



**joint NGOs' contribution  
to the fourth Universal Periodic Review of the Netherlands  
by the UN Human Rights Council**

**This report<sup>i</sup>, with specific focus on corporate accountability, environmental issues, sustainable development and human rights is submitted on behalf of the following NGOs:**

- **Stichting IUCN Nederlands Comité (IUCN National Committee of The Netherlands Foundation)**
- **Milieudefensie (Friends of the Earth Netherlands)**
- **Stand Up For Your Rights (SUFYR)**

This report was authored as a cooperation between the NGOs mentioned, which have all interrelated with the UN before, through work on health, environmental issues and sustainable development – often specifically in relation to human rights.

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## SUBMITTING ORGANISATIONS

The undersigned NGOs welcome the opportunity provided by the Office of the High Commissioner on Human Rights to submit a stakeholders' report for the Fourth Universal Periodic Review (UPR) of the Netherlands, to be held in 2022.

### **IUCN NL:**

IUCN NL is an international nature organisation that operates from Amsterdam, the Netherlands. We are part of the International Union for Conservation of Nature (IUCN), the largest union for nature conservation in the world. In our projects we work closely with civil society organisations in the Global South. Our vision is a just world in which nature is valued and protected. Our goal is to safeguard nature as the foundation for all life on earth. In this endeavour we devote special attention to areas that have a high natural value and special biodiversity, which are under pressure, and to the people who depend on and protect that nature. IUCN NL works closely with civil society organisations in the Global South.

### **Milieudefensie:**

Milieudefensie (Friends of the Earth Netherlands) is a national organisation with 35 local groups. Founded in 1971, it has more than 110.000 members and donors. Milieudefensie is part of the international Friends of the Earth network. The mission of Milieudefensie is a good life for all people on earth and for generations to come. Because we are the last generation who can prevent a climate disaster, the climate will occupy a central position in our work. Milieudefensie works closely with civil society organisations in the Global South.

### **Stand Up For Your Rights:**

Stand Up For Your Rights (or 'SUFYR') is a human rights NGO, with charitable registration in The Netherlands, which works on human rights issues in relation to the environment. SUFYR was founded on the belief that the world needs a stronger push for acknowledging and upholding human rights linked to a sustainable future of people and all life on planet earth. SUFYR has contributed to many (UPR and other) reporting cycles and UN reports.

Because of their statutory goals and missions, the undersigned NGOs choose to focus on environmental, climate and health issues in relation to human rights. Due to the restricted number of words allowed for this report, its contents are limited to and focussed on the most pressing matters of concern regarding the respect for and the protection and fulfilment of human rights in third countries, caused by Dutch companies or governmental support to companies. We would also like to refer to earlier recommendations UPR 3<sup>rd</sup> Cycle – 27<sup>th</sup> session related to the theme Business & Human Rights. (doc: Matrix – theme B6 – A/HRC/36/15/Add.1)

The undersigned NGOs express their sincere hope that the findings in this report will encourage an open and constructive dialogue, which shall lead to an expedient solution for the signalled shortcomings and an improved respect for and protection and fulfilment of human rights in the Netherlands and abroad. For present and future generations.

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## LIST OF ABBREVIATIONS

CC	Climate Change
CCPR	UN Human Rights Committee
CESCR	UN Committee on Economic Social and Cultural Rights
DCC	Dutch Civil Code
ECA	Export Credit Agency
ECHR	European Convention on Human Rights
EIA	Environmental Impact Assessment
ENNHRI	European Network of National Human Rights Institutions
FPIC	Free, Prior and Informed Consent
GANHRI	Global Alliance of National Human Rights Institutions
Ibid	Ibidem
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
IRBC	International Responsible Business Conduct
IUCN NL	Stichting IUCN Nederlands Comité
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institute
No.	Number
OECD	Organisation for Economic Cooperation and Development
OECD Guidelines	OECD Guidelines for Multinational Enterprises
UDHR	Universal Declaration of Human Rights
UN	The United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNGP	United Nations Guiding Principles on Business and Human Rights
UPR	Universal Periodic Review
SDGs	The Sustainable Development Goals
WAMCA	Dutch Mass Damage Settlement Act in Collective Action (in Dutch: “Wet afwikkeling massaschade in collectieve actie”)

## 1. THE LAST UPR RECOMMENDATIONS ON BUSINESS AND HUMAN RIGHTS

Via Human Rights Council Resolution A/HRC/36/15, the Netherlands received seven recommendations on business and human rights (No. 131.106 to 131.112)<sup>ii</sup> two relating to the environment:

*“131.108 Respond to concerns of the Committee on the Elimination of Racial Discrimination about the participation of Netherlands companies in the extractive industry and in the production of soya and palm oil abroad that have adverse effects on the enjoyment of human rights and the environment.”; and*

*“131.110 Ensure accountability for human rights violations and environmental damage resulting from the global or overseas operations of companies registered or headquartered in the Netherlands.”*

The Netherlands accepted most recommendations and confirmed:

*“The Netherlands is committed to preventing involvement of any Dutch companies in human rights abuses”<sup>iii</sup>*

And, in relation to 131.110 -, replied:

*“Under certain circumstances, Dutch companies can be held liable in civil or criminal proceedings for extraterritorial human rights abuse. In response to a thorough analysis of how our judicial system measures up to the GPBHR, a number of measures have been taken to strengthen access to remedy. However, it remains primarily the duty of the host State to protect its citizens from human rights abuse by domestic as well as transnational companies.”*

The Netherlands thus confirmed that it is its duty to protect its citizens from corporate human rights violations and environmental damages not only in the Netherlands but also abroad.

## 2. BUSINESS AND HUMAN RIGHTS IN THE NETHERLANDS

The Netherlands is by origin a trading country with trading interests in the global south either as an importing or exporting party. Consequently, to ensure that human rights are not violated in their value chain, Dutch companies have to monitor their (in)direct operations in the Netherlands and abroad. Following the advice of the Dutch Social Economic Council in 2014, the Netherlands introduced International Responsible Business Conduct agreements<sup>iv</sup> for various industry sectors. These sector agreements between companies and other stakeholders were to commit to tangible results based on the OECD Guidelines and the UNGPs. At the moment 10 IRBC Agreements are in place.<sup>v</sup>

Although sufficient reports<sup>vi</sup> were in the public domain that Dutch companies were (in)directly linked to human rights violations in their value chain, the Netherlands waited evaluating its IRBC policy until 2020<sup>vii</sup>. The evaluation showed that the IRBC agreements reach 1.6% of the total number of companies in the 13 sectors with high IRBC risks in the Netherlands<sup>viii</sup>. Also across the IRBC agreements, progress on due diligence was largely too limited to identify concrete impacts. And overall a reduction in negative impacts in global value chains as a result of the IRBC agreements were not observed. The evaluation made clear that the IRBC policy was not working and that additional measures are to be put in place such as laws and regulations requiring companies to perform proper due diligence into their value chain.

Since the evaluation in 2020 there have been some positive developments. In the coalition agreement<sup>ix</sup> of the Dutch government it is mentioned that: *'In the EU, the Netherlands promotes international corporate social responsibility legislation (ICSR) and it implements national ICSR legislation that takes into account a level playing field with neighbouring countries and implementation of possible EU regulations.'*

At European Union level the European Commission recently published a proposal for the Directive on Corporate Sustainability Due Diligence.<sup>x</sup> Although these developments seem positive, taking the complexity of the subject matter into consideration and the (business) interests involved, it may take till at least 2027<sup>xi</sup> before such an EU Directive is agreed upon.

Concluding, it is apparent that human rights violations still (risk to) occur in value chains that are (in)directly linked to Dutch companies, and therefore the Netherlands did not sufficiently follow up on the accepted recommendations as set out under section 1.

### **3. DUTCH CORPORATE LINKS TO HUMAN RIGHTS VIOLATIONS**

#### **A. Corporate Accountability**

Although several reports<sup>xii</sup> show that many investors- and pension funds through their investments do not follow the UNGPs and OECD Guidelines, also Dutch fossil fuel and agro-commodities industries are linked to violation of human rights. The Netherlands is a major importer of agro-commodities such as cocoa beans, palm oil (it is the world's third largest importer in terms of import value), soybeans (fourth country) and coffee (fifth country).<sup>xiii</sup> The responsibility referring to respectful trading principles that comes with being a major importer should be taken up by the Netherlands to ensure that Dutch companies respect human rights in their value chain in line with the UNGPs.

Below, we will elaborate in more detail on the role of Dutch companies in some of these sectors and their (in)direct links to human violations in the global south.

- **Fossil fuels**

Royal Dutch Shell is one of the biggest oil companies worldwide. Shell is among others known because of its activities in Niger Delta, Nigeria. Despite tireless protests of local

communities, an assessment report of UNEP in 2011<sup>xiv</sup>, and a follow up in 2021, a court case<sup>xv</sup> won by representatives of the victims (Milieudefensie), Shell is still not taking sufficient measures to stop polluting and start cleaning the soils and waterways in the Niger Delta.

#### Case: SHELL in Nigeria

For over five decades, oil and gas extraction have caused large-scale, continued contamination of the water and soil in Ogoni communities. The continued and systematic failure of Shell and the government to clean up have left hundreds of thousands of Ogoni people facing serious health risks, struggling to access safe drinking water, and unable to earn a living due to the contamination of waterways. The failure by Shell to stop this and to properly clean up the poisoned soil and waterways means that hundreds of thousands of Ogoni people are facing serious human rights violations. In 2011 the UNEP released a report<sup>xvi</sup> documenting the devastating impact of the oil industry in Ogoniland, and set out urgent recommendations for clean-up. A new investigation<sup>xvii</sup> highlights that the “emergency measures” proposed by UNEP have not been properly implemented and that the billion-dollar clean-up project, of which Shell is part, that was launched by the Nigerian government in 2016 has been ineffective.

- **Soy**

The meat, dairy and (animal) feed industries are fuelling the expansion of extensive soy production, causing (illegal) deforestation in countries like Argentina, Paraguay and Brazil<sup>xviii</sup>. The search for productive land has provoked social conflicts with frenzied land grabbing. Furthermore, farmers often use pesticides and herbicides to grow and harvest soybeans, whilst these chemicals are linked to environmental damage and serious illness.<sup>xix</sup> With forest and topsoil removed, agricultural chemicals can flow into rivers and then travel into protected areas, thus putting livelihoods, biodiversity and a safe, clean and healthy environment of local communities and indigenous peoples at risk.<sup>xx</sup> Deforestation in itself is one of the major drivers of climate change.

The Netherlands has an intensive meat and dairy industry and is therefore a key player in the global soy trade. Within the European Union, the Netherlands is the largest importer of both soybeans and soymeal.<sup>xxi</sup> Most of this soy (68%) is then crushed at one of the two crushing plants that are owned by the two largest soy traders in the world: Archer Daniels Midland (ADM) in Rotterdam and Cargill in Amsterdam.

A report by Global Witness reveals that those two companies, plus Bunge in Amsterdam, are linked to human rights abuses caused by soy producers in conflict with traditional communities in Brazil's Bahia state<sup>xxii</sup>. It is stated that security agents hired by the producers have reportedly intimidated community members. Some have been arbitrarily detained, beaten, and threatened with murder. The community claim their ancestral lands are being taken from them, endangering their lives and livelihoods. In many cases the report shows business relationships are directly linked to international traders as contributors to the abuse and victimisation of the community. These international traders then sell their soy as animal feed to Dutch companies, thus making Dutch companies indirectly complicit in human rights violations in their value chain.<sup>xxiii</sup>

In these cases, the international traders and also Dutch companies purchasing soy from them fail their responsibility to respect human rights based on the UNGPs. Responsibilities that have often – in addition to the UNGPs – been laid down in their own policies and have been confirmed by many other authoritative international standards on business (and human rights), including the OECD Guidelines and the OECD Guidance for Responsible Business Conduct. Pursuant to these standards, it is well established that ADM's, Bunge's, Cargill's and also the Dutch companies' responsibilities to respect human rights in their value chain exists independently from the obligation of the Netherlands to protect human rights.

- **Palm Oil**

Indonesia is the world's top producer and exporter of palm oil. Also Malaysia (second) and Colombia (fourth) are large producers of palm oil. As there is high demand for palm oil, other countries have plans or attributed licences for industrial palm oil plantation expansion, including countries in the Congo Basin, Nigeria, Sierra Leone and Liberia. Governments present palm oil as a strategy to lift their country out of poverty and are giving large tracts of land to companies in concessions. Consequently, large swathes of primary forest risk being cut down for palm oil plantations. Local residents are being chased away from their land, often without giving consent and without receiving due compensation. Those who can work as plantation workers earn too little to make ends meet and often face systemic labour rights violations. The result: destroyed environments and biodiversity, social problems, crime and conflicts. Despite promises of companies that they bring work and income, many communities in or around plantations live in poverty. Due to monoculture and the use of pesticides, the soil dries up and pollutes the water and communities run health risks due to the pesticides.<sup>xxiv</sup> Communities now have to buy drinking water, whereas before they used to get water from the river.<sup>xxv</sup>

The Netherlands is the world's third largest importer of palm oil in terms of import value. It is one of the biggest importers of palm oil from Indonesia, Colombia, Sierra Leone, Cameroon and Liberia. Dutch companies buy palm oil from international palm oil brokers such as Socfin<sup>xxvi</sup> and Fedepalma<sup>xxvii</sup>. These international palm oil brokers have (mis)used the policies of aforementioned governments by making use of land concessions over land with controversial tenure rights either themselves or by companies (such as Poligrow in Colombia<sup>xxviii</sup>) from which they buy palm oil.<sup>xxix</sup>

Although these companies have policies stating that they respect human rights, it is apparent from referenced reports that violations of human rights do occur in their value chain. Consequently, it is inherent that Dutch companies purchasing palm oil from these companies run a substantial risk that human rights were violated in their value chain.

- **Dredging in the Global South**

Dredging companies are hardly mentioned when human right violations by Dutch companies are discussed. Nevertheless, the OECD qualifies the infrastructure sector, including the dredgers, as one of the thirteen highly risky sectors. Consequently, dredging companies should pay due care and perform proper due diligence when accepting contracts to ensure that no human rights are violated prior to or in the course of fulfilling their contract. It appears however that Dutch dredging companies don't exercise sufficient due diligence and risk being linked to human rights violations and damage the environment and local communities in many ways.

*Case Boskalis in Sulawesi<sup>xxx</sup> :*

Boskalis conducted two dredging projects in Makassar, South-Sulawesi Indonesia. The first was a prestige project to expand the city of Makassar. 40 families were violently evicted from their land by the government to make way for the dredging project by Boskalis and the land development. Also this project has led to coastal erosion and increased wave intensity impacting buildings along the coast. The second was the construction of a new port. In both projects fishing communities in and around Makassar protested against these sand mining and reclamation projects. The activities of Boskalis have decreased the incomes from fishing, as fishing areas have been damaged, the water got muddy and fishermen have to travel more miles by boat increasing fuel costs. Boskalis claims that funds have been set up to compensate the fisherfolk for the loss of fishing grounds. But the impacted fishermen and their families were not informed by Boskalis of the potential negative impacts of the project and never received any compensation. Also the fishermen were never involved in the development phase of the projects.

Similarly in project developments in Jakarta Bay<sup>xxxi</sup>, fishing communities were never involved in the development phase of the project or compensated for their losses. In May 2016 the Indonesian Minister of Environment and Forestry ordered by decree an immediate suspension of all work on the artificial islands in Jakarta Bay. The ministry concluded that fisherfolk had never been involved in the planning, the companies had violated their permits and the Environmental Impact Assessments were not in order. The fisherfolk in Jakarta Bay have seen the success of their protest, but the fisherfolk of Makassar are still in the middle of their struggle for justice.

## **B. Investments of Dutch financial sector in relation to human rights violations**

The Dutch financial sector, its banks, insurance companies and pension funds, invests billions in private sector companies who trade in products (i.e. palm oil and soy) with a high risk of deforestation.<sup>xxxii</sup> Despite having sustainability policies Dutch financial institutions

such as ABN Amro, Rabobank and ING<sup>xxxiii</sup> continue to finance controversial palm oil companies. Between 2010 and 2018, they invested at least EUR 4.9 billion in fourteen companies involved in more than a hundred scandals in Indonesia, Malaysia, Cameroon, Sierra Leone and Liberia, among others. Land grabbing, deforestation, conflict, falsification of environmental reports, violation of labour rights and obstruction of inspections are the order of the day and these banks have been aware of this for at least 10 years.<sup>xxxiv xxxv xxxvi</sup>

Also Dutch pension funds are linked to human rights violations via their investments in foreign companies. In February 2021 the Dutch Fair Finance guide researched land grabbing by pension funds and found investments for at least EUR 8.2 billion in companies involved in serious violations of land rights. Stichting Pensioenfond ABP, Pensioenfond Zorg en Welzijn and Pensioenfond Metaal en Techniek were the largest investors. None of the pension funds sufficiently engaged with the companies they invested in and that are guilty of land grabbing, or that are structurally committed to compensating victims. Local communities in Brazil, Colombia, DRC, India, Indonesia, Sierra Leone and Vietnam, among others, are victims of land grabbing and intimidation by the companies in which these pension funds invest.<sup>xxxvii</sup>

In June 2021, the Dutch Fair Insurance Guide published a study on how insurance companies respond to serious human rights violations by companies in which they invest. The nine largest insurance groups active in the Netherlands together invest more than 4 billion euros in eleven multinationals that are involved in human rights violations. The findings: most insurance companies take no or insufficient action against companies involved in cases of i.e. heavy pollution, land grabbing, gross violence and even murder, even if they have been aware of these abuses for years. Achmea, Aegon, Allianz, ASR, Menzis, NN Group and VGZ could not demonstrate that they are taking sufficient action against the violations, as required by international standards as the UNGPs.<sup>xxxviii</sup>

### **C. Indirect links of the Netherlands to human rights violations through its export credit agency**

The Netherlands is the sole shareholder of an export credit agency, Atradius Dutch State Business, that supports by among others insuring payment risks for Dutch exporters of capital goods that private insurers do not cover. One expects that the Netherlands would ensure that support is only provided in relation to projects where Dutch companies ensure that no human rights are violated or the environment is damaged, but this is not the case.

For example through Atradius DSB, the Netherlands has provided export credit insurance to a consortium led by Boskalis and Van Oord for an amount of EUR 515 million for the Suez expansion project.<sup>xxxix</sup> The expanded canal would provide the world with a two-way traffic shipping lane through Egypt's Sinai Desert. Shortly before the start of the dredging activities, several media outlets reported significant adverse human rights and environmental impacts and risks associated with the project. Thousands of Egyptians were reported to have been forcibly evicted from their homes without consultation or sufficient compensation in order to make way for the Suez Canal.<sup>xl</sup> Despite these abuses and the media attention, the project went forward as planned and the insurance was provided.

According to the CSR policy of Atradius DSB,<sup>xi</sup> the Netherlands wants:  
*“companies to operate responsibly both in the Netherlands and abroad. Atradius DSB therefore encourages companies to observe the OECD guidelines’ recommendations to the fullest extent possible. Furthermore, it is set out that Atradius DSB, will only insure export transactions and investments abroad if it is of the opinion that they have no unacceptable environmental or social impacts. The export transactions may furthermore not be associated in any way with issues such as bribery or abuses of human rights.”*

Taking the case set out above into account, this policy clearly was not complied by.

According to the UNGPS and the OECD Guidelines, Atradius DSB has the responsibility to respect human rights and avoid adverse impacts. It is not only expected to identify, prevent, and mitigate impacts that they themselves cause or to which they contribute, but they are also expected to mitigate any impacts caused by other businesses or governments that are linked to their products or services. This has clearly not been done in aforementioned case.

Also the Netherlands is acting in conflict with aforementioned frameworks as it has the duty to protect human rights in relation to business activity and the environment. As the sole shareholder of Atradius DSB, the Netherlands should use its leverage to ensure that only support is provided to companies that respect human rights and the environment in their business activity.

## **4. CLIMATE CHANGE**

There is international agreement that global warming must be kept well below 2°C with the aim to reach 1.5°C. The latest IPCC report<sup>xlii</sup> shows that we must reckon with sudden, irreversible accelerations in warming and that without a drastic reduction in emissions this decade, we risk passing tipping points that will amplify ecological damage and exponentially increase climate change. Even a temporary exceedance of 1.5°C is extremely dangerous and would result in irreversible adverse effects on timescales from centuries to millennia, or in the case of species extinction, simply irreversible.

### **A. Climate change and human rights**

Climate change and human rights are interrelated.<sup>xliii</sup> The UN Special Rapporteur made statements<sup>xliv</sup> and also UN Human Rights Committee has adopted many resolutions on this<sup>xlv</sup> and considered<sup>xlvi</sup>:

*“Furthermore, the Committee recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”*

One of the OHCHR’s consideration is to protect human rights from business harms:  
*“States must take adequate measures to protect all persons from human rights harms caused by businesses; to ensure that their own activities, including activities conducted in*

*partnership with the private sector, respect and protect human rights; and where such harms do occur to ensure effective remedies. Businesses are also duty-bearers.”<sup>xlvi</sup>*

The OHCHR’s key messages on human rights and climate change highlight the essential obligations and responsibilities of States and other duty-bearers, including businesses, and their implications for climate change-related agreements, policies, and actions.<sup>xlvi</sup> <sup>xlix</sup>

## **B. Climate change and deforestation**

Deforestation is linked to human rights violations as well as one of the major drivers of climate change that will have a huge impact on the living standards of a substantial part of the global population.

In 2014 the Netherlands was party to the declaration to halve global deforestation in 2020<sup>l</sup> and to stop it in 2030. However since then, even more primeval forest has been cut down. During the Climate Summit in Glasgow, in November 2021, the Netherlands again committed herself to stop deforestation in 2030. It is not clear how the Netherlands will contribute in preventing deforestation in the forthcoming years.

It is also evident that voluntary commitments of businesses are not sufficient. Leading consumer goods companies in the Netherlands such as Unilever, Mondelez, Nestlé and Procter & Gamble as well as top palm oil traders including Cargill, GAR, Musim Mas and Wilmar, are purchasing palm oil originating from producers linked to scores of fires in Indonesia. These traders and consumer companies are (in)directly linked to palm oil operations that have been subject to court action, administrative sanctions or other government intervention as a result of fires.<sup>li</sup>

Dutch financial institutions also play a big role in deforestation through their investments. Rabobank was the largest Dutch creditor of forest-risk commodities in the selected countries. In the period 2016 to March 2021, it provided approximately US\$ 1.7 billion in loans and underwriting services attributable to such commodities. It was followed by ABN Amro (US\$ 1.1 billion) and ING Group (US\$ 1 billion) (Figure 1).<sup>lii</sup>

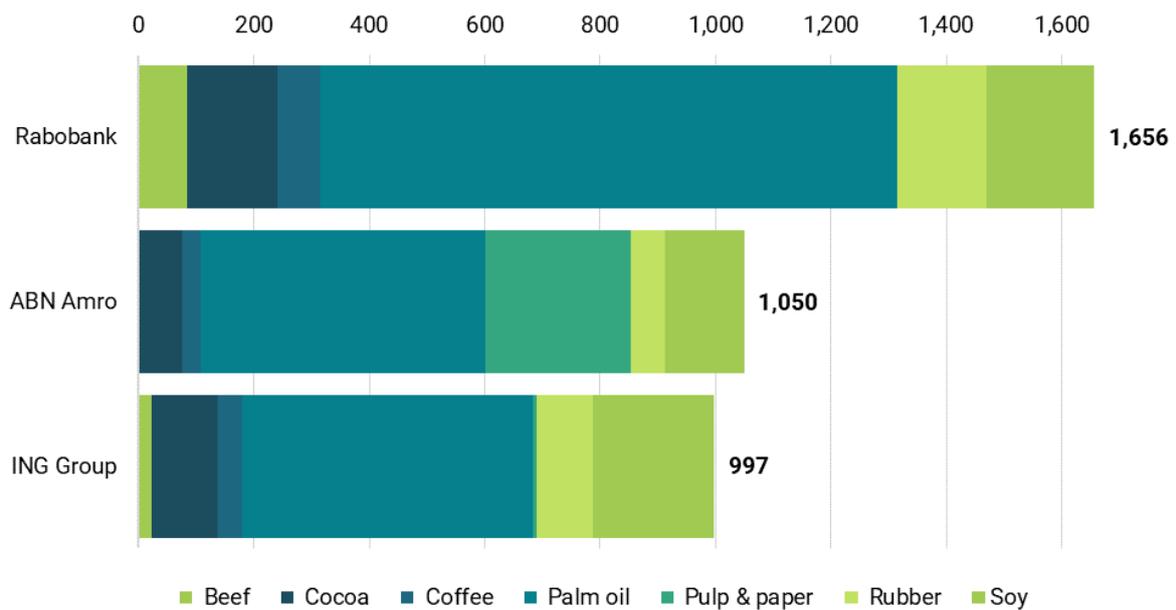


Figure 1 Dutch forest-risk loans & underwriting per creditor and commodity (2016-2021 March, US\$ mln)

### C. Indirect links of the Netherlands to climate change through its export credit agency

The Netherlands is also contributing to a rise in greenhouse emissions by providing export credit support for fossil projects abroad through its ECA.<sup>liii</sup>

#### **CASE Mozambique:**

The Netherlands provided over EUR 1 billion export credit insurance through its ECA for the Mozambique LNG project.<sup>liv</sup> This insurance was granted during the week that extremely violent attacks took place.<sup>lv</sup> The project has contributed to human rights violations on the ground as people were removed from their homes, agricultural lands and fishing grounds; it also contributed to tensions on the ground escalating in severe violent conflict, leading to thousands of deaths, hundreds of thousands of refugees and severe conflict-related gender based violence. Civic space has shrunk, with critical journalists and NGOs not able to enter the region and even disappearing. The violence is coming from insurgents, the Mozambican forces as well as private security forces. The ECA fossil insurance goes against the Paris Agreement, and contributes to global climate change, in a country already hit hard by it.

As the Netherlands signed the joint Statement on International Public Support for the Clean Energy Transition at COP26 in Glasgow<sup>lvi</sup> it must implement its commitments and ensure that its ECA also implements the commitments made thereunder. Consequently, the Netherlands should ensure that its ECA no longer provides any export credit insurance to projects relating to the fossil fuel energy sector.

## 5. ACCESS TO JUSTICE AND REMEDY

The Third pillar of the UNGP is about access to justice and remedies: the need to provide effective remedies for human rights violations. States should take necessary steps to ensure through judicial, administrative, legislative or other appropriate means that those affected by human rights violations within their territory and/or jurisdiction have access to effective redress.

Recent legal cases<sup>vii</sup> confirmed that the Netherlands has not fully complied in providing victims of human rights violations by Dutch companies in the Netherlands and abroad access to justice and remedy in the Netherlands. In general, victims are faced with practical and judicial barriers when litigating such as unequal information position, costs of litigating, burden of proof, availability of legal assistance, competence Dutch court, applicable law and also (in the case of a criminal complaint) the available resources at prosecuting authorities.

To promote an efficient and effective collective settlement of mass damage and to make it easier for victims to collectively recover those damages, the *Wet afwikkeling massaschade in collectieve actie* ('WAMCA') was introduced. However, the WAMCA imposes additional requirements on idealistic foundations/associations wanting to make use of the WAMCA for their constituency, resulting in extra organisational costs. Also, only collective proceedings that have a sufficiently close connection with the Dutch legal sphere can be brought before the Dutch court. This is an additional obstacle as most facts occur abroad and are connected to foreign subsidiaries of Dutch companies. Since there is a lack of organisational transparency in Dutch companies, it will be very difficult to sue a Dutch company on the basis of this law for human rights violations committed by its 100% foreign subsidiary. Other obstacles such as, transparency, financial costs of legal proceedings and applicable law<sup>viii</sup> are not addressed in the WAMCA, so that these barriers remain an issue in the access to remedy.

## 6. NATIONAL HUMAN RIGHTS INSTITUTE

The Dutch National Institute for Human Rights (NHRI) has an important role to play in putting national issues in a human rights perspective<sup>lix</sup>. The NHRI confirmed the importance of a human rights-based approach to the Sustainable Development Goals (SDGs) and Paris Agreement on Climate Change at international events, such as COP23 in Bonn. The NHRI has as the mandate by law to protect all human rights and research and insure better implementation of all human rights.

On 8 October 2021 the Netherlands, along with almost all the other countries in the Human Rights Council, voted in favour of the global recognition of the human right to a safe, clean, healthy and sustainable environment. The resolution encourages States to adopt policies for the enjoyment of the right to a safe, clean, healthy and sustainable environment as appropriate, including with respect to biodiversity and ecosystems. Now is the time that the Netherlands and its NHRI invests in and works on this adopted human right<sup>lx</sup>. Unfortunately, not much is done on those topics.

## 7. REQUESTED RECOMMENDATIONS

**We call on States and ask the UN Human Rights Council to recommend the Netherlands to:**

***on corporate accountability (including the financial sector):***

1. Implement, monitor and enforce Dutch mandatory human rights and environmental due diligence legislation at least in line with the UNGPs and the OECD Guidelines to prevent any negative impact from public and private actors, including companies and financial institutions, on human rights in relation to their health, wellbeing and their natural environment throughout their whole (international) value chain including accountability clauses for damages in case of infringements.
2. Design mandatory independent human rights, including indigenous rights, and environmental impact assessments with the clear aim and responsibility for Dutch companies to respect human rights and the environment globally and make these assessments part of the Dutch mandatory human rights and environmental due diligence legislation as set out under recommendation 1 above.
3. Secure the land and tenure rights of indigenous and rural communities by implementing the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest in the Context of National Food Security.
4. Only invite Dutch companies to accompany the Netherlands on trade missions abroad if these companies are transparent on their compliance with the UNGPs and OECD Guidelines and have not been (in)directly linked to human rights violations and environmental damage abroad.
5. Implement the Glasgow commitment in regards to fossil phase out by 2022, which means translating the commitment into a binding policy, ensuring strong guidelines that do not leave loopholes to promote oil and gas (in the Netherlands or abroad), and substantially increasing international financial support for a just energy transition.
6. Ensure that compliance with UNGPs and OECD Guidelines is a precondition for public tenders and subsidies; and exclude companies that have been (in)directly linked to human rights violations and environmental damage.
7. Ensure the EU Directive Corporate Sustainability Due Diligence will not set the bar lower than the UNGP's and the OECD Guidelines.
8. Actively push at EU level for the Council to give the EU Commission a mandate to negotiate at UN level on the UN Binding Treaty for transnational companies and human rights, so that the EU will actively and constructively participate in the negotiations on this Treaty to ensure that all companies worldwide will respect

human rights and the environment throughout their and their business relations' value chain.

***on its export credit agency:***

9. Require all involved in state export credit support projects, via Atradius DSB or other actors, to perform their own independent human rights (social, economic and environmental) impact assessment, involving all relevant stakeholders prior to providing any insurance and only providing support if there are no negative consequences for relevant stakeholders such as local communities, indigenous peoples and the environment.
10. Ensure that all involved in state export credit support projects, including Atradius DSB, change their CSR policy (i) requiring companies to observe the UNGPs and the OECD guidelines, (ii) requiring companies to perform an independent social, economic and environmental impact assessment, involving all relevant non state stakeholders prior to providing any insurance.
11. Ensure all involved in state export credit support projects, including Atradius DSB, only provide support to companies that comply with the UNGPs and the OECD Guidelines.

***on climate change:***

12. Ensure all public and private actors are legally obliged to set concrete climate plans of action to bring their activities in line with the 1.5-degree scenario of the Paris Agreement and specify criteria (by sector) for corporate climate targets (short-, medium- and long-term) for greenhouse gas emission reductions in their entire value chain (scope 1, 2 and 3) in absolute percentage.
13. Ensure climate impact is part of the previously mentioned Dutch mandatory human rights and environmental due diligence legislation, the EU Directive Corporate Sustainability Due Diligence and the UN Binding Treaty for transnational companies and human rights.

***on access to remedy:***

14. Ensure enforcement and effective remedies and remove legal and practical obstacles to holding accountable companies domiciled in the Netherlands, for violations of human rights, resulting from their operations in the Netherlands or abroad, such as reversal of the burden of proof, transparency regarding corporate information, making Dutch law the applicable law in the Dutch mandatory human rights and environmental due diligence legislation, and establishing a financial fund to support victims for the costs of legal proceedings.
15. Fully map which legal avenues and regulations (including applicable law, legal standing for NGOs, legal aid and forum non conveniens) are in place to hold Dutch

companies liable for damage caused. Then assess whether these avenues are sufficient and easily accessible; both practical and affordable and mend where needed, especially to safeguard access to justice and remedies for (potential) victims of human rights violations from countries in which there are little to no realistic possibilities for redress.

***on the Dutch NHRI:***

16. Expand the Dutch NHRI with extra staff and financial resources to work on respecting human rights with regards to environmental and climate issues.
17. Train existing staff to implement formal human rights-based assessments and monitoring mechanisms, which includes environmental standards and (environmental) impact assessments.

## ENDNOTES:

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- <sup>i</sup> This report consists of 5630 words, excluding the end notes, cover page, list of abbreviations and information on the submitting organisations
- <sup>ii</sup> [https://www.upr-info.org/sites/default/files/document/netherlands/session\\_27\\_-\\_may\\_2017/matricerecommendationsnetherlands.pdf](https://www.upr-info.org/sites/default/files/document/netherlands/session_27_-_may_2017/matricerecommendationsnetherlands.pdf)
- <sup>iii</sup> UN Document A/HRC/36/15/Add.1
- <sup>iv</sup> <https://www.imvoconvenanten.nl/en/why/achtergrond>
- <sup>v</sup> <https://www.imvoconvenanten.nl/nl/convenantenoverzicht>
- <sup>vi</sup> <https://www.somo.nl/wp-content/uploads/2016/03/Dredging-in-the-Dark.pdf>
- <sup>vii</sup> <https://www.kit.nl/wp-content/uploads/2020/07/KIT-2020-Evaluation-of-RBC-agreements-FINAL.pdf>
- <sup>viii</sup> <https://www.imvoconvenanten.nl/-/media/imvo/files/mvo-sector-risk-assessment.pdf?la=en&hash=E04F2533DE30CFF10A2C2D3C2E2D1327>
- <sup>ix</sup> <https://www.parlement.com/9291000/d/pdfs/coalitieakkoord-2021-2025.pdf>
- <sup>x</sup> <https://ec.europa.eu/info/publications/proposal-directive-corporate-sustainable-due-diligence-and-annex-en>
- <sup>xi</sup> <https://www.mvoplatform.nl/europese-wetgeving-voor-verantwoord-ondernemen-niet-haalbaar-voor-2027-nationale-actie-nodig/>
- <sup>xii</sup> [https://www.tni.org/files/download/nl\\_and\\_global\\_land\\_and\\_water\\_grab.pdf](https://www.tni.org/files/download/nl_and_global_land_and_water_grab.pdf) and <https://www.worldbenchmarkingalliance.org>
- <sup>xiii</sup> <https://www.cbs.nl/nl-nl/nieuws/2019/31/nederland-grootste-importeur-cacaobonen>
- <sup>xiv</sup> [https://postconflict.unep.ch/publications/OEA/UNEP\\_OEA.pdf](https://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf)
- <sup>xv</sup> <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2021:134>
- <sup>xvi</sup> <https://www.unep.org/explore-topics/disasters-conflicts/where-we-work/nigeria/environmental-assessment-ogoniland-report>
- <sup>xvii</sup> <https://friendsoftheearth.eu/wp-content/uploads/2020/11/No-Clean-Up-No-Justice.pdf>
- <sup>xviii</sup> <https://news.mongabay.com/2021/07/study-shows-how-soy-cattle-team-up-to-drive-deforestation-in-south-america/>
- <sup>xix</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6918143/>
- <sup>xx</sup> <https://news.mongabay.com/2021/07/as-soy-frenzy-grips-brazil-deforestation-closes-in-on-indigenous-lands/>
- <sup>xxi</sup> <https://www.idhsustainabletrade.com/uploaded/2021/06/2019-IDH-European-Soy-Monitor-report.pdf>
- <sup>xxii</sup> [https://www.globalwitness.org/documents/20216/Seeds\\_of\\_Conflict\\_-\\_November\\_2021.pdf](https://www.globalwitness.org/documents/20216/Seeds_of_Conflict_-_November_2021.pdf)
- <sup>xxiii</sup> <https://milieudefensie.nl/actueel/een-schimmige-sojaketen.pdf>
- <sup>xxiv</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6918143/>
- <sup>xxv</sup> <https://www.amnesty.nl/wordt-vervolgd/de-rol-van-nederland-in-de-vuile-palmolie-industrie>
- <sup>xxvi</sup> <https://www.fian.be/Landgrabbing-by-SOCFIN-in-Sierra-Leone-documentation?lang=fr>,
- <sup>xxvii</sup> [https://web.fedepalma.org/sites/default/files/04032022\\_Balance2021\\_y\\_perspectivas\\_2022delaagroindustria\\_de\\_la\\_palma\\_de\\_aceite\\_CMG.pdf](https://web.fedepalma.org/sites/default/files/04032022_Balance2021_y_perspectivas_2022delaagroindustria_de_la_palma_de_aceite_CMG.pdf)
- <sup>xxviii</sup> <https://wrm.org.uy/articles-from-the-wrm-bulletin/section1/colombia-palm-producing-company-poligrow-plans-to-grab-more-land-under-the-small-producers-scheme/>  
<https://eia-global.org/press-releases/poligrow-colombia-ltda-ordered-to-suspend-operations-due-to-presumed-envir>  
<https://www.business-humanrights.org/en/latest-news/colombian-land-activist-threatened-by-paramilitaries-linked-to-oil-palm-company-poligrow/>  
<https://wrm.org.uy/articles-from-the-wrm-bulletin/section1/colombia-palm-producing-company-poligrow-plans-to-grab-more-land-under-the-small-producers-scheme/> <https://wrm.org.uy/articles-from-the-wrm-bulletin/section1/colombia-palm-producing-company-poligrow-plans-to-grab-more-land-under-the-small-producers-scheme/>  
<https://www.colectivodeabogados.org/?El-rol-de-las-empresas-en-el-conflicto-armado-y-la-violencia-sociopolitica>
- <sup>xxix</sup> [https://www.fian.be/IMG/pdf/fian\\_b\\_report\\_landgrab\\_in\\_sl\\_malen\\_2019\\_full\\_weblow.pdf](https://www.fian.be/IMG/pdf/fian_b_report_landgrab_in_sl_malen_2019_full_weblow.pdf)
- <sup>xxx</sup> Case elaborated in: [https://friendsoftheearth.eu/wp-content/uploads/2020/10/FoEE\\_Human\\_Rights\\_report\\_v15-pages-1.pdf](https://friendsoftheearth.eu/wp-content/uploads/2020/10/FoEE_Human_Rights_report_v15-pages-1.pdf)
- <sup>xxxi</sup> <https://www.somo.nl/wp-content/uploads/2017/04/Social-justice-at-bay-28-April-2017.pdf>

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- <sup>xxxii</sup> Report: Kuepper B. and W. Warmerdam (2021, December), Dutch Financing of Forest-Risk Sectors – An Analysis of Financial Links with Key Sectors Driving Forest Loss, Amsterdam, The Netherlands: Profundo. <https://www.profundo.nl/en/projects/dutch-financing-of-forest-risk-sectors>
- <sup>xxxiii</sup> See an overview (substantiated with reports) of several human rights violations of INGs clients Noble Group Ltd. in Indonesia; Bolloré Group and Socfin Group S.A. in Cameroon en Sierra Leone; and Wilmar International Ltd in Indonesia and Liberia. [OECD Complaint](#)
- <sup>xxxiv</sup> <https://milieudefensie.nl/actueel/draw-the-line.pdf>
- <sup>xxxv</sup> <https://forestsandfinance.org/news/chases-big-rainforest-problem/>
- <sup>xxxvi</sup> <https://wrm.org.uy/articles-from-the-wrm-bulletin/section1/brazil-plantation-company-suzano-covers-up-its-devastating-impacts-with-claims-of-conservation/>
- <sup>xxxvii</sup> <https://eerlijkegeldwijzer.nl/media/496737/2021-02-praktijkonderzoek-pensioenfondsen-en-landrechten.pdf>
- <sup>xxxviii</sup> [https://eerlijkegeldwijzer.nl/media/497067/2021\\_06-praktijkonderzoek-human-rights-and-extractives.pdf](https://eerlijkegeldwijzer.nl/media/497067/2021_06-praktijkonderzoek-human-rights-and-extractives.pdf)
- <sup>xxxix</sup> <https://www.somo.nl/nl/wp-content/uploads/sites/2/2016/03/Dredging-in-the-Dark.pdf>
- <sup>xl</sup> <https://www.theguardian.com/world/2014/sep/03/egyptians-evicted-without-compensation-suez-canal-project>
- <sup>xli</sup> <https://atradiusdutchstatebusiness.nl/en/about-us/corporate-social-responsibility-csr.html>
- <sup>xlii</sup> <https://www.ipcc.ch/report/ar6/wg2/>
- <sup>xliiii</sup> See (e.g.) Delivering on the Paris Promises: Combating Climate Change while Protecting Rights <https://unfccc.int/sites/default/files/903.pdf> <https://www.ohchr.org/en/climate-change/impacts-climate-change-effective-enjoyment-human-rights> or
- <sup>xliiv</sup> Safe Climate: A Report of the Special Rapporteur on Human Rights and the Environment, 1 October 2019, A/74/161, Acknowledgements.
- <sup>xli v</sup> <https://www.ohchr.org/en/climate-change/reports-human-rights-and-climate-change>
- <sup>xli vi</sup> HRC 23 September 2020, CCPR/C/127/D/2728/2016 (Ioane Teitiota - New Zealand), section 9.4. “Furthermore, the Committee recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.
- <sup>xli vii</sup> Also: “Businesses are also duty-bearers. They must be accountable for their climate impacts and participate responsibly in climate change mitigation and adaptation efforts with full respect for human rights. Where States incorporate private financing or market-based approaches to climate change within the international climate change framework, the compliance of businesses with these responsibilities is especially critical.” see: <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf>
- <sup>xli viii</sup> Also: “Climate justice requires that climate action is consistent with existing human rights agreements, obligations, standards and principles. Those who have contributed the least to climate change unjustly and disproportionately suffer its harms. They must be meaningful participants in and primary beneficiaries of climate action, and they must have access to effective remedies.”
- <sup>xli ix</sup> Also: “Businesses are also duty-bearers. They must be accountable for their climate impacts and participate responsibly in climate change mitigation and adaptation efforts with full respect for human rights. Where States incorporate private financing or market-based approaches to climate change within the international climate change framework, the compliance of businesses with these responsibilities is especially critical.” see: <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf>
- <sup>i</sup> <http://forestdeclaration.org>
- <sup>ii</sup> <https://storage.googleapis.com/planet4-international-stateless/2019/11/5c8a9799-burning-down-the-house-greenpeace-indonesia-fires-briefing.pdf>
- <sup>iii</sup> <https://www.profundo.nl/download/md-211208-gecomprimeerd>
- <sup>iiii</sup> <https://en.milieudefensie.nl/news/07-md-banktrack-fossil-fuels-africa-rpt-hr.pdf>
- <sup>lv</sup> <https://www.bothends.org/en/Whats-new/News/Is-the-Netherlands-insuring-a-controversial-gas-extraction-project-in-Mozambique-/>
- <sup>lv</sup> Amnesty International, Mozambique: “What I saw is death”: War crimes in Mozambique’s forgotten cape, March 2021; Human Rights Watch, “Mozambique: Hundreds Women, Girls Abducted”, December 7, 2021.
- <sup>lvi</sup> <https://ukcop26.org/statement-on-international-public-support-for-the-clean-energy-transition/>
- <sup>lvii</sup> [Shell/ Nigeria court case](#) and [BothEnds/Boskalis court case](#)
- <sup>lviii</sup> [Shell/ Nigeria court case](#)
- <sup>lix</sup> For some pages of The Netherlands Institute for Human Rights website in English: <https://www.mensenrechten.nl/mission-and-ambition>

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<sup>kx</sup> Resolution A/HRC/48/L.23/Rev.1 on the Human right to a safe, clean, healthy and sustainable environment, was adopted by a vote of 43 in favour (including The Netherlands), none against and 4 abstentions (as orally revised).

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**Annex 1      Contact details submitting organisations**

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