

I. The Complainant

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II. The NCP

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III. The Violations

Pakistan based Shehri-Citizens for a Better Environment requests the Dutch National Contact Point to ascertain whether Makro Habib Pakistan Limited (MAKRO) , a joint venture between SHV Holdings, NV, Netherlands and the House of Habib, Pakistan is adhering to the following sections in the OECD's *Guidelines for Multinational Enterprises* and facilitate a resolution with respect to the company's involvement in an illegal transfer

of land/conversion of land use, human rights violation and environmental degradation.

The breach of the following sections of the OECD's *Guidelines for Multinational Enterprises* is indicated:

Chapter II - General Policies

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development
2. Respect the human rights of those affected by their activities consistent with the host governments international obligations and commitments
6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices

Chapter V - Environment

3. Assess and address in decision making, the foreseeable environmental, health and safety-related impacts associated with the processes, goods and services and the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.

IV. Shehri-CBE and its mandate

Shehri-CBE was founded in the year 1990 (*registered under the Societies Act XXI 1860 as a non-profit organization*) and started its activities in the same year. The organization is involved in various projects related with protection and conservation of the natural and built environment of our country. Over the years, Shehri-CBE has built for itself a sound reputation in the field of environmental advocacy and the development and management of participatory approaches for solving regional issues. Whether they are issues of land use and zoning, solid waste management, nature conservation, human rights or policy debates, Shehri-CBE has contributed positively in all sectors. Shehri-CBE is engaged in research work and preparation of environmental impact studies on several issues of environmental concerns and specializes in managing dialogues and

interactions between local people and government agencies on issues and concerns that require joint action and participation.

Shehri-CBE represents the interests of the general public and enjoys a wide mandate that is established in its *Memorandum of Association*. It states:

The objects for which the *Society* is established are:

- To research, investigate, compile and disseminate information regarding existing laws, rules and regulations and/or contraventions thereof, or proposed legislation, pertaining to every aspect of the environment.
- To enquire into encroachment of amenity land and contravention of building laws and master plans and to provide legal assistance to citizens in this regard
- To study and make suggestions towards improving urban planning standards, master plans and to enquire into violations thereof
- To create general public awareness of issues pertaining to the organization and maintenance of a healthy and secure physical and social environment.
- To provide technical assistance and guidance to local area citizens groups relating to problems of their local areas and environment.

V. SHV Holdings NV – The Corporate Structure

SHV Holdings, founded in 1896 – the result of a merger between a number of large coal trading companies is a family owned company and a super heavyweight in Dutch commerce. The firm, which is the largest private company in the Netherlands, has global interests in energy, retail, and raw-material distribution businesses. The company is one of the world's top liquefied petroleum gas companies, and owns US scrap metal company David J. Joseph and German-based metal recycling firm TSR Recycling. SHV also operates the Makro store chain in Asia and South America. The company today has 5 activities in 29 countries on 4 continents and employs about 31, 400 people.

Makro Habib Pakistan Limited (MAKRO), is a joint venture between SHV Holdings, NV, Netherlands and the House of Habib, Pakistan.

MAKRO

SHV is active with its Makro stores in Asia and South America. Makro is a cash and carry wholesaler, selling in high volume food and non-food products to registered professional customers. Target customer groups are small and medium size retailers, caterers, individual customers and the institutional market. The mission statement of the Makro is the distribution of products with excellence in price, quality and variety to professional customers, offering those advantages and opportunities of growth. At the end of 2006 Makro South America had 103 stores, Makro Asia 69 stores. The Makro South America head office is located in Sao Paulo, the head office of Makro Asia in Bangkok, Thailand. Sales amounted to € 4,0 billion in 2005.

Note: SHV's shares are not traded on any stock market; they are privately owned by the descendants of the founders and their relatives, and members of the Supervisory Board of Directors and Executive Board of Directors.

Supervisory Board of Directors:

Mrs. A.M. Fentener van Vlissingen (46), Chairman

J.A. Fentener van Vlissingen (68), Vice-chairman

J.R. Behlau (59)

Mrs. L.A.A. Van den Berghe (56)

A. Burgmans (60), effective June 1, 2007

P.A.F.W. Elverding (59), effective June 1, 2007

R.W.J. Groenink (58)

P.C. Klaver (62)

M.L. Mautner Markhof (55)

P.A. Verburgt (72), until May 25, 2007

H.H.F. Wijffels (65)

Executive Board of Directors:

P.J. Kennedy (54), Chairman

F.E. Bruneau (48)

S.R. Nanninga (50), effective November 1, 2007

J.J. de Rooij (46)

H. Scheffers (59), until May 25, 2007

Company Portfolio

Primary SIC: Gas Transmission & Distribution, Primary NAICS: Natural Gas Distribution

Description: Utilities: Petroleum and natural gas distribution. Mining: Oil and gas exploration.

Wholesale: Cash and carry food, alcoholic beverages and non-food products and recycling. Finance: Private equity provider, business venture investments and holding company.

Registered & Corporate Office

SHV Holdings N.V

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The Netherlands

Ph# +31 (30)233 8833

Fax: +31 (30)233 8304

Website: <http://www.shv.com>

Makro Habib Pakistan Ltd.

5-B/3, Gulberg III

Lahore, Pakistan

Ph# (92-42)571 6451-5

Fax: (92-42) 571 7900

Managing Director

Marek Minikiewicz

VI. The Case

Discussed as follows is the Case arguing in favor of Makro-Habib Pakistan Limited (MAKRO) ceasing operations of its store constructed on a public amenity plot and dismantling its facility so that the said plot can be restored to its rightful status. The ownership of land and the subsequent construction involving related legal violations and environmental degradation that include illegal transfer of land, illegal and unauthorized conversion of land (*zoning violation*), defiance of Court orders, violation of the national environmental regulations and compliance procedures, environmental degradation in the locality and the associated human rights violations

The Case is built with respect of the company's similar actions (*not only in the case of the 'Webb Ground' plot*) in Lahore City and in two other instances in Karachi City. The Case is placed within the broader context of the major urban development concerns in Pakistan that include violations of land use and zoning regulation and environmental degradation.

Webb Ground – Site of the Makro Cash & Carry Departmental Store (Illegal transfer of land and unauthorized conversion of land use)

In 1938 (*prior to the creation of Pakistan, during British Colonial rule*), the 'Webb Ground' (4,958 acre), Plot#148/1, Tunisia Line was leased by the sanction of the General Officer Commanding-in-Chief, Western Command to the Karachi Grammar School (KGS) to be used as a 'recreation ground'. The Ministry of Defence (MoD), Government of Pakistan maintained a status of A-2 Military land (*land not actually used or occupied by the military, but used for non-essential activities such as recreation*) for the said plot. The school used it regularly for sporting events, matches and athletics. The KGS 'Annual Sports Day' was held at the ground. In 1975, the 'Lines Area Redevelopment Project' (LARP), Scheme #35, Gulshan-e-Zahoor (*an urban renewal project*) was conceived by the Karachi Development Authority (*now defunct*). The bulk of the area which was proposed to be included in the LARP (*including the Webb Ground*) belonged to the Federal Government – Ministry of Defence. By virtue of an arrangement reached between the Ministry of Defence and the Provincial Government of Sindh and the Karachi Development Authority (KDA) in 1976, an area measuring about 191,713

acres was transferred by the MoD to the provincial government of Sindh province whereas the rest of the area falling within the Karachi Cantonment Board limits was retained by the MoD.

It is the position of Shehri-CBE that is supported by documentary proof and endorsed by the City District Government Karachi (CDGK) and the LARP management that the 'Webb Ground' was part of the land transferred for use in the LARP project.

However, on October 21st, 2002, the MoD, Government of Pakistan, reclassified the said plot from category A-2 to B-4, thus laying claim on the said plot (*and maintaining that the said plot was never transferred to the LARP by the MoD*). They further sanctioned a grant for its lease to the Army Welfare Trust for use in commercial purposes. Subsequently, on July 7th, 2006, the 'Webb Ground' plot was sub-leased by the Army Welfare Trust (AWT) for an initial period of 30 years to the joint venture, Makro-Habib Pakistan Limited (MAKRO), for the establishment of a 'Cash & Carry' departmental store – a clear case of a 'Lease Agreement Violation'

The Response

The sub-lease of the 'Web Ground' plot by the AWT to MAKRO was followed by the following sequence of events:

- The City Nazim (Mayor), in a letter dated December 1, 2006 to the AWT, states the City government's (LARP) claim over the said plot
- In a series of letters addressed to the CEO, SHV Holdings NV, Shehri-CBE protests against the company's involvement in an 'illegal' sub-leasing of land and 'illegal' conversion of land use (*from amenity/playground to commercial*). Shehri-CBE also demands a stop to the construction of the departmental store
- Shehri-CBE holds a meeting (*February 27, 2007*) with the MAKRO management to convey its concerns
- A number of articles appear in the leading newspapers of the country exposing the deal between AWT and MAKRO as a major 'land scam'
- In response to Shehri-CBE's inquiries, the City Government reiterates its stand that the "LARP has not changed the land use of the plot and till to date this plot is a playground in the approved Master Plan of LARP Scheme 35, CDGK
- It is interesting that despite that fact that the MAKRO management continue to publicly accept and acknowledge the control of AWT on the said plot and had entered into a 'Memorandum of

Understanding with them, they continue to seek CDGK and LARP's permission to start work on their project

- In 2007, a resident of the area, Mehfooz-un-Nabi Khan s/o Aftab Ahmed Khan, who had also served as a Mayor and Councilor of the locality, files a 'Public Interest Litigation' in the provincial High Court (*highest court of the province*) against the City Government/LARP, the Chief Controller of Buildings, the Secretary, Environment, Government of Sindh, the AWT and MAKRO and asks for a halt to the construction work and re-instatement of the status of the 'Webb Ground' as a playground/amenity plot
- The High Court of Sindh requests Shehri-CBE to become interveners in the case. Shehri-CBE accepts the court's request
- On August 22, 2007, the High Court issues a 'status quo' order in CP 1740/07. At the same time the High Court requests Shehri-CBE to become Amicus Curie in the case
- In defiance of the High Court's order, MAKRO advertises in the press on August 27, 2007, inviting the public to register at the MAKRO Office as 'customers'
- In defiance of the High Court's order, MAKRO continues construction work at the site
- On July 16, 2007, MAKRO files a suit (# 926/07) against Shehri-CBE in the High Court of Sindh claiming 'harassment' but fails to obtain an injunction from the Court
- On August 14, 2007, MAKRO conducts a 'soft opening' of the store
- Residents of the area register a complaint against the "Environmental Pollution and Nuisance caused by Makro Cash & Carry Mega-store" to the relevant authorities on August 06, 2007, citing the following concerns:
 - Location of the store blocks access of clean air in the neighborhood
 - Installation of three large power generators has resulted in "tremendous" noise and air pollution in the neighborhood
 - Since the construction of the store, sewage overflows have become a regular feature in the neighborhood and due to improper drainage, a 'cesspool' of sewage has developed in front of the store
 - The store has blocked access to a school in the neighborhood resulting in great inconvenience to the parents/children
 - The store has been built on the only land that served as a playground for the children of the locality (*area population - about 250,000*). They have thus been deprived of this open, recreational space

- The store has been built in such a way that entrance to the neighborhood has been narrowed and no vehicle can now enter the lane. This is cause of serious concern, particularly in emergency situations
- On the request of Shehri-CBE, a reputed firm of Consulting Engineers (*Fahim Nanji & Desouza*) conduct sound level recordings at the site of the Makro store (*September 7, 2007*) and conclude that the '*measurements taken reflect an unacceptable level for continuous exposure to persons, and will result in hearing damage and build-up of psychological stresses*'

Shehri-CBE's management had one meeting with the MAKRO management where they denied Shehri-CBE's claims and documentary evidence of illegal activity. On the other hand, all the letters/emails sent to the SHV Holdings in the Netherlands yielded no response

Arguing the Case

Shehri-CBE had identified the following irregularities and illegalities in the MAKRO case in terms of land control, land use and environmental violations of the relevant rules and regulations:

Legal Violations

The Webb Ground was absorbed into the LARP scheme and was retained as a playground in Block 7 of KDA Scheme #35 Master Plan. In a letter dated February 17, 2007, the Project Director LARP, CDGK confirmed that the **“LARP has not changed the land use of the plot and till to date this plot is a playground in the approved Master Plan of LARP Scheme 35”**

On December 19, 2002, the Webb Ground plot, which had earlier been very arbitrarily 'commercialized' by the MoD without carrying out any town planning studies or ascertaining the availability of enhanced utilities and infrastructure, was leased for 90 years to the AWT. Thereafter, 'Rangers' (*Para-military forces*) were posted on the site to guard the premises. Such an ad-hoc conversion of an amenity playground plot to commercial use is against the principles of justice, and is in violation of urban planning laws. This illegality was further compounded when the AWT further sub-leased this plot to MAKRO for the construction of a Cash & Carry store. In defiance of the High Court's order, MAKRO advertises in

the press on August 8, 2007, inviting the public to register at the MAKRO Office as 'customers' and also continued with construction work at the site

'Pakistan Environmental Protection Act of 1997' (PEPA 1997), and 'Pakistan Environmental Impact Assessment Regulation of 2000', provide for categories of projects that require 'Environmental Impact Assessment' (EIA) and 'Initial Environmental Examination' (IEE) in view of the relative significance and magnitude of the environmental impact of the proposed projects. It is stated that for the MAKRO project, no IEE report was ever submitted to the Pakistan Environmental Protection Agency for its approval. Therefore, in accordance with Section 12 of PEPA 1997, construction could not have been initiated.

Without prejudice to the fact that the Webb Ground is a part of LARP of CDGK, the lease deed between AWT and MAKRO is not stamped according to the 'Stamp Act'. The lease has been drawn on stamp paper of value only Rs.100/-, therefore robbing the Provincial Exchequer of millions of Rupees. Moreover, the lease deed is not registered. Any right in land for more than 6 months needs to be registered compulsorily under the Registration Act of 1908, and if not registered, then it cannot be relied upon.

Without prejudice to the fact that the Webb Ground is a part of LARP of CDGK, the building has been occupied without the mandatory 'Completion Certificate' of Karachi Cantonment. The 'Completion Certificate' can only be issued after the building and all the drainage and water arrangements have been completed. However, MAKRO started operations without the building and ancillary structures and drainage systems being completed.

Environmental Concerns

In the absence of a drainage system, a huge cesspool has been created right next to where perishable food products are being sold. The collected sewage is also an ideal breeding ground for mosquitoes thus exposing the whole adjoining residential area as well as the store visitors to various infections including the potentially life threatening endemic 'dengue fever'. Another health hazard is the constant noise of the continuously running power generators (3#) of 500 kVA each, as the store has as yet

not been connected to the main electricity grid. The generator sound recording done at the adjacent residences and schools gives a noise level of 85 db, equivalent to the noise of a constantly ringing alarm-clock. The EPA and international standards for noise levels in a residential area is 40 db and for schools is 30 db or less. A constant exposure to noise levels of 85 db would result in permanent hearing damage and anti-social behavior.

Serializing the Violations

Violations of Land Use
<ul style="list-style-type: none"> ▪ Commercializing an 'amenity area' ▪ Depriving the local community of the only playground facility available in the area
Violation of Construction Codes
<ul style="list-style-type: none"> ▪ No approval ▪ No completion or occupancy certificate ▪ Provision of insufficient infrastructure
Environmental and Health Hazards
<ul style="list-style-type: none"> ▪ Causing sewage overflows/improper drainage causing a cesspool to develop in the area ▪ Noise/Air pollution ▪ Sale of perishable food products right next to the sewage cesspool

MAKRO - Setting a trail of disputes and controversies

It is not that MAKRO operations in Pakistan have not been trouble free or challenged on such matters before. MAKRO's dealings in land acquisitions for their stores, even other than the LARP/Webb Ground land acquisition have been full of controversies:

- For its first store in Karachi, *(the store being operated in the Webb Ground plot is the second such store in Karachi City)* an industrial plot in the S.I.T.E locality was used, but a dispute still persists with the leasing authorities on the payment of commercialization charges
- The attempted commercialization of a 10 acre amenity fruit garden plot in Lahore city's *(Pakistan's second largest city)* Model Town Society has been challenged by area residents and members of the

society. The observations of the learned Lahore High Court Judge in the case are noted as follows:

“In short, before the proposed project can be undertaken, the Master Plan of the Society would require to be amended by the Society itself in accordance with its bye-laws and the ‘Cooperative Societies Act 1925’ and rules framed there under and there after the requisite permission and sanction would require to be obtained from the concerned Town Municipal Administration regarding change in land use. Both actions are obviously justifiable separately under the ‘Cooperative Societies Act 1925’ and the Punjab Local Government Ordinance 2001 and also perhaps before the Courts including this Court. Furthermore, an Environmental Impact Assessment (EIA) would have to be obtained from the concerned Government Agency specified under the Pakistan Environmental Protection Act 1997 which action too is justifiable”.

- A dubious 8.5 acre land deal on Shakra-e-Faisal, Karachi (for the setting up of MAKRO's third store in Karachi) has been reported in the press

The Company - violating its own corporate ethics?

According to the SHV Management:

*“SHV's most important values are **integrity** and **loyalty**. Integrity means being honest, genuine and totally open in communications about all matters that concern the company. Based on the integrity and loyalty of our people, SHV wishes to continue to grow both for the benefit of our shareholders, our employees and for the well-being of the society in which we live and work”.*

It is also claimed that:

“We are strongly involved in the development of many aspects of our immediate environment. A sustainable and positive development of the society in which we work and live is also to our own benefit. It is not by coincidence that this has been fundamental in the SHV Corporate Philosophy for many years. In many ways our companies give a more specific interpretation to their social engagement in the countries in which they operate. This is not a recent development but has been the case for many years. It takes place

in many different ways, as can be expected in our decentralized organization. Examples are activities that support social and cultural projects, promote sports, help the disabled, promote educational programs and protect the environment.

Clearly, the ongoing and proposed practices related with the opening and operation of Makro stores in Pakistan do not seem to conform to their stated corporate philosophy and commitments to the society at large.

The Charge sheet

It is quite clear that MAKRO has blazed a trail of legal violations and environmental degradation and has willfully participated after being aware of the relevant facts (*not only in the case of the 'Webb Ground' plot but in Lahore City and in two other instances in Karachi City*) in the :

- Illegal transfer of land
- Illegal and unauthorized conversion of land (*zoning violation*)
- Defiance of Court orders
- Violation of the national environmental regulations and compliance procedures
- Environmental degradation in the locality
- Human Rights violations
- Depriving the children of a low income community of its only playground

What needs to be done?

The 'right to life' for citizens is being increasingly interpreted by the superior courts as 'right to a clean, healthy and unpolluted environment'. People living in the urban areas have an entitlement to a people friendly built environment, to open spaces for recreation and fresh air, to playgrounds for children, to schools, hospitals and social amenities, to libraries and theatres, to proper transport systems and roads, to freedom from air and noise pollution, to adequate utilities and infrastructure, and the like.

Unfortunately, owing to population pressures and mushrooming urban-rural migration, land in Karachi is being increasingly abused by violation of urban planning principles, including unlawful allotment of unplanned tracts, arbitrary conversion of land-use, and construction of illegal

buildings. The applicable town planning and building laws are ignored, misinterpreted or violated for personal gain. This has resulted in severe deterioration of the built environment of the city. The citizens have filed hundreds (*if not thousands*) of cases in order to try and help the judges of our courts to realize the potential devastation. However, at times even court orders have been violated. In 1999 SCMR 243, the Supreme Court of Pakistan warned all concerned: *"It may further be observed that some builders raise un-authorized construction after obtaining status quo orders from the courts"*.

Within this context, Shehri-CBE now wishes the Makro Habib Pakistan Limited (MAKRO), a joint venture between SHV Holdings, NV, Netherlands and the House of Habib, Pakistan to immediately initiate the following steps:

- MAKRO ceases operations of its store constructed on the public amenity plot (*Webb Ground*) and dismantles its facility so that the said plot can be restored to its rightful status as a playground
- Funds a project for cleaning up of the area adversely affected by the environmental degradation caused due to the operations of the MAKRO store
- Pays for the cost and expenses incurred by the 'Petitioner' in the Public Interest Litigation "C.P. N.O.D -1740/2007"