

Shell in Neuquén (Argentina)

By **Observatorio Petrolero Sur - OPSur** (Argentina)



About the corporation:

Name of the parent company:

Royal Dutch Shell plc

Subsidiary in Argentina: Shell Compañía Argentina de Petróleos Sociedad Anónima (Shell CAPSA)

Sector: Energy / Fossil fuels (exploration, production, transportation, refining and commercialisation)

Country of origin: The Netherlands / United Kingdom

Ownership of the corporation's capital (shareholders, owners, etc.)²:

Shell Petroleum N.V. controls 99.99% of Shell CAPSA's shareholder capital. Shell Petroleum N.V. is a corporation registered in the Netherlands, which is fully owned by Royal Dutch Shell plc.³ Royal Dutch controls 60% of its shares and Shell Transport from the UK holds the remaining 40%.

Country or countries where the transnational corporation operates:

According to information on the Shell CAPSA website, it operates in over 70 countries.⁴

Location of the case: Province of Neuquén, Patagonia, Argentina.

Shell in the Argentinian Patagonia

On the international scene, Royal Dutch Shell plc claims to share the climate goals set by the Paris Agreement. In Argentina, however, its local subsidiary, Shell CAPSA, and its affiliate, O&G Developments, are part of a group of corporations involved in the exploration and extraction of unconventional gas and oil (shale and tight sands) in the province of Neuquén since the beginning of 2010. These projects strengthen the fossil fuel matrix and increase its contribution to global warming. What is more, the use of hydraulic fracturing or “fracking” techniques raises the risks of operations that cause major environmental impacts even further. In some places, this is taking place in areas already exposed to severe degradation processes, as noted by the United Nations Development Programme, which limits the possibilities of diversifying the productive matrix and moving towards more sustainable practices.¹ The expansion of the extractive industry threatens existing productive activities, such as fruit and vegetable production and livestock raising, which are not only the source of livelihood for local communities, but also a key element in the identity of peasant families and small farmers. The situation got worse when a revolving doors process was found in which directors of transnational corporations, such as the former CEO of Shell CAPSA, were appointed to high-level positions in the Ministry of Energy and Mines.

Background information on the exploitation of unconventional reservoirs in Argentina

Like other European corporations such as BP, Total, Wintershall, Statoil and Mercuria, Shell CAPSA is currently pursuing projects for the exploration and production of tight sands and shale gas and oil. Its goal is to gain control over Vaca Muerta and Los Molles – some of the largest shale gas deposits in the world according to the US Energy Information Administration (EIA)¹ – to help consolidate its dominant position in the world trade of gas and sustain local crude oil production.²

Opportunities to exploit unconventional reservoirs in Argentina multiplied in 2012 when the Fernández de Kirchner administration expropriated 51% of YPF’s shares, controlled until then by the Spanish oil corporation Repsol. Transnational corporations used the argument that the expropriation generated “legal insecurity” to obtain concessions in their favour. The result of the negotiations shaped the agreement signed between Chevron and YPF and alterations to the Law on Fossil Fuels (Law no. 27,007) adopted in 2014. The changes incorporated a special regime for unconventional reservoirs into the law, extended the time limits on concessions and contract extensions and increased tax exemptions.³ At the same time, the government implemented policies to promote the industry such as direct and indirect subsidies for production and public investment in infrastructure.⁴

When Mauricio Macri assumed the presidency in 2015, he launched a process to reactivate the country’s exports. This policy was implemented by Juan José Aranguren, who had been the CEO of Shell CAPSA for 37 years and still was six months before he was named Minister of Energy and Mining⁵. When he accepted the position as minister,

This case is part of the report

THE EU AND THE CORPORATE IMPUNITY NEXUS
BUILDING THE UN BINDING TREATY ON TRANSNATIONAL CORPORATION AND HUMAN RIGHTS

The full report can be downloaded at:

<https://multinationales.org/The-EU-and-the-Corporate-Impunity-Nexus>



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he still owned shares in Royal Dutch Shell plc, which were worth 13 million pesos.⁶ In his first year in office, Shell Western Supply was awarded seven of the eight concession contracts for fuel tankers⁷. He also authorised gas imports from Chile – a country that buys gas from BG, a Shell company – and paid 53% more than the LNG that arrives in Argentina’s ports. National deputies Martín Doñate and Rodolfo Tailhade (from the *Frente para la Victoria* coalition) filed criminal charges against Aranguren for his involvement in these events.⁸ In 2018, Aranguren was removed from his position and replaced by a former vice-president of Pluspetrol, an Argentine company with headquarters in The Netherlands.

Irregularities and corruption allegations

In 2014, during the debate on the reform of the Law on Fossil Fuels, the CEO of Shell CAPSA joined the lobby of the provinces that were defending the “carry” mechanism. The federal government and YPF had proposed eliminating it from the law. This mechanism allows private companies to form partnerships directly with provincial companies on exploration and production projects without having to go through a public tender process first. During the Macri administration, Shell CAPSA used this mechanism to set up joint ventures with companies controlled by the provincial oil company (GyP) and the Argentinean state (YPF) to begin operating in the Province of Neuquén. It should be highlighted that since this mechanism has been implemented, changes in the ownership of the oil blocks are not subject to the approval of the provincial legislature. The provincial government granted GyP the titles to the blocks and GyP negotiates the titles with companies interested in them. This procedure is less transparent than the public bidding process.

There are also suspicions of corruption involving this mechanism in Neuquén. In 2014, provincial legislator Beatriz Kreitman denounced that the companies that signed contracts with GyP were being forced to make contributions to *Fundación Alejandría*, a NGO controlled by the oil company whose accounting records were questionable. A public prosecutor for economic crimes proved that there were no records to justify expenditures of approximately US\$150,000 charged to provincial officials. In March 2016, the charges against the accused were dismissed. Kreitman criticised the court’s lack of will to get to the truth.⁹

Impacts of the corporation’s operations

In most parts of the Province of Neuquén, Shell CAPSA operates through its subsidiary O&G Developments Ltd. S.A., of which it controls 100% of its capital. The corporation is active in five areas: Cruz de Lorena, Sierras Blancas, Águila Mora, Coirón Amargo Sur and Bajada de Añelo. It has shares in another two, which are run by Total Austral: Rincón La Ceniza and La Escalonada. Their main negative impacts on the local population are as follows:

- Pressure on peasant and small producers’ land: changes in land use that affect production and result in the loss of food sovereignty;¹⁰
- Pressure on indigenous land: projects are imposed without implementing prior consultation processes. When conflicts emerge, negotiation mechanisms that are inconsistent with national and international indigenous law are used;¹¹
- Increase in the precariousness of working conditions and wage cuts in the oil sector due to changes made to the collective bargaining agreement to reduce the corporations’ operating costs;¹²
- Greater pressure on land exposed to severe degradation processes and desertification caused by conventional oil operations;¹³ and
- Extractivist activities in the surroundings of the Auca Mahuida protected natural area.¹⁴

The state’s participation

In the Bajada de Añelo area, the Neuquén provincial government approved the route for the pipeline that is to run from Bajada de Añelo to a processing plant in Loma Campana. The works affect the territory of the Campo Maripe Mapuche community, which was not consulted prior to the approval. This sparked a conflict that was later settled through the signing of an economic agreement between the community and the company, with the backing of the provincial government. Even though the conflict was defused, the provincial government has yet to recognise the communities’ territorial rights. While Shell CAPSA does not ignore this violation of indigenous rights, it has maintained its operations. Authorities in Neuquén promoted the settlement as an exemplary solution.



Shell station in the access to Añelo and signalisation towards the fields
Photo: Martín Alvarez Mullally



Access to the Mapuche community Campo Maripe
Photo: Martín Alvarez Mullally



Women from Mapuche community Campo Maripe, protagonists of the struggle in defence of their territory Photo: Checho Maripe

Shortly before this, works of YPF in the same area had also been paralysed. In this case, though, the company called on the National Gendarmerie – a militarised security force – to intervene to ensure the continuity of the operations.¹⁵ In March, the national government announced its decision to send 400 more Gendarmerie officers to Neuquén to protect the Vaca Muerta operations.¹⁶

Affected peoples and resistance

These changes affected the population in areas where the main productive activities were fruit and vegetable growing and livestock raising and the peasant families and Mapuche communities settled in places far from urban centres the most. They affect their economy and their ties to their territory, and encourage migration to cities in search for employment opportunities. In addition to the growing population in the towns and cities, the cost of living also increased, as the higher-than-average wages of oil workers become the reference for defining the prices of goods and services.¹⁷

In 2012, a process to coordinate and mobilise opposition to the use of fracking (not only by Shell) began in Neuquén and Río Negro. In this process, socio-environmental and multisectoral assemblies were created in several places, in which several sectors participated, such as social, women's, environmental and Mapuche organisations, trade unions and political parties. Oil operations were paralysed by actions undertaken in Mapuche communities to defend their territory. Women played a fundamental role in the resistance¹⁸. Furthermore, intense information campaigns on the social, environmental and economic impacts of the 'new extractive frontier' were developed. In some places, activists campaigned strongly to get municipal bylaws banning the use of fracking within the municipal limits passed. However, even though the approval of these initiatives expressed the people's will, they were declared unconstitutional by the Superior Courts of Justice of Río Negro and Neuquén. The myriad of strategies used included the construction of networks and campaigns at the local, national, regional and international level. In 2014, activists participated in Shell and Total's shareholder meetings in Amsterdam and Paris, respectively, and in those of Shell and BP held in Amsterdam and Manchester in 2018.

With the support of the Municipality of San Patricio del Chañar, the company offered job training programmes for the oil industry for the population of this small town in Neuquén, whose productive matrix used to be centred on fruit production. This initiative was replicated in Añelo.¹⁹

Until now, Shell CAPSA has been open to dialogue, but the solutions found are not always legally admissible, as in the case of the resolution of the conflict with the Campo Maripe community. In this case, an extrajudicial agreement was reached in February 2018 between the Mapuche community and the company in which the parties agreed to a one-time payment in compensation for the pipeline passing through their territory. The governor of Neuquén intervened directly to mediate the agreement at the request of the CEO of Shell CAPSA, according to the press. The case was held as a good example of effective conflict resolution that did not require the intervention of the courts or security forces. It should be noted, however, that the agreement was adapted to the compensation mechanisms established by Provincial Decree no. 861/96 for superficiaries affected by the oil industry, which stripped the demand for rights of its ethnic nature²⁰.

Until now, both peasant families affected by unconventional gas or oil projects and the Campo Maripe Mapuche community have obtained economic and other types of benefits (drilling of wells for water, connecting power lines to houses in remote locations, etc.) in the negotiations with the company when conflicts emerge in the different regions in which it operates.

A precedent in this area was the spill of 5,300 cubic metres of crude oil into La Plata River on January 15th, 1999 in the jurisdiction of the province of Buenos Aires. The “Estrella Pampeana” tanker belonging to Shell CAPSA collided with another boat, “Sea Paraná”, off the coast of Magdalena. The municipality sued the company for its failure to take measures to clean up and restore the coastal area. After the courts ruled against the corporation, an out-of-court agreement for economic compensation was reached in which it was clear that the corporation would provide money as a ‘donation’, and not as compensation for the damage caused.²¹

In the case of the Mapuche communities, they have denounced the provincial authorities’ systematic lack of will to implement public policies to guarantee their territorial rights, among other rights. Furthermore, as Deputy Kreitman stated in February 2018, the justice system does not seem to have the will to investigate allegations of corruption. This lack of will leads one to infer the existence of a powerful group of interests that puts the quest for oil before collective rights.

Denunciations at the national and international level

In the case of the Mapuche communities affected by the projects, the consultation mechanisms established by ILO Convention No. 169 on Indigenous and Tribal Peoples and the UN Declaration on the Rights of Indigenous Peoples, endorsed by the Argentine state, were not employed. The ethnic and cultural pre-existence of the indigenous peoples of Argentina and their right to territory, enshrined in the Argentine Constitution and the Constitution of the Province of Neuquén, were also not recognised. Moreover, in practice, the access of peasant families - who have occupied government land for decades and have initiated proceedings to obtain the land titles - to land is not guaranteed. Not only has the Neuquén government failed to resolve this long-standing issue, but it also created a trust to which it transferred all the public lands that will be affected by the development of the unconventional Vaca Muerta deposits. By doing so, it appropriated the fees charged for easement rights. The stated purpose of the trust is to fund public education.²²

In 2016, the Europe-Third World Centre from Switzerland, the Asociación Argentina de Abogados Ambientalistas (Argentine Association of Environmental Laywers) and OPSur presented a joint declaration to the UN Human Rights Committee denouncing the violation of collective human and environmental rights by the Chevron, Total and Shell oil corporations in Patagonia.²³ Then, in 2017, together with the Center for International Environmental Law and the Global Initiative for Economic, Social and Cultural Rights, we submitted to the UN Committee on Economic, Social and Cultural Rights a document that questions the lack of respect for and compliance with the economic, social and cultural rights of the local population and the Mapuche communities affected by the extraction of fossil fuels from the Vaca Muerta unconventional reservoirs.²⁴



Panoramic view of Añelo
Photo: Fabian Ceballos

ENDNOTES

1. US Energy Information Administration 2013, 17.
2. Observatorio Petrolero Sur 2018.
3. Fundación Bariloche -Víctor Bravo- (2015), Observatorio Petrolero Sur (2012a), (2012c), (2013a), (2013b) and (2014b).
4. Enlace por la Justicia Energética y Socioambiental (2016), (2017a) and (2017b).
5. The Law on Public Ethics establishes that a period of at least 3 years must pass between one position and another.
6. Secretaría de Ética Pública, Transparencia y Lucha contra la Corrupción. Oficina Anticorrupción (2016).
7. Página/12 2017.
8. Noticias Cuyo 2016.
9. Diego di Risio 2016, pp 50-51.
10. Scandizzo 2016, 109-117 and Observatorio Petrolero Sur 2014a and 2014b.
11. Río Negro 2018b.
12. Río Negro 2017a.
13. Anaya 2012, 11 and Scandizzo 2016, 105-109.
14. Observatorio Petrolero Sur 2014c and 2014e.
15. Río Negro 2017b.
16. Río Negro 2018c.
17. Various authors 2016.
18. Observatorio Petrolero Sur 2015.
19. Municipalidad de San Patricio del Chañar 2014a y 2014b, Futuro Sustentable 2015 y 2016.
20. Río Negro -Federico Aringoli- (2018b)
21. Agostina Chiodi 2011.
22. Gobierno de la Provincia del Neuquén 2015.
23. Observatorio Petrolero Sur 2016.
24. Observatorio Petrolero Sur 2017.

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