



## OECD Guidelines for Multinational Enterprise

### Specific Instance

(Translation from Spanish)

*With Respect to the Activities of SHELL CAPSA at the Polo Petroquímico Dock Sud - Argentina*

***Buenos Aires, Argentina, May 28, 2008***

El Instituto para la Participación y el Desarrollo de Argentina (INPADE)  
and Fundación Amigos de la Tierra Argentina

#### **Specific Instance Presented to:**

##### **Ambassador Rodolfo Rodríguez**

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## I. INTRODUCTION- OBJECTIVE OF THE SPECIFIC INSTANCE

The *Instituto para la Participación y el Desarrollo de Argentina (INPADE)*, with offices at Castillo 460, City of Buenos Aires, represented by Mr. Jorge Carpio, Executive Director<sup>1</sup>, and the *Fundación Amigos de la Tierra Argentina*, located at Avenida Córdoba 5051, City of Buenos Aires represented by Mr. Roque Pedace<sup>2</sup> present themselves before the Honorable Ambassador Rodolfo Rodríguez, National Contact Point of Argentina and the Honorable National Contact Point of the Netherlands, in order that in performing their duties, they take heed of this presentation and proceed with the opening of a Specific Instance against the firm SHELL CAPSA, of Argentina, for the flagrant and officially documented violation of the following chapters of the OECD Guidelines for Multinational Enterprises<sup>3</sup>: Preface; Chapter II General Policies; Chapter III Disclosure and Chapter V Environment.

## II. SHELL CAPSA – DOCK SUD. A brief on activities and history in Argentina.

The firm SHELL is of Dutch origin and its history in Argentina began in 1914, making it the second oldest oil company currently operating in the country. SHELL holds many enterprises situated within the territory of Argentina (in the Federal Capital city of Buenos Aires, and the provinces of Santa Fe and Chaco). The company's primary activities in Argentina are the transportation and distribution via river of products derived from oil; the sale of fuels and lubricants designed for aviation; the sale and distribution of chemical products; the sale of liquid petroleum; the commercialization of natural gas; and the marine transportation of crude oil.

The SHELL CAPSA Refinery Buenos Aires, located at calle Sargento Ponce 2318, Dock Sud, Avellaneda, the object of this report, began operating May 7, 1931. The Dutch/Shell group is of British and Dutch origin. In 2005 Shell Argentina had 2,881 employees with "stable work" and "stable-transitory work" status.

The SHELL CAPSA facilities occupy a total of 106 hectares and is the only refinery belonging to the Shell Group in South America. It has a storage capacity of 770,000m<sup>3</sup>, of which 175,000m<sup>3</sup> are reserved for the storage of crude oil and the rest for intermediate and finished products, ready for delivery.<sup>4</sup> These are made up of units of hydrotreatment and catalytic converters. Shell also owns two gas plants which obtain butane, propane, and propylene. The crude oil is transported from the oil fields to the refinery primarily via sea, although some of it is also transported by pipeline. SHELL CAPSA has its own fleet of ships that unload the raw material at its dock for flammable materials near the refinery, from which the crude oil is pumped into storage tanks to be processed<sup>5</sup>.

## III. Facts and Findings Resulting in the Presentation of the Specific Instance

The present Specific Instance derives from, and is largely substantiated by, a *Preventative Closure* carried out by the National Government Environmental Authority (SAyDS) – acting on behalf of National, Provincial and Municipal Governments - of Shell's facilities located at Dock Sud, last year, following the SAyDS findings during an extended audit, which included violations of Administrative, Environmental, and Human Rights legislation. These officially substantiated violations can be directly associated with many violations of the OECD Guidelines for Multinational Enterprises, and are directly relevant to the list of requests made at the end of this Specific Instance.

With respect to the relevant facts cited for the purposes of the presentation of this Specific Instance, much of the evidence is directly extracted from the Administrative Record of the *Secretaría de Ambiente y Desarrollo Sustentable* (the SAyDS) dated August 22-28, 30 and September 1-4, 2007 when personnel from the *Cuerpo Técnico de Fiscalización y Control de la Dirección Nacional de Control Ambiental de la Secretaría de Medio Ambiente y Desarrollo Sustentable (SAyDS), Autoridad de Cuenca Matanza Riachuelo*<sup>6</sup>, carried out inspections of SHELL CAPSA facilities. Following thirteen days of inspection, the SAyDS concluded, through a publicly available

<sup>1</sup> INPADE is an Argentinean civil association, established June 14, 2004, established by Resolution 1579 of the Inspección General de Justicia del Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación. <http://www.inpade.org.ar/>

<sup>2</sup> "Amigos de la Tierra"- *Argentina* is a non-governmental organization that since August 22, 1984 has developed activities in Argentina with the objective of working for the restoration, preservation and rational use of natural resources, belonging to the Red Internacional Ambientalista, *Friends of the Earth International (FOEI)* <http://www.amigos.org.ar/>

<sup>3</sup> Later referred to as, "The Guidelines".

<sup>4</sup> [http://www.shell.com/home/content/ares/about\\_shell/what\\_we\\_do/refineriabuenos\\_11051620.html](http://www.shell.com/home/content/ares/about_shell/what_we_do/refineriabuenos_11051620.html)

<sup>5</sup> [http://www.shell.com/home/content/ares/about\\_shell/what\\_we\\_do/refineriabuenos\\_11051620.html](http://www.shell.com/home/content/ares/about_shell/what_we_do/refineriabuenos_11051620.html)

<sup>6</sup> <http://www.ambiente.gov.ar/default.asp?idseccion=212>

resolution, that SHELL CAPSA was in precarious and illegal environmental conditions, and as such, the SAYDS resolved to carry out a *Preventative Closure* of SHELL CAPSA's facilities founded on the following reasons:

Firstly, at the moment of inspection SHELL CAPSA did not have *“permission to extract from from the Dock Sud Canal nor the Río de la Plata the 18,400,000 liters of per hour that they were removing, failing to comply with the Water Code of the Province of Buenos Aires.”* They also did not possess *“the servicing and periodical tests of machines subject to pressure complying with the SPA resolution 231/96, in about 700 machines.* There also existed *“confirmed losses and spills of dangerous waste. Soil tests also confirmed contamination.”*

Furthermore, it was affirmed that there was *“unsatisfactory management of special and/or dangerous waste in violation of Law 11.720 of the Province Buenos Aires and 24.051 of Dangerous Wastes of the Nation (Residuos Peligrosos de la Nación).* They were neither registered as operators of special waste<sup>7</sup>, nor complying with declarations of the treatment of dangerous waste<sup>8</sup>, nor *with operation manuals<sup>9</sup>, nor with permission to affect water resources.* Nor did they comply with environmental impact studies.

Through the resolution of SAYDS it was concluded that *“the inspected establishment did not present the minimal conditions of environmental security and therefore, it is possible to support the presence of a dangerous situation as much for the environment as for the physical integrity of inhabitants due to a high association with risks (...) that meet the criteria for the adoption of preventative legal means, including:*

- *Closure of the establishment of SHELL CAPSA- Dock Sud;*
- *Intervention of la Unidad Fiscal Ambiental (the Environmental Prosecutor's Unit), with the objective of collecting data and determining if Shell has committed a crime that merits the intervention of the Federal Court of Argentina;*
- *To urge the competent authorities to exert their sanctionary powers with respect to this situation;*
- *Demand that the legal representation of SHELL CAPSA appear before the Dirección de Infracciones Ambientales (Environmental Crimes Unit), with the objective of, in a personal and indelegable way, offering a detailed report regarding the exempt circumstances<sup>10</sup>.”*

After several days of public declarations, the President and CEO of SHELL CAPSA, Juan José Aranguren, argued that he was being persecuted by the national government, and that there would be a supposed imminent shortage of oil at a national level. SHELL CAPSA refused to recognize and actually denied claims by the SAYDS of violations and irregularities, and refuted the idea that the company was contaminating or guilty of damaging environmental material. Yet, shortly after the closure, and the public exposure of the results of the audit by the SAYDS, Mr. Aranguren would end by recognizing that the SAYDS's findings indeed were true and stated that SHELL would draw up an *Environmental Remediation Plan* through which it was ensured that a *Study and Work Plan* would be elaborated in a detailed manner addressing the potential level of affectation and harm caused by Shell as a result of their inadequate environmental management, and the incidents caused by the spillage of hydrocarbons into the soil.

This plan comprised four main activities:

- An analysis of the property of Shell and the surrounding area, taking into account the geographical location of the affected areas and the type of installation that caused the contamination. This includes the presentation of a map of the superficial installations and means of access (over land, river and sea); a map of subterranean installations with the identification of the location of close urban zones; the presentation of the results of previous studies that had been conducted (environmental audits, surveys of the depth of the groundwater level) the identification of the sources of documentation and details about the age of the contamination, among others.

-A Hydro-geological Study, to map out the route of the contaminants, from the sites of the spills to the zones affected by the contamination. Using the results of this study, a piece of land should be defined inside the area that will be used as a control and whose physical, chemical and biological characteristics are similar to those of the site prior to its affectation. A chemical analysis of the contaminants, in both soil and water, to be developed to identify their types and concentrations.

-A physical- chemical analyses of the soil, determining its grade of affectation.

The SAYDS demanded that SHELL CAPSA present, within a deadline of ten days<sup>11</sup>:

<sup>7</sup> Artículo 5 y 34 de la Ley de Residuos Peligrosos y los artículos 8 y 38 de la ley 11.720 de la Provincia de Buenos Aires.

<sup>8</sup> Artículo 12 L. 24.051 y artículo 2 970 L. 11. 720.

<sup>9</sup> Artículo 40 L. 24.051 y artículo 45 L. 11. 720.

<sup>10</sup> RS ACUMAR N° 98 – Bold added.

-A sworn statement and attached documentation for their registration into the National Registrar of Producers and Handlers of Hazardous Wastes to the SAYDS' Unit of Hazardous Waste, as an operator.

-A sworn statement and attached documentation registering the company as an operator of special waste before the Provincial Registrar of Producers and Handlers of Special Waste – of the Environmental Secretariat of the Province of Buenos Aires.

-Documentation that proves treatment and disposal of the dangerous/special waste generated in the accidents that occurred on August 2, 2007. In addition, a plan of strict compliance to the aforementioned registration and to Resolución S.P.A N° 231/96, regarding machines subject to pressure in the environment.

-Documents that prove compliance with Law 12.257 and the Resolution ADA N° 08/04 in reference to the use, protection and preservation of water resources and permission to dispose of liquid waste, Ley Provincial 5965. The SAYDS also demanded that the company begin, within 15 days, the final disposal of the waste detected during the inspection, as well as all other waste accumulated by the company that has a storage time of more than six months.

### Environmental Impact Zones of the Activities of SHELL CAPSA- Dock Sud.

The SHELL CAPSA facilities, inspected and preventively closed by the SAYDS for failure to comply with national environmental laws, as mentioned previously, is located in a area that presents many problems originating from a situation of extreme socio-economic vulnerability of its inhabitants which has evolved over time and in parallel to the petroleum refinery industry, largely dominated by SHELL. These problems are compounded by a lack of sufficient infrastructure and a lack of public services in the immediate areas adjacent to SHELL CAPSA, which were it not for the countervailing force or urban migration seeking employment at the refinery, would not otherwise have been settled.

The location of Dock Sud, where the Polo Petroquímico is situated, is four kilometers from the center of the city of Buenos Aires, in the suburban locality of *Avellaneda*, demarcated by the Río de la Plata, the Sarandí river, the Río Matanza - Riachuelo and the Dock Sud Canal. This area has 23.717 habitantes<sup>12</sup>, representing 7% of the inhabitants of the area. This site is home to the largest and most contaminated petrochemical industrial sector in Argentina. Close to 4,500 people inhabit the area. The area is also generating approximately 5% of the GDP of the Province of Buenos Aires. The area is more generally and broadly part of the "Matanza-Riachuelo River Basin". This geographic area is of a high environmental and social sensitivity *"various studies have determined that this area has a high grade of contamination by substances such as lead and chromium found in bodies of water above ground, in subterranean water as well as in the soil. The atmospheric contamination covering all the industrial zones, such as Dock Sud, is alarming."*<sup>13</sup>

The industrial activities and lack of sound environmental management by Shell have generated serious governmental concern. This situation is of extreme gravity and urgency, and the recent confirmation of suspicions of the role played by Shell in this contamination is greatly alarming residents, civil society, public authorities and the courts. There have been governmental programs and policy in place since 1993 to address the clean up of the environment and the health and integrity of the affected populations. But during 2006-2007, the national government, through the National Environmental Authority (the SAYDS), acting on behalf of all levels of government (municipal, provincial, and national) greatly increased efforts to crack down on the sources of the problem.<sup>14</sup> The SAYDS recognized that *"the problem of the Matanza Riachuelo Basin ... is the result of a process of social and environmental degradation that has lasted decades"*<sup>15</sup>. To address the multiple problems, the SAYDS created in conjunction with the Province of Buenos Aires, and the Ciudad Autónoma de Buenos Aires, an Integrated Plan for the Clean-up of the Matanza Riachuelo Basin (*Plan Integral de Saneamiento de la Cuenca Matanza Riachuelo*)<sup>16</sup>.

The actions of the government have been concentrated primarily on the control of the companies that carry out industrial activities in the industrial hub. Shell is perhaps the most notorious company in the region<sup>17</sup>. The national

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<sup>11</sup> RS ACUMAR N° 98

<sup>12</sup> According to the national census conducted in 2001.

<sup>13</sup> Special Report on Matanza- Riachuelo Basin <http://www.farn.org.ar/participacion/riachuelo/documentos.html>

<sup>14</sup> Later referred to as SAYDS

<sup>15</sup> <http://cmr.ambiente.gov.ar/>

<sup>16</sup> <http://cmr.ambiente.gov.ar/?idarticulo=3609>

<sup>17</sup> Special Report on Matanza- Riachuelo Basin <http://www.farn.org.ar/participacion/riachuelo/documentos.html>

government has stated in its strategy for the clean-up of the Matanza Riachuelo Basin that *“first it is necessary to eliminate the causes of the contamination... so that later it is possible... to clean up the area...”*<sup>18</sup>

With respect to the community directly affected, in the periphery of Dock Sud, and immediately adjacent to the SHELL CAPSA facilities, is the *Villa Inflamable* community. *Villa Inflamable* is a neighborhood whose inhabitants have been living, for decades (and on a daily basis), with the toxic fumes that are produced by the refining of oil by Shell. This a community that is highly vulnerable, because of its scant resources and low incomes, that further suffers from a lack of basic infrastructure for sanitation and utilities (water, electricity, gas, plumbing, access to health facilities, etc).<sup>19</sup> The residents of *Villa Inflamable* live, in their great majority, below the poverty line and reject the existence of the oil industry as a result of the contamination that the industry generates. Shell has caused grave health consequences to children, mothers, pregnant women, the elderly and other neighbors.

It is common knowledge that the residents of *Villa Inflamable* *“...furthermore suffer from epidermal, ocular, pulmonary, neurological, and other diseases, as a result of the presence of toxic metals, carcinogenic dioxins and other dangerous wastes that fill the trash; they live in precarious conditions, and in many cases extreme. The fragile and unstable connections of drinking water come from far away and cross the contaminated canals... The houses are sinking and the water poisons all that it touches (...) Near the banks of warehouses for oil storage there runs a 132,000 volt electrical installation. Hundreds of combustible fuel storage tanks are tremendously deteriorated and the gas containers are found less than a convenient distance away, which means that a chain explosion would provoke an expansive wave of more than three kilometers ... The roads exhibit enormous holes, five meters in diameter, where trucks carry fuel, compromised gas, toxic waste, etc...”*<sup>20</sup>

A report compiled by the Japanese International Cooperation Agency (JICA)<sup>21</sup> in 2003, found that the residents of *Villa Inflamable* are living at high environmental and health risk, due primarily to the presence of 17 toxic gases (among which are found benzene, toluene, xylene, and carbon tetrachlorine), and the presence of heavy metals (lead and chrome among others). The results of the study, which analyzed 144 children from *Villa Inflamable*, found that 57 of the 144 had a high level of lead in their blood. The metal also appeared in the soil of their property, while 15 hydrocarbonic gases were found in the air.



Shell's industrial and other activity is omnipresent in many facets of the lives of the residents of *Villa Inflamable*. Auyero and Swistun, in a recently published volume on the social and environmental predicaments of *Villa Inflamable*<sup>22</sup> write, “[Shell] is everywhere: in the trucks that come and go, in the logos on the t-shirts that the children wear, in the different “special programs” that the company finances in the neighborhood”... It is also in the reports that the company publishes about its community service, which the company then distributes to the community and its residents, to remind them of all the social activities that the company provides. It is also important to emphasize that the relationship between the community and Shell is affected by the same dependence that many individuals and families have on the company, that for some it is a source of work and for others it is a philanthropic corporation that serves to better the lack of basic services in the area.

The attitude of Shell towards the community, which some call “politics of a good neighbour” is manifested in a long list of donations and philanthropic works in the community (athletic donations, school supplies, donations to

<sup>18</sup> Declarations made by SAyDS <http://www.ambiente.gov.ar/?IdArticulo=3289>

<sup>19</sup> Reports: Dorado 2005 and Swistun 2007.

<sup>20</sup> Quoted from the article “Dock Sud. Convivir con la muerte” <http://argentina.indymedia.org/news/2006/08/430674.php>, By Ana Sofia Quintana - Wednesday, Aug. 09, 2006.

<sup>21</sup> <http://www.jica.org.ar/>

<sup>22</sup> Auyero, Javier, y Swistun, Debora. *Inflamable: Estudio del Sufrimiento Ambiental*. Paidós. Tramas Sociales 45. Buenos Aires 2008.

kindergarten classes, to the church, clothing, heaters, paintings, vacation trips for students, games for children, food for cafeterias, contribution to the construction of infrastructure, financing for health centers, etc.). In its entirety, the invested sum adds up to a figure in the tens of thousands of dollars (a meager sum, surely compared to the many millions, or rather billions of dollars the company has reaped at the site since its founding). Yet Shell's industrial activity results in many of the environmental problems facing *Villa Inflamable* and its investments in social philanthropy are insignificant when compared to the SHELL's industrial activity has on human life, in health and in the quality of the environment. It is clear that Shell has an enormous negative impact on the health of the residents of *Villa Inflamable* and on the poor quality of the environment that surrounds them, which surpasses any philanthropic activity that can be credited to the corporation.

Auyero and Swistun summarize the relationship between the community and the corporation and its contamination of the environment in the following manner: *"[the victims are] scared about the causes and the development of their illnesses (and those of their loved ones), they are uncertain about the probable relocation of the neighborhood (...) suspicions and rumors surround the actions of the most powerful oil company: Shell. [they anticipate] the complexity of the responses: the physical and psychological suffering is exacerbated by the doubts, by the disbelief, the suspicions, the fears and the interminable waiting. ... Historically ... we see that doctors... are part of the daily life of residents of Villa Inflamable along with lead and unpleasant odors. They also become a part of the lives of Shell personnel... Many times, the residents of Villa Inflamable are angry, others anguished, others confused or mystified as to the cause, the scope, and the potential effects of the contamination. Divisions... and rumors about the imminent "relocation" of the neighborhood, about the bribes that Shell is paying... to quiet a massive protest that never happens..*

Within the dangerous substances that are manipulated within the SHELL CAPSA plant is crude oil, which is a substance that results from a mix of various components. Before the oil can be used as a combustible, lubricant, road surface, or raw chemical material, the components must be separated, purified, chemically modified and mixed according to their properties and the demand<sup>1</sup>. This process is the activity that is performed in the oil refineries. This implies the manipulation of processes, substances, and wastes scientifically and legally categorized as highly dangerous. Consequently, their improper and/or negligent manipulation offers important and irreparable risks to health and the environment in general. Among the substances that impact the health of people are found:<sup>2</sup>

- *Sulfur dioxide (SO<sub>2</sub>)*. Generally, sulfur dioxide affects respiratory function, causing symptoms such as difficulty breathing, cough, bronchial constriction, irritation of the throat, irritation of the eyes, tightness of the chest, and reduced productivity and activity and diminishes the life expectancy. In high concentrations, even a brief exposure can be fatal.

- *Nitrous oxide (NO<sub>x</sub>)*: This is an extremely reactive gas that can have substantial short and long term effects on the health of human beings. It can cause temporary illnesses such as pulmonary irritation, hyperactivity, irritation of the eyes, nose and throat; inflammation of respiratory cells, cough, low lung capacity, pain upon inhalation, and respiratory infections (bronchitis and pneumonia). High concentrations of nitrous oxides raise the mortality rate in the places where they are found, increase susceptibility to lung cancer, and can cause premature death.

- *Carbon monoxide (CO)*. Carbon Monoxide can cause serious respiratory illnesses, behavioral changes, effects on the central nervous system, functional cardiac and pulmonary changes, headaches, fatigue, drowsiness, coma, and death.

- *Solid Particles (ash, sulfates, and nitrates)*. Upon entering the lungs, these particles reduce the respiratory capacity of a human being. Many of these small particles are acidic and stay suspended in the air for a long period of time, causing them to have a higher possibility of being inhaled. Because they are acidic, they cause severe harm to the lung fiber.

- *Carbon Dioxide (CO<sub>2</sub>)*. In excess, it causes intoxication and poisoning.

Many of the mentioned effects have been confirmed for many years in residents adjacent to SHELL CAPSA facilities at Dock Sud, as well as in the close-by community, and such finding have been reconfirmed recently by the National Environmental Authority (SAyDS). Such grave consequences, with respect to the health of the people that live in this area and to the environment, and the recent official findings against SHELL CAPSA which confirm that Shell is not in compliance with national environmental norms, have motivated the present Specific Instance.

It is essential to emphasize that this Specific Instance does not merely *presume* the culpability of the SHELL CAPSA in contaminating the area and harming the health of residents in the surrounding areas of their facility, but rather, that SHELL CAPSA's culpability **has already been established and confirmed** by the competent National Environmental Authority (SAyDS). This Specific Instance highlights not only the violations of the OECD Guidelines perpetrated by SHELL CAPSA but the absolute failure by SHELL CAPSA to respond, attend to and redress the consequences of its actions which have been perpetrated over many decades to the detriment of the environment and to the health of local residents. Furthermore, it emphasizes the corporate irresponsibility of SHELL CAPSA of knowingly hiding their impacts by not informing the public, or governmental authorities, and by promoting relatively low cost philanthropic "good neighbor" policies and programs, and CSR marketing, investing an extremely insignificant low sum of money in *good works* in order to cover up its severely harmful and fatal impact on children, the elderly, mothers, and other residents of the community.

#### IV. VIOLATIONS OF THE OECD GUIDELINES BY SHELL CAPSA ARGENTINA.

It is evident that the violations perpetrated by SHELL CAPSA, found by the environmental authority audit conducted by the SAyDS, result in evident violations of the OECD Guidelines. *Preface, Chapter II "General Policies" paragraphs 1, 2, and 5; Chapter III "Disclosure" paragraphs 1, 2, 4e, and 5b; and Chapter V "Environment", First paragraph, and paragraphs 1-8. These are described below:*

##### A) Regarding the Preface<sup>23</sup>

*"The Guidelines establish principles and standards (...) for responsible business conduct consistent with applicable laws".*

The OECD has pointed out that in interpreting the Guidelines, *"Obeying domestic law is the first obligation of business"*<sup>24</sup>. This Specific Instance examines Guidelines compliance based in part, on the findings by the competent National Environmental Authority (the SAyDS), as a result of 13 separate audits, performed at the SHELL CAPSA facilities at Dock Sud. This comparison permits a revealing inconsistency between SHELL CAPSA's performance and the applicable environmental law, which in turn we can associate to violations of the Guidelines themselves. The evidence compiled by the the SAyDS show that:

The company did not produce mandatory Environmental Impact Assessments; SHELL CAPSA worked without permits to remove the 18,400,000 liters/hr of water (the equivalent to the quantity of water used by a city of 1,100,000 people) from the Dock Sud Canal and the Rio de la Plata; they did not perform the maintenance and mandatory periodic tests of machinery subject to pressure as required by the Resolution SPA 231/96 of nearly 700 machines<sup>25</sup>. The totality of its equipment was not registered with the API 510 system, which means that Shell operates its establishment with "ghost" equipment, that is to say equipment not registered nor formally controlled by any entity of the government of Argentina. Considering that much of this equipment operates at high pressure and that it is extremely dangerous, the risk to workers and local communities of machinery of this type with no oversight from control authorities, is enormous.

The company also did not report the environmental incidents that occurred over the past two years; the company has committed formal omissions of not having presented manifestos, nor operation logs about dangerous waste to the government authorities; nor did they comply with rules regarding dangerous and industrial waste, storing waste longer than the six months allowed by the government code, nor did they exhibit preparations to transport the dangerous waste to Shell's Ezeiza plant (a facility in a different location). Finally, on the occasions of the inspections, the national environmental authority affirmed *in situ, in fraganti* soil contamination of some of the areas of the Shell facilities. The situation is under further investigation, and could result in criminal prosecution.

Consequently, it can be concluded that SHELL CAPSA has not complied with the Guidelines in terms of national law and policy compliance, as it has been verified by the National Environmental Authority (SAyDS) that SHELL CAPSA is in a situation of *flagrant illegality* by violating the following Argentine laws:

- National Constitution art. 75 par. 22 and 41.

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<sup>23</sup> The Guidelines. Preface paragraph 1.

<sup>24</sup> Commentary on the Guidelines for Multinational Corporations approved by the CIME- Commentary on the General Principles, point 2. [www.oecd.org/dataoecd/21/20/16975360.pdf](http://www.oecd.org/dataoecd/21/20/16975360.pdf)

<sup>25</sup> <http://www.ambiente.gov.ar/?aplicacion=noticias&idarticulo=4776&idseccion=12>

- Argentine Civil Code, 1.171, 1113, 902-904, 183/184.
- National Law 24.051 of Dangerous Waste.
- General Law of the Environment 25 775.
- National Law of Industrial Waste.
- Water Code of the Province of Buenos Aires.
- Law 11.720 of the Province of Buenos Aires.
- Resolution SPA 231/96.

The preface continues, stating that **“The Guidelines aim to ensure that operations of these enterprises be in harmony with government policies”** so as to **“enhance the contribution to sustainable development made by multinational enterprises.”** The OECD has stated that respecting this Guideline implies that there is not a contradiction *“between the activities of multinational corporations and sustainable development... that the links between economic, social and environmental progress are fundamental in this relationship... and that it is precisely this complement that motivates these Guidelines...”*<sup>26</sup> establishing, therefore, that the transnational corporations subject to the OECD Guidelines should *“cooperate with the public authorities in the application of policies and rules”*.

With the aim of determining the compliance or violation of the Guidelines by SHELL CAPSA, it is necessary to determine the adequacy of the company’s work with the environmental policies of the government of Argentina in relation to the geographic and social area in which the company is conducting its activities.

With respect to this point, we point out that SHELL CAPSA’s Dock Sud facility, as was stated previously, is located in “Matanza-Riachuelo Basin”, a river basin and area that the Argentine government has identified as *“of high social sensitivity (the most extreme poverty in the country is found there, its residents live in conditions of extreme overcrowding, multiplying health problems) and of high environmental sensitivity. The Riachuelo River flowing through the basin, has a very slight inclination, a slow current flow and its capacity for drainage is minimal; the alluvial land of the basin is very low and is densely populated, and is subject to periodical flooding that occurs in a rapid and dramatic manner..”*<sup>27</sup> To deal with one of the most critical areas in Argentina in social and environmental terms, since 1993 the government developed a special Environmental Management Plan (Planes Especiales de Gestión Ambiental) to promote better sanitation and protect the lives and health of its residents<sup>28</sup>.

During 2007, *“convinced that people’s surroundings affect their quality of life and define parameters of dignity and social justice, the National Government, the Province of Buenos Aires and the City of Buenos Aires, in combined form, revised what had been done up until this point individually, collectively assessed the situation in the Matanza Riachuelo Basin, and defined the priority problems in which the government should intervene and establish a new regulatory framework, orderly planning and set a path towards achieving greater social equality and sustainable development”*<sup>29</sup>, creating to this effect, an “River Basin Authority” and prioritizing for the first year, collective efforts in conjunction with companies in the area with the aim of eliminating the principal causes of contamination and promoting better and more transparent environmental management.

For its part, and on the occasion of the inspections carried out, and in order to support this plan, the SAYDS found that the company, *“SHELL CAPSA is not only in an environmentally illegal situation, contrary to the public policies of sustainable development that the state promotes in this sector, creating a dangerous situation for the integrity of the bordering neighbors, but also that the company hid information from the government authorities about environmental incidents, particularly one which occurred August 2, 2007. This fact motivated the SAYDS to solicit on August 24, 2007, that the company present, in writing and within ten business days, the details of the totality of environmental incidents that took place within the last two years. They furthermore violated the legal right to information by not exhibiting the transport manifesto required by the SAYDS”*<sup>30</sup>, nor properly proving the compliance with the administrative regulations<sup>31</sup>. Only after the forced closure of SHELL CAPSA by the National Environmental Authority, did Shell agree to review its situation, subscribing to the environmental management plan proposed by the SAYDS that has been detailed *et supra*.

<sup>26</sup> *Ibidem*- Commentary about the General Principles, point 4- page 21. [www.oecd.org/dataoecd/21/20/16975360.pdf](http://www.oecd.org/dataoecd/21/20/16975360.pdf)

<sup>27</sup> Report of the Auditoria General de la Nación Argentina about the Cuenca Matanza-Riachuelo. <http://www.farn.org.ar/participacion/riachuelo/documentos.html>

<sup>28</sup> *Ibidem* 20.

<sup>29</sup> The objectives of 12 months posed by the Argentinean authorities are to inspect, relieve and control the totality of the industries in the cuenca; to execute environmental contingency plans for the industries; to clear up and eliminate clandestine dumping; to implement a permanent environmental monitoring network; to establish a system of cross control; to sanction industries that are violating the rules and to promote the creation of environmental taxes. <http://cmr.ambiente.gov.ar/?idarticulo=3609>

<sup>30</sup> Leyes Nacionales 11.720 y /o 24.051

<sup>31</sup> Artículo 22 del decreto 806/97 de la Provincia de Buenos Aires y artículo 3 de la Resolución SPA 228/98.

It can be concluded that the activities realized by SHELL CAPSA and inspected and verified by the SAYDS are illegal, arbitrary and environmentally risky; that the company has ignored government policies and campaigns promoting sustainable development that the Argentine government has and continues to promote in the sector, and that the SHELL CAPSA has serially violated the OECD Guidelines.

The prologue of the OECD Guidelines continues, establishing the need to “...**strengthen the basis of mutual confidence between enterprises and the societies in which they operate.**”

With the aim of applying this Guideline, in its commentaries on the implementation of the Guidelines the OECD has further clarified, that “Enterprises are encouraged to cooperate with governments in the development and implementation of policies and laws ... [and that] considering the views of other stakeholders in society ... can enrich this process<sup>32</sup>.”

For the analysis of compliance to this Guideline on the part of SHELL CAPSA, a series of interviews with the residents of *Villa Inflamable* and articles published by various newspapers in the country have been analyzed. The results obtained through this analysis are varied, and all point out the insistence that the company assume responsibility and immediately redress the problems it has caused in the area. Some examples of the commentary of the neighbors follow:

*“Shell dodges its responsibility and does nothing. They build a school for you here and there it is, with all the money that they take out of here it supposedly is the area of the province with the best income. But it doesn’t show... it doesn’t show...” (Marcos, resident of Villa Inflamable)<sup>33</sup>*

*“...in general the cases of asthma and skin diseases are greater since the Shell plant came here... because before nobody had problems” (Carlos, Resident of Villa Inflamable)<sup>34</sup>*

*“I spoke with the manager of social responsibility [at Shell] in order to calm the angry feelings we have with respect to Shell, because it is like a monster invading the whole planet... but nothing...they change their name, with nothing more than social reason, to continue killing you.” (Marcos, resident of Villa Inflamable)<sup>35</sup>*

*“...don’t come to tell me that everything is fine, that something is functioning poorly and it’s the responsibility of the people... because they believe that because we are poor we are stupid...” (Mary Resident of Villa Inflamable)<sup>36</sup>*

*“...And they know that we are struggling to continue moving forward, that we won’t stay in the mold.” (Marcos, resident of Villa Inflamable)<sup>37</sup>*

The resolution issued by the National Environmental Authority (SAYDS) establishes: “In the vicinity of the establishment, is “*Villa Inflamable*”, shaped by precarious buildings where around 800 families live with poor resources and without access to basic sanitation: systems to collect waste and systems that provide drinking water. The health effects caused by the presence of this type of contamination are important (...) Additionally, the fuel oil is a heavy hydrocarbon (with a polycarbon chain of more than 20 carbon atoms) that in certain concentrations in the soil and water can cause pathologies that are detrimental to human health. This is the reason it is difficult to know the level of contamination that exists at the site, or in the groundwater. Beyond stating that fuel oil is a mix of hydrocarbons and petroleum aromatics (benzene and benzene derivatives), it can contain additives like nitrogen or sulfur.”

The opinions expressed by the residents of *Villa Inflamable* reflect the negative reputation and distrust that residents have for SHELL CAPSA, and alongside these is clear evidence of grave social and environmental impact that Shell has caused in the community, which the residents understand (because they live with it daily and permanently), despite the lack of information coming from the company. SHELL CAPSA has clearly failed to respect the health and lives of local residents, nor the environment in which they live. They have failed to build

<sup>32</sup> Commentary on the OECD Guidelines for Multinational Enterprises, point 3 [www.oecd.org/dataoecd/21/20/16975360.pdf](http://www.oecd.org/dataoecd/21/20/16975360.pdf)

<sup>33</sup> <http://www.taringa.net/posts/info/953060/Villa-Inflamable---Avellaneda.html>

<sup>34</sup> Interview performed in February 2008 by the investigation team of the Fundación FOCO. The executive summaries of these interviews are attached to the formal complaint as an Appendix.

<sup>35</sup> <http://www.taringa.net/posts/info/953060/Villa-Inflamable---Avellaneda.html>

<sup>36</sup> Interview performed in February 2008 by the investigation team of the Fundación FOCO. The executive summaries of these interviews are attached to the formal complaint as an Appendix.

<sup>37</sup> <http://www.taringa.net/posts/info/953060/Villa-Inflamable---Avellaneda.html>

mutual trust and benefit to the community and fail entirely in the promotion of sustainable development, or in the respect for government policy devised to redress the present social and environmental predicament. In fact, until the conclusions of the SAYDS audit and SHELL CAPSA's capitulation in signing commitments to revert its situation, SHELL CAPSA ignored and refuted the claims of the community and of the environmental authorities that it was at any fault at all. According to SHELL CAPSA, everything was in order and by the law.

We can't but conclude through this attitude that SHELL CAPSA is in flagrant violation of the OECD Guidelines and that, consequently, SHELL CAPSA must provide immediate redress and action to repair the situation they have caused, to guarantee the sustainability of its future activities and respect the fundamental rights of the affected residents of the area. As such and to promote mutual trust with the community Shell must establish a mechanism for communication with the community; as well as guarantee the information and participation of the affected stakeholders in steps to clean-up and develop proper environmental management, as the National Environmental Authority (SAYDS) has laid out.

## **Regarding Chapter II "General Policies"**

### **2) "Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments."**

Argentina has incorporated into its National Constitution<sup>38</sup> eleven international human rights instruments and has subscribed and adhered to innumerable standards and international mechanisms having to do with human rights. With the aim of establishing the compliance or violation of the Guidelines on the part of SHELL CAPSA, we compare the activities of the company and their relation with human rights enforced in Argentina.

In regards to the activities of SHELL CAPSA, the National Environmental Authority (the SAYDS) has stated that *"the inspected establishment does not offer the minimum conditions of environmental safety and therefore the present situation is considered dangerous to the environment as well as to the physical integrity of residents of the area due to a high level of risk"...* *"the company has concealed information about the environmental incidents that have occurred"...* *"contamination of the soil at the company facilities have been registered ..."* *"... the company does not have environmental impact studies..."*<sup>39</sup> As a result, it can only be concluded that SHELL CAPSA is in an unsustainable and environmentally precarious situation, presenting serious danger of increasing the grave environmental degradation that the residents of Dock Sud already suffer.

In this context, we point out that the environmental degradation is not limited to ecological impact, but rather that it brings other important consequences. One of these is the violation of the human rights of the people victimized by this degradation.<sup>40</sup> The relationship between human rights and the environment is not exhausted by *the right to a healthy environment*, but rather has other aspects recognized by international instruments. In order to cite some examples we can point to the Human Rights Committee in accordance with Article 6 of the UN Covenant on Civil and Political Rights, that has recognized that the right to a healthy environment acts in correlation with the right to life, and consequently, the violation of the human right to a healthy environment implies the violation of the right to life. Additionally, it has been established that an interdependence between the human right to information and other human rights exists. This relationship was recognized by the General Assembly of the United Nations in 1946 when it resolved that: *"The freedom of information is a fundamental human right and corner stone of all of the liberties upon which the United Nations is built"*<sup>41</sup>

SHELL CAPSA has conducted its commercial and industrial activities in absolute disregard for the national laws and policies in place to protect the environment and the communities in its vicinities, and in the precarious and dangerous absence of an adequate system of environmental management and with absolutely no flow of information about contamination to the residents of *Villa Inflamable*. SHELL CAPSA has turned its back to the community in which it operates, paying off its impact with philanthropic donations and CSR programs that only serve to cover up the life-threatening impacts of its production processes and that its failed environmental

<sup>38</sup> Artículo 75 inciso 22 Constitución Nacional Argentina.

<sup>39</sup> RS ACUMAR N° 98

<sup>40</sup> The interdependence and indivisibility of human rights and the environment has been recognized by the international community on various occasions. The Declaration of Human Environment of the United Nations of 1972 (Stockholm Declaration), The Beech Declaration of 1989, the Declaration of the Environment and Development of the United Nations (Rio de Janeiro 1992), the special report on human rights and the environment of the Subcommission on Human Rights of the United Nations (Ksentini Report 1994), are some examples of the recognition of the link between human rights and the environment by the international community.

<sup>41</sup> United Nations Resolution 59 (1) AG, 1946. "International Norms and Shared Analysis of Good Practices". Document of the Organization. Article 19. Cited in: Acces to Public Information in the Americas. Inter-American Dialogue. Pag. 40.

compliance has caused. And to make matters worse, SHELL CAPSA has systematically concealed and denied relevant information to the community and to all levels of Government, failing to comply even with basic Environmental Impact Studies requirements. In this way, the company has not only violated the OECD Guidelines, but it also violated the most essential universal principles of human dignity, and the human rights to life, health and information of its own workers and the residents of *Villa Inflamable*, rights which have been recognized by and subscribed to by Argentina, among them, the Declaration of Human Rights of the United Nations<sup>42</sup>, articles 1(1), 2, 4, 5, 19, 25, 26 of the American Convention on Human Rights<sup>43</sup>, 1, 10, 11 of the Additional Protocol to the American Convention “*San Salvador Protocol*”<sup>44</sup> Articles I, VII, XI of the American Declaration of Human Rights<sup>45</sup> and International Labor Organization (ILO) Conventions.

### **Regarding Chapter III “Disclosure” and its relationship with Chapter V “Environment”**

(Chapter III “Disclosure”)

**2. “Enterprises should apply high quality standards for disclosure. ... [and] apply high quality standards for non-financial information including environmental and social reporting”**

**5. b) “Enterprises are encouraged to communicate additional information that could include: Information on systems for managing risks and complying with laws, and on statements or codes of business conduct”;**

The OECD has pointed out that *“clear and complete information on enterprises is important to a variety of users, from shareholders and the financial community to other constituencies such as employees, local communities, special interest groups, governments and society at large. To improve public understanding of enterprises and their interaction with society and the environment, enterprises should be transparent in the operations and responsive to the public’s increasingly sophisticated demands for information.”*<sup>46</sup>

SHELL CAPSA’s violation of this Guideline can be easily deduced. In order to comply with information with respect to environmental incidents and impacts it is necessary to take measures to adequately collect information relative to the impact of its activities. There is no publicly available evidence from Shell that SHELL CAPSA has done so. The SAyDS confirms this view, concluding that SHELL CAPSA *“does not comply with a system of obtaining information that guarantees the scientific certainty about the impact that its activities have on the environment and the health of people, nor evidence of having established goals of improvement and regular controls for the advancement of the environment, health and security...”* in particular it has been observed that *“that which is not logical nor adequate due to risk is the method of sampling that has been accepted, where a development of a previous oil well is carried out before the sampling operation and after a rest the results are taken, this situation is unacceptable due to the contamination of the soil and in this manner the real environmental situation was concealed.”*<sup>47</sup>

(Chapter V “Environment” - relative to disclosure)

**2a) “Provide the public and employees with adequate and timely information on the potential environmental, health and safety impact of the activities of the enterprise, which could include reporting on progress in improving environmental performance”**

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

**3. “Assess, and address in decision making, the foreseeable environmental health, and safety-related impacts associated with the processes of goods and services of the enterprise over their full life**

<sup>42</sup> Art. 19 right to liberty of opinion and expression; Art. 23 Right to work; Art. 25 right to quality of life.

<sup>43</sup> 26 Art. 1 – Obligation to respect rights; Art.2 – Obligation to respect internal measures; Art. 4 – Right to life; Art. 5 – Right to Physical Integrity; Art. 19 – Rights of the Child;

<sup>44</sup> Art. 10 – Right to Health, y Art. 11 – Right to a healthy environment.

<sup>45</sup> Art. I – Right to life, liberty and personal security; Art. VII – Right to the protection of mothers and children; Art. XI – Right to the preservation of health.

<sup>46</sup> Commentary about the OCDE Guidelines for Multinational Enterprises, point 12. [www.oecd.org/dataoecd/21/20/16975360.pdf](http://www.oecd.org/dataoecd/21/20/16975360.pdf)

<sup>47</sup> Act N° 220/2007

**cycle. Where these proposed activities may have significant environmental, health or safety impacts, and where they are subject to a decision of a competent authority, prepare and appropriate environmental impact assessment.”**

As is clear from the audit and inspections carried out at the SHELL CAPSA facilities of Dock Sud, the SAYDS stated that the company “has concealed information relevant to the subject of the environment... they have not registered environmental incidents with state authorities in the last two years... they have not shown manifestos of the transportation of dangerous wastes...<sup>48</sup> they have not been able to properly prove their compliance with enforced administrative depositions on the matter... and they have not provided Environmental Impact Assessments.”<sup>49</sup>

Additionally, the survey done of the residents of *Villa Inflamable* has concluded that SHELL CAPSA did not confer with any representative of the residents, nor did the company create adequate and punctual communication and consultation activities with the communities directly affected by the environmental, health, and security policies of the company.

Keeping in mind the ample consensus that exists at a local and international level regarding that “public information represents one of the essential instruments for the protection of the well-being and health of the population in environmental risk”; that “the information particularly concerning the activities that are dangerous for the well-being of human beings is a fundamental right”<sup>50</sup>; and finally that “to achieve an effective protection against ecological conditions that constitute a threat to human health, it is imperative that the population have access to the information and participate in the processes pertinent to the making of decisions... allowing the to closely follow and respond to the actions of the public and private sectors...<sup>51</sup> .

The aforementioned demonstrate that SHELL CAPSA has not only violated both Guidelines, but furthermore that SHELL CAPSA has failed to prove that they have conducted Environmental Impact Assessments regarding their activities, and in concealing and denying information to State and to the impacted, SHELL CAPSA has violated the right to information recognized by national and international human rights law<sup>52</sup>. As a consequence, the company has the responsibility not only to comply with its legal obligation, proving the real impact of its activities through an appropriate Environmental Impact Assessment; but it is also responsible for ensuring immediately, and in an urgent manner, the dissemination of relevant information in an ample and transparent manner. SHELL CAPSA must also establish a mechanism of adequate and punctual communication and consultation with the communities directly affected by its activities.

## **Regarding Chapter V “Environment”**

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

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

The OECD has pointed out that... “sound environmental management is an important part of sustainable development, and is increasingly being seen as both a business responsibility and a business opportunity. ... Improving environmental performance requires a commitment to a systematic approach and to continual improvement of the system. An environmental management system provides the internal framework necessary to control an enterprise’s environmental impacts and to integrate environmental considerations into business

<sup>48</sup> Leyes Nacionales 11.720 y /o 24.051

<sup>49</sup> Artículo 22 del decreto 806/97 de la Provincia de Buenos Aires y artículo 3 de la Resolución SPA 228/98.

<sup>50</sup> See the article “The Environmental Jurisprudence of International Human Rights Tribunals”, Dinah Shelton, Page 5.

<sup>51</sup> Interamerican Commission on Human Rights, “Report on Ecuador” - 1997

<sup>52</sup> We cite as an example, Article 19 of the Universal Declaration of Human Rights and Article 13 of the American Convention on Human Rights.

*operations. Having such a system in place should help assure stockholders, employees, and the community that the enterprise is actively working to protect the environment from the impacts of its activities.”*<sup>53</sup>

Regarding the fifth paragraph of this Guideline which states that the enterprise should maintain plans for “preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for reporting to the competent authorities”, an accident that occurred August 2, 2007 at SHELL CAPSA was not communicated to any government authority, which the SAYDS noted when, on August 23, 2007, an inspection of the factory was performed. This implies not only a violation of the environmental law of the country, but also a negligent attitude, and a violation of the right to information, and the obligation to divulge information pertaining to environmental and social impact. In the SAYDS resolution of September 5, 2007, that ordered the *Preventative Closure* of SHELL CAPSA, the event is explained in the following manner:

*“August 23, 2007, it was confirmed that an inactive semiunderground pipe had an important hydrocarbon stain beneath it, visible in the cross section of a buried section of the pipe. This situation would correspond to an environmental incident produced by the rupture of the duct that transported fuel oil and resulted in spillage. Movement of soil and the existence of approximately 25 liters of spilled fuel oil was confirmed. Upon first glance, the depth of contamination of the land affected by the waste was not able to be determined, but dark stains were detected. Additionally, it was reported that a fire hose of spilled waste was observed, considered by the company to be hydrocarbon outside the specification that had been moved to the storage sector of SLOPS. The incident was said to have occurred August 2, 2007 and was not communicated by Shell to any national or local authority.”*

We find another irregularity regarding the sixth paragraph of the Guideline that establishes that the activity helps the “development and provision of products or services that have no undue environmental impacts” and “that can be reused, recycled and disposed of safely”. During the SAYDS inspection, it was detected that the use of diverse chemical substances, some of which did not have an outlet, nor a use as a by product, nor as wastes in the pertinent declarations executed by SHELL CAPSA as per environment law 11.720. Five thousand cubic meters of partially neutralized caustic soda exist, which the facility does not have the capacity to utilize, nor to treat in any productive process, in virtue of which the soda ought to be disposed of as dangerous waste considering the partiality of the neutralization. Law 11.720 prohibits the storage of waste for more than six months, term which has passed, and results consequently in a violation of the existing norm.

The SAYDS also verified through its 13 various inspections of “contaminated effluent liquids with hydrocarbons in deep conversion units, and thermal cracking.”<sup>54</sup>, places that were designated for the storage of non-dangerous wastes and in tanks of bitter water, containing hydrosulfuric acid. Spills were also verified: on August 31 the Inspection Commission exposed the plan and order testing on visible stains and spills. The first sector where the discoveries were made was in the “Tailing Plans” where drips were observed that had not been registered in SHELL CAPSA’s books (which are supposed to be kept to record this type of accident). These drips were on the concrete surface and in the runoff towards the street, and consisted of a black viscous character. It was observed that the runoff, due to the incline of the street towards the sewer, had come into contact with the accumulated water and soil of the surrounding land.

On August 26 the SAYDS inspected the depository of industrial waste in which a depository park of empty drums were observed, which were found without sealed tops and were piled up laterally. Furthermore, two containers were found: a red one containing scrap metal and a green one containing wood scraps, both discovered without protective tops. These wastes were found contaminated by hydrocarbons among other substances and in the process of being classified. Further, stock was taken of the valves used for the maintenance of crude oil distiller Nº 3, and it was verified that some of these were found with residues of hydrocarbon and were accumulated on top of the soil and without protective covers.

Consequently, the SAYDS concluded that “the SHELL CAPSA facility at Dock Sud does not present the minimum conditions for environmental security... that the mentioned irregularities permit the presumption of danger and risk that the operation of the firm in question produces for the environment and the physical integrity of the residents of the basin ... and as has been shown, it is recommended to the Authority of the Matanza- Riachuelo Basin, in the framework of the present intervention, the adoption of the following preventative measures... the preventative total closure of the Shell CAPSA establishment until the stated situation of danger is reversed...”<sup>55</sup>

<sup>53</sup> Commentary about the OCDE Guidelines for Multinational Enterprises, points 30 and 31. [www.oecd.org/dataoecd/21/20/16975360.pdf](http://www.oecd.org/dataoecd/21/20/16975360.pdf)

<sup>54</sup> Act Nº 155/07 (Act of extraction of samples- law 26.168)

<sup>55</sup> Technical report about the RS ACUMAR Nº 98

From that which is established above, it can be inferred that the corporation has not only violated the Guidelines, but also that with its environmental and socially irresponsible attitude it has put the lives, health and environment of hundreds of neighboring residents in danger.

## V. BACKGROUND TO SHELL OPERATIONS AROUND THE GLOBE

The violations of the OECD Guidelines listed above in which SHELL CAPSA has incurred in Argentina, are in fact typical and *modus operandi* with respect to what we can observe in Shell operations around the world. It is in great part for this reason that this Specific Instance is filed in parallel to both the Argentine and Dutch NCPs, with the hopes that each will address and engage the company, SHELL CAPSA, but also Shell international, in a discussion about how Shell's operations are impacting communities around the world and contributing to unsustainable patterns of development. It is time the Dutch government, and Shell International engage in serious discussion about its unsustainable patterns of behavior and industrial practice.

### (International Activity With respect to Chapter II General Policies)

As in Argentina, Shell has ignored both the wishes and the laws of communities around the world. In Ireland, Shell constructed sections of a controversial pipeline without the necessary planning permission, then attempted to pay the community rather than dismantle the pipeline.<sup>56</sup> In Russia, Shell violated health regulations causing mass food poisoning among its employees.<sup>57</sup> In both Nigeria and the Netherlands, Shell has been sued for violating laws by dumping waste products.<sup>58</sup> Similar practices were highlighted in two complaints recently filed before the OECD regarding Shell's operations in Brazil and in the Philippines.<sup>59</sup> The Brazil complaint states that Shell disregarded environmental, health and safety procedures, and obtained agreements bypassing ordinary legislation.<sup>60</sup> The Philippines complaint states that Shell sought to have a local health and safety law annulled and interfered with local decision-making, and that its subsidiary procured exemptions from local officials violating corruption laws.<sup>61</sup>

Shell has repeatedly failed to respect human rights by endangering the lives and health of communities near their projects. In Nigeria, the Federal High Court found that Shell was committing a 'gross violation' of the human rights to life and dignity by its practice of gas flaring.<sup>62</sup> The Supreme Court of the Philippines found that Shell's operations posed an unacceptable threat to the right to life.<sup>63</sup> In the US, residents claim that Shell's Texas refinery is causing serious health problems, violating their rights to health and to life.<sup>64</sup> The Brazil complaint states that Shell violated the rights to health and dignity of both its employees and neighbouring communities.

### (International Activity With respect to Chapter III Disclosure)

Shell's failure to provide timely, regular, reliable and relevant information in Argentina is typical of its activities internationally. In the Netherlands, Shell is being sued for failing to report the accidental release of pollutants into the atmosphere.<sup>65</sup> In the UK, Shell agreed to a \$352.6m settlement regarding alleged misstatements to its

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<sup>56</sup> Center for Public Inquiry, *The Great Corib Gas Controversy*, 2005, pp. 12-18. Available at:

<http://www.publicinquiry.ie/reports.php#id196>

<sup>57</sup> Friends of the Earth, "The Shell Files"

<sup>58</sup> <http://allafrica.com/stories/200703260614.html>; Reuters, "Shell Sued Over 2004 Pollution," October 4, 2007. Available at: <http://www.reuters.com/article/environmentNews/idUSL0460481720071004>

<sup>59</sup> Milieudéfensie (Friends of the Earth Netherlands), Friends of the Earth International, Coletivo Alternative Verde (CAVE) and the Petroleum By-Product and Ore Workers Labor Union in the State of São Paulo (SIPETROL), *Complaint on Violations of the OECD Guidelines for Multinational Companies* ('the Brazil complaint'), and Milieudéfensie, Friends of the Earth International and The Fenceline Community For Human Safety, *Complaint against Filipinas Shell Petroleum pursuant to the OECD Guidelines for Multinational Enterprises* ('the Philippines complaint'), both filed May 15, 2006.

<sup>60</sup> The Brazil complaint, p. 2.

<sup>61</sup> The Philippines complaint, pp. 6-7.

<sup>62</sup> <http://news.bbc.co.uk/2/hi/africa/4438182.stm>

<sup>63</sup> Social Justice Society Vs. Atienza G.R. No. 156052, February 13, 2008.

<sup>64</sup> Paul Mason, "Can Shell Placate Critics", BBC News, October 28, 2004. Available at:

<http://www.refineryreform.org/downloads/codeofsilence.pdf> ; Texas SEED Coalition, *Code of Silence: Toxic Tragedy of Beaumont/Port Arthur, Texas* Available at: <http://www.refineryreform.org/downloads/codeofsilence.pdf>

<sup>65</sup> Reuters, "Shell Sued Over 2004 Pollution," October 4, 2007. Available at:

<http://www.reuters.com/article/environmentNews/idUSL0460481720071004>

shareholders.<sup>66</sup> The Philippines complaint states that Shell concealed negotiations with the City of Manila, did not disclose information on safety risks to nearby residents and continues to claim that there are no health risks, despite contrary scientific evidence.<sup>67</sup>

### **(International Activity With respect to Chapter IV Employment and Industrial Relations)**

Shell's failure to take adequate steps to ensure occupational health and safety in their operations in Argentina is also typical of their international operations. In Russia, the Yuzhno-Sakhalinsk court found Shell's contractor had illegally engaged foreign employees.<sup>68</sup> In the UK, Shell has been repeatedly warned by the Health and Safety Executive about the poor state of its North Sea platforms.<sup>69</sup>

### **(International Activity With respect to Chapter V Environment)**

In Argentina Shell has failed to establish and maintain an appropriate environmental management system, has failed to provide appropriate information on and to assess and address the foreseeable environmental, health, and safety-related impacts of its activities, has failed to maintain appropriate contingency plans and has failed to encourage the development of sustainable alternatives. These failings are endemic in Shell's operations.

Shell has repeatedly failed to collect and evaluate adequate and timely information and to consult with affected communities regarding the environmental, health, and safety impacts of their activities. In the US, Shell's air-monitoring programme failed to detect pollution in coastal Louisiana.<sup>70</sup> In South Africa, Shell under-reported emissions from one plant by approximately 12 tonnes per day over a five-year period.<sup>71</sup> In Russia, Shell's Sakhalin II project violated many of the recommendations made by the independent scientific review panel that Shell itself convened.<sup>72</sup> The Brazil complaint states that Shell failed to collect and evaluate adequate information about the impact of its operations on the local community, including on employee health. The Philippines complaint states that Shell concealed information about health risks and the nature of its operations.

Shell has failed to maintain appropriate environmental contingency plans. Major oil spills in Africa were not dealt with effectively, in some cases soil was merely turned over.<sup>73</sup> The Philippines complaint states that Shell failed to provide a buffer zone to residential areas and violated local laws by failing to provide appropriate fire response systems and failing to obtain permits for storage of inflammable materials.

### **Conclusions on International Relevance of the Specific Instance**

Given the systematic and repetitive nature of the typologies of violations of the OECD Guidelines that we can observe perpetrated by Shell and Shell's affiliates, throughout the world, we strongly believe the present Specific Instance should be seen, not as a complaint brought by a single community against a local affiliate of a national corporation based in the Netherlands but operating in Argentina, but rather, as the reflection of a recurring and systematic problem perpetrated by a multinational enterprise with a great many affiliates in a great many countries, and in which many have similar and recurring violations of the Guidelines, of international and a national law and of internationally recognized human rights.

For this reason, the engagement of SHELL international into the discussion as to how to address the violations presented in this Specific Instance, is critical to the successful outcome of any intervention by the NCP, as is the collaborative effort of both NCPs, the Argentina and Dutch NCP in addressing both mother company, and its local affiliate in Argentina.

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<sup>66</sup> Graeme Wearden, "Shell payout to settle reserves case - without admitting blame," *The Guardian*, April 11, 2007. Available at: <http://www.guardian.co.uk/business/2007/apr/11/oilandpetrol.money>

<sup>67</sup> The Philippines complaint, p. 8.

<sup>68</sup> Friends of the Earth, *The Shell Files*

<sup>69</sup> Ferry Macalister, "Shell safety record in North Sea takes a hammering," *The Guardian*, March 5, 2007. Available at: <http://www.guardian.co.uk/business/2007/mar/05/oilandpetrol.news>

<sup>70</sup> Friends of the Earth, *Broken Promises: How Shell's Non-Compliance with the OECD Guidelines Harms People and the Environment*, June 2006, p. 4.

<sup>71</sup> Friends of the Earth, *Broken Promises*, June 2006, p. 4.

<sup>72</sup> [http://www.pacificenvironment.org/downloads/Shell\\_s%20Failure%20to%20Follow%20Whale%20Panel%20Recommendations.pdf](http://www.pacificenvironment.org/downloads/Shell_s%20Failure%20to%20Follow%20Whale%20Panel%20Recommendations.pdf)

<sup>73</sup> Friends of the Earth, *Broken Promises*, June 2006, p. 5.

Finally, a critical issue pertaining to the eventual decision of the Dutch NCP to accept, reject or defer this Specific Instance to the Argentine NCP or vice versa. **We are extremely concerned** with the tendency we are seeing of NCPs in industrialized countries deferring Specific Instances to developing countries when those countries have NCPs. Clearly, the intention behind the development and introduction of the OECD Guidelines for Multinational Enterprises amongst OECD Member States was that those States actively engage and commit to promote sustainable development in other countries as per the activities of those enterprises deriving from their nationality, but operating abroad.

The entry of new *developing countries* into the OECD Framework either as full members or observers, and the appearance in those countries of NCPs, while certainly a positive and welcome trend for the greater objective of sustainable development, in terms of compliance with the OECD Guidelines by multinational enterprises (which are largely of industrialized country origin) risks the consequence that industrialized countries like the Netherlands will be able to defer Specific Instances to developing countries with local NCPs. This can result in an intentional or unintentional transfer of the obligations industrialized countries have with respect to assuming the commitments they have made under international agreements, such as the OECD Guidelines. Deference of Specific Instances in such cases should be highly discouraged amongst NCPs, and countries whose multinational enterprises are operating abroad under such flagrant violations of national and international law, and of the OECD Guidelines, are more obliged to engage in addressing and reverting such situations.

For this reason, we **STRONGLY** urge the Dutch NCP **NOT** to defer this Specific Instance to Argentina, and instead either take it up independently or work with the Argentine NCP to steer a proper course, engage with Shell Netherlands as well as with SHELL CAPSA in Argentina, on the content of this Specific Instance, and work collaboratively with the Argentine NCP, and with the stakeholders, to foster a constructive solution to the issues presented.

## VI. REQUESTS OF THE SIGNATORIES:

Keeping in mind the grave and flagrant findings by the Argentine National Environmental Authority of violations of national and international law, committed by SHELL CAPSA, causing environmental harm and affectation of the human rights of the residents of *Villa Inflamable* and its neighbors (something that does not implicate the need to confirm the accusations by the National Contact Points, but rather seeks to find an adequate response from SHELL CAPSA to recognize, address and repair the damage to the community and to the environment);

Deducing from these violations by SHELL CAPSA (stated, confirmed, and sanctioned by the Argentine State), the direct relationship with the violations of the OECD Guidelines committed by SHELL CAPSA and stated in the present Specific Instance;

Considering the environmental accidents and irregularities officially confirmed by the Argentine State as having been committed by the SHELL CAPSA: the high rate of danger that the facilities implies for the health and quality of life of the people that live in the areas near the company, as well as the negligence and deficiency of the company in regards to environmental management, information, participation of the community, and the legal compliance;

Keeping in mind that the negligent and irresponsible conduct of SHELL CAPSA has not been respectful to the principles of sustainable development, nor to internationally accepted norms on corporate responsibility, nor the responsibility to ensure the enforcement, protection and respect of human rights of community stakeholders, and that SHELL CAPSA's actions are in direct violation of the OECD Guidelines;

Remembering that as signatories of the OECD Guidelines, both the Argentine and Dutch governments have promised to adhere to, promote, and develop the compliance of the Guidelines in their entirety<sup>74</sup> and its observance<sup>75</sup> in the area of its jurisdiction<sup>76</sup>, promoting positive contributions towards economic, environmental, and social progress of multinational corporations;

We who endorse this Specific Instance solicit the National Contact Points of Argentina and the Netherlands; that they accept the Specific Instance and use their good offices and powers conferred on them to take the pertinent measures to encourage SHELL CAPSA and Shell International to immediately secure:

1. The creation of a permanent communication mechanism with the community that permits SHELL CAPSA to redress community impacts the company has provoked on health, the environment, homes in the neighborhood, and other effects; which should include the full disclosure and transparency of information on the part of the company towards the neighbors, particularly in relation to the environmental and social impact caused in the past, present (and future);
2. The creation of a mechanism for public consultation and active participation by the affected people particularly in relation to the activities and agreements of identification of impacts, and remediation of damage agreed to by the company before the National Environmental Authority (SAyDS);
3. The investment by the company in medication, medical attention, studies, and other health necessities, that collaborate to alleviate the serious problems that are reported by the residents of the community and that are caused by the contamination that has been produced by the company and the poor condition of the environment it has caused;
4. The investment by the company in the cost of relocating the residents of the neighborhood to decent and clean homes that are free of contamination;
5. The investment of the company in the environmental-clean up of the area, including the cleaning of the banks of streams and rivers, as well as areas nearby bodies of water of the neighborhood;
6. The promotion of a space for dialogue and participation that brings together all of the petroleum sector operating in the vicinity to develop activities in the affected area, with the intent of advancing together in the search for a solution for environmental and social problems suffered by the residents of the area.

Signed:

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<sup>74</sup> OECD Guidelines for Multinational Enterprises, Chapter I, Point 10

<sup>75</sup> OECD Guidelines for Multinational Enterprises, Chapter I, Point

<sup>76</sup> OECD Guidelines for Multinational Enterprises, Chapter I, Comment 2

Appendices:

- With respect to the Facts and Violations of the OECD Guidelines:

- 1) Resolution of the Secretaría de Medio Ambiente y Desarrollo Sustentable de la Nación of September 4, 2007.
  - a) Resolution of the Secretaría de Medio Ambiente y Desarrollo Sustentable de la Nación of September 11, 2007
  - b) Technical Report of the Secretaría de Medio Ambiente y Desarrollo Sustentable de la Nación of September 5, 2007
  - c) Technical Report of the Secretaría de Medio Ambiente y Desarrollo Sustentable de la Nación of September 10, 2007

Appendix 2 General Impacts and in the Riachuelo Community

- a) Previous documentation in magazines and newspapers (Clarín, La Nación, Página 12)– Dock Sud “Villa Inflamable” Case, June 2006 – September 2007.
- b) Interviews with those affected by the contamination who live in *Villa Inflamable*.