



Groninger  
Bodem Beweging



**Frisse Wind. Nu!**



**Kinderrechten.nl**

**GREENPEACE**

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 health, environmental issues and sustainable development, is submitted on behalf of the following NGOs:

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9. Greenpeace Nederland<sup>vii</sup>
10. Lab for Future Generations<sup>viii</sup>
11. Mobilisation For The Environment<sup>ix</sup>

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Many of these NGOs have interrelated with the UN before, through work on health, environmental issues and sustainable development – often specifically in relation to human rights and in UPR reporting.

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## LIST OF ABBREVIATIONS

CC	Climate Change
CCPR	UN Human Rights Committee
CERD	Committee on the Elimination of Racial Discrimination
CESCR	UN Committee on Economic Social and Cultural Rights
DCC	Dutch Civil Code
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
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institute
NL	The Netherlands
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
RTRS	Round Table for Responsible Soy
SDGs	The Sustainable Development Goals
WAMCA	Dutch Mass Damage Settlement Act in Collective Action (in Dutch: “Wet afwikkeling massaschade in collectieve actie”)

## 1. INTRODUCTION

The undersigned NGOs welcome the opportunity to submit a stakeholders' report for the Fourth Universal Periodic Review (UPR) of the Kingdom of the Netherlands, to be held in 2022.

Because of the statutory goal and mission of the NGOs involved, this report focuses on human rights issues in relation to the environment and health. 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.

For present and future generations of all life.

### **Introduction into the context of the Netherlands**

In recent years, the recognition of the links between human rights and the environment has greatly increased. The number and scope of international and domestic laws, judicial decisions, and academic studies on the relationship between human rights and the environment have grown rapidly. The most prominent lawsuit that has been 'done and won' based on human rights is the famous Urgenda climate case of 2019<sup>10</sup>.

The Netherlands has - from the start - promoted the SDGs in and outside our country. Unfortunately, it has not chosen a human rights-based approach to implement and monitor progression on the SDGs.

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.<sup>11</sup>

Despite beautiful words supported through the SDGs, UNFCCC Climate Change COPs and Human Rights Council Resolutions supported – including the new human right to a safe, clean, healthy and sustainable environment, practice in The Netherlands is poor.

Dutch people and children breathe in heavily polluted air, the state does not live up to its climate change obligations, it allows businesses to pollute our air, soil, water and natural areas, allows airports to expand and increase the amount of air and noise pollution, etcetera. One of the reasons this happens is the lack of human rights focus when it comes to the environment.<sup>12</sup>

Despite all recommendations received and adopted, the Netherlands has not at all implemented human rights-based mechanisms (including on permits, monitoring and enforcement) to ensure human rights are not violated by public and private actors. The people of Groningen still live in insecurity as the Dutch Government continues to threaten to drill for more gas if we have colder days or if our big neighbour Germany needs it. They have not received adequate compensation and do not meaningfully participate. The same goes for the people that live near other polluting industrial plants such as that of Tata Steel in The Netherlands or in Curacao.

Contrary to its positive human rights obligations, the state does not restrict private actors through better laws, governance, permits, monitoring or enforcement and waits for NGOs and people to sue the companies - as they recently have successfully done on Shell – or file criminal complaints against them – as in the case of Tata Steel (IJmond) and NAM (in Groningen).

It does show our legal system (and our judges) works, but for sure practise ought to be regulated otherwise - based on the positive obligations of the State.

## **2. RECOMMENDATIONS RECEIVED BY THE NETHERLANDS**

Short overview of relevant recommendations that the state has not sufficiently followed up on. Please see **Annex I** for a full overview:

### **2.1 UPR recommendations - 3<sup>rd</sup> cycle in 2017 (A/HRC/36/15)**

Strong recommendations on business and human rights (No. 131.106 to 131.112), two explicit on environmental damage with (no. 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 confirmed<sup>13</sup>

“The Netherlands is committed to preventing involvement of any Dutch companies in human rights abuses” And, in relation to 131.110, “it remains primarily the duty of the host State to protect its citizens from human rights abuse by domestic as well as transnational companies.”

### **2.2 Other treaty body recommendations**

#### **\* CDESCR Concluding Observations In 2017 (E/C.12/NLD/CO/6)**

In 2017, CDESCR recommended in its Concluding Observations after the 2017 review of The Netherlands<sup>14</sup> ‘to pursue a human right–based approach, including human rights impact assessments, in its development cooperation policy’. It expressed concerned and gave recommendations on business harming human rights on gas extractions and Groningen, the polluting oil refinery in Curacao and damage to the environment and to indigenous people’s livelihoods in Peru.

CDESCR recommended “to ensure compliance with human rights obligations for companies operating in the territory of the State party.”

#### **\* CCPR Concluding Observations In 2019 (CCPR/C/NLD/CO/5)**

Acknowledging it as a priority issue, ...the Committee remains concerned by the serious effects that gas extraction operations have had on the safety and well-being of inhabitants in the Groningen region as well as their private lives in their homes (arts. 6, 17 and 23).

The State party should:

- (a) Take necessary measures to ensure the physical safety and mental well-being of people residing in the area of gas extraction in Groningen and the security and safety of their homes.
- (b) Provide adequate compensation to the victims and prevent future occurrences of damages related to gas extraction;
- (c) Ensure the meaningful participation of, and consultation with, inhabitants of Groningen in designing and implementing the phase-out plan.

\* **CERD Concluding Observations in 2021 (CERD/C/NLD/CO/22-24)**

August 2021, The Committee on the Elimination of Racial Discrimination:

- Expresses its concern that climate change is negatively impacting the human rights of people in the Dutch Caribbean,
- Recommends to initiate studies to understand the negative impact of climate change, consider avenues to provide full support and mitigate; and
- Protect vulnerable groups against negative climate change impacts.<sup>15</sup>

\* **CRC Concluding Observations In 2022 (CRC/C/NLD/CO/5-7)**

CRC (in 31. and 32.) is very clear that The Netherlands needs to address air pollution and climate change, expresses its concerns on the heavily polluted air children breath “concerned about the negative impact of climate change on the rights of the child and the high prevalence of pollution-induced asthma.” and recommends to

- Reduce greenhouse gas emissions in line with international commitments taking into account children’s rights, needs and views
- Mitigate and adaptation to the harmful effects of climate change, including the heightened risks of the rise in sea levels and stronger hurricanes in the Caribbean;
- Assess policies and practices related to the aviation, transport and other relevant sectors and the impacts of the resulting atmosphere pollution and greenhouse gas emissions on children’s rights as a basis for designing a well-resourced strategy to remedy the situation;
- Promote children’s awareness of climate change, environmental health, air pollution and their right to health.

### **2.3 The Netherlands Knows**

The State knows that it is its duty to protect its citizens from corporate human rights violations and environmental damages.

In this report we will see that despite that and all recommendations, it does not act sufficiently and it does not prevent human rights violations of Dutch companies impacting present and future generations in and outside The Netherlands.

### **3. HUMAN RIGHTS AND ENVIRONMENTAL AND HEALTH ISSUES IN THE NETHERLANDS**

#### **3.1 SPECIFIC (AIR, NOISE, WATER AND SOIL) POLLUTION AND THE ROLE OF BUSINESS**

The adverse impacts to the environment in the Netherlands are largely caused by business activities and weak regulation, implementation, and enforcement of private actors by the government.

Protecting people against harm, pollution and climate change caused by public and private actors is a human rights obligation of The Netherlands' government.<sup>16</sup> But it does not live up to this obligation, as we will see from the next examples.

##### **Royal Dutch Shell**

Following one of the first wins on climate change based on human rights against the state in 2019 (the already mentioned Urgenda climate case), in May 2021, the The Hague District Court ordered the Royal Dutch Shell group to reduce its CO2 emissions by net 45% in 2030, compared to 2019 levels, through the Shell group's corporate policy.<sup>17</sup> The judicial ruling, which was based on human rights, including the rights of future generations, however has not led to any changes in government policy or rules for other companies ensuring that they achieve the same goals. The responsible secretary of state for Climate has promised a 'deep analysis' into the consequences of this verdict after the summer of 2021, but no such analyses has been published or presented to the House of Representatives.<sup>18</sup>

Shell has now been presented with binding targets to reduce CO2 emissions. Not by the state, as should have happened based on (positive) human rights obligations, but by a judge based on tort law and human rights. Other fossil fuel companies have not been impacted by this verdict yet. The state is not creating the clear and just level playing field it should.

##### **Tata Steel**

The pollution and associated risk to local people's and children's' health caused by the industrial steel factory plant of Tata Steel, and its predecessors are a big concern. A report published by public health institute RIVM in August 2021, shows that the dust emitted by or due to Tata Steel in the IJmond area contain extremely high concentrations of hazardous PAHs and heavy metals. Levels are so high; they increase the risk of cancer. It harms the health of children and future generations (including permanent damage to the brains of fetuses<sup>19</sup>).<sup>20</sup>

The bad health situation has been known for decades, but more recently draw more attention of the press and public opinion in the Netherlands. This new RIVM report has led to parliamentary majority demanding the state's assistance for a transition to cleaner production.<sup>11</sup> Part of the pollution is caused with Tata Steel acting within its permit conditions, which calls for stricter emission standards if the State want to mitigate/eliminate negative impact on health. Local people and children have often protested against Tata Steel, concerned about their health and wellbeing<sup>21</sup> and many TV programs have given attention to this situation.

Responding to a formal criminal complaint by more than 800 people and several legal entities against Tata Steel, public prosecutors announced that they launched a criminal investigation to determine if Tata Steel intentionally and unlawfully released hazardous substances into the soil, air, or surface water.<sup>22</sup>

Film Production Company WaterBear has made an in-depth and shocking short film about the operations at Tata Steel, including the lack of action by the Dutch government stopping the company from violating the human and children's rights of people in the region. It's in English and called 'Europese Biggest Lie NL, Tata Steel'<sup>23</sup>.

At this point no governmental body is stopping or restricting Tata Steel from this health and life-threatening pollution. Tata Steel currently promises a very long-term solution – transferring to hydrogen instead of coal and gas in the decades to come– but this is both unsure and will allow for many more years of human rights violating and nature destroying pollution.

The company is also requesting government subsidies (not loans) to become clean. So, whilst profits flow abroad, Tata Steel wants Dutch people to pay for cleaning up for what should not be polluted based on human rights. The world upside down. The state must act on this, make Tata Steel pay for it and enforce the laws and human rights in place to protect people and nature.

### **NAM and earthquakes**

In Groningen, the Northeastern part of The Netherlands, earthquakes are caused by gas extraction. People in this area of the country suffer in their physical health and mental wellbeing, because of the stress they endure. Children also live with the stress they see their parents endure.<sup>24</sup> And at the same time many of the affected are not adequately compensated. The gas extraction is done by a company: NAM, which is a Shell and Exxon owned company. Despite very specific and urgent recommendations by CESCR in 2017 and CCPR in 2019 (addressed later in chapter 6 of this report), no human rights-based action or assessment was implemented, and true meaningful participation has not yet taken place. The government in The Hague decides over the people of Groningen, they are not truly heard, let alone consulted in the process of ending the gas drilling and compensating damages.

Besides of the state taking too little action to restrict the amount and impact of the earthquakes, remedies continue to be difficult to impossible for people with damage.

The NAM, as a company, is also responsible to respect human rights and should – through a proper due diligence process – ensure no human rights violations take place. In the end Dutch State remains primarily responsible based on human rights.

The Council of State, our highest administrative court on 3 July 2019 declared<sup>25</sup> that because of human rights (the right to life and right to family life), the Minister of Economic Affairs and Climate must provide better reasons as to why gas extraction from the Groningen field cannot be phased out more quickly. Other, more recent, rulings continue to cause stress and uncertainty for the people in Groningen. On 15 July 2020 the Council of State<sup>26</sup> ruled that the Minister of Economic Affairs and Climate correctly weighed the safety interests of the inhabitants of Groningen. It affirmed that the reinforcement of houses was too slow but that its pace is increasing. It also concluded that the process of damage compensation was improving. Finally, it concluded that the Minister implemented all reasonably possible measures to reduce the gas extraction as soon as possible to zero. However, on 21 July 2021<sup>27</sup> the Council of State stated that the reinforcement of houses was still too slow and steps should be taken to accelerate the process. However, since the gas extraction was being reduced progressively, it ruled that the slow pace of reinforcement was no obstruction to the Minister's decree. It further repeated its conclusions regarding the damage compensation scheme and the efforts to end the gas extraction as soon as possible. The Council of State has put too much trust in the promises of our government as, contrary to the abovementioned Council's statements, the reinforcement process hardly accelerated over the past years. Reports<sup>28</sup> show a negligible speeding up of the process. At this very moment only 13% of the total scope of 27,000 houses have been demolished and rebuilt or reinforced since 2015.



The process of damage compensation takes on average an increasing amount of time<sup>29</sup>. There are more than 23,000 open files. Over 50% of these files last more than six months from filing to decision. The number of appeals against decisions of the Mining Damage Institute Groningen (IMG) is increasing.

Last but not least: The reduction of the gas extraction is slowing down, as shown in the table below. Recently the expected closure of the gas field was postponed from 2022 to 2023 or 2024.

Gas year	Amount in billion cubic meters	Correction	Expected closure of gas field
2019-2020	11.8 bcm	Reduced to 10.7 bcm by decree of 16 March 2020	2022
2020-2021	8.1 bcm		2022
2021-2022	3.9 bcm	Announced (14 March 2022) to increase to 4.6 bcm	Announced (14 March 2022) to be 2023 or 2024

Despite this ruling and despite the very specific recommendations by CCPR and CESCR on Groningen, the state continues to create stress and uncertainty for the people in Groningen as time and again it will openly echo that it may need to produce more gas from the Groningen gas fields (increasing the risk of earthquakes), for instance to meet contractual obligations with Germany.<sup>30</sup>

#### **NAM and water pollution**

On top of the earthquake risks, when extracting oil and gas, wastewater is produced. At this point our government allows NAM to inject this polluted wastewater into empty gas fields in the region of Twente. This process pollutes the underground and could pollute ground water reserves and create underground instability for the people in the region.

On **water** there are more examples:

#### **Chemours / Dupont**

Despite the discharge of the carcinogenic PFOA and GenX into the surface water by chemical company Chemours, the Netherlands' government is time and again extending permits.<sup>31</sup> As the state is not living up to its obligations (also those under human rights law) city councils have decided to sue this company to make sure they stop polluting, clean up and pay up for damages to people and the environment.<sup>32</sup>

#### **Chemelot**

For many years. the chemical plant of Chemours empties wastewater containing chemicals and micro plastics into the river Maas. Local (city council) politicians were shocked to learn about this when it was aired on National TV<sup>33</sup>. The Netherlands however still allows (so permits) the discharge of well over 10.000 kilos of microplastics into the surface water by chemical company Chemelot.<sup>34</sup>

The water, polluted by these and other companies, of course isn't suddenly cleaned up when out of sight. It ends up in our river systems, our ground water, our water reserves and therefore our drinking water and ultimately in our oceans. The state plays a dangerous game with the rights to life, health and water, which it has all recognised. It gambles with the health of its current populations, children and future generations. Even our drinking water companies call on

the government to change this<sup>35</sup>. As the right to water, which The Netherlands was one of the first states to recognise, proclaims that water sources that are clean need to be kept clean and protected for future generations allowing them to also freely exercise the right to water, the Netherlands violates this right. Our government officials are not being good ancestors. They probably do not intentionally hurt people but choose to look away and choose to listen to the short-term interests of companies outweighing the immediate and long-term interests of its people and future generations. Why? Because the state does not have a mechanism in place that assesses human rights violations and forces it to withhold permits, to monitor and to enforce when human rights violations occur in relation to the environment.

### **Schiphol and Lelystad Airports**

The state supported for decades the growth of our airports and flights. The group of people complaining about the growing noise, air and nitrogen pollution (deteriorating the living environment quality) has also grown and their voice is now louder than before.<sup>36</sup> The answer of governments on complaints was: 'The Netherlands needs these flights, to remain attractive for companies'. In other words: 'We choose business over healthy people and planet'.

It turned out that some of our airports did not even have the proper 'nature permit' to be open under Dutch law and debate is still going whether they should be limited or whether Lelystad airport should not open at all<sup>37</sup>. During all these discussions, human rights were not considered explicitly. No assessment has been made whether the noise pollution and pollution of air, soil and nature are still within the limits of (not) violating human rights.

### **NATURE AND PROTECTED AREAS SUFFER TOO**

#### *The state puts World Heritage Site The Wadden Sea at risk for short term economic revenues*

The state also continues to hand out new permits for gas drilling in the UN World Heritage Site The Wadden Sea risking the area to sink and emitting more CO<sub>2</sub> and even risking this unique area to be severely harmed and disappear. International conservation groups and local politicians and city councils joined hands and voices in an outcry against this<sup>38</sup>. On top of that, UNESCO threatened to take away the world heritage status of the Dutch part of the Wadden Sea as gas drilling is incompatible with the obligations that the Netherlands has to protect, preserve and transfer the heritage to future generations together with Germany and Denmark.<sup>39</sup> The Wadden Sea suffers from continued and cumulative (economic) pressure and pollution. From public (e.g. jet fighters and (increased) noise pollution, permits for gas extraction and a power cable right through Wadden Island Schiermonnikoog<sup>40</sup>) and private actors. People protest, the state allows them and does not enforce the agreements under international environmental law and obligations under human law.

#### *Nitrogen and open water quality levels*

Dutch natural areas are under pressure also due to excessive nitrogen precipitation. As a result, judges, based on EU Directives, now ensure a strict cap is to be set and enforced. Suddenly many economic developments were at stake and to grant permits for these developments it must first be substantiated that they do not deteriorate the quality of nature. The excess of nitrogen does not only threaten biodiversity and nature, but also the quality of groundwater, surface water and the air. A human rights-based approach could have prevented this and could be a way out.

The same goes for our water bodies: our open water bodies are of such poor ecological quality (only 0,3% received a status 'good' based on the European Water Framework Directive), that we lag behind in Europe<sup>41</sup>. Too many pesticides, microplastics, medicine residues and chemicals, too little biodiversity, and life. Based on the directive, all water bodies need to be on the level 'good' in 2027 and scientist raised the alarm on this<sup>42</sup>. It will be extremely difficult for The Netherlands to reach the 2027 targets. But we need to for us, future generations and for our natural environment, also based on human rights, including the right to water. A human rights-based approach could have prevented this and could be a way out.

Many UN bodies have shown the way it can be done and should be done and since the (2018) General Comment 36 on the right to life (CCPR/C/GC/36) it is very clear (par 62):

“Obligations of States parties under international environmental law should thus inform the contents of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.”<sup>43</sup>

It is of great concern that in the Netherlands:

- No human rights-based assessment or approach is in place, only a 'standard' environmental impact assessment when conducted.
- The government does not link or inform its obligations under environmental law with human rights (or vice versa). The interest of (non human) nature are underrepresented, so are our human rights in relation to the enjoyment and protection of biodiversity.
- The government does not act when human rights and children's rights violations are predicted to happen or when they materialise.

## **THE STATE KNOWS**

The Netherlands government has confirmed it is aware of its obligations, and demonstrated this when responding to its last UPR: "...it remains primarily the duty of the host State to protect its citizens from human rights abuse by domestic as well as transnational companies.”<sup>44</sup>

The State also knows because it lost the famous Urgenda Climate Case, setting the example for many other human rights based climate cases worldwide.

In its ruling the Dutch Supreme Court based the duty for climate reductions on case law by the European Court of Human Rights. Those cases were about pollution. Air, noise, soil pollution. They also apply to climate change and important case are Tatar v. Romania (2009)<sup>45</sup> and Jugheli and others v. Georgia (2017) on air pollution<sup>46</sup>

It can therefore be concluded that the Netherlands is aware of its obligations and, knowingly, is not taking (sufficient) action. The Netherlands should take appropriate action on all matters mentioned above. Respecting, protecting and fulfilling the human rights of the people now impacted, protecting the environment and implementing a human rights-based approach to the issues - especially in those where private actors are involved- taking into account intergenerational equity.

It's time for the Netherlands' government to mend this and not only to fulfil its legal obligations and commitments to international human and children's rights, but also its moral obligation to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.

#### **4 AIR POLLUTION AND CLIMATE CHANGE**

Air pollution and climate change require special attention in this report.

In May 2021, the Dutch NGO Coalition on Children's Rights submitted the *Written inputs to the State Report* to the UN Committee on the Rights of the Child (UNCRC).<sup>47</sup> for the first time, considerations of climate change and environmental pollution on children's rights were considered, also fueled by the fact that Dutch children and youth consider this one of their major concerns.

During the 89<sup>th</sup> pre-session the Dutch NGO Coalition expressed the wish to discuss this in more detail with Committee members. This resulted in an additional submission<sup>48</sup> and a meeting with Committee members 8 October 2021, as well as questions asked by the UN Committee to the Netherlands' government and Concluding Observations and Recommendations on the issue<sup>49</sup>.

##### ***Air pollution***

In its report of May 2021, the Dutch NGO Coalition on Children's Rights also expressed concerns on air pollution. The Netherlands is a European frontrunner in terms of air pollution. This has a negative impact on children's health: one in five children suffers from asthma due to air pollution, the highest rate in Europe.

There are major concerns with regards to the air quality in the Netherlands. Medical journal *The Lancet* published in September 2019 that for one in five children with asthma in the Netherlands, the air pollution is a cause.<sup>50</sup> This is the highest number in the entire of Europe. Children and the unborn children must be mentioned as a specific group as they are, with the elderly and people with chronic diseases, particularly vulnerable to the impacts of air pollution<sup>51</sup>. Studies show (more and more) that mothers breathing toxic air raises risks of miscarriage and premature births and impacts foetal development<sup>52</sup>.

As with SO<sub>2</sub>, NO<sub>x</sub> in air pollution contributes to acid deposition but also to eutrophication of soil and water. In addition, recent research has shown that NO<sub>x</sub>, independent of PM, reduces life expectancy. Currently, average life expectancy in the Netherlands is reduced 9 months by PM exposure and an addition 4 months due to NO<sub>2</sub> exposure, resulting in a total loss of life expectancy of the entire population of on average over a year. About 10.000 people in The Netherlands die a year due to air pollution.<sup>53</sup>

Studies reveal that on 40% of Amsterdam city streets where air pollution is measured, levels of NO<sub>2</sub> are higher than allowed per European clean air regulations.<sup>54</sup> Also in several other cities and nearby some major farms, air pollution limit values are exceeded. In many places the Dutch State is not realising the European limit values, which are far too weak to properly protect health. In many to most urban areas, they are extremely far from reaching the 'minimum' WHO Air Quality Guidelines, which for PM are 50% more stringent than the current EU limit values.<sup>55</sup>

WHO points out the severe health effects due to exposure to ambient air pollution, and has drafted international guidelines on air pollution. A particular concern is that WHO guidelines are two times stricter than the EU regulations for PM. Therefore, the Netherlands should adopt and work to meet the higher WHO Guidelines to protect the right to the highest attainable standard of health for its citizens effectively.

Air pollution has an impact on many human rights, including the right to life, the right to health and the right to water and sanitation (especially regarding keeping our current water sources clean). Improving air quality has positive health and economic impacts (less people ill means less working days lost for employers and less medical costs – e.g. hospital, medicine, doctors) and will improve human rights for people today and for future generations.

In January 2020, the Clean Air Agreement was agreed between the central government, provinces and municipalities to ensure cleaner air. Children are recognized as a group with higher sensitivity to the negative effects of air pollution.

Although it has a nice name and hopefully is a step forward, it is too soft and non-binding: It merely states that the government is ‘working towards the WHO guideline values for nitrogen dioxide and particulate matter in 2030’, rather than using the WHO values as minimum and mandatory standards today.<sup>56</sup>

### ***Climate Change***

Similar to air pollution the Dutch government has been criticized in the past reporting period for not taking sufficient action on preventing harmful international climate change.

The Urgenda case changed this on paper: at first the district court, followed by the appeal court and reconfirmed by the Dutch Supreme Court, this lawsuit was won and the Netherlands was forced by the court to step up its efforts on greenhouse gas reductions, in line with international treaty obligations to this effect.

This case has been ruled as a tort case under Dutch law, where civil and political rights and the case law of the European Court of Human Rights were crucial for the duty of care of the Dutch State. The district court included and introduced intergenerational equity in the verdict, confirming the principle of fairness towards future generations.

In 2022 we learned what we already feared: 2020 was a year of less CO2 emissions mainly due to COVID19 (not due to actions of the state) and the state complied with the Supreme Court ruling. For 2021 however, The Urgenda target to emit at least 25 percent less greenhouse gases every year, was not achieved last year. Our government statistics office CBS reported based on initial calculations that emissions in 2021 were only 23.9 percent lower than in 1990<sup>57</sup>. The cause for that is obvious: too little action by the state. Extremely worrying because of the state of climate emergency the world is in and because of the state not complying with its supreme court ruling.

## **5. THE DUTCH NATIONAL HUMAN RIGHTS INSTITUTION, GENERAL FUNDING AND SDGS**

The authors of this report are pleased there is a National Institute for Human Rights (NHRI) according to the Paris Principles.<sup>58</sup> The NHRI has the mandate by law to protect all human rights and research and ensure better implementation of all rights. The Institute has 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. It has also followed up on these topics at Global Alliance of National Human Rights Institutions (GANHRI) and European Network of National Human Rights Institutions (ENNRI) meetings.

However, at present, the NHRI focuses most on the equal treatment mandate. In fact, the Dutch NHRI was born out of the Dutch Equal Treatment complaint body before it became an NHRI. With such pressing issues like air, water and soil pollution, corporate human rights violations and environmental degradation, the government lagging on climate change, children and youth demanding climate justice, court cases confirming human rights obligations of the Netherlands' government and businesses on climate change, there is a need for a more active attitude on the side of the NHRI.

## **6. RECOMMENDATIONS REQUESTED**

Many things should and can improve, based on human rights.

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

1. Act and take effective preventative measures when human rights and children's rights violations are predicted to happen or when they materialize in relation to the environment.
2. Take necessary measures to ensure the physical safety, health and mental well-being of people residing in The Netherlands, more specifically in the area of gas extraction in Groningen, near industrial plants, such as the Tata Steel plants in IJmond, near airports, highways and industrial farms. Ensure meaningful participation of, and consultation with, inhabitants in designing and implementing phase-out plans.
3. Take necessary measures to ensure the physical safety and mental health of people residing in areas of pollution, prevent negative impact from public and private actors, provide proper compensation to the victims; and prevent future occurrences of damages.
4. Ensure that Dutch public and private actors, including companies and financial institutions, respect human rights in relation to the environment throughout their whole value chain by implementing mandatory national legislation in line with the UNGPs and the OESO Guidelines.
5. Reduce greenhouse gas emissions in line with the State party's international commitments and ensure that national policies and programmes on environmental protection and climate change are implemented in accordance with the principles of human and children's rights and taking into account specific groups, needs and views.

6. Take effective measures for the mitigation of and adaptation to the harmful effects of climate change, including specific situations and areas such as the increased risks due to extreme weather, the rise in sea levels in Dutch coastal, Wadden and ‘under sea level’ areas, stronger hurricanes to the islands in the Caribbean impacting and vulnerable and underrepresented groups – including children and future generations.
7. Conduct an assessment of policies and practices related to the aviation, transport and other relevant sectors and the impacts of the resulting atmosphere pollution and greenhouse gas emissions on human and children’s rights as a basis for designing a well-resourced strategy to remedy the situation.
8. Promote, with the active participation of schools, people’s awareness of climate change and environmental health, including with regard to relevant air quality and climate legislation and their right to the enjoyment of the highest attainable standard of health.
9. Introduce and implement formal human and children’s rights-based assessments and monitoring mechanisms in environmental standards and (environmental) impact assessments.
10. Expand the Dutch NHRI with extra staff and financial resources to work on respecting human rights with regards to environmental and climate issues.
11. Train existing staff, government officials and public servants to implement formal human rights-based assessments and monitoring mechanisms, which includes environmental standards and (environmental) impact assessments.
12. Ensure accountability for human and children’s rights violations and environmental damage resulting for companies operating in the territory of The Netherlands as well as for the global or overseas operations of companies registered or headquartered in the Netherlands.
13. In the context of dangerous activities in particular, govern the licensing, setting-up, operation, security and supervision of the activity and make it compulsory for all those concerned to take practical measures to ensure the effective protection of the human rights of the people whose health or lives might be impacted by the inherent risks.
14. Take appropriate and effective measures to ensure The Netherlands is compliant with its international and national obligations with regard to environmental treaties, standards and agreements, especially those with an impact on the human rights of people, present and future generations.

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<sup>i</sup> This report consists of 5438 words, excluding the end notes, frontpage, table of content and list of abbreviations

<sup>ii</sup> 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.

<sup>iii</sup> JustLaw is a lawfirm that strives to have law work for a sustainable future of all life. Owner Jan van de Venis contributed to many UN reporting cycles before and is often invited to UN meetings as an expert – also by UN Special Rapporteurs.

<sup>iv</sup> Groninger Bodem Beweging is an NGO standing up for the (rights of present and future generations of) people in Groningen affected by the earthquakes. It has participated in UN CESR, CCPR and UPR reporting before.

<sup>v</sup> Frisse Wind Nu, Gezondheid op 1, Dorpsraad Wijk aan Zee and IJmondig are all NGOs and civil society organisations, standing up for the (rights of present and future generations of) people living near and affected by the pollution of the Tata Steel factories in the IJmond region.

<sup>vi</sup> Kinderrechtcollectief: the Dutch NGO Coalition on the Rights of the Child – through which they participated in the recent CRC sessions on climate change and air pollution: The ‘Children’s Rights Collective’ was founded in 1995 and consists of six core members: the children’s rights organizations Defence for Children, the National Youth Council, Kinderpostzegels, UNICEF Netherlands, and Save the Children and Terre des Hommes. Together they have the mission

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to ensure that the rights of children in the Netherlands are guaranteed. See:

<https://www.kinderrechten.nl/kinderrechten-nl/wie-zijn-wij/>

<sup>vii</sup> Greenpeace Netherlands: “We believe that a green, sustainable world is necessary, better and feasible. For that change, we need to break the current status quo. We expose major environmental problems and promote sustainable solutions through scientific research, lobbying, demonstrations and peaceful and inventive confrontations.”

<sup>viii</sup> See: <https://labtoekomststigeeneraties.nl> The Lab for Future Generations strives for today’s society to incorporate and actively take along the interests for future generations. Most of its work and rulings by the acting Ombudsperson For Future Generations are based on human rights.

<sup>ix</sup> See: <https://mobilisation.nl/index.php?id=1> Mobilisation For The Environment is famous for bringing to court and winning strategic environmental law suits. Their case (being won at the Council of State) resulted into what is known in The Netherlands as de stikstofcrisis (the nitrogen crisis).

<sup>10</sup> Official translated verdict in the Urgenda vs. The Netherlands case ECLI:NL:HR:2019:2007

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:2007>

<sup>11</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).

<sup>12</sup> The authors of this report are deeply concerned about the ease with which The Netherlands adopts and supports resolutions and recommendations, followed by complete lack of human rights focus and approach in relation to concrete health and environmental issues in The Netherlands. The Netherlands does not bring human rights home.

<sup>13</sup> UN Document A/HRC/36/15/Add.1

<sup>14</sup> UN document E/C.12/NLD/CO/6, §§ 10 to 13

<sup>15</sup> See [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NLD/CERD\\_C\\_NLD\\_CO\\_22-24\\_46534\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NLD/CERD_C_NLD_CO_22-24_46534_E.pdf) no. 37.

<sup>16</sup> The Netherlands’ government needs to ensure that it respects, protects and fulfills human rights in relation to climate change as (as stated by CCPR in General Comment 36 on the right to life: CCPR/C/GC/36, no. 62):

*“Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.”*

<sup>17</sup> Netherlands Council for the Judiciary, 26-05-2021, *Royal Dutch Shell must reduce CO2 emissions*

<sup>18</sup> Context of these statements can be found in the Minister’s address to parliament; 14 July 2021 “Beantwoording Kamervragen GL over Uitspraak Rechter Shell”

<sup>19</sup> See <https://www.usnews.com/news/national-news/articles/2018-03-14/air-pollution-within-levels-considered-safe-changes-brain-development-leads-to-cognitive-impairment>

<sup>20</sup> RIVM, 09-03-2021, Dust in IJmond contains many PAHs and metals;

<sup>21</sup> Youth News Broadcast, 02-09-2021, Onderzoek: Stof bij staalfabriek is slecht voor kinderen

<sup>22</sup> See <https://nltimes.nl/2022/02/02/prosecutors-launch-criminal-investigation-tata-steel-harsco-metals-pollution>

<sup>23</sup> It had its premiere in Amsterdam on 25 March 2022 See: <https://dezwijger.nl/programma/premiere-europes-biggest-lie-nl-tata-steel-ijmuiden>

<sup>24</sup> Children from the Netherlands have also provided their testimonies on this to the UN Committee on the Rights of the Child in October 2021. Read the additional submission of the Dutch NGO Coalition of the Rights of the Child on this issue here: <https://www.kinderrechten.nl/assets/2021/10/21-10-05-Additional-Submission-on-CR-and-the-Environment-NL.pdf>

<sup>25</sup> E.g. “Since safety is of paramount importance in such decision-making, the Minister must be able to offer a very clear explanation of how he expects to bring an end to gas extraction in the shortest possible term. And because the fundamental rights of Groningen’s residents are at stake, high demands have been placed on this explanation.”

English summary <https://www.raadvanstate.nl/@116238/council-state/>

<sup>26</sup> <https://www.raadvanstate.nl/uitspraken/@121727/201907399-1-r4/>

<sup>27</sup> <https://www.raadvanstate.nl/uitspraken/@126210/202005811-1-r4/>

<sup>28</sup> Data derived from the subsequent Year Reports of the Nationaal Coördinator Groningen

<sup>29</sup> <https://www.schadedoormijnbouw.nl/dashboard?topic=voortgang>

<sup>30</sup> See: <https://www.dutchnews.nl/news/2022/01/groningen-gas-extraction-could-double-this-year-despite-earthquake-problems/>

<sup>31</sup> See (in Dutch): <https://sliedrecht24.nl/chemours-mag-vijf-kilo-genx-per-jaar-op-oppervlaktewater-lozen/>

<sup>32</sup> See (in Dutch): <https://www.waterforum.net/gemeentes-slepen-chemours-en-dupont-voor-de-rechter/>

<sup>33</sup> See (in Dutch) [https://www.limburger.nl/cnt/dmf20210509\\_94105528](https://www.limburger.nl/cnt/dmf20210509_94105528)

<sup>34</sup> See (in Dutch): <https://www.plasticsoupfoundation.org/2021/07/chemelot-mag-14-000-kilo-microplastics-per-jaar-in-de-maas-lozen/>



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- <sup>35</sup> For instance, DUNEA, see (in Dutch): <https://www.dunea.nl/algemeen/nieuws/2021/rivm-inname-pfas-moet-omlaag-kraanwater-is-veilig>
- <sup>36</sup> See <https://nltimes.nl/2022/01/24/schiphol-wants-decision-year-lelystad-airport-opening>
- <sup>37</sup> See <https://pledgetimes.com/minister-rejects-nitrogen-calculation-at-lelystad-airport-and-schiphol/>
- <sup>38</sup> See <https://www.dutchnews.nl/news/2021/09/international-conservation-groups-condemn-wadden-sea-gas-drilling-plans/>
- <sup>39</sup> See: <https://www.world-today-news.com/unesco-threatens-to-take-away-wadden-sea-world-heritage-status-because-of-gas-extraction/>
- <sup>40</sup> See (in Dutch): <https://nos.nl/artikel/2379975-protest-tegen-stroomkabel-dwars-door-schiermonnikoog-groeit>
- <sup>41</sup> Source EEA • NRC 120322 / FG - <https://www.nrc.nl/nieuws/2022/03/18/schoon-water-is-in-nederland-nog-ver-weg-a4102847>
- <sup>42</sup> See <https://www.nrc.nl/nieuws/2022/03/18/schoon-water-is-in-nederland-nog-ver-weg-a4102847>
- <sup>43</sup> Par 62: 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. Obligations of States parties under international environmental law should thus inform the contents of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.
- <sup>44</sup> UPR Recommendations – See: The Dutch Response to UPR 2021 on GPBHR, pp 4-5
- <sup>45</sup> In *Tatar vs Rumania* ECHR concluded where official reports confirm a “deterioration in the local population’s quality of life and, in particular, affected the applicants’ welfare and deprived them of the enjoyment of their home, so affecting their private and family life.” (which is the case when dealing with air, soil, water and noise pollution) “The existence of a substantial, serious risk to the applicants’ health and welfare imposed on the State an obligation to adopt reasonable and adequate measures to protect their right to respect for their private life and home and, more generally, their right to the enjoyment of a healthy and safe environment.”
- <sup>46</sup> In *Jugheli and others v. Georgia*, ECHR concludes that “even assuming that the air pollution did not cause any quantifiable harm to the applicants’ health, it may have made them more vulnerable to various illnesses.” “Moreover, there can be no doubt that it adversely affected their quality of life at home” and “In the context of dangerous activities in particular, States have an obligation to set in place regulations geared to the specific features of the activity in question, particularly with regard to the level of risk potentially involved. They must govern the licensing, setting-up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of the citizens”.
- <sup>47</sup> Dutch NGO Coalition on Children’s Rights, 2021, Written inputs to state report the Netherlands ‘Children’s rights in the Netherlands 2015-2020’.
- <sup>48</sup> Children’s Rights and the Environment in and related to the Netherlands, Additional submission to the UN Committee on the Rights of the Child by the Dutch NGO Coalition on the Children’s Rights, in relation to the State Party Review of the Netherlands, October 5, 2021
- <sup>49</sup> The UN Committee on the Rights of the Child, in its Concluding Observations to the Netherlands of February 2022 urges the Netherlands’ government to reduce greenhouse gas emissions and the harmful effects of climate change. This recommendation also applies to the Caribbean, which is threatened by rising sea levels and stronger hurricanes. During the session with the Dutch government, the Committee also asked about how children are involved and what the State Secretary wants to say to children about their participation in future climate plans. The State Secretary indicated that the participation of children and young people is very important, that this is what happens and that a youth council is being set up.
- <sup>50</sup> Dutch News, 10-09-2019, Netherlands has most asthmatic children in Europe: report
- <sup>51</sup> For people with chronic diseases, see for instance, See <http://bmjopen.bmj.com/content/5/9/e009075.full.pdf>
- <sup>52</sup> See <https://www.independent.co.uk/environment/air-pollution-driving-car-travel-pregnant-women-study-baby-a8966806.html> although written for the UK, we have similar ones for The Netherlands. And our air is just as or even more polluted.
- <sup>53</sup> See: <https://www.eea.europa.eu/media/newsreleases/many-europeans-still-exposed-to-air-pollution-2015/premature-deaths-attributable-to-air-pollution>
- <sup>54</sup> For instance, see: ‘Friends of the Earth Netherlands challenging State about Air Pollution’, Newspaper: Parool (2 August 2016) <http://www.parool.nl/binnenland/milieudefensie-daagt-staat-om-luchtvervuiling~a4350196/>; Also see <http://www.ggd.amsterdam.nl/gezond-wonen/milieu-buitenshuis/luchtkwaliteit/>
- <sup>55</sup> WHO Air Quality Guidelines (2005), here: [http://www.who.int/phe/health\\_topics/outdoorair/outdoorair\\_aqg/en/](http://www.who.int/phe/health_topics/outdoorair/outdoorair_aqg/en/)

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<sup>56</sup> Clean Air Agreement, see website, in Dutch: <https://www.schoneluchtakkoord.nl/> and on the Implementation Agenda Clean Air Agreement, in Dutch: <https://www.schoneluchtakkoord.nl/thema/hogst-blootgestelde-gebieden-gevoelige-groepen/uitvoeringsagenda-sla-hogst-blootgestelde/>

<sup>57</sup> See (in Dutch): <https://www.ad.nl/klimaat/cbs-urgenda-doel-om-uitstoot-te-verminderen-niet-gehaald~aeb35469>

<sup>58</sup> For some pages of The Netherlands Institute for Human Rights website in English: <https://www.mensenrechten.nl/mission-and-ambition>