeting the Paris Agreement targets."

**David R. Boyd,**  
*United Nations Special Rapporteur on human rights and the environment*



## 7. Annexes

### Recommended reading

The legal documents in the Shell Climate Case

- An overview of the legal documents submitted by Milieudefensie and its co-claimants in the Shell climate case can be found here: <https://en.milieudefensie.nl/news/overview-of-legal-documents-climatecase-against-shell>
- The legal documents submitted by Shell can be found here: <https://www.shell.nl/media/nieuwsberichten/2020/hoe-denkt-shell-over-de-klimaatzaak.html>
- The judgement of the District Court in the Hague: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339>
- For a summary of the ruling, see: 'Royal Dutch Shell must reduce CO<sub>2</sub> emissions', District Court of The Hague, 26 May 2021. [https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Den-Haag/Nieuws/Paginas/Royal-Dutch-Shell-must-reduce-CO<sub>2</sub>-emissions.aspx](https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Den-Haag/Nieuws/Paginas/Royal-Dutch-Shell-must-reduce-CO2-emissions.aspx)

10 ways Shell is destroying our Earth (complete with supporting documents), Milieudefensie, 26 October 2020. <https://en.milieudefensie.nl/news/10-ways-shell-is-destroying-our-earth-complete-with-supporting-documents>

Pumping and planting: Paris out of sight - spotlight on Shell's climate ambition, Milieudefensie, March 2021.

Green words, fossil actions: a closer look at Shell's climate ambition, Milieudefensie, 9 February 2021.

Smoke and Fumes – the legal and evidentiary basis for holding big oil accountable for the climate crisis, Center for International Environmental Law (CIEL), 2017. <https://www.ciel.org/wp-content/uploads/2019/01/Smoke-Fumes.pdf>

A revealing report on what the world's leading fossil fuel companies knew about climate change, their climate denial and failure to act.

Six reasons the Shell ruling made history for climate litigation, ClientEarth, 7 June 2021. <https://www.clientearth.org/latest/latest-updates/opinions/six-reasons-the-shell-ruling-made-history-for-climate-litigation/>

### Climate change litigation - useful websites and databases

The **United Nations Environment Programme (UNEP)** publishes a global climate litigation report that provides an overview of climate litigation across the world and an assessment of global climate litigation trends. Its **2020 Status Review** (<https://www.unep.org/resources/report/global-climate-litigation-report-2020-status-review>) shows how climate litigation is compelling governments and corporate actors to pursue more ambitious climate change mitigation and adaptation goals.





**The Grantham Research Institute on Climate Change and the Environment** publishes a Global Trends in Climate Litigation series. Its **2021 Snapshot** (<https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-litigation-2021-snapshot/>) provides an update on known case numbers and considers relevant trends in the arguments and strategies employed by litigants in climate change cases. 'Grantham' also maintains the **Climate Change Laws of the World (CCLW) database** (<https://climate-laws.org/>). CCLW is the largest global data base of climate change laws, policies and litigation.

The **Sabin Center for Climate Change Law** (<http://climatecasechart.com/climate-change-litigation/>) provides two databases of climate change case law. Cases in the databases are organized by type of claim and are searchable. In many cases, links are available to decisions, complaints, and other case documents.

### **Climate change litigation – starting points for legal assistance and fundraising**

**ClientEarth** (<https://www.clientearth.org/>) is an environmental charity that uses the power of law to change the system for a brighter, healthier future. ClientEarth works with local partners in over 60 countries around the world to create systemic change that protects life on Earth. Climate accountability is a key focus point. ClientEarth promotes and monitors the climate laws, plans and policies of governments and companies. Client Earth's lawyers bring legal challenges when governments and companies fail to deliver on their environmental obligations.

ClientEarth recently published a legal guide "Access to justice in European Union Law" to empower members of the public to help tackle the poor implementation of EU environmental policies and regulation. The organisation offers free legal assistance in promising environmental cases.

**Action4Justice** (<https://action4justice.org/>) is a global network of NGOs, lawyers and civil society organisations working to improve access to justice across the world. A4J helps to equip individuals and communities with the practical information needed to help them uphold their human rights and protect their environment through legal action and advocacy. They also facilitate the creation of coalitions of community leaders, civil society and legal professionals which can use legal action to bring social change. A4J has platforms in different countries across the world that can give you information and tips specific to your country.

Their webpage on climate change litigation included guides for bringing a court case and links to useful organisations: [https://action4justice.org/legal\\_areas/climate-change/](https://action4justice.org/legal_areas/climate-change/)

**The Dutch Urgenda Foundation** (<https://www.urgenda.nl/en/home-en/>) which aims for a rapid transition towards a sustainable society, founded the Climate Litigation Network (<https://www.urgenda.nl/en/themas/climate-case/global-climate-litigation/>) to support climate cases worldwide.

**Global Legal Action Network** (<https://www.glanlaw.org/>) works with affected communities to pursue innovative legal actions across borders to challenge powerful actors involved in human rights violations and systemic injustice.



The **Climate Justice Fund** (<https://climatejustice.fund/>) is a financial facility that supports the development and use of legal avenues to attain global climate justice. The CJF provides support for the incubation of new legal initiatives for climate justice, with specific focus on communities and networks in the Global South. It is set up, governed and managed by a group of well-established and experienced climate lawyers, climate justice campaigners and activists.

**CrowdJustice** ([www.crowdjustice.com](http://www.crowdjustice.com)) is an online platform aimed at raising funds and support for legal action. Featured environmental causes (per 12 September 2021) include a local resident getting an emergency injunction to stop fracking, neighbours protecting a green space from link road development and a Youth4ClimateJustice case against 33 European countries.







**If you want to support our case.  
Donate here**

