

**Complaint and Request for Mediation to the Dutch and UK National Contact Points  
for the OECD Guidelines for Multinational Enterprises**

31 July 2012

TO: Dutch National Contact Point, UK National Contact Point

FROM: **Non-commercial Gardening Association, "Stroitel"**  
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**Sakhalin Environment Watch**

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**RE: Development and Operations of the Sakhalin II Project, Phase 2, Prigorodnoye  
Production Complex**

Sakhalin Environment Watch ("SEW") and the Non-commercial Gardening Association, "Stroitel" (the "Stroitel Association") (collectively the "Complainants") hereby submit the attached complaint and request for mediation (the "Complaint") to the Dutch National Contact Point ("Dutch NCP") and United Kingdom National Contact Point ("UK NCP") regarding violations of the OECD *Guidelines for Multinational Enterprises* (the "*Guidelines*") by Royal Dutch Shell, PLC, the Royal Bank of Scotland Group, PLC, Standard Chartered, PLC, and Barclays, PLC, as a result of their business relationship with Sakhalin Energy Investment Company Ltd. ("SEIC"), the operator of the Sakhalin II Project, including the Prigorodnoye Production Complex, on Sakhalin Island, Russia. The Complaint includes the following sections:

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## **I. Introduction**

### **A. Identification of the Complainants as Interested Parties**

The Complainants in this matter are:

1) The Non-commercial Gardening Association, “Stroitel” (the “Stroitel Association”). The Stroitel Association includes the owners of dachas located adjacent to the Sakhalin II Project’s Prigorodnoye Production Complex (“Prigorodnoye Complex” or the “Complex”), a liquefied natural gas (“LNG”) plant and LNG and oil export terminals in the village of Prigorodnoe, on Sakhalin Island, Russia. The Stroitel Association was founded in 1979 as a non-commercial organization for support of its 79 members. As described below, members of the Stroitel Association allege harm to their dachas, or seasonal homes, and their health and well-being from the Complex and allege that the Complex operator, the Sakhalin

Energy Investment Company Ltd. (“SEIC”)<sup>1</sup> has failed to resettle them or provide just compensation.

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2) Sakhalin Environment Watch (“SEW”), a Sakhalin Island-based regional environmental non-governmental organization (“NGO”), which represents the Stroitel Association for the purposes of this Complaint. SEW is widely recognized as a leading NGO in Russia focusing on regional environmental, social and developmental impacts of industrial sectors including the oil and gas industry. SEW has monitored and engaged the financial enterprises, companies and government agencies involved in the Sakhalin II Project since 1997. In 2011, the Chairman of SEW, Dmitry Lisitsyn, won the prestigious Goldman Environmental Prize in part for his work with local Sakhalin communities to address the harmful impacts of Sakhalin II.<sup>2</sup>

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## **B. Identification of the Implicated Dutch and UK Multinational Enterprises**

The Complainants submit this complaint regarding *Guidelines* violations by Royal Dutch Shell, the Royal Bank of Scotland, Standard Chartered and Barclays as a result of their business relationships with SEIC, the operator of the Sakhalin II Project, including the Prigorodnoye Complex, on Sakhalin Island, Russia.<sup>3</sup> This section explains the “business relationship” that exists between these multinational enterprises and the Complex operator, SEIC.

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<sup>1</sup> *About Us*, Sakhalin Energy, <http://www.sakhalinenergy.com/en/aboutus.asp> (last visited 22 June 2012).

<sup>2</sup> *Dmitry Lisitsyn*, The Goldman Environmental Prize, <http://www.goldmanprize.org/2011/asia> (last visited 22 June 2012).

<sup>3</sup> See OECD, *Guidelines for Multinational Enterprises* [hereinafter *Guidelines*] § II(A)(12) (adopted 25 May 2011) (“Enterprises should . . . [s]eek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a *business relationship*.” (emphasis added)), available at <http://www.oecd.org/dataoecd/43/29/48004323.pdf>; see also *Guidelines* “Commentary on General Principles”(14) (“The Guidelines concern those adverse impacts that are either caused or contributed to by the enterprise, or are directly linked to their operations, products or services by a business relationship”).

The *Guidelines* call on multinational enterprises to use their leverage to influence the actions of entities with which they have a “business relationship.”<sup>4</sup> “Business relationships’ include relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services.”<sup>5</sup>

i. Royal Dutch Shell, PLC

Royal Dutch Shell, PLC (“Shell”) is a public company headquartered in The Hague, Netherlands and incorporated in England and Wales<sup>6</sup> and is, through its subsidiary Shell Sakhalin Holdings B.V.,<sup>7</sup> a shareholder in SEIC with a 27.5 percent minus one share stake.<sup>8</sup> Shell was the controlling shareholder (55%) of SEIC at the time the Sakhalin II, Phase 2 Project, including the Prigorodnoye Complex, was initiated and constructed before reducing its majority stake in a 2007 sale to partly state-owned Gazprom, headquartered in Russia.<sup>9</sup> Following the sale, Shell continued to serve as SEIC’s “lead Technical Advisor”<sup>10</sup> and currently remains the second largest shareholder in SEIC after Gazprom, which owns 50% plus 1 share.<sup>11</sup>

As first the majority shareholder of SEIC, and now as the second largest shareholder in SEIC, Shell has maintained a direct business relationship with the operator of the Sakhalin II Project, including the Prigorodnoye Complex, during the entirety of the time period covered in the Complaint. Shell has been in a position to use its leverage to influence SEIC’s operations throughout the lifetime of the Sakhalin II, Phase 2 Project and was the majority shareholder in SEIC when key decisions, discussed in detail below, were made about resettlement of and compensation to the Stroitel Association dacha community. Currently, as the second largest shareholder in SEIC, Shell remains in a position to use its leverage to influence Project operations and SEIC’s resettlement and compensation practices.

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<sup>4</sup> See *Guidelines* §§ II(A)(12), IV(3), “Commentary on General Principles”(14), “Commentary on Human Rights”(43).

<sup>5</sup> See *Guidelines* “Commentary on General Principles”(14), “Commentary on Human Rights”(43).

<sup>6</sup> See *Shell at a glance*, Shell Global, [http://www.shell.com/home/content/aboutshell/at\\_a\\_glance/](http://www.shell.com/home/content/aboutshell/at_a_glance/) (last visited 22 June 2012).

<sup>7</sup> The *Guidelines* apply to enterprise groups and call on parent entities to provide guidance to subsidiaries. See *Guidelines* “Commentary on General Principles”(8)-(9) (“The Principles call on the board of the parent entity to ensure the strategic guidance of the enterprise . . . The Principles extend to enterprise groups. . . . Compliance and control systems should extend where possible to these subsidiaries.”).

<sup>8</sup> *Sakhalin II*, Gazprom, <http://www.gazprom.com/about/production/projects/deposits/sakhalin2/> (last visited 22 June 2012).

<sup>9</sup> See *Sakhalin II Project: Key Milestones*, Gazprom, available at <http://gazprom-sh.nl/sakhalin-2/history/> [hereinafter “*Key Milestones*”]; Shell Sakhalin Holdings BV, Annual Report 2007, Shell Sakhalin Holdings BV, September 2008.

<sup>10</sup> Sakhalin Energy, 2007 Annual Review, at 9, available at [http://www.sakhalinenergy.ru/en/documents/Annual\\_Review\\_2007\\_eng.pdf](http://www.sakhalinenergy.ru/en/documents/Annual_Review_2007_eng.pdf) (“The entry of Gazprom as the majority shareholder in April 2007 was a landmark development. . . . Royal Dutch Shell remains Sakhalin Energy’s lead Technical Advisor.”).

<sup>11</sup> The following companies are shareholders in SEIC: Gazprom (which holds 50% plus 1 share), Shell (27.5% minus one share), Mitsui (12.5%) and Mitsubishi (10%). *Sakhalin II*, *supra* note 8; see also *Key Milestones*, *supra* note 9.

Moreover, Shell and Gazprom work in close cooperation with regard to the operation of the Sakhalin II Project, and the two companies continue to pursue partnership opportunities in the oil and gas sectors.<sup>12</sup> Thus, in addition to Shell's leverage over SEIC as a result of being its second largest shareholder, Shell is in a position to use its business relationship with Gazprom, the majority shareholder of SEIC, to influence SEIC's practices.

## ii. Financial Institutions

As described below, Royal Bank of Scotland Group, PLC ("RBS"), Standard Chartered, PLC ("Standard Chartered") and Barclays, PLC ("Barclays") each have an investment nexus, and thus an established business relationship, with SEIC. Additionally, these financial institutions are likely parties to contractual agreements regarding the elimination and mitigation of the health, safety, environmental, and social impacts of the Prigorodnoye Complex. For example, as discussed in Section III of the Complaint, Sakhalin II "Phase 2 Senior Lenders" have entered into a *Common Terms Agreement* with SEIC, which defines the parties' obligations in the development of Sakhalin II, Phase 2 and includes health, safety, environmental, and social standards to which the parties have agreed.<sup>13</sup> As such, each of these financial institutions exercises a degree of influence over the operations of the Prigorodnoye Complex and SEIC's resettlement and compensation practices. Further, as will be described more fully in Section III, RBS, Standard Chartered and Barclays are all Equator Principles Financial Institutions,<sup>14</sup> committing them to self-regulatory practices prohibiting financial support for projects where the borrower does not comply with relevant social and environmental policies under the Equator Principles.<sup>15</sup>

### 1. Royal Bank of Scotland Group, PLC

In March and April 2007, ABN AMRO, a bank then headquartered in Amsterdam, Netherlands,<sup>16</sup> acted as one of the arrangers for corporate loans totaling US\$5.45 billion and US\$2 billion, respectively, to Gazprom in support of the company's acquisition of a

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<sup>12</sup> See Press Release, Gazprom, Gazprom and Shell develop cooperation in Russian and international oil and gas markets (21 June 2012), available at <http://www.gazprom.com/press/news/2012/june/article137861/>; "Gazprom, Shell Highlight Sakhalin II Project Success", Oil and Gas Eurasia, 8 August 2012, <http://www.oilandgaseurasia.com/news/p/0/news/15173> (last visited 15 June 2012); Anna Shiryaevskaya & Stephen Bierman, *Gazprom May Invite Shell to Shtokman Group, Focus on LNG*, Bloomberg, 25 May 2012, <http://www.bloomberg.com/news/2012-05-25/gazprom-may-invite-shell-to-shtokman-group-focus-on-lng.html> (last visited 22 June 2012).

<sup>13</sup> See SEIC, Health, Safety, Environmental and Social Action Plan 1.4 (November 2005), available at [http://www.sakhalinenergy.com/en/documents/doc\\_lender\\_hse\\_1.pdf](http://www.sakhalinenergy.com/en/documents/doc_lender_hse_1.pdf) [hereinafter "HSESAP"].

<sup>14</sup> *Members and Reporting*, Equator Principles Association, <http://www.equator-principles.com/index.php/members-reporting> (last visited 2 July 2012).

<sup>15</sup> *About the Equator Principles*, Equator Principles Association, <http://www.equator-principles.com/index.php/about-the-equator-principles> (last visited 22 June 2012).

<sup>16</sup> See ABN AMRO Holding N.V., Annual Report, at 98, available at [http://www.abnamro.com/en/images/050\\_Investor\\_Relations/020\\_Financial\\_Disclosures/020\\_Annual\\_Reports/Annual\\_reports\\_archive/010\\_ABN\\_AMRO/AAB\\_Annual\\_Report\\_2007\\_en\\_pdf.pdf](http://www.abnamro.com/en/images/050_Investor_Relations/020_Financial_Disclosures/020_Annual_Reports/Annual_reports_archive/010_ABN_AMRO/AAB_Annual_Report_2007_en_pdf.pdf).

majority shareholder stake in SEIC, the operator of the Sakhalin II Project, which includes the Prigorodnoye Complex.<sup>17</sup>

Royal Bank of Scotland Group, PLC (“RBS”), which is headquartered in the United Kingdom,<sup>18</sup> then acquired ABN AMRO’s Asian operations in Fall 2007.<sup>19</sup> In November 2008, the UK Government became the majority shareholder of RBS.<sup>20</sup> RBS, along with Société Générale, continues to control the part of ABN AMRO that made the loan to Gazprom.<sup>21</sup> The financing provided to Gazprom in support of its acquisition of SEIC gives RBS direct influence over, and a financial interest in, SEIC, the Sakhalin II Project, and Prigorodnoye Complex operations.

## 2. Standard Chartered, PLC (“Standard Chartered”)

In June 2008, SEIC secured a Project Finance Facility of US\$5.3 billion from a group of financial enterprises, including Standard Chartered, for the construction, testing and commissioning of the Sakhalin II, Phase 2 Project, which includes the Prigorodnoye Production Complex.<sup>22</sup> United Kingdom headquartered Standard Chartered,<sup>23</sup> as a member

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<sup>17</sup> RBS, as well as Morgan Stanley and Société Générale, acted as arrangers for the March 2007 loan. The financial consortium supporting the April 2007 loan also included: Société Générale (co-arranger), Intesa San Paolo (co-arranger), AK Bank, Alpha Bank, Bank of Tokyo-Mitsubishi UFJ, Banque Misr, Barclays, BNP Paribas, Calyon, part of Crédit Agricole, Citi, DnB Nor Bank, Fortis (now part of BNP Paribas), Kommunalcredit, Landesbank Baden-Württemberg, Mega International Commercial Bank, Mizhuo Corporate Bank, Morgan Stanley, Sumitomo Matsui Banking Corporation, and Woori Financial Group. Thomson ONE Database, “Tearsheet 2228561115”, Thomson ONE Database ([www.thomsonone.com](http://www.thomsonone.com)), 27 March 2007; Bloomberg Database, “Loan finder”, Bloomberg Database, viewed August 2011; BankTrack, *Dodgy Deal: Sakhalin II Oil and Gas Project*, at 2, [http://www.banktrack.org/manage/ajax/ems\\_dodgydeals/createPDF/sakhalin\\_ii\\_oil\\_and\\_gas\\_project](http://www.banktrack.org/manage/ajax/ems_dodgydeals/createPDF/sakhalin_ii_oil_and_gas_project) (last updated 28 June 2012).

<sup>18</sup> *Key Facts about RBS*, RBS Group, <http://www.rbs.com/about/business-strategy/key-facts.html> (last visited 2 July 2012).

<sup>19</sup> ABN AMRO, History Department, *ABN AMRO, 1990-Present*, at 2, available at [http://www.abnamro.com/en/images/010\\_About\\_ABN\\_AMRO/050\\_History/020\\_Downloads/ABN\\_AMRO\\_1990-PRESENT\\_UK.pdf](http://www.abnamro.com/en/images/010_About_ABN_AMRO/050_History/020_Downloads/ABN_AMRO_1990-PRESENT_UK.pdf); Bloomberg News, *Consortium Wins Control of ABN Amro*, N.Y. Times, 9 October 2007, available at <http://www.nytimes.com/2007/10/09/business/worldbusiness/09bank.html>; see also Jane Croft, *RBS begins to see benefits of ABN deal*, Fin. Times, 1 April 2008, available at <http://www.ft.com/intl/cms/s/0/f9ee7ffa-ff4b-11dc-b556-000077b07658.html#axzz1z1I1novl>.

<sup>20</sup> RBS Group, Equity Ownership Statistics, [http://www.investors.rbs.com/equity\\_statistics](http://www.investors.rbs.com/equity_statistics) (last visited 28 June 2012).

<sup>21</sup> See BankTrack, *supra* note 17, at 2.

<sup>22</sup> This group also includes: Japan Bank for International Cooperation, Bank of Tokyo Mitsubishi UFK, Mizuho Corporate Bank, Sumitomo Mitsui Banking Corporation, BNP Paribas and Credit Suisse Group. See Bloomberg Database, “Loan finder”, Bloomberg Database, viewed August 2011; Shell Sakhalin Holdings BV, “Annual Report 2008”, Shell Sakhalin Holdings BV, December 2009; BankTrack, *supra* note 17, at 2-3. In October 2009, SEIC secured an additional US\$1.4 billion from the following banks for completion of the full scope of Phase II of Sakhalin II: Bank of Tokyo-Mitsubishi UFJ, BNP Paribas and Mizuho Corporate Bank. See *Sakhalin-2 project - recent key milestones*, Sakhalin Energy, [http://www.sakhalinenergy.com/en/atag glance.asp?p=aag\\_main&s=1](http://www.sakhalinenergy.com/en/atag glance.asp?p=aag_main&s=1) (last visited 22 June 2012); Thomson ONE Database, “Tearsheet2517216115”, Thomson ONE Database ([www.thomsonone.com](http://www.thomsonone.com)), 8 October 2009.

<sup>23</sup> Standard Chartered, Annual Report 2011, at 16, available at [http://reports.standardchartered.com/ar2011/servicepages/downloads/files/entire\\_scb\\_ar2011.pdf](http://reports.standardchartered.com/ar2011/servicepages/downloads/files/entire_scb_ar2011.pdf).

of this financial consortium, provided a corporate loan to SEIC totaling US\$300 million.<sup>24</sup> Standard Chartered's US\$300 million loan to SEIC is not scheduled to mature until June 2013.<sup>25</sup> This loan, which supports the Sakhalin II Project, establishes both an active business relationship between Standard Chartered and SEIC and Standard Chartered's financial interest in the Sakhalin II Project.

### 3. Barclays, PLC ("Barclays")

In April 2007, Barclays, which is headquartered in the United Kingdom,<sup>26</sup> became a member of a banking syndicate that provided a US\$2 billion corporate loan to Gazprom in support of its acquisition of a majority share of SEIC, the Sakhalin II Project operator, including the Prigorodnoye Complex.<sup>27</sup> The financing provided to Gazprom in support of its acquisition of SEIC gives Barclays direct influence over, and a financial interest in, SEIC and Sakhalin II Project operations.

Moreover, in May 2010, SEIC secured a three-year, US\$17.1 million loan from Barclays for general corporate purposes.<sup>28</sup> The three-year loan establishes a direct business relationship between Barclays and SEIC, and gives Barclays a financial interest in SEIC's ongoing activities, including operation of the Prigorodnoye Complex.

As OECD member countries and signatories to the OECD *Guidelines for Multinational Enterprises*, the Netherlands and the UK are responsible for encouraging Dutch and UK multinational enterprises, respectively, "to observe the *Guidelines* wherever they operate."<sup>29</sup> While the actions relevant in this Complaint occurred largely in Russia, the Dutch and UK NCPs should accept the Complaint because Russia is not an adhering country and the multinational enterprises named in the Complaint are either incorporated or headquartered in the Netherlands or the UK.

### C. Summary of the Complaint

The Stroitel Association and Sakhalin Environment Watch submit this Complaint to the Dutch and UK NCPs regarding violations of the *Guidelines* by Shell, RBS, Standard Chartered and Barclays as a result of their business relationship with SEIC, the operator of the

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<sup>24</sup> BankTrack, *supra* note 17, at 2.

<sup>25</sup> Bloomberg Database, "Loan finder", *Bloomberg Database*, viewed August 2011. The entire \$5.3 billion was disbursed to SEIC by May 2009, and \$1.6 billion, including Standard Charter's \$300 million, will mature in June 2013. *Id.*

<sup>26</sup> Barclays, Annual Report 2011, at 77, *available at* <http://group.barclays.com/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadername2=MDT-Type&blobheadervalue1=inline%3B+filename%3D2011-Barclays-PLC-Annual-Report-%28PDF%29.pdf&blobheadervalue2=abinary%3B+charset%3DUTF-8&blobkey=id&blobtable=MungoBlobs&blobwhere=1330686323829&ssbinary=true>.

<sup>27</sup> Thomson ONE Database, "Tearsheet 2219348115 and 2219348115", Thomson ONE Database ([www.thomsonone.com](http://www.thomsonone.com)), 5 April 2007; Bloomberg Database, "Loan finder", Bloomberg Database, viewed August 2011. For a list of other institutions making up the financial syndicate supporting the loan see note 18.

<sup>28</sup> Bloomberg Database, "Loan finder", Bloomberg Database, viewed August 2011.

<sup>29</sup> *See Guidelines* § I(3).

Sakhalin II Project, including the Prigorodnoye Production Complex, on Sakhalin Island, Russia.

The Sakhalin II Project is one of the largest integrated oil and gas projects in the world and includes the liquefied natural gas (“LNG”) plant and LNG and oil export terminals that make up the Prigorodnoye Production Complex. As described in detail below, the construction and operation of the Prigorodnoye Complex has caused pollution and physical damage to the Stroitel Association’s dachas and to their cultivated lands, which are located 1.2 kilometers from the Complex, within the 3.5 kilometer Sanitary Defense Zone proposed in project documents approved by the Russian Ministry of Natural Resources.<sup>30</sup>

In 2003, construction of the Prigorodnoye Complex began, causing degradation of air quality, noise disturbances, damage to and loss of access to local fishing and recreation resources, declines in agricultural productivity, and decreases in community and road safety. Operations began in 2007, leading to further declines in agricultural productivity and degradation of air and soil quality as a result of harmful pollutants emitted at the Complex. The risk of possible emergencies at the operating LNG plant also created additional threats to community safety.

Construction and operation of the Prigorodnoye Complex has decreased the value of the land and structures owned by Stroitel Association members, as well as threatening these individuals’ health, livelihood and cultural heritage. This harm has, in effect, led to the displacement of members of the Stroitel Association dacha community, and dacha owners have not been resettled or justly compensated for this displacement. The *Guidelines*, Russian law and international policies to which Sakhalin II must adhere require that these dacha owners be resettled and fully compensated for their loss.

Through their business relationship with SEIC, the operator of the Sakhalin II Project, Shell, RBS, Standard Chartered, and Barclays are responsible for the following *Guidelines* violations, described fully in Section III of the Complaint:

- Sections II and IV: failing to prevent or mitigate adverse impacts directly linked to a business relationship.
- Sections I and II: failing to adhere to Russian Law regarding resettlement or compensation of the displaced dacha community.
- Section II: failing to comply with relevant self-regulatory policies and mutual agreements, inaccurately disclosing information material to the resettlement of the affected dacha community, and engaging in bad faith negotiations with community stakeholders.
- Section IV: failing to respect internationally recognized human rights in accordance with Russian law and relevant international agreements.

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<sup>30</sup> Order #600 of the Ministry of Natural Resources of the Russian Federation, on 15 June 2003.



- Section VI: failing to contribute to sustainable development or adequately account for the protection of the environment, public health and safety.

## **II. The Sakhalin II Prigorodnoye Complex Has Harmed Stroitel Association Dacha Owners, the Environment, Community Health and Safety and Cultural Heritage**

In 1979, the Stroitel Association was established in the village of Prigorodnoe, in the Korsakov District of Russia's Sakhalin Island.<sup>31</sup> Original members of the Stroitel Association were mostly veterans and distinguished construction workers from the Korsakov District.<sup>32</sup> Association members built 79 dachas on the shore of Aniva Bay. Dachas are seasonal or year-round second homes and plots of land with vegetable gardens and orchards located in rural parts of Russia.<sup>33</sup> The owners of the Stroitel Association dachas on Sakhalin Island tilled the hillside's virgin soils, growing vegetables, fruits, and berries for their own tables.<sup>34</sup> Dacha residents fished for sea scallops and fish in the fisheries-rich waters of Aniva Bay and caught fresh water fish in local streams.<sup>35</sup>

By 1998, most of the dacha properties had been privatized, and the amateur builders and cultivators became the owners not just of the buildings, but also of the land.<sup>36</sup> Each family belonging to the Stroitel Association owns a land plot of approximately 0.06 hectares. Although the dachas are considered "second" homes in Russia, many of the dacha residents are retirees who live there year round and, because of their small pensions, rely heavily on the fruits and vegetables grown on dacha land.<sup>37</sup>

The SEIC Supervisory Board approved the Sakhalin II, Phase 2 development plan, one of the largest integrated oil and gas projects in the world,<sup>38</sup> in June 2001.<sup>39</sup> SEIC operates Sakhalin II, including the Prigorodnoye Complex, under a production sharing agreement with the Russian Government.<sup>40</sup> Situated on-shore and off-shore of Sakhalin Island, Sakhalin II includes three offshore drilling platforms and subsea pipelines near the Northeast area of Sakhalin Island, an on-shore processing facility also in the Northeast area, 800 kilometers of on-shore pipelines that traverse to the Southern end of Sakhalin Island, and the Prigorodnoye Production Complex situated at the Southern end of Sakhalin Island,<sup>41</sup> about 1.2 kilometers away from the Stroitel Association's dachas in the village of

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<sup>31</sup> Sakhalin Environment Watch, *The Good Neighbor, or The Continuing Story of One Resistance Movement*, November 2010, at 3, available at <http://bankwatch.org/aa-documents/dacha-people-history-nov2010.pdf> [hereinafter "*Good Neighbor*"].

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 8, 11.

<sup>36</sup> *Id.* at 3.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

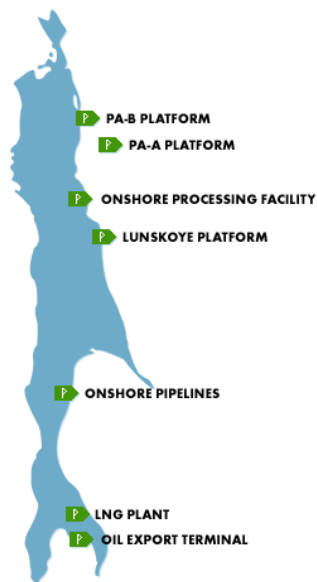
<sup>39</sup> See *Key Milestones*, *supra* note 9.

<sup>40</sup> Sakhalin Energy, *supra* note 1.

<sup>41</sup> *Explore Sakhalin-2 Project*, Sakhalin Energy, available at [http://www.sakhalinenergy.com/en/project.asp?p=explore\\_phase2](http://www.sakhalinenergy.com/en/project.asp?p=explore_phase2) [hereinafter "*Explore Sakhalin-2*"].

Prigorodnoe.<sup>42</sup> The Prigorodnoye Complex includes an LNG plant consisting of two parallel process trains to treat and liquefy up to 9.6 million tons of LNG per year, as well as export terminals for LNG and crude oil.<sup>43</sup>

Figure 1. "Explore Sakhalin-2 Project" Map



Source: Explore Sakhalin-2, *supra* note 41.

The construction, testing, commissioning and operation of the Prigorodnoye Complex is the cause of past, present, and future harmful impacts to the local environment, the land owned by the Stroitel Association members, and the health and well-being of Association members living in the dacha community located approximately 1.2 kilometers from the Complex. This harm has led to the effective displacement of the Stroitel Association dacha community, and dacha owners have not been resettled or justly compensated for this displacement.

The Stroitel Association and Sakhalin Environment Watch have documented these harmful impacts, with supporting evidence produced by SEIC, state regulatory agencies and scientific and research organizations. The attached report, *The Good Neighbor*, provides written and photographic documentation of the Prigorodnoye Complex's harmful impacts on the Stroitel Association dacha community.<sup>44</sup> The attached abstract of the 2009-2010 *Soil Monitoring Report* commissioned by SEIC provides supporting evidence, as does the attached *Chemical Analysis* performed by the Sakhalin Scientific Research Institute of Agriculture (Sakhalin NIISKh).<sup>45</sup> The Complainants hereby incorporate each of these reports by reference into the Complaint.

<sup>42</sup> See *Good Neighbor*, *supra* note 31.

<sup>43</sup> See *Explore Sakhalin-2*, *supra* note 41.

<sup>44</sup> See *Good Neighbor*, *supra* note 31.

<sup>45</sup> Sakhalin Scientific Research Institute of Agriculture (Sakhalin NIISKh), Russian Academy of Agricultural Sciences State Scientific Institution, *Chemical Analysis of the Possible Impacts of Atmospheric Emissions from*

## A. Implementation of an Inadequate Sanitary Defense Zone Surrounding the Prigorodnoye Complex

In 2001, SEIC announced that it would construct and operate Phase 2 of the Sakhalin II Project, including the Prigorodnoye Complex adjacent to the Stroitel Association dachas. Construction commenced over the ensuing years, and the Complex began operating in 2008. SEIC has maintained contradictory positions on the environmental impact of the Complex, as well as the question of whether nearby dacha residents should be resettled and how much, if any, compensation was required. One of the biggest points of inconsistency was the size of the Sanitary Defense Zone around the Complex required to protect the health and safety of nearby residents.<sup>46</sup>

In January 2002, SEIC announced in public hearings that Russian public health officials had already established a Sanitary Defense Zone of 1 kilometer around the Complex.<sup>47</sup> In June 2002, a letter from the Deputy Chief Sanitation Doctor of the Russian Federation and head of the Russian Federal Consumer Protection and Human Health Control Service (“Rospotrebnadzor”), endorsed the 1 kilometer Sanitary Defense Zone.<sup>48</sup>

However, in 2002, in contrast to these two statements identifying a 1 kilometer Sanitary Defense Zone, SEIC prepared a Technical and Economic Feasibility Plan for construction of Sakhalin II, Phase 2, which determined that the Complex required a Sanitary Defense Zone of at least 3.5 kilometers, with an increase to 4.2 kilometers to protect food gardens:

The second phase of exploitation will be characterized by two types of liquefaction. This variant will require the construction of a full-scale LNG plant. The planned size of the Sanitary Defense Zone is 3.5 kilometers from the border of the industrial area because of the presence of [nitrogen dioxide and sulfur dioxide]. The size of the Sanitary Defense Zone will be increased to 4.2 kilometers from all gardening plots in order to preserve recreational areas.<sup>49</sup>

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*the Liquefied Natural Gas (LNG) and Oil Export Terminal (OET) Plant “Sakhalin Energy Investment Company Ltd.” on “Stroitel” Non-Commercial Garden Association Soil and Produce*, November 2011 [hereinafter “Chemical Analysis”].

<sup>46</sup> “According to Russian legislation, production facilities and other sites that could have negative impacts on the environment or human health must be buffered by a territory with special use restrictions h a sanitary defense zone (SDZ). In order to preserve peoples’ health and limit negative effects, human habitation, including dacha communities, is forbidden within the SDZ.” *Good Neighbor*, *supra* note 31, at 4.

<sup>47</sup> “Sakhalin Energy Investment Company Ltd.” Public hearings, Preliminary variant of materials on environmental impact assessment, Sakhalin-2 project, phase 2 (18 December 2001 – 20 January 2002); *see also Good Neighbor*, *supra* note 31, at 5.

<sup>48</sup> 16 June 2002 letter from Deputy Chief Sanitation Doctor of the Russian Federation, S. I. Ivanov, numbered 1100/2362 2 111; *see also Good Neighbor*, *supra* note 31, at 5.

<sup>49</sup> Sakhalin-2 Project, phase 2, Technical and Economic Feasibility Plan, volume 5, book 9, part 1, chapter 4.2.5, pgs. 25-26.

In January 2003, SEIC submitted its Technical and Economic Feasibility Plan to the Russian Federation's Ministry of Natural Resources (the "Ministry") as part of the approval process for the Prigorodnoye Complex and the other aspects of Sakhalin II, Phase 2. In June 2003, the Ministry approved the Project, which allowed construction to commence. Significantly, in providing its approval, the Ministry required a Sanitary Defense Zone of 2.1 kilometers around the Complex during the construction startup period and, taking into account nitrogen dioxide and sulfur dioxide emissions, required an increase to 3.5 kilometers during operation of the Complex.<sup>50</sup>

In summary, the Ministry approved construction of the Complex with the understanding that SEIC would immediately establish a 2.1 kilometer Sanitary Defense Zone and that it would increase the Zone to 3.5 kilometers once it began operation of the Complex. A Sanitary Defense Zone of either 2.1 or 3.5 kilometers would have encompassed the Stroitel Association dachas located approximately 1.2 kilometers from the Complex. Thus, under Russian law, the Stroitel Association dacha members should have been resettled and compensated for their loss before SEIC began construction of the Complex.<sup>51</sup>

## **B. The Stroitel Association's Fight for Resettlement and Just Compensation**

Despite the requirements set forth by the Ministry in its approval of the Project, SEIC ultimately failed to implement the 2.1 kilometer construction Sanitary Defense Zone or the 3.5 kilometer operations Sanitary Defense Zone, leaving Stroitel Association Members without resettlement or just compensation. During the construction, testing, commissioning and operation of the Complex, leaders of the dacha community repeatedly proposed to SEIC that land and dachas of approximately equal value be provided to dacha owners effectively displaced by the Complex. SEIC rebuffed these requests for fair and equitable resettlement.

After the commencement of construction of the Prigorodnoye Complex in 2003, communications from SEIC regarding the Sanitary Defense Zone and resettlement of the Stroitel Association members began on a positive note. In 2004, SEIC produced and distributed brochures indicating that approval of a 3.5 kilometer Sanitary Defense Zone was "assumed," and that such a designation would "require the resettlement of dachas in the village of Prigorodnoe."<sup>52</sup> The brochures also announced SEIC's decision, along with the local city administration, to move forward with a "resettlement and compensation program."<sup>53</sup> Based on this assurance, and faced with ongoing construction impacts, described in more detail below, many dacha residents abandoned maintenance of their farmland and properties as they awaited implementation of SEIC's resettlement and

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<sup>50</sup> Order #600 of the Ministry of Natural Resources of the Russian Federation, on 15 June 2003.

<sup>51</sup> See 2.2.1/2.1.1.1200-03 "Sanitary Defense Zones and Sanitary Classifications for Businesses, Construction and Other Objects", ratified by the decree of the Head State Sanitary Inspector of the Russian Federation on 25 September 2007 N 74 (amended on 9 September 2010).

<sup>52</sup> SEIC, Informational Brochure, "*Steps to provide compensation in connection with the upcoming resettlement of dachas from the sanitary defense zone of the LNG plant and OET in the village of Prigorodnoe*", June 2004, excerpts available in *Good Neighbor*, *supra* note 31, at 9.

<sup>53</sup> *Id.*

compensation program.

Despite the 3.5 kilometer Sanitary Defense Zone identified in SEIC's Technical and Economic Feasibility Plan and the public brochure stating that dachas in the village of Prigorodnoe would be resettled, SEIC sent a letter to Stroitel Association members on 25 May 2005, stating that only a 1 kilometer Sanitary Defense Zone was required.<sup>54</sup> SEIC justified this position by asserting that the 2002 letter from the Russian Deputy Chief Sanitation Doctor and head of Rospotrebnadzor, which set a 1 kilometer Sanitary Defense Zone, was the controlling document, despite the fact that the Ministry's approval of a 3.5 kilometer Sanitary Defense Zone was more current.<sup>55</sup> Incongruously, SEIC's May 2005 letter to Stroitel Association members also claimed that "[t]he Company is currently completing an international standard resettlement action plan, which includes compensation mechanisms for land users in accordance with the World Bank Operational Directive 4.30."<sup>56</sup>

Amidst the confusion caused by SEIC's May 2005 letter and mounting construction impacts on the dacha community, additional dacha residents abandoned the village, while others held out hope for resettlement and just compensation. On 28 January 2006, the dacha owners and other community members picketed the LNG plant, demanding an increased Sanitary Defense Zone surrounding the Complex.

In August 2006, SEIC made an offer of monetary compensation to dacha owners. The compensation package offered by SEIC in August 2006 contained two components:

- 1) Compensation "for the loss of market value," which was set at 50% of the August 2006 market value for each plot, as estimated by GAKS Sakhalin Appraisal Agency ("GAKS"), an appraisal company hired by SEIC. This was provided to all dacha owners with no strings attached; and
- 2) Compensation of the remaining 50% of the August 2006 market value, as estimated by GAKS, on the condition that dacha owners forfeit their property rights to the dacha buildings and land.<sup>57</sup>

The offered compensation package was unjust, however, as property values had already significantly declined due to the negative impacts of construction of the Prigorodnoye Complex.<sup>58</sup> As documented in a 2005 report by the sociology department of Sakhalin State University, entitled *Evaluation of assumed loss of value parameters of dachas among the Stroitel Association in Prigorodnoe, Korsakov district, in connection with the construction of the LNG plant*, construction of the Complex had already caused significant negative impacts affecting property value, including:

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<sup>54</sup> SEIC, letter № 2005-OUT-Y-08-00098, 25 May 2005; *see also Good Neighbor*, *supra* note 31, at 10.

<sup>55</sup> SEIC, letter № 2005-OUT-Y-08-00098, 25 May 2005.

<sup>56</sup> *Id.*

<sup>57</sup> *See Good Neighbor*, *supra* note 31, at 13-14.

<sup>58</sup> *Id.*

- Decline of the area’s reputation because of environmental dangers connected to plant operations;
- Decline in the state of roads because of the use of heavy transport vehicles for construction purposes;
- Dust, noise, and vibrations caused by the movement of heavy transport vehicles;
- Decline in safety on roads; and
- Increase in the risk of attack or theft by construction workers from the plant.<sup>59</sup>

Thus, the offer to pay dacha owners 100% of the August 2006 property value in exchange for forfeiting all property rights was not full compensation for the loss caused by the Prigorodnoye Complex.

Moreover, this drop in the value of the Stroitel Association dachas coincided with a real estate boom in nearby dacha communities caused by the influx of foreign investment and higher paid expatriate workers associated with Sakhalin II and other new oil and gas projects in the area, resulting in a tremendous increase in the price of replacement dachas. For instance, “according to the experts at the Island Home Sakhalin Informational-Analytical Journal, prices on real estate in Korsakov district increased threefold during the second half of [2006].”<sup>60</sup>

As explained in more detail below, because the Stroitel Association dachas are located within the 3.5 kilometer Sanitary Defense Zone, as proposed by SEIC and approved by the Ministry, the dacha residents should have been resettled, meaning that they should have been compensated in an amount that would allow them to buy similar dachas in a neighboring community to least restore them to their former living standard.<sup>61</sup> Therefore, the first component of the compensation package offered by SEIC, which was received by all dacha owners in September/October 2006, in no way justly compensated dacha owners for the for the “loss of market value” caused by construction of the Complex.

Despite the inadequacy of the offered compensation, 28 members of the Stroitel Association agreed to the second component of the compensation package and forfeited their rights to their dachas. Due to the rising prices of other dachas in nearby communities, only two of the 28 were able to purchase new dachas. The other 42 remaining dacha owners did not accept the second component and therefore did not forfeit their property rights. Of these, 5 owners subsequently abandoned their dachas because of the negative impacts of the Complex. To this day, 37 Stroitel Association dacha owners remain.<sup>62</sup>

The Complainants have made several further attempts to resolve this dispute between 2006 and the present, including through direct appeals to SEIC management on 16

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<sup>59</sup> *Id.* at 15.

<sup>60</sup> *Id.* at 13-14.

<sup>61</sup> See OD 4.30, *infra* note 155 (requiring that displaced persons are “compensated for their losses at full replacement cost”).

<sup>62</sup> *Id.*

September 2009, 16 August 2010, and 26 January 2012, without success. Despite receiving approval from the Ministry for the Sakhalin II Project on the basis of a 3.5 kilometer Sanitary Defense Zone surrounding the Complex, SEIC has failed to resettle or justly compensate the Stroitel Association dacha owners.

### **C. Community Health and Safety Impacts**

While the remaining dacha residents fight for resettlement and just compensation, they are facing numerous threats to their health and safety that are directly related to living in such close proximity to the Prigorodnoye Complex. Many of the negative health and safety impacts suffered by residents of the Stroitel Association dachas are documented in *The Good Neighbor* and are summarized here.

Negative impacts began during the Complex's construction, which lasted from 2003 to 2007. Construction of the Complex's LNG plant created dust and released fumes, impacting the quality of air breathed by local dacha residents.<sup>63</sup> Construction noise, including heavy equipment traffic and explosions from a nearby quarry, caused further disturbances to a population predominantly consisting of senior pensioners.<sup>64</sup> The noise did not stop at night and prevented people from sleeping.<sup>65</sup>

Heavy construction equipment also damaged local roads. The Korsakov-Novikovo road, which passes close to the dacha village, was so severely damaged by heavy trucks that road safety significantly declined.<sup>66</sup> Dacha residents driving regular cars had difficulty passing and frequently sank into the mud, causing an increase in Stroitel Association members' auto repair bills.<sup>67</sup>

Construction also brought in expatriate construction workers who squatted in and occupied dachas within the community. The workers travelled to and from the community in large construction vehicles and disrupted the community with late night carousing.<sup>68</sup> Further, the influx of outside workers increased the risk of attack or theft, thereby directly threatening the community's safety.<sup>69</sup>

The testing and commissioning of the Complex's LNG plant brought additional impacts to Stroitel Association dacha owners. *The Good Neighbor* presents photo documentation of the plant's smoke stack, used for gas flaring, shooting flames 125 meters into the air during the testing and commissioning of the plant.<sup>70</sup> The gas flaring has produced black soot that

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<sup>63</sup> See *Good Neighbor*, *supra* note 31, at 8-9.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 15.

<sup>66</sup> *Id.* at 8, 15.

<sup>67</sup> *Id.* at 8-9.

<sup>68</sup> *Id.* at 10.

<sup>69</sup> *Id.* at 15.

<sup>70</sup> *Id.* at 12, 15-16.

falls on the dachas, coating exposed surfaces.<sup>71</sup> The smoke stack also emits a constant audible hum, disturbing the local community.

Finally, one of the most severe impacts of construction, which will likely continue to get worse during the operation of the Complex, is dacha residents' loss of food security. As a result of ongoing construction, many food resources formerly relied on by dacha residents have been lost. For example, access to the beach in Mereya Valley, formerly a valuable resource for cod fishing, was blocked.<sup>72</sup> Additionally, the laying of underwater pipes for the oil terminal buried the local sea scallop habitat.<sup>73</sup>

Harmful emissions during testing, commissioning and operation of the Complex have also severely jeopardized the community's food security. Because of the miniscule salaries and pensions of retirees residing within the dacha community, Stroitel Association members rely on the fruits and vegetables grown on dacha land for a significant portion of family food rations.<sup>74</sup> During the Complex's testing and commissioning, however, dacha owners began to notice a sharp decline in the productivity of fruits and berries that grew on trees and bushes on their plots.<sup>75</sup> The productivity decline continued as the Complex began operation.<sup>76</sup> Contaminated clouds of dust have settled on dachas and their farm plots, leading to this decrease in productivity.<sup>77</sup> One resident surveyed 17 dacha plots and found declines in productivity that coincided with the onset of project construction and worsened with sudden severity in 2007, when the Complex was undergoing testing and commissioning.<sup>78</sup> By 2009, the productivity of pears, apples, plums and currants had declined to near zero, as shown in Chart 1 below.<sup>79</sup>

The degradation of perennial crops is expected to increase as a result of ongoing Complex emissions.<sup>80</sup> The Russian Academy of Agricultural Sciences, in its 2011 *Chemical Analysis* report, identified elevated concentrations of several harmful pollutants on Stroitel Association land, with the greatest increase of soil contamination prevalent in those areas closest to the Complex.<sup>81</sup> The level of soil contamination caused by emissions from the Complex is discussed in more detail below in Section II(D) on environmental impacts.

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<sup>71</sup> *Id.* at 15-16, 21.

<sup>72</sup> *Id.* at 11.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 3.

<sup>75</sup> *Id.* at 15-16, 21.

<sup>76</sup> *Id.* at 19-20.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

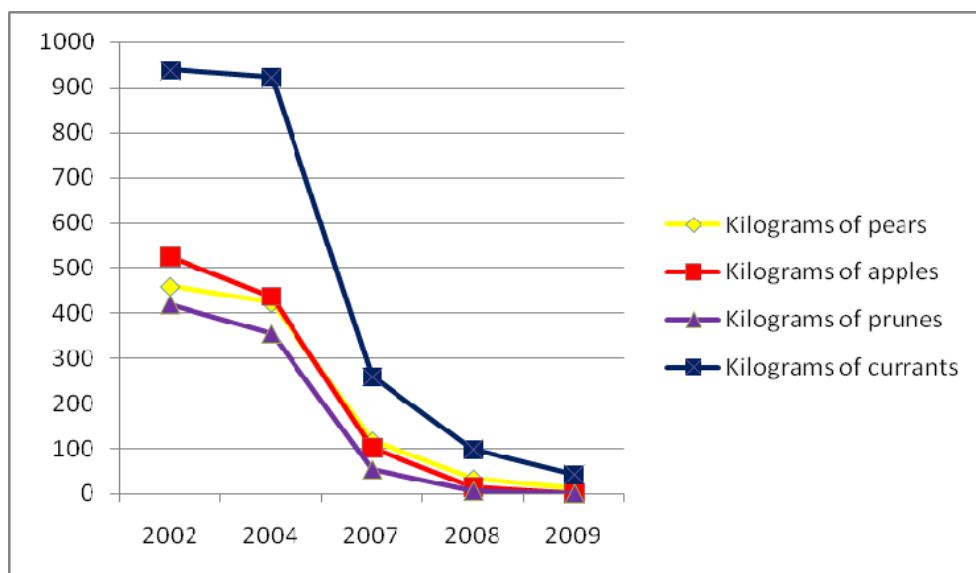
<sup>80</sup> See *Chemical Analysis*, *supra* note 45, at 31 ("The adverse effects of natural gas combustion by the LNG/OET plant to [agricultural] products takes place year-round. Since one can hardly expect positive changes in the levels of emissions from the LNG/OET plant, the degradation of perennial crops will only increase. Therefore, harmful substances will continue to accumulate in local soils . . . the beginning of gardening season and its following summer vegetation period will be accompanied by an increased content of soil contaminants, including the most dangerous organic compounds such as benzo(a)pyrene.").

<sup>81</sup> *Id.* at 30.



In addition to harming crops relied upon by dacha residents, emissions from the Complex are a threat to residents' health. The Russian Academy of Agricultural Sciences' 2011 *Chemical Analysis* described the potential harms to human health, including an increased risk of cancer, of living in areas with a high concentration of pollutants present at the Complex including nitrogen dioxide, sulfur dioxide and benzo(a)pyrene.<sup>82</sup> The *Chemical Analysis* also indicated that several Stroitel Association members have died from cancer in a short period of time.<sup>83</sup>

*Chart 1. Trends in total productivity of pears, apples, prunes and currants on 17 dacha plots of the Stroitel Association in 2002, 2004, 2007, 2008, 2009.*



*Source: The Good Neighbor, supra note 31, at 20*

Lastly, because SEIC has failed to resettle dacha residents in accordance with the 3.5 kilometer Sanitary Defense Zone that conditioned the Ministry's approval of the Complex, continued operations also represent a direct threat to the health and safety of dacha residents in the event of an emergency. According to project design documentation, the maximum safe zone from the LNG terminal in the event of an emergency is 2.999 kilometers.<sup>84</sup> Therefore, an emergency at the LNG terminal would pose a direct threat to dacha residents residing just 1.2 kilometers away.

#### **D. Environmental Impacts**

Complainants recognize the economical, social, and cultural value of the environment and natural resources located within and near the Stroitel Association dacha community. As described above, residents rely upon the annual food supply of fruits and vegetables grown

<sup>82</sup> *Id.* at 7, 9.

<sup>83</sup> *Id.* at 9.

<sup>84</sup> See *Good Neighbor, supra* note 31, at 21.

in the fertile dacha soil and depend upon the local river and beaches as a reliable source of fish. The Prigorodnoye Complex has severely impacted the availability of these environmental resources.

The quality of environmental resources used for recreation purposes declined as a result of the Complex. For example, during construction of the Complex, the nearby Mereya River, which residents used for swimming and fishing, became cloudy with sediment flowing from the construction site.<sup>85</sup> Moreover, SEIC's monitoring and analysis of harmful pollutants emanating from the Prigorodnoye Complex have been questionable, at times directly contradicting studies conducted by the Rospotrebnadzor and other independent third parties.

Additionally, emissions from the Complex have resulted in numerous environmental problems. Dust and fumes associated with construction have polluted community wells.<sup>86</sup> As detailed in both *The Good Neighbor* and the Russian Academy of Agricultural Sciences' *Chemical Analysis*, emissions from the Complex have also left seedbeds, greenhouses, windows, and even the surface of water in irrigation barrels coated with a thin layer of yellow and black film.<sup>87</sup>

Emissions from natural gas flaring may also be causing, or may lead to, acid rain.<sup>88</sup> Scientists from the Institute of Marine Geology and Geophysics of the Russian Academy of Sciences believe that there is a possibility of acid rain because of the high content of nitrogen oxides and sulfur in emissions caused by natural gas flaring, in combination with the region's partial fog coverage and light rainfall.<sup>89</sup> In 2009, these scientists conducted research utilizing snow cover samples as far as 3 kilometers away from the Complex in order to measure air quality.<sup>90</sup> The results demonstrated a rise in the acidity of the snow cover, with steady increases in acidity as one approached the LNG plant.<sup>91</sup> Results also indicated increases in the total mineralization of precipitation and the quantity of sodium, potassium, calcium, chloride, and sulfate and chlorine anions.<sup>92</sup>

As a result, green plants may be particularly vulnerable as they are more sensitive to various gasses than people or animals.<sup>93</sup> Data from the Institute of Marine Geology and Geophysics monitoring project demonstrated that acidic gasses cause the death of specific plant organs and a decline in agricultural productivity, including both size and yield.<sup>94</sup> These findings correspond with the experiences of dacha residents who, as described

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<sup>85</sup> *Id.* at 8.

<sup>86</sup> *Id.* at 15.

<sup>87</sup> See *Chemical Analysis*, *supra* note 45, at 4.

<sup>88</sup> See *Good Neighbor*, *supra* note 31, at 19.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

above, have suffered from a decline in fruit and berry productivity over the course of construction and operation of the Complex.<sup>95</sup>

The *Chemical Analysis* conducted by the Russian Academy of Agricultural Sciences provides additional evidence of environmental harm to the dacha community from excessive pollution and confirms soil contamination and related impacts to fruits and vegetables. Scientists compared the chemical composition of soil samples on Stroitel Association land to Russian environmental public health requirements regarding maximum and estimated permissible concentrations of chemical compounds and concluded that the samples showed, *inter alia*:

- Elevated concentrations of nitrogen oxide, nitrogen dioxide, sulfur, and benzo(a)pyrene in the soil that are likely caused by the LNG and oil export terminal.<sup>96</sup>
- Levels of the most dangerous pollutant, benzo(a)pyrene, which Russian law classifies in the highest class of harmful substances, exceeding the Maximum Permissible Concentrations (“MPC”)<sup>97</sup> by 15%-40% in the soil of all surveyed sites.<sup>98</sup>
- Microdoses of benzo(a)pyrene have been found in fruits and berries grown on Stroitel Association land.<sup>99</sup> According to the Russian Academy of Agricultural Sciences, “[c]rop productions should not contain even trace amounts of [benzo(a)pyrene].”<sup>100</sup>
- Significantly elevated concentrations of nitrates, up to three times in excess of the MPC, occurring in fresh beets and in the leaves of apple trees.<sup>101</sup>

Apple trees also showed signs of chemical burns and desiccation of the upper parts of their crowns.<sup>102</sup> Similar symptoms were found in plum trees.<sup>103</sup> Chemical burns were also recorded in berry crops, such as currants and gooseberries.<sup>104</sup>

The SEIC-commissioned 2009-2010 *Soil Monitoring Report* also reveals soil contamination related to Complex emissions. The Report documented soil concentrations of heavy metals

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<sup>95</sup> *Id.*

<sup>96</sup> See *Chemical Analysis*, *supra* note 45, at 30.

<sup>97</sup> The Maximum Permission Concentrations (“MPC”) for a harmful substance represents the concentration “below which no direct or indirect adverse effects on human health should occur (if continuously being exposed over the lifetime), or on the health of the next generations.” See Antonia Reihlen et al., *The Russian system of chemicals management* 22, 30 (June 2010), available at [http://hs.befgroup.net/glossary/texts/The\\_Russian\\_system\\_of\\_chemicals\\_management.pdf](http://hs.befgroup.net/glossary/texts/The_Russian_system_of_chemicals_management.pdf).

<sup>98</sup> See *Chemical Analysis*, *supra* note 45, at 30.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

and hydrocarbons that exceeded the allowed limit on 11 of 12 monitoring plots and reported that the heavy metal and hydrocarbon content increased significantly during the monitoring period. Although this monitoring was conducted around the LNG site, not on Stroitel Association land, it nonetheless demonstrates excessive emissions from the Complex.

Despite documentation of harmful emissions in a report it commissioned, SEIC has failed to implement a reliable system of environmental management to monitor and mitigate the ongoing harmful impacts on the dacha community's environment. Emission statistics published by SEIC are not comprehensive: in 2007, SEIC monitored only 7 of the 25 harmful pollutants emitted by the Complex; and in 2008, SEIC stopped monitoring select suspended materials, hydrogen sulfide, and mineral oils.<sup>105</sup>

In addition to SEIC's questionable decision to exclude several known harmful pollutants from monitoring, the veracity of SEIC's emissions reporting is doubtful. For example, on 10 June 2009, Sakhalin Region's division of the Rospotrebnadzor took air samples in three areas within the dacha community and found sulfur dioxide concentrations of 0.24-0.29 mg per cubic meter, which is 24-29 times the concentrations reported in the analysis of air samples from Stroitel Association territory published by SEIC.<sup>106</sup> Moreover, SEIC has reported that concentrations of several harmful pollutants have remained relatively even over time, which seems at odds with the dramatic increase in the volume of emissions from the Complex.<sup>107</sup>

These facts demonstrate that Stroitel Association members have already suffered adverse environmental impacts from construction, testing, commissioning and operation of the Complex. Moreover, the harmful emissions caused by Complex operations continue to affect the Stroitel Association dacha owners. Complainants are also concerned about future environmental harm that will likely occur as a result of continued emissions of identified pollutants.

### **E. Impacts on Vulnerable Populations and Social and Cultural Heritage**

Dachas are an important part of Russian family life and culture and serve numerous functions, including providing: a significant portion of a family's yearly food supply; a place for parents, grandparents, and children to commune and strengthen family ties; a place for the restoration of health and well-being; and a place for retirement. Children learn to work the land by assisting with the spring planting and fall harvest labors, and often spend their summers under the care of their grandparents at their family's dacha, which also serves as the traditional location for social gatherings amongst family and friends.<sup>108</sup> Additionally, as mentioned above, because of the small salaries and pensions of retirees commonly residing within dacha communities, the fruits and vegetables grown on dachas are an important

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<sup>105</sup> See *Good Neighbor*, *supra* note 31, at 18.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 13-14.

<sup>108</sup> *Id.* at 4.

part of the sustenance of many elderly Russians, and also strengthen their social status.<sup>109</sup> Dachas therefore play an important social, economic, and cultural role in Russian society.

Prior to the construction and operation of the Complex, the Stroitel Association dachas served all of these purposes for Association members. The aforementioned health, safety, and environmental impacts of the Complex, however, are destroying the cultural heritage and traditions of the Stroitel Association dacha community. For example, because of poor air quality and a general decrease in quality of life at the dachas as a result of construction and operation of the Complex, children of the older dacha residents visit less frequently, and grandchildren have stopped coming to stay with their grandparents during the summer months and assist in working the dacha land.<sup>110</sup> The material, social, and economic harm to dacha residents as a result of the Prigorodnoye Complex has not only robbed dacha owners of their property and a vital source of food for their families, but is also destroying longstanding familial and cultural traditions within the community.

### **III. Dutch and UK Multinational Enterprises Have Violated the OECD *Guidelines for Multinational Enterprises Through Their Business Relationship with SEIC, the Operator of the Sakhalin II Project***

Under the OECD *Guidelines*, the Dutch and UK multinational enterprises implicated in the Complaint must leverage their business relationship with SEIC to bring SEIC and its operation of the Prigorodnoye Complex into compliance with the *Guidelines*.<sup>111</sup> According to the *Guidelines* General Policies, multinational enterprises are obligated to prevent or mitigate adverse impacts “directly linked to their operations, products or services by a business relationship,” even if “they have not contributed to that impact.”<sup>112</sup> This obligation extends to the promotion of “responsible business conduct compatible with the *Guidelines*” amongst “business partners.”<sup>113</sup>

As explained above, Shell, RBS, Standard Chartered, and Barclays each have a business relationship with SEIC and thus are not only responsible for upholding their own internal standards under the *Guidelines* (see Section III(B) below), but also for *Guidelines* violations caused by SEIC’s construction, testing, commissioning, and operation of the Prigorodnoye Complex. The identified Dutch and UK multinational enterprises have not used their leverage to prevent or remedy SEIC’s numerous violations of the *Guidelines*, which are discussed in detail below.

The immediate attention of the Dutch and UK NCPs to these *Guidelines* violations is especially critical in light of current and future threats to the health and safety of Stroitel Association members as a result of SEIC’s refusal to provide resettlement or just compensation.

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<sup>109</sup> *Id.* at 3-4.

<sup>110</sup> *Id.* at 9, 15.

<sup>111</sup> See *Guidelines* “Commentary on General Policies”(19).

<sup>112</sup> *Guidelines* § II(A)(12); see also *id.* § IV(3) (Reiterating the requirement with regard specifically to adverse human rights impacts).

<sup>113</sup> *Id.* at § II(A)(13).

## **A. Violations of *Guidelines* Sections I and II Regarding Applicable Domestic Law**

### **i. Failure to Comply with Russian Law Regarding Resettlement or Compensation of the Displaced Dacha Community**

Multinational enterprises must operate in accordance with the domestic laws and regulations of the countries in which they operate.<sup>114</sup> SEIC, as operator of the Prigorodnoye Complex, is thus bound to abide by Russian law, which calls for the resettlement of residential communities in areas designated for protection as a result of a new construction project, as are the multinational enterprises that share a business relationship with SEIC.<sup>115</sup>

According to Russian law, sanitary defense zones must be calculated in a way that creates a protective barrier aimed at separating industrial areas and associated pollutants or physical impacts from residential, landscape and recreation areas.<sup>116</sup> Companies are responsible for resettling residents where necessary,<sup>117</sup> and in accordance with regulations that bar residential developments, including collective or individual dacha lots, within sanitary defense zones.<sup>118</sup>

SEIC established and implemented only a 1 kilometer Sanitary Defense Zone surrounding the Prigorodnoye Complex. However, as documented in Section II of the Complaint, the Ministry of Natural Resources approved the Complex on the basis of a 3.5 kilometer Sanitary Defense Zone, which was also supported by SEIC's own project documentation. Thus, under Russian law, SEIC should have implemented the 3.5 kilometer Sanitary Defense Zone and should, therefore, have resettled Stroitel Association dacha owners because Russian law does not allow dachas and their associated gardens to be located within sanitary defense zones. Through its failure to comply with Russian law regarding

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<sup>114</sup> See *Guidelines* § I(8) (“[t]he entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries.”); see also *Guidelines* § II (“Enterprises should take fully into account established policies in the countries in which they operate. . .”).

<sup>115</sup> See 2.2.1/2.1.1.1200-03 “Sanitary Defense Zones and Sanitary Classifications for Businesses, Construction and Other Objects”, ratified by the decree of the Head State Sanitary Inspector of the Russian Federation on 25 September 2007 N 74 (amended on 9 September 2010).

<sup>116</sup> See *id.*

<sup>117</sup> See *id.* at § 3.2 (“In a new or renovation construction project within a sanitary protected zone . . . the measures and means of organizing the sanitary protected zone must be specified, including the resettlement of residents in the event of its necessity. The completion of construction events, *including the resettlement of residents*, must be provided by officials of the respective industrial plants and production companies.” (emphasis added)).

<sup>118</sup> See *id.* at § 5.1 (“The following are not allowed to be distributed in a sanitary protected zone: residential developments, including separate residential homes, landscaped recreational areas, rest areas, the territory of resorts, sanatoriums and rest homes, *the territory of gardeners’ partnerships and summer cottage development, collective or individual dachas and garden lots*, as well as other regulated property territories for the use of habitation; sports facilities, children’s playgrounds, educational and children’s facilities, general medical and preventative care facilities and general use therapeutic services.” (emphasis added)).

the resettlement of dacha residents, SEIC has violated the *Guidelines*, and Shell, RBS, Standard Chartered, and Barclays have failed to use their leverage to bring SEIC into compliance with the *Guidelines* on this issue.

## **B. Violations of OECD *Guidelines* Section II Requirement to Comply with Self-Regulatory Practices and Mutual Agreements**

Under the *Guidelines*, multinational enterprises are expected to uphold principles of good governance, including by adhering to “self-regulatory practices” and respecting obligations to stakeholders established through “mutual agreements.”<sup>119</sup> Shell, RBS, Standard Chartered, and Barclays are all in violation of these *Guidelines* requirements as a result of their failure to comply with their own self-regulatory practices and/or agreements made with SEIC regarding the Prigorodnoye Complex.

### **i. IFC Performance Standards**

RBS, Standard Chartered, and Barclays are all Equator Principles Financial Institutions and, as such, have made a commitment “to not provid[e] loans to projects where the borrower will not or is unable to comply with” the social and environmental policies and procedures that make up the Equator Principles.<sup>120</sup> The Equator Principles set minimum standards for environmental and social risk management by providing a standardized framework for Equator Principles Financial Institutions to self-regulate their Project Finance transactions.<sup>121</sup> These policies and procedures include the *Performance Standards on Environmental and Social Sustainability* (the “*Performance Standards*”) of the International Finance Corporation (“IFC”), the private sector arm of the World Bank Group.

In other words, each Equator Principles Financial Institution, including RBS, Standard Chartered and Barclays, must ensure that projects it invests in, such as the Sakhalin II Project and its Prigorodnoye Complex, are in compliance with the health, safety, environmental, and social obligations outlined in the *Performance Standards*.<sup>122</sup> Moreover, as explained below, Shell, as a major shareholder in SEIC, is also required to ensure that SEIC’s operation of the Prigorodnoye Complex is in compliance with the *Performance*

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<sup>119</sup> See *Guidelines* § II(A)(7) (“Enterprises should . . . [d]evelop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.”); *Guidelines* § II(B)(7) (encouraging enterprises to “recognise the rights of stakeholders established by law or through mutual agreements. . . .”); *Guidelines* § II(A)(6) (“Enterprises should . . . [s]upport and uphold good corporate governance principles and develop and apply good corporate governance practices, including throughout enterprise groups.”).

<sup>120</sup> About the Equator Principles, Equator Principles Association, <http://www.equator-principles.com/index.php/about-the-equator-principles> (last visited 19 July 2012).

<sup>121</sup> *Id.*

<sup>122</sup> See *International Finance Corporation’s Performance Standards on Social and Environmental Sustainability*, IFC (adopted February 2006), available at <http://www1.ifc.org/wps/wcm/connect/ac3381804886593bb892fa6a6515bb18/IFC%2BPerformance%2BStandards.pdf?MOD=AJPERES&attachment=true&id=1322803957411>. The IFC *Performance Standards* and corresponding violations detailed in this complaint reflect those standards adopted in February 2006 and applicable to project financing initiated by Equator Principles Financial Institutions prior to 1 January 2012.

*Standards* due to commitments in the Sakhalin II Health, Safety, Environment and Social Action Plan (“HSESAP”).

In its construction and operation of the Prigorodnoye Complex, SEIC has violated the following *Performance Standards*:

- Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts;
- Performance Standard 3: Pollution Prevention and Abatement;
- Performance Standard 4: Community Health, Safety, and Security;
- Performance Standard 5: Land Acquisition and Involuntary Resettlement;
- Performance Standard 6: Biodiversity Conservation and Sustainable Management;
- Performance Standard 8: Cultural Heritage; and
- IFC Environmental, Health, and Safety Guidelines

In each case, SEIC’s violations also represent violations by RBS, Standard Chartered, and Barclays under the Equator Principles, and therefore under the *Guidelines*’ expectation that multinational enterprises uphold their own self-regulatory practices. Additionally, SEIC’s violations of the *Performance Standards* represent *Guidelines* violations by Shell under the provision obligating multinational enterprises to respect mutual agreements.

### **Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts**

SEIC’s has failed to adequately assess, disclose, and respond to the significant environmental risks and impacts of the Prigorodnoye Complex, in violation of Performance Standard (“PS”) 1. Thus, by investing in SEIC and the Sakhalin II Project, RBS, Standard Chartered, and Barclays violated their commitments under the Equator Principles, which in turn violates the *Guidelines* requirement that multinational enterprises adhere to their own self-regulatory practices. Similarly, Shell, as a major shareholder in SEIC, violated the *Guidelines* by failing to assure that SEIC follows its mutual agreements, which include agreements stating that the Sakhalin II Project will comply with the *Performance Standards*.

PS 1 requires project sponsors to maintain an Environmental and Social Assessment and Management System that is “commensurate with the level of social and environmental risks and impacts.”<sup>123</sup> This system must provide an “accurate, and objective evaluation” of risks and impacts<sup>124</sup> and accurately disclose relevant information on potential community impacts.<sup>125</sup> PS 1 also calls for the prevention of harm to “disadvantaged or vulnerable” groups<sup>126</sup> and to the environment in the project’s area of influence, including where communities might be impacted by “unplanned but predictable developments” such as a

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<sup>123</sup> IFC Performance Standard [hereinafter IFC PS] 1: Soc. & Env’tl. Assessment & Mgmt. Sys. ¶ 3.

<sup>124</sup> *Id.* at ¶ 7.

<sup>125</sup> *Id.* at ¶ 20.

<sup>126</sup> *Id.* at ¶ 12.



foreseeable accident or emergency.<sup>127</sup>

SEIC's implementation of a 1 kilometer Sanitary Defense Zone, and its subsequent refusal to resettle or fairly compensate Stroitel Association dacha owners, violates these requirements. First, SEIC has not adequately accounted for the conclusions of relevant government authorities and third parties, calling into question the objectivity and accuracy of SEIC's evaluation of project risks and impacts. The risk assessment in SEIC's own Technical and Economic Feasibility Plan identified the need for a 3.5 kilometer Sanitary Defense Zone, and the Ministry's approval of the Prigorodnoye Complex confirmed this assessment. Further, as documented in the Complaint, third party environmental assessments of the impacts of pollution arising from the Complex have found unsafe levels of chemical compounds in soil samples and fruits and have concluded that Stroitel Association members will continue to experience declines in crop productivity as a result of their proximity to the Complex. Nonetheless, in violation of PS 1, SEIC has failed to establish an accurate system for evaluating environmental impacts and has failed take these third party findings into account.

Second, as detailed in Section III(C) below, SEIC has failed to accurately disclose information to interested stakeholders. While SEIC has disclosed some information, it has done so in a contradictory, incomplete, and misleading manner, particularly with regard to plans for the resettlement of impacted dacha owners.

Finally, SEIC has not fulfilled its emergency preparedness and response obligations under PS 1. As detailed in Section II(C) above, dacha residents continue to reside within the boundaries of the area identified as at risk in the event of an emergency at the Complex.

Due to SEIC's violation of PS 1, RBS, Standard Chartered, and Barclays, as Equator Principles Financial Institutions, and Shell, as a major shareholder of SEIC, are all in violation of the *Guidelines* requirement that multinational enterprises adhere to established self-regulatory practices and mutual agreements.

### **Performance Standard 3: Pollution Prevention and Abatement**

Through its construction and operation of the Prigorodnoye Complex, SEIC has failed to meet the objective of PS 3 to "avoid or minimize adverse impacts on human health and the environment."<sup>128</sup> PS 3 mandates adherence to good international industry practices, as defined in the IFC's *Environmental, Health and Safety Guidelines*<sup>129</sup> and requires that project sponsors address air, surface, and soil pollution with consideration given to the capacity of the local environment to absorb pollution without presenting an "unacceptable risk to human health and the environment."<sup>130</sup>

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<sup>127</sup> *Id.* at ¶ 5.

<sup>128</sup> IFC PS 3: Resource Efficiency & Pollution Prevention ¶ 1 ("Objectives").

<sup>129</sup> *Id.* at ¶ 3.

<sup>130</sup> *Id.* at ¶ 9, Footnote 9.

Sections II(C) and II(D) above detail severe adverse impacts to human health and the environment caused by SEIC's construction, commissioning, testing, and operation of the Complex, including the destruction of natural habitat, the degradation of agricultural productivity, and the emission of dangerous levels of pollution as verified by third party assessments within the dacha community. Moreover, as detailed in the below section on SEIC's violation of IFC *Environmental, Health and Safety Guidelines*, SEIC has not adhered to good international industry practices. Shell, RBS, Standard Chartered, and Barclays have thereby failed to prevent adverse impacts linked to their business relationship with SEIC, in contravention of self-regulatory practices and mutual agreements requiring that SEIC comply with PS 3.

#### **Performance Standard 4: Community Health, Safety, and Security**

In violation of PS 4, SEIC has failed to "evaluate the risks and impacts to the health and safety of the affected community . . . and [has failed to] establish preventive measures . . . [that] will favor the prevention or avoidance of risks or impacts over minimization and reduction."<sup>131</sup> As discussed in Section II(C) above, the construction, commissioning, testing, and operation of the Prigorodnoye Complex have threatened the health and safety of Stroitel Association members. The safety hazard posed by the Complex has been compounded by the implementation of an inadequate Sanitary Defense Zone in violation of applicable Russian law and in conflict with SEIC's internal estimates, and by deficiencies in environmental monitoring and analysis. SEIC's violation of PS 4 represents a failure on the part of Shell, RBS, Standard Chartered, and Barclays to apply relevant self-regulatory practices, to respect obligations established through mutual agreements, and to prevent adverse impacts directly linked to a business relationship as required under the *Guidelines*.

#### **Performance Standard 5: Land Acquisition and Involuntary Resettlement**

The environmental, health, and safety impacts of the construction, testing, commissioning, and operations of the Prigorodnoye Complex, as described in detail in Section II above, constitute a form of involuntary resettlement. Involuntary resettlement "refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood). . . ." As explicitly defined in most recent iteration of the IFC *Performance Standards*, the term livelihood includes "the full range of means that individuals, families, and communities utilize to make a living, such as wage-based income, agriculture, fishing, foraging, other natural resource-based livelihoods, petty trade, and bartering."<sup>132</sup>

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<sup>131</sup> IFC PS 4: Cmty. Health, Safety & Sec. ¶ 4.

<sup>132</sup> See *IFC Performance Standards and Guidance Notes- 2012*, IFC PS 5: Land Acquisition & Involuntary Resettlement ¶ 1,

[http://www1.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/sustainability+framework/sustainability+framework+-+2012/performance+standards+and+guidance+notes+2012/performance+standards+-+2012](http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/sustainability+framework/sustainability+framework+-+2012/performance+standards+and+guidance+notes+2012/performance+standards+-+2012) (last visited 26 June 2012).

Under PS 5, projects that lead to involuntary resettlement must have a Resettlement Action Plan and, in the event of purely economic displacement, procedures to offer compensation.<sup>133</sup> Both of these measures must be consistent with PS 5 objectives, including to “provide compensation for loss of assets at replacement cost” in order to “improve or at least restore the livelihoods and standards of living” of displaced persons.<sup>134</sup>

Stroitel Association dacha owners have suffered displacement and, under PS 5, must be resettled and fully compensated. Under the 3.5 kilometer Sanitary Defense Zone established by the Ministry when it approved plans for the Complex, the Stroitel Association’s members should have been subject to physical displacement and resettled or fully compensated. Moreover, despite SEIC’s refusal to acknowledge the need to physically displace and resettle the dacha owners living within 1.2 kilometers of the Complex, the residents have been effectively displaced because it is unsafe and unhealthy for them to continue to live so close to the Complex. Furthermore, the Stroitel Association’s members indisputably have suffered from economic displacement. They have lost access to traditional fishing and recreation resources, and have experienced significant adverse impacts on the agricultural productivity of dacha plots. Additionally, the value of their dachas has decreased because of emissions and other negative impacts from the Complex.

While SEIC did develop a *Sakhalin II Phase 2 Resettlement Action Plan* (“RAP”) in November 2005,<sup>135</sup> such a plan is not complete under PS 5 until “the adverse impacts of resettlement have been addressed in a manner that is consistent with . . . the objectives of this Performance Standard,” including full replacement-cost compensation or restoration of lost assets and livelihoods.<sup>136</sup> By failing to resettle dacha owners impacted by the Prigorodnoye Complex or to provide replacement cost compensation, e.g. compensation sufficient to purchase an equitable replacement dacha, SEIC has failed to comply with PS 5’s requirements regarding implementation of a Resettlement Action Plan or related compensation procedures including the requirement to “improve or at least restore the livelihoods and standards of living” of dacha owners.<sup>137</sup> Because of SEIC’s violation of PS 5, RBS, Standard Chartered, and Barclays, as Equator Principles Financial Institutions, and Shell, as a major shareholder of SEIC, are all in violation of the *Guidelines* requirement that multinational enterprises adhere to established self-regulatory practices and mutual agreements.

## **Performance Standard 6: Biodiversity Conservation and Sustainable Management**

PS 6 on Biodiversity Conservation and Sustainable Management calls for the implementation of mitigation measures which respect traditional communities’ usage of areas with “significant social, economic or cultural importance”, such as Stroitel Association

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<sup>133</sup> IFC PS 5: Land Acquisition & Involuntary Resettlement ¶ 12-13.

<sup>134</sup> *Id.* at ¶ 3 (“Objectives”).

<sup>135</sup> SEIC, *Sakhalin II Phase 2 Resettlement Action Plan*, November 2005, available at [http://www.sakhalinenergy.com/en/documents/doc\\_lender\\_soc\\_2.pdf](http://www.sakhalinenergy.com/en/documents/doc_lender_soc_2.pdf) [hereinafter “RAP”].

<sup>136</sup> IFC PS 5: Land Acquisition & Involuntary Resettlement ¶ 12.

<sup>137</sup> *Id.* at ¶ 3 (“Objectives”).

members' use of dacha plots as an agricultural resource.<sup>138</sup> Further, PS 6 prohibits the degradation of natural habitats except in extremely limited circumstances.<sup>139</sup> SEIC violated these provisions by failing to mitigate the impact of harmful pollutants on the agricultural productivity of the dacha plots, which have suffered and are expected to continue to suffer from declining crop yields. Similarly, it failed to prevent or mitigate the impacts on nearby sea scallop habitat, which was buried as a result of construction activities. SEIC's failure to adhere to PS 6 implicates Shell, RBS, Standard Chartered, and Barclays with violations of the *Guidelines* for failing to implement relevant self-regulatory practices, to respect obligations established through mutual agreements, and to prevent adverse impacts directly linked to a business relationship.

### **Performance Standard 8: Cultural Heritage**

For the purposes of PS 8, cultural heritage includes "practices of communities embodying traditional lifestyles" and must be identified, preserved and protected from the adverse impacts of project activities "regardless of whether or not it has been legally protected".<sup>140</sup>

As explained above in Section II(E), the Stroitel Association dachas impacted by the Complex are part of a traditional Russian lifestyle. Due to inadequate social and environmental assessment and deficiencies in the corresponding environmental management system, SEIC did not properly identify the Complex's impacts on cultural heritage as required under PS 8.<sup>141</sup> Additionally, SEIC has violated PS 8 by failing to avoid significant damage to dacha owners' cultural heritage, feasibly achieved by resettling them in nearby dachas or providing sufficient compensation to allow dacha owners to purchase replacement dachas in a different location. SEIC's violation of PS 8 represents a failure on the part of Shell, RBS, Standard Chartered, and Barclays to apply relevant self-regulatory practices, to respect obligations established through mutual agreements, and to prevent adverse impacts directly linked to a business relationship as required under the *Guidelines*.

### **IFC Environmental, Health and Safety Guidelines**

The IFC's *Environmental, Health, and Safety* ("EHS") *Guidelines* provide general and industry-specific examples of "Good International Industry Practice" referenced in the IFC *Performance Standards*.<sup>142</sup> In addition to the numerous violations of the *Performance*

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<sup>138</sup> IFC PS 6: Biodiversity Conservation and Sustainable Mgmt. of Living Nat. Resources ¶ 9; *see also* ¶ 9, Footnote 2.

<sup>139</sup> *Id.* at ¶ 7.

<sup>140</sup> IFC PS 8: Cultural Heritage ¶¶ 3, 4-7.

<sup>141</sup> *See id.* at ¶¶ 4-5.

<sup>142</sup> IFC, *Environmental, Health, and Safety Guidelines* (adopted February 2006), available at [http://www1.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/IFC+Sustainability/Sustainability+Framework/Environmental%2C+Health%2C+and+Safety+Guidelines/](http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Environmental%2C+Health%2C+and+Safety+Guidelines/). Prior to the adoption of the IFC's updated Sustainability Framework in 2006, including the *Environmental, Health and Safety Guidelines*, IFC *Safeguard Policies* similarly required that conforming entities prevent, minimize, mitigate, and compensate for adverse impacts in a project's area of influence, including through resettlement activities. *See IFC Safeguard Policies, available at*

*Standards* described above, SEIC has failed to adhere to the *EHS Guidelines*, as evidenced by violations including, but not limited to:

- Failure to incorporate “methods of physical separation around project sites to protect the public from . . . nuisance issues related to noise, odors, or other emissions.”<sup>143</sup>
- Failure to “reduce the consequences of a failure or accident,” including through the establishment of inadequate “safety zones around a site.”<sup>144</sup>
- Failure to conduct air quality studies to “ensure that no adverse impacts to human health and the environment result.”<sup>145</sup>
- Failure to restore access roads to “pre-existing topography” following construction activities.<sup>146</sup>

As previously discussed, SEIC’s numerous violations of IFC *Performance Standards* and *EHS Guidelines* represent a failure on the part of Shell, RBS, Standard Chartered, and Barclays to apply relevant self-regulatory practices, to respect obligations established through mutual agreements, and to prevent adverse impacts directly linked to a business relationship as required under the *Guidelines*.

## **ii. Common Terms Agreement and the Sakhalin II Health, Safety, Environment and Social Action Plan**

As mentioned in Section I(B)(ii), Sakhalin II “Phase 2 Senior Lenders” have a contract with SEIC called the *Common Terms Agreement*, which defines the parties’ obligations in the development of Sakhalin II, Phase 2, including the Prigorodnoye Production Complex.<sup>147</sup> The *Common Terms Agreement* requires compliance with obligations contained in the Sakhalin II Health, Safety, Environment and Social Action Plan (“HSESAP”).<sup>148</sup> The Sakhalin II HSESAP details the measures agreed between SEIC and Phase 2 Senior Lenders to “eliminate identified adverse health, safety, environmental and social impacts, offset them, or reduce them to acceptable levels.”<sup>149</sup>

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[http://www1.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/IFC+Sustainability/Sustainability+Framework/Safeguards+++Pre2006/](http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Safeguards+++Pre2006/).

<sup>143</sup> *Id.* at § 3.2.

<sup>144</sup> *Id.*; see also IFC, *EHS Guidelines for Liquefied Natural Gas Facilities*, at 12, available at <http://www1.ifc.org/wps/wcm/connect/87e7a48048855295ac04fe6a6515bb18/Final%2B-%2BLNG.pdf?MOD=AJPERES&id=1323161924903>.

<sup>145</sup> *Id.* at 6; see also IFC, *EHS Guidelines for Onshore Oil and Gas Development*, at 2, available at <http://www1.ifc.org/wps/wcm/connect/4504dd0048855253ab44fb6a6515bb18/Final%2B-%2BOnshore%2BOil%2Band%2BGas%2BDevelopment.pdf?MOD=AJPERES&id=1323153172270>.

<sup>146</sup> *Id.* at 13.

<sup>147</sup> See HSESAP, *supra* note 13, at 1.1.

<sup>148</sup> *Id.* at 1.1 (“Under the Common Terms Agreement between [SEIC] and the Phase 2 Senior Lenders (CTA), the Company commits to comply in all material respects with this HSESAP.”).

<sup>149</sup> *Id.*

Although, the *Common Terms Agreement* has not been made publically available,<sup>150</sup> the Complainants assume that Standard Chartered is a party to this agreement because, as described in Section I(B)(ii)(2), it was a member of the financial consortium supporting Sakhalin II, Phase 2. The Complainants also suspect that financial enterprises linked by a business relationship to Sakhalin II, including RBS and Barclays, are parties to this or similar binding agreements. Thus, the *Common Terms Agreement*, any similar agreements and the HSESAP constitute “mutual agreements” that Shell, as significant shareholder of SEIC, and RBS, Standard Chartered, and Barclays, as significant investors in SEIC and/or Sakhalin II, must all respect under the *Guidelines*.<sup>151</sup>

Under the HSESAP, SEIC must operate Sakhalin II, including the Complex, in compliance with both Russian law and international standards, including the policies of the World Bank and the IFC.<sup>152</sup> Moreover, the HSESAP specifies that World Bank and IFC standards apply to all displacement caused by Sakhalin II, Phase 2:

The land requirement of the Project has resulted in the need to physically relocate a limited number of households and to compensate individuals and enterprises for losses due to loss of land used for income or subsistence generating activities. It has also resulted in the need to mitigate any socio-economic displacement that occurs as a result of the Project in accordance with the qualitative World Bank/IFC . . . social policies and guidelines. . . .<sup>153</sup>

Additionally, Annex A of the HSESAP commits SEIC to compliance with the World Bank’s Operational Directive (“OD”) 4.30 on Involuntary Resettlement.<sup>154</sup> OD 4.30 requires the development of a resettlement plan, specifying that:

Where displacement is unavoidable, resettlement plans should be developed. All involuntary resettlement should be conceived and executed as development programs, with resettlers provided sufficient investment resources and opportunities to share in project benefits. Displaced persons

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<sup>150</sup> “The Common Terms agreement is clearly stated to have environmental and social provisions, yet it is not publicly available.” Pacific Environment & Sakhalin Environment Watch, *Material Breach Widespread: Non-compliance Revealed in Consultant Report on Sakhalin II*, 7 November 2007, available at [http://pacificenvironment.org/downloads/Material%20Breach%20-%20Review%20of%20AEA%20Report\(7\)\(b\).pdf](http://pacificenvironment.org/downloads/Material%20Breach%20-%20Review%20of%20AEA%20Report(7)(b).pdf).

<sup>151</sup> See *Guidelines* §§ II(B)(7), II(A)(7).

<sup>152</sup> HSESAP, *supra* note 13, at 1.3 (“In relation to the construction and operation of the Project, [SEIC] will comply with all material HSE and social regulatory requirements of the Russian Federation, and will comply in all material respects with the terms of the TEO-C2 (Russian project approvals process) and any other material HSE and social consents applicable to the Project as provided for under the terms of the financing. In addition, [SEIC] will execute its Project activities (including those executed by its EPC contractors and subcontractors) in accordance with the requirements of the qualitative and quantitative World Bank/IFC, EX-Im Bank and EBRD environmental, health and safety and social policies and guidelines. . .”).

<sup>153</sup> *Id.* at 3.7.6.

<sup>154</sup> The HSESAP reiterates SEIC’s commitment to World Bank/IFC guidelines in a section entitled “Project Compliance with International Standards” which includes a table of standards expressly identifying the World Bank’s Operational Directive on Involuntary Resettlement, OD 4.30. See *id.* at 80, Annex A.

should be (i) compensated for their losses at full replacement cost prior to the actual move; (ii) assisted with the move and supported during the transition period in the resettlement site; and (iii) assisted in their efforts to improve their former living standards, income earning capacity, and production levels, or at least to restore them. Particular attention should be paid to the needs of the poorest groups to be resettled.<sup>155</sup>

SEIC's *Sakhalin II Resettlement Action Plan* ("RAP") reaffirms its commitment to OD 4.30, stating "[w]here acquisition cannot be avoided, [SEIC will] carry out land acquisition and resettlement in accordance with the laws and regulations of the Russian Federation, the Sakhalin II Project Production Sharing Agreement (PSA), and World Bank/International Finance Corporation (IFC) OD 4.30 on Resettlement."<sup>156</sup>

Thus, the HSESAP and SEIC's RAP identify a framework of national laws, regulations and administrative practices, and international standards, including the IFC *Performance Standards* and World Bank OD 4.30, with which SEIC must comply in operating the Prigorodnoye Complex. Shell, as a result of its significant ownership stake in SEIC, which is itself a party to the HSESAP, and RBS, Standard Chartered, and Barclays, through their presumed commitment to the *Common Terms Agreement* or similar agreements, are therefore responsible, under the *Guidelines* requirement that multinational enterprises adhere to mutual agreement, for ensuring SEIC's compliance with these standards.

The compensation package SEIC offered dacha owners in August 2006 was based on then-current estimates of dacha market value that failed to account for the harm already caused by construction of the Prigorodnoye Complex or reflect the significantly higher costs faced by dacha owners seeking to purchase replacement dachas. It therefore does not qualify as full compensation under the standard set forth in OD 4.30. The inadequate compensation offered by SEIC did not constitute "full replacement cost" and failed to "improve [displaced persons'] former living standards . . . or at least to restore them," as required by OD 4.30.<sup>157</sup> Specific violations of OD 4.30 include:

- SEIC's failure to "provide[] sufficient investment resources and opportunities to share in project benefits,"<sup>158</sup> as demonstrated by the harm to the Stroitel Association members' dachas, and the village's protests against the company.
- SEIC's failure to compensate dacha owners "for their losses at full replacement cost,"<sup>159</sup> as demonstrated by the inadequacy of compensation provided to the 26 members of the Stroitel Association who accepted the proposed compensation package but were unable to purchase replacement dachas, as well as the fact that

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<sup>155</sup> World Bank, Operational Directive 4.30 on Involuntary Resettlement, at ¶ 3(b), 1 June 1990, *available at* [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol\\_Resettlement/\\$FILE/OD430\\_InvoluntaryResettlement.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_Resettlement/$FILE/OD430_InvoluntaryResettlement.pdf) [hereinafter "OD 4.30"].

<sup>156</sup> See RAP, *supra* note 135, at 22.

<sup>157</sup> OD 4.30, *supra* note 155, at ¶ 3(b).

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

the remaining 42 Association members have, to date, received only 50% of the August 2006 value of their dachas as compensation.

- SEIC’s refusal of the Stroitel Association’s repeated offers to accept equitable resettlement or compensation sufficient to purchase equivalent nearby dachas. Displaced dacha owners were thereby not “assisted with the move and supported during the transition period in the resettlement site,” nor were they “assisted in their efforts to improve their former living standards, income earning capacity, and production levels, or at least to restore them.”<sup>160</sup>
- SEIC’s failure to pay “particular attention . . . to the needs of the poorest groups to be resettled,”<sup>161</sup> as demonstrated by the fact that SEIC failed to fulfill the above requirements, despite the vulnerable economic condition of some of the dacha owners, particularly the pensioners.

As the facts presented in this Complaint demonstrate, SEIC has breached the framework of Russian law and international standards identified in the *Common Terms Agreement*, the HSESAP, and SEIC’s RAP. In particular, SEIC has failed to respect the resettlement rights of Stroitel Association dacha owners, enshrined in these mutual agreements. In addition to violating Russian law and the IFC *Performance Standards*, SEIC’s failure to resettle or fully compensate Stroitel Association dacha owners violates World Bank OD 4.30. SEIC’s violation of these standards represents a failure on the part of Shell, RBS, Standard Chartered, and Barclays to respect obligations established through mutual agreements and to prevent adverse impacts directly linked to a business relationship as required under the *Guidelines*.

### **C. Violations of *Guidelines* Section II Requirement to Act in Good Faith and Section III on Disclosure**

#### **i. Failure to Accurately Disclose Information Material to the Resettlement of the Affected Dacha Community**

SEIC’s failure to accurately disclose information to Stroitel Association members regarding their resettlement and the environmental impacts of the Complex represents a violation of the *Guidelines* requirement that stakeholders receive timely and accurate information on all “material matters” regarding enterprise activities.<sup>162</sup> This includes any information that might “influence the economic decisions” of interested parties.<sup>163</sup>

SEIC’s public disclosure regarding dacha owners’ rights to resettlement or compensation has been misleading and contradictory, in violation of *Guidelines* Section III(1) requiring the accurate disclosure of material matters. For instance, SEIC distributed brochures to

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<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> See *Guidelines* § III(1).

<sup>163</sup> See *Guidelines* “Commentary on Disclosure”(30).



Stroitel Association members indicating that approval of a 3.5 kilometer Sanitary Defense Zone was “assumed,” and that such a designation would “require the resettlement of dachas in the village of Prigorodnoe.”<sup>164</sup> SEIC subsequently contradicted this brochure by implementing a 1 kilometer Sanitary Defense Zone in reliance on an official document predating the brochure and in disregard of the Ministry of Natural Resources’ approval of the project with a 3.5 kilometer Sanitary Defense Zone. SEIC thus inaccurately informed affected dacha owners about their forthcoming resettlement. Dacha owners relied on SEIC’s inaccurate and contradictory information in their economic decisions, including in some instances their decisions to accept inadequate compensation or abandon their dacha properties, leaving the land fallow and contributing to the disrepair and loss of value of dachas throughout the community.

Additional violations of the disclosure requirement are evident in SEIC’s questionable reporting regarding harmful emissions from the Prigorodnoye Complex. Deficiencies in environmental monitoring and analysis by SEIC identified in Section II(D) undermine the credibility of SEIC’s public disclosures on matters of public health and safety, which are material to the livelihood of Stroitel Association members and the value of their dacha properties. Shell, RBS, Standard Chartered, and Barclays are implicated in SEIC’s failure to accurately disclose information material to the resettlement of the affected Dacha community, and associated violation of the *Guidelines*, through their business relationship with SEIC.

## **ii. Bad Faith Negotiations Regarding Compensation and Resettlement**

The *Guidelines* expect enterprises to act in “good faith” in their efforts to meaningfully engage with affected stakeholders.<sup>165</sup> SEIC failed to accurately disclose information material to the resettlement of affected Stroitel Association members, offered inadequate compensation for their losses and has since failed to engage with them regarding their right to resettlement and just compensation, all of which amounts to bad faith negotiations with community stakeholders in violation of the *Guidelines*.

Specifically, in 2004, SEIC announced plans to complete a Resettlement Action Plan (“RAP”), communicating this information to Stroitel Association dacha owners by way of a publically distributed brochure.<sup>166</sup> Contrary to SEIC’s stated intent, and despite repeated offers by the community to relocate on equitable terms, SEIC continues to refuse to resettle or fully compensate Stroitel Association members. The misleading nature of SEIC’s communications, and its subsequent 2006 offer of inadequate compensation in return for forfeiting property rights, illustrates its bad faith negotiations with Stroitel Association dacha owners.

Moreover, SEIC’s RAP itself suggests a lack of good faith, revealing SEIC’s motivation to absolve itself of the need to resettle the dacha owners by stating: “The extent of the

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<sup>164</sup> See Informational Brochure, *supra* note 52.

<sup>165</sup> See *Guidelines* “Commentary on General Policies”(25).

<sup>166</sup> See Informational Brochure, *supra* note 52; see also *Good Neighbor*, *supra* note 31, at 9.

operations phase Sanitary Protection Zone to be imposed . . . has been set at 1 kilometer. This avoids the need for resettlement of any household adjacent to the LNG site other than those households relocated in 2003.”<sup>167</sup> The RAP does not provide a meaningful explanation for the discrepancy between the 1 kilometer Sanitary Defense Zone endorsed therein and SEIC’s previous references to a 3.5 kilometer Sanitary Defense Zone in its publicly distributed brochure and the project documents it submitted for approval to the Ministry of Natural Resources.

Thus Shell, as a majority shareholder in SEIC, and RBS, Standard Chartered, and Barclays, as financial institutions with an investment nexus affording them influence over SEIC’s operation of the Prigorodnoye Complex, failed to uphold their responsibility under the *Guidelines* to promote responsible business conduct and good faith negotiations on the part of their business partner, SEIC.

#### **D. Violations of OECD *Guidelines* Section IV on Human Rights**

Through their support of and participation in the Sakhalin II, Phase 2 Project, the Dutch and UK multinational enterprises identified in the Complaint violated OECD *Guidelines* Section IV on Human Rights. The *Guidelines* establish multinational enterprises’ “duty to protect human rights,” and to address any adverse impact on these rights as a result of their activities.<sup>168</sup> The *Guidelines* extend this duty to the activities of business partners by calling on multinational enterprises to prevent or mitigate adverse human rights impacts that are “linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.”<sup>169</sup> This reiteration of multinational enterprises’ responsibility to avert adverse impacts linked to business relationships demonstrates that this duty is particularly strong with respect to the protection of human rights. The Dutch and UK multinational enterprises identified in this Complaint, in particular Royal Dutch Shell, as a significant shareholder in SEIC, are thereby bound to respect internationally recognized human rights standards and to use their leverage over SEIC to prevent or mitigate adverse human rights impacts.

The displacement of the Stroitel Association dacha community as a result of the Prigorodnoye Complex has deprived residents of their property and infringed upon their right to take part in cultural life. Ongoing and future environmental harms associated with the Complex have also endangered the safety, health, and livelihood of dacha residents.

In light of the above, the Dutch and UK multinational enterprises identified in this complaint have not adhered to the *Guidelines* requirement that they respect internationally recognized human rights. Violations of human rights related to the Prigorodnoye Complex include rights to the protection and enjoyment of property enshrined in Article 17(2) of the Universal Declaration of Human Rights, Article 1(2) of the UN International Covenant on Economic, Social and Cultural Rights (“ICESCR”) and Protocol 1(Article 1) of the European

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<sup>167</sup> See RAP, *supra* note 135, at 26.

<sup>168</sup> See *Guidelines* §§ IV(1), II(A)(2).

<sup>169</sup> *Id.* at § IV(3).

Convention on Human Rights, as well as the right to take part in cultural life articulated in Article 15(1)(a)<sup>170</sup> of the ICESCR.

Furthermore, the harmful environmental, health, and safety impacts of the Prigorodnoye Complex on Stroitel Association dacha owners has prevented the Government of Russia from guaranteeing community members' right to a healthy environment. The Russian Federation recognized its citizens' "right to a favourable environment" in its 1993 Constitution, including each citizen's right to "compensation for damage to his health or property caused by ecological harms."<sup>171</sup> Numerous international and regional bodies have also recognized the right to a safe and healthy environment.<sup>172</sup>

## **E. Violations of OECD *Guidelines* Section VI on the Environment**

### **i. Failure to Contribute to Sustainable Development**

The environmental harms arising from the Prigorodnoye Complex, together with SEIC's inadequate disclosure on environmental impacts and related safety measures, demonstrate SEIC's failure to uphold the commitment to sustainable development required by the OECD *Guidelines*. Under the *Guidelines*, multinational enterprises are prohibited from conduct causing "any contradiction" between their activities and sustainable development.<sup>173</sup> Enterprises must instead contribute to sustainable development, which is defined as serving the needs of the present "without compromising the ability of future generations to

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<sup>170</sup> See United Nations Economic and Social Council, General comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), 21 December 2009, available at <http://www2.ohchr.org/english/bodies/cescr/docs/gc/E-C-12-GC-21.doc> (articulating that "culture, for the purpose of implementing article 15 (1) (a), encompasses, inter alia, ways of life . . . methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives").

<sup>171</sup> Constitution of the Russian Federation, Article 42 (12 December 1993), available at [http://www.venice.coe.int/docs/2003/CDL\(2003\)018-e.pdf](http://www.venice.coe.int/docs/2003/CDL(2003)018-e.pdf).

<sup>172</sup> See U.N. Commission on Human Rights Resolution 2005/57 and Resolution 2005/60; American Convention on Human Rights in the Area of Economic, Social and Cultural Rights art. 11 (1988); Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (U.N. Economic Commission for Europe, 1998); African Charter on Human and Peoples' Rights art. 24 (1981).

<sup>173</sup> See *Guidelines* "Commentary on General Principles"(3) ("There should not be any contradiction between the activity of multinational enterprises (MNEs) and sustainable development").

meet their own needs.”<sup>174</sup> Public participation in decision-making is also recognized as an essential component of sustainable development.<sup>175</sup>

In conflict with these requirements, the destructive impacts of the Prigorodnoye Complex on Stroitel Association members’ ability to grow fruits and vegetables have threatened the food security and livelihood of dacha owners. Dachas owners impacted by the Prigorodnoye Complex have experienced severe decreases in crop yields since the testing and commissioning of the Complex, a trend that is expected to continue as a result of Complex operations.<sup>176</sup> Because these crops account for a significant portion of dacha owners’ annual food supply, SEIC’s actions have therefore compromised dacha owners’ ability to meet their own needs and those of their families. Thus, SEIC is in violation of the *Guidelines* proscription on activities contrary to sustainable development.

SEIC has also failed to ensure public participation standards compatible with sustainable development. According to the United Nations *Agenda 21* action plan on sustainable development, of which Russia, the Netherlands, and the UK are all signatories:

One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making. . . . Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures.<sup>177</sup>

As detailed in the Complaint, SEIC’s environmental monitoring and reporting has been inconsistent and has been contradicted by third party assessments. Furthermore, its public disclosures with regard to the environmental impact of the Complex and intended resettlement plans, most notably with regard to the size of the required Sanitary Defense Zone, have been misleading and contradictory. SEIC’s actions have thus undermined the credibility of the public participation process as it relates to the Prigorodnoye Complex.

Shell, RBS, Standard Chartered, and Barclays are all responsible under the *Guidelines* to prevent or mitigate adverse impacts linked to their business relationship with SEIC. Yet, the needs of the present served by the construction and operation of the Complex have

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<sup>174</sup> See *Guidelines* Footnote (4) to “Commentary on General Principles”(3) (defining the term sustainable development as found in the 1987 World Commission on Environment and Development (Brundtland Commission): “Development that meets the needs of the present without compromising the ability of future generations to meet their own needs”); see also *Guidelines* § VI (“Enterprises should . . . conduct their activities in a manner contributing to the wider goal of sustainable development.”); *Guidelines* § II(A)(1) (“Enterprises should . . . [c]ontribute to economic, environmental and social progress with a view to achieving sustainable development.”).

<sup>175</sup> See United Nations Conference on Environment & Development, *Agenda 21*, at 23.2, available at <http://www.un.org/esa/sustdev/documents/agenda21/english/Agenda21.pdf>.

<sup>176</sup> See *Chemical Analysis*, *supra* note 45, at 31.

<sup>177</sup> See *Agenda 21*, *supra* note 175, at 23.2.

come at the expense of community welfare and have failed to uphold meaningful standards of public participation, in violation of the *Guidelines* commitment to sustainable development.

**ii. Failure to Adequately Account for the Protection of the Environment, Public Health and Safety**

SEIC has failed to account for existing and future threats to the environment and to the health and safety of dacha residents arising from the Prigorodnoye Complex. Under the *Guidelines*, multinational enterprises should identify, prevent, and mitigate adverse environmental impacts, accounting for the “need to protect the environment, public health and safety.”<sup>178</sup>

SEIC’s actions have been contrary to this requirement. Section II of this Complaint identifies specific harms to the environment, public health, and safety arising from the construction, testing, commissioning, and operation of the Prigorodnoye Complex. Stroitel Association members have experienced a decline in road safety as a result of construction, a loss of fishing and recreation resources, and threats to their livelihood and food security.

Residents also face threats to their health and safety from exposure to harmful emissions from the Prigorodnoye Complex and in the event of an emergency at the LNG plant. SEIC’s establishment of a 1 kilometer Sanitary Defense Zone conflicts with its own Technical and Economic Feasibility Plan, which proposed a 3.5 kilometer Sanitary Defense Zone and on which the Russian Ministry of Natural Resources based its project approval. Moreover, as detailed in Section II(C), SEIC’s own estimates indicate that Stroitel Association members reside less than half the maximum distance necessary to protect against hazards in the event of an emergency at the Sakhalin II LNG terminal.<sup>179</sup> Dacha residents are thus justifiably concerned about the health and safety impacts of the Prigorodnoye Complex, particularly given the inconsistency between SEIC and third party assessments of the extent of harmful pollutants in affected areas and of the necessary distance from the Complex needed to ensure the community’s safety in the event of an emergency.

SEIC’s implementation of a 1 kilometer Sanitary Defense Zone around the Complex is particularly demonstrative of its failure to account for the need to protect the environment, public health, and safety, as required by the *Guidelines*. Further, SEIC is violating the *Guidelines* regardless of the size Sanitary Defense Zone required by Russian law. The past, current, and future harmful environmental, public health, and safety impacts of the Complex on Stroitel Association dacha owners amount to violations of the *Guidelines* irrespective of the required boundaries of the Sanitary Defense Zone surrounding the Complex. Additionally, Shell, RBS, Standard Chartered, and Barclays have failed to adhere to the *Guidelines* obligation that they use their leverage over SEIC to prevent or mitigate these adverse impacts, to which they are linked because of their business relationship with SEIC.

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<sup>178</sup> See *Guidelines* § VI.

<sup>179</sup> See *Good Neighbor*, *supra* note 31, at 21.

### **iii. Failure to Maintain an Appropriate Environmental Management System**

The dubious quality of SEIC's environmental monitoring has jeopardized the surrounding communities' health and livelihood, undermining the ability of SEIC, and those with whom it shares a business relationship including Shell, RBS, Standard Chartered, and Barclays, to adhere to "environmental, health, and safety objectives or targets" and prevent adverse impacts as required by the *Guidelines*.<sup>180</sup> Under the *Guidelines*, multinational enterprises must establish an environmental management system that meets several basic requirements, including the "collection and evaluation of adequate and timely information," and regular assessment of progress towards the achievement of measurable environmental, health, and safety goals that are consistent with "relevant national policies and international environmental commitments."<sup>181</sup>

Monitoring and analysis of the environmental impacts of the Prigorodnoye Complex has not been adequate and timely as required under the *Guidelines*. As described more fully above in Section II(D), SEIC has conducted insufficient environmental monitoring, including monitoring less than a third of the harmful pollutants emitted from the Complex in 2007, and omitting other harmful pollutants from monitoring activities in later years.<sup>182</sup> Furthermore, independent examination by Russia's consumer protection agency has contradicted SEIC's reporting of pollution levels,<sup>183</sup> indicating that SEIC may be systemically underreporting emissions at the Complex. SEIC's reporting of pollutant concentrations is also called into question by the fact that it reports that concentrations have remained relatively even over time, despite dramatic growth in the volume of pollutant emissions due to increased and ongoing Complex operations.<sup>184</sup>

The Dutch and UK NCPs are obliged to address the aforementioned violations of the *Guidelines*, described in section III of this Complaint,<sup>185</sup> to which Shell, RBS, Standard Chartered, and Barclays are linked by their business relationship with SEIC.

## **IV. Attempts to Resolve the Dispute**

While the multi-year history of the Complainants interaction with SEIC is recounted in Section II, the following section describes some more recent communications between the dacha community, community partners and SEIC.

On 16 September 2009, Alla Gafner, head of the Stroitel Association, appealed to A.B. Miller, Chairman of Gazprom, and A.I. Medvedev, Chairman of the SEIC Board of Directors, with a

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<sup>180</sup> See *Guidelines* § VI(1).

<sup>181</sup> *Id.*

<sup>182</sup> See *Good Neighbor*, *supra* note 31, at 18.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* at 13-14.

<sup>185</sup> See *Guidelines* "Procedural Guidance"(1)(C) ("The National Contact Point will contribute to the resolution of issues that arise relating to implementation of the *Guidelines* in specific instances . . .").

request to resettle the remaining 37 dacha residents into a dacha cooperative of equal value in the Korsakov District.

On 16 August 2010, Sakhalin Environment Watch approached A.P. Galaev, Executive Director of SEIC, to request that he read *The Good Neighbor* and accordingly provide for the resettlement of the 37 remaining Stroitel Association dacha residents to other dacha cooperatives in the Korsakov District.

On 26 January 2012, Sakhalin Environment Watch again appealed to A.P. Galaev, Executive Director of SEIC, this time requesting that he read the *Chemical Analysis* conducted by the Russian Academy of Agricultural Science and return to the question of the necessity of relocating Stroitel Association residents.

SEIC has denied all these requests.

#### **V. Requested Next Steps and Expectations of the Dutch and UK National Contact Points**

The Complainants respectfully request that the Dutch and UK National Contact Points:

- 1) Facilitate a resolution through mediation of the outstanding issues raised in this Complaint, in particular a remedy to the problems of the inadequate compensation and resettlement of Stroitel Association dacha owners, who have been effectively displaced by the Prigorodnoye Complex;
- 2) Undertake a full examination of the construction, testing, commissioning, and operation of the Prigorodnoye Complex with regard to the above identified violations of OECD *Guidelines for Multinational Enterprises*;
- 3) Undertake a field visit, as part of the NCPs' examination of the case, to the Prigorodnoye Complex, including to the affected dacha residents; and
- 4) Monitor the implementation of relevant commitments under any future resolution agreement in order to ensure proper implementation of the *Guidelines* in an efficient and timely manner and in accordance with applicable law.

We look forward to the response of the Dutch and UK National Contact Points regarding their consideration of this Complaint and any corresponding requests.