FINAL SUBMISSIONS SUPREME COURT APPEAL CLIMATE CASE MILIEUDEFENSIE V SHELL

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SHELL'S SCARE TACTICS AND CONTRADICTIONS

There are only four countries with a larger carbon footprint than Shell: China, the US, India and Russia. Shell's role in causing dangerous climate change is therefore greater than that of most countries. That is why we can only tackle the climate crisis if major polluters such as Shell also do their part.

Large companies such as Shell operate in many countries simultaneously. As a result, it is nearly impossible for governments to regulate these companies effectively. This power vacuum is also known as the 'governance gap'. Effective regulation is further hindered by lobbying from the powerful fossil fuel sector. Shell alone, for example, spends 100 million euros a year on political and societal influence.

Through the Climate Case against Shell, launched in 2018, Milieudefensie aims to close the *governance gap*. Milieudefensie wants the court to make it clear that Shell has a duty of care to align its activities with the Paris Climate Agreement. The demand: that Shell reduce its CO_2 emissions by 45 per cent by 2030 compared with 2019.

In November 2024, the Court of Appeal in The Hague ruled that Shell does indeed have a duty to fight dangerous climate change. Unlike the district court in 2021,[1] the Court of Appeal stated that it was unable to determine the exact percentage by which Shell must reduce its emissions. The fact that the Court of Appeal ruled that Shell has a duty of care is of great significance. However, to truly protect people from the danger caused by Shell, the company must also be required to meet a specific reduction target. That is why Milieudefensie appealed to the Supreme Court.

The latest legal document that Milieudefensie has submitted to the Supreme Court is the Written Reply .In it, Milieudefensie responds to Shell's Written Explanatory Submission. In this summary, you can read four main rebuttals of Shell's arguments.

Before we address these points, it is important to note that Shell is deliberately pretending that this case is not about its liability. This obfuscation strategy means that Shell's written statement is full of all sorts of problems and scare tactics that are irrelevant to the core legal question at the heart of this case: the question of whether the court can set limits on Shell's destructive course. For instance, Shell argues that by imposing a reduction percentage, the court would be interfering too much in how the energy transition is being shaped, and Shell attempts to

[1] In 2021, The Hague District Court ordered Shell to reduce its emissions by 45 per cent, in line with the Paris Agreement. See: The Hague District Court, ECLI:NL:RBDHA:2021:5339, 26 May 2021.

convince the court that a reduction order would lead to energy shortages or a lack of fuel for the army.[2]

Because Shell is ignoring the relevant legal rules and gathering as many arguments as possible to defend its own dominant market position, its written submission is riddled with contradictions. For example, Shell claims:

1. On the one hand, that energy security would be seriously jeopardised if Shell were to be required to reduce its CO_2 emissions. On the other hand, that a reduction obligation would have no effect on emissions because oil and gas would then be supplied to the market via other companies.
2. On the one hand, a reduction obligation would be detrimental to Shell's competitive position because it would apply only to Shell. On the other hand, a reduction obligation would be highly far-reaching, as it would also apply to other companies.
3. On the one hand, only the legislature may impose a reduction obligation because – unlike the courts – it would be able to weigh up all relevant interests. On the other hand, the global pace at which CO_2 emissions are being reduced is too slow, which therefore means that governments cannot solve the climate problem on their own.

If, however, one does look at the legal standards at the heart of this case, the law points in one direction: Shell has a duty of care to combat dangerous climate change, and the law provides sufficient grounds to impose a specific reduction percentage on Shell.

4 REBUTTALS TO SHELL'S ARGUMENTS

1. Shell paints an inaccurate picture of the division of roles between countries and companies

Shell pretends that this case is not about its liability, but about the energy transition and how it should be shaped globally. Shell also pretends that the climate response and energy transition should be left only to governments and can only take place if those governments jointly draw up a comprehensive plan and implement it in a coordinated manner. This view is incorrect.

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[2] CO_2 emissions from the entire European military apparatus account for just 1 per cent of Europe's total emissions. If Shell is obliged to reduce its emissions in line with the Paris Climate Agreement, the entire military apparatus can therefore continue to be co-supplied by Shell without any problem. Furthermore, climate change itself poses a growing risk to military security. This is widely recognised by national and international security experts (see: Milieudefensie's written reply, paras. 103–105, p. 32). Incidentally, the 'No Fuel No Fight' report cited by Shell was commissioned by the fossil fuel lobby group VEMOBIN.

Firstly, current global climate policy as set out in the Paris Agreement is not based on coordinated top-down action by states.[3] It is the sum of the actions taken bottom-up by countries, with an explicit call for companies to make their own contribution as well. Because without the contribution of large companies, we cannot achieve the targets of the Paris Agreement. Everyone therefore has their own share of responsibility.

Secondly, legislators have so far failed to draw up regulations that ensure the necessary reduction in emissions by companies. The reason: the governance gap mentioned in the introduction and the lobbying by the oil and gas industry, which has successfully blocked effective regulation. One example of this is the removal of the climate transition plan obligation from the European Corporate Sustainability Due Diligence Directive.[4] Climate and other human rights interests consistently lose out to the commercial interests of oil and gas companies in legislative processes.

2. Reducing oil and gas supply is crucial for both the climate and for energy security

Shell continues to point the finger at consumers, arguing that the company can only reduce its supply of oil and gas if demand for these fuels falls. However, reducing the *supply* of oil and gas is at least as crucial.

The Court of Appeal recognises the importance of preventing further *carbon lock-in*.[5] The court also ruled that the energy transition is being seriously slowed down because companies continue to impose the use of fossil fuels from the supply side of the market, as this prevents sustainable alternatives from competing effectively with oil and gas.[6] The court therefore acknowledges that the *lock-in effect* influences demand for oil and gas.

Furthermore, the phasing out of fossil fuels is not only good for the climate, but also for energy security. A rapid energy transition leads to greater energy security and more affordable energy. As the director of the International Energy Agency said following the gas crisis in 2022: *"Today's crisis is a reminder of the unsustainability of our reliance on fossil fuels and can be a key*

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[3] Such an approach was indeed tried in 2009 in the run-up to COP15, but ended in great disappointment. See: Milieudefensie's written reply, para. 12, p. 9.

[4] As the European Commission puts it: *"Others, in particular from the oil and gas industry, called for the deletion of Article 22 of the CSDDD on combating climate change."* See: Milieudefensie's written reply, para. 18, p. 11.

[5] Investments in oil and gas fields and associated infrastructure amount to billions, with payback periods spanning decades. Investors therefore have a strong *incentive* to continue selling as much oil and gas as possible throughout that period. In this way, they are forcing society to continue using oil and gas for decades to come, and it is certain that the investments made today will continue to result in CO_2 emissions for decades to come. This is known as the *carbon lock-in*.

[6] Judgment of The Hague Court of Appeal in the Milieudefensie v Shell climate case, 12 November 2024: ECLI:NL:GHDHA:2024:2099, paragraphs 7.59 and 7.60.

turning point to move faster towards a cleaner, more affordable and more secure energy system."[7]

3. Shell must accept its own share of responsibility; that is the only effective approach

The key principle in tackling climate change is that both states and companies are responsible for their own actions. It is also impossible to envisage a solution to the climate crisis without this legal accountability on the part of major players such as Shell. If companies fail to fulfil their duty of care, everyone can continue to point the finger at one another and carry on emitting greenhouse gases. The consequences of this are disastrous and incalculable.[8]

Shell claims that a reduction order is ineffective, because other companies will take over Shell's production and trade – and thus its CO_2 emissions. However, the behaviour of other companies is not only irrelevant when determining Shell's legal liability, but also when assessing whether a reduction order is effective. Indeed, the Dutch Supreme Court also ruled in the Urgenda case that *"no reduction (...)* is *negligible*" and that everyone is obliged *to "do their part*".[9]

4. Objective points of reference determine *the extent to which* Shell must reduce its CO_2 emissions in line with the 1.5°C target

Shell claims that a reduction target would be based solely on what Milieudefensie believes should happen to the global energy system. That is not the case. Milieudefensie is asking the court to apply Dutch law and to set legal limits for Shell's behaviour, based on Dutch law. In doing so, the court must make use of so-called 'objective points of reference'. That is its duty. In sections IV to VI of its Written Explanatory Submission, Milieudefensie has explained how the court can use these objective points of reference to arrive at a reduction obligation for Shell.

Both the Court of Appeal and the District Court have concluded, based on Dutch law, that Shell must reduce its CO_2 emissions and make its contribution to limiting global warming to 1.5 degrees. The same objective points of reference that the court applied to reach this conclusion also provide a basis for determining a specific reduction percentage for Shell.

SHELL'S SCENARIOS LEAD TO CATASTROPHIC GLOBAL WARMING

Shell's written explanatory submission also reveals that it has no intention whatsoever of acting in line with the Paris Agreement. Shell is, in fact, dismissing all reduction scenarios aimed at the

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[7] Executive Director rebuts three myths about today's global energy crisis, IEA 2022.
[8] IGH 23 July 2025, No. 187 (Obligations of States in respect of climate change), para. 456.
[9] Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006 (Urgenda), grounds 5.7.1, 5.7.8 and 8.3.4.

binding 1.5°C target.[10] Shell believes we should base our approach on scenarios that assume a future in which the world takes no, or insufficient, climate action. Scenarios in which the world is rapidly heading towards catastrophic temperature rises of well over 2°C. The world outlined by Shell is therefore precisely the world that UN climate treaties, human rights and soft law sources are trying to prevent.

Shell's argument boils down to the idea that, because of insufficient action by governments, the company itself is also allowed to remain inactive and may even increase its oil and gas supply. The binding 1.5°C target – and all the dramatic consequences of failing to meet it – must give way to Shell's financial self-interest. All of this provides grounds for obliging Shell to reduce its emissions in line with 1.5°C reduction scenarios. The reduction percentages for oil and gas set out in these scenario's are not only necessary but also entirely achievable in the real world.

RECENT RULINGS

Shell is acting as if -should Milieudefensie win- it were the only company that would be obliged to reduce CO_2 emissions. However, climate cases are being brought against foreign companies worldwide. For example, in Italy,[11] Switzerland,[12] Germany,[13] France,[14] and New Zealand[15], courts have accepted that companies can have climate obligations.
The most recent example is the French ruling in the climate case against TotalEnergies. The French court used the same objective criteria that Milieudefensie is relying on in the Shell case. Just like Shell, Total attempted to evade a climate obligation by arguing that the company has no influence over its customers' emissions and that imposing a climate obligation by the court would be ineffective. Both arguments were rejected by the court in this case.

Shell places strong emphasis on two recent German cases against BMW and Mercedes. According to Shell, the German court ruled that only politicians can impose climate obligations on companies and that this is not a matter for the courts. Shell's interpretation is incorrect. The German rulings relate to a completely different and specific legal context, namely that of the *Algemeine Persönlichkeitsrecht.* It is still fully possible that in the future a German court will impose a climate obligation on companies on a different legal basis. Moreover, Shell's interpretation of the ruling would imply that the German rulings run counter to all the

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[10] The 1.5°C target is prescribed as a binding objective by UN climate treaties, human rights law, soft law sources, the Supreme Court, the European Court of Human Rights, the International Association of Human Rights Law and the International Court of Justice.
[11] Corte Suprema di Cassazione 21 July 2025, No. 13085/2024. (Greenpeace et al. v. Eni).
[12] Zug District Court, 17 December 2025, A1 2023 9, (Asmania et al. v. Holcim)
[13] See, for example, Essen Higher Regional Court, 25 May 2025, 5 U 15/17 (Lliuya v RWE)
[14] Tribunal Judiciaire de Paris, 25 June 2026, No. RG 22/03403 (Notre Affaire à Tous et others v Total)
[15] Supreme Court of New Zealand, 7 February 2024, SC 149/2021 [2024] NZSC 5154, (Smith v Fonterra et al.)

international rulings mentioned earlier.[16]

NEXT STEPS

On 17 July, we submitted our Written Reply to the Supreme Court. Shell has submitted its rejoinder. The next step is an advisory opinion from the Procurator-General and the Advocate-General. This is expected by the end of 2026. The Supreme Court's ruling is expected in the first half of 2027.

In May 2025, Milieudefensie announced a new Climate Case against Shell. This case builds on the first. In the new case, Milieudefensie is demanding that Shell stop drilling for new oil and gas fields and that Shell reduce its CO_2 emissions step by step between 2030 and 2050.

MORE INFORMATION

Milieudefensie's first climate case against Shell

- Milieudefensie's Written Reply
- Notes on oral argument for the Supreme Court hearing
- Explainer: Why we are appealing to the Supreme Court
- Milieudefensie v. Shell: Summary of the ruling on appeal

The new climate case against Shell concerning new oil and gas fields

- Summary of the summons
- The summons

Explainers, summaries and all legal documents relating to both Milieudefensie's climate cases against Shell and the climate case against ING can be found in the Milieudefensie Climate Case Tool.

[16] See E.R. de Jong, 'Klimaatperikelen in Karlsruhe', NTBR 2026/16.