



**Shadow Report on The Netherlands  
submission to the United Nations Human Rights Committee  
126<sup>th</sup> session 1-26 July 2019**

**This report, with specific focus on environmental issues and sustainable development, is submitted on behalf of the following NGOs:**

- **Stand Up For Your Rights (SUFYR)**
- **Milieudefensie (Friends of the Earth Netherlands)**
- **Groninger Bodem Beweging**

This report was authored by Jan van de Venis, expert human rights lawyer at JustLaw on behalf of Stand Up For Your Rights, Groninger Bodem Beweging and Milieudefensie (Friends of the Earth Netherlands). These NGOs have all interrelated with the UN before, through work on life, health, environmental issues and sustainable development – often specifically in relation to human rights. The Groninger Bodem Beweging is a grass roots NGO representing the interests of the people which have been impacted by the gas extraction and earthquakes arising from them.

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## TABLE OF CONTENTS

1.	INTRODUCTION	3
2.	HUMAN RIGHTS AND ENVIRONMENTAL, HEALTH, SAFETY & SECURITY ISSUES IN THE NETHERLANDS	3
	2.1. EARTH QUAKES DUE TO GAS EXTRACTIONS IN GRONINGEN	6
3.	RELEVANT HUMAN RIGHTS PROTECTED UNDER ICCPR	8
4.	THE NETHERLANDS DOES NOT ACT ON 2017 UPR AND CESCRC RECOMMENDATIONS	15
4.	RECOMMENDATIONS REQUESTED	17

## **1. INTRODUCTION**

The undersigned NGOs welcome the opportunity provided to submit this shadow report. This submission is prepared in advance of the United Nations (UN) Human Rights Committee's (hereinafter, "the Committee") review of the fifth periodic report of The Netherlands at its 126th Session in July 2019.

It provides an overview of our main and specific concerns under the International Covenant on Civil and Political Rights (hereinafter, "the Covenant"). These include the lack of action and neglect of positive obligations and non-action on UN recommendations on matters like environmental pollution, climate change and the gas extraction, causing earthquakes in the region of Groningen. It is linked to acts and omissions of the State itself and on ensuring human rights are not violated by businesses. Or, in other words, that the State does not take appropriate action to ensure that businesses do not violate human rights.

We express our deep concerns, that the government does not (properly) monitor the implementation of several recommendations of international human rights treaty bodies, even though it has accepted them.

Because of their statutory goals and missions, the undersigned NGOs choose to focus on environmental issues in relation to human rights. We will focus on the most pressing matters of concern regarding the respect for and the protection and fulfilment of human rights under the Covenant in the Netherlands.

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 environmental human rights in the Netherlands.

For present and future generations.

## **2. HUMAN RIGHTS AND ENVIRONMENTAL, HEALTH, SAFETY & SECURITY ISSUES IN 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. and "A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation. Without a healthy environment, we are unable to fulfil our aspirations or even live at a level commensurate with minimum standards of human dignity.<sup>1</sup>

These words are not just mentioned on the OHCHR websites, they are reiterated, acknowledged and reaffirmed in and through many UN documents, including UN Human Rights Council Resolutions, General Comments and OHCHR and Special Rapporteur's research, reports and publications – sometimes on the general relation between human rights and the environment, sometimes on specific issues such as climate change or toxics.

Even though the constitution of The Netherlands does not codify a specific constitutional right to a healthy environment, The Netherlands is bound by i) the international (human rights) treaties and agreements, it has agreed to, which include ICCPR, ICESCR, CRC; ii) case law of international courts, such as the European Court of Human Rights and the European Committee of Social Rights, and iii) (as set out before) agreements such as the Sustainable Development Goals and the (COP21) Paris Climate Agreement.

**The authors of this report are concerned about the lack of a human rights focus and understanding in relation to concrete and serious (quality of) life, health and environmental issues in The Netherlands.**

Dutch politicians and government representatives have often proclaimed that allowing any part of the claim in the human rights-based climate change case would intrude upon the State's political discretion and interfere with the "separation of powers."<sup>2</sup>.

For sure, in many cases a balance must be sought between health and environmental protection and economic development, however it seems that acknowledged human standards too often are not taken into consideration in the Netherlands.

The Netherlands especially does not properly take into consideration human rights in relation to more commercial activities. Because we cannot mention all examples of that, and in this report wish to focus on the people impacted in Groningen by gas extraction caused earth quakes, we will give a few examples. In many, if not all, of these cases one or more victims, potential victims and/ or NGOs invoked their human rights, called for a human rights-based impact assessment and to a more active State that should avoid businesses (activities) having a negative impact on their human rights. Examples:

- **Lelystad Airport**

The government wants to expand the airport of Lelystad and increase the number of flights and change its landing and take-off schemes and direction. This has a negative impact on the lives of people and is a source of pressure and degradation of the nature in the region. According to a recent report, the social costs of maximum aviation growth can rise to 21.5 billion euros due to environmental and climate change damage. Where no growth of the airport would lead to a maximum of 6.5 billion euros in benefits. Their conclusion: it would even be better for the Dutch economy to close down Lelystad Airport.

Increased noise and air pollution have only been taken into consideration lightly in a so-called 'Milieu Effect Rapportage' (an Environmental Impact Assessment). But no human rights-based impact assessment, let alone a proper human rights due diligence has been made. The people living in the area protest but are protesting, but not listened to. The argument of short-term economic gain wins it for the Dutch State.

- **Tata Steel and Harsco**

Following a period of non-action by the local governmental authorities, inhabitants of Wijk aan Zee and IJmuiden had to threaten to take the authorities to court for turning a blind eye to (unlawful) health threatening emissions by nearby companies Tata Steel and Harsco. Residents have been continually exposed to unlicensed emissions, grey and orange dust clouds, a rain of graphite and other deposits. Among the health problems cited are respiratory complaints, headaches, nausea and concentration problems.

In fact, these graphite rains contain an “unwanted” amount of the metal lead, manganese and vanadium for young children. This is reported by the National Institute for Public Health and the Environment (RIVM). “Because people are already exposed to heavy metals in their daily lives, it is desirable to limit extra exposure as much as possible, especially to lead. Young children in particular around the company are especially exposed to the metals in the graphite rains,” says the institute. However, despite many incidents, the company continues to cause a threat to the health and lives of many people, children and families.

- **Chemours**

For years people from the city of Dordrecht and the region have been protesting against the dumping in the river of GenX by the company Chemours (formerly Dupont) directly into the rivers of the Netherlands. GenX is a very stable ‘fluorine’ compound and is used for the production of Teflon, known from the non-stick coating in pans. Due to the dumping of Chemours it has been traced to be present in the source that the regional water company Dunea uses for making drinking water, the Afgedamde Maas. Laboratory data indicate that GenX may be carcinogenic to humans. It also has effects on the liver. For years the company has been illegally discharging big amounts of the substances per year. And it ends up in our river systems and drinking water. The illegal discharges appear to be caused by emissions into the air, which end up in rainwater and flow through the grounds of Chemours in the Lower Merwede. Still the central government, by means of the Minister for Infrastructure and Water Management, in May 2019 gave a permit to Chemours. According to the Minister it’s the only way to monitor whether the emission of those hazardous substances is reduced by 99 percent, as Chemours has announced. Instead of taking effective measures ensuring that this company does not illegally pollute our environment, fining it, blocking it and ensuring effective remedies and justice by taking measures to protect the people of the Netherlands, our government hands out a new permit to continue to pollute, now legally.

Three examples of pressing issues on human rights, business and human rights and the health and lives of people in The Netherlands. There are many more. The Netherlands does not create a safe environment for its people to live in. It does not take on a precautionary approach towards businesses to ensure the human rights of Dutch people are not violated. It does not pursue a human rights-based approach or impact assessment in such matters, let alone a human rights-based monitoring mechanism. In fact instead of protecting, respecting and fulfilling the human rights of its people, it tends to make decisions on often non scientifically backed up commercial theories and short term interests, forgetting the rights of people, children and future generations. This all needs to change, and as you Committee has confirmed before, needs to be in line with international principles and standards of corporate social responsibility, such as the Guiding Principles on Business and Human Rights.

**Probably the most pressing issue in The Netherlands, impacting the lives of thousands of people suffering from gas extraction caused earth quakes in the region of Groningen requires your closest attention and clearest recommendations.**

Because of the fact that:

- This is such a serious issue impacting the human rights of such a big group of people, children and future generations;
- The Netherlands is not living up to its own recent promises following its UPR in 2017 (A/HRC/36/15/Add.1 – more in chapter 3), and
- The Netherlands is not at all acting on the very ‘Groningen’ specific 2017 calls and recommendations by the UN Committee on Economic Social and Cultural Rights (E/C.12/NLD/CO/6, §§ 10 to 13 –more in chapter 3).

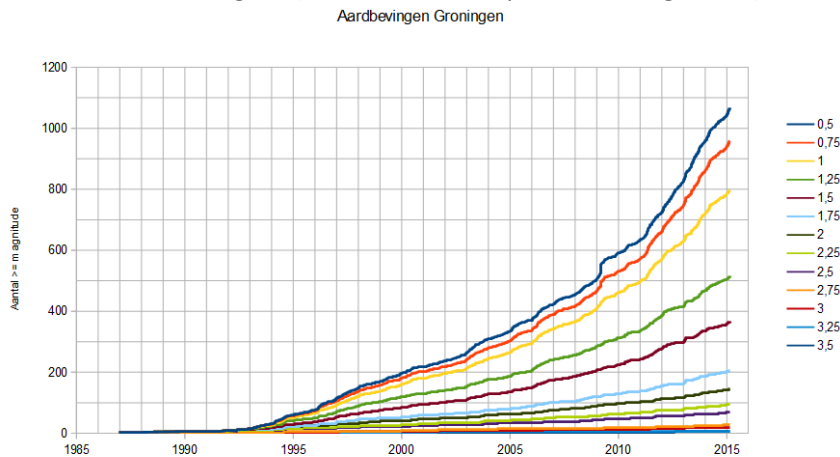
## 2.1 EARTH QUAKES DUE TO GAS EXTRACTIONS IN GRONINGEN

As a person living in the area affected cried out: ***“When will this end? Only when a house collapses on a family and people get killed? Or not even then?”***

The Netherlands’ most North Eastern province Groningen lies on top of a big gas field. The field started production in 1963 and produced around 100 billion cubic meters per year in the first decade of production but gradually the annual production fell to around 35 billion cubic meters per year. The Groningen gas field is operated by the Nederlandse Aardolie Maatschappij BV (NAM), a joint venture between Royal Dutch Shell and ExxonMobil with each company owning a 50% share.<sup>3</sup>

As the gas field emptied, earthquakes started to emerge in the province of Groningen just before the year 1990. Initially they were few in numbers and light on the Richter scale. However both the amount and strength of the earthquakes grow exponentially.<sup>4</sup>

This is shown in this figure (amount of earthquakes  $\geq$  magnitude):



The damage resulting from the earthquakes is also on the rise. The homes of the people who live on top of the field are progressively damaged, some are collapsing. Houses, schools, offices and irreplaceable historical buildings like medieval churches are subsiding and slowly collapsing. There are major concerns about the dikes protecting the people<sup>5</sup> and a large chemical park in the area. Farmland is subsiding, drains are broken, the groundwater level is disturbed and sometimes rising<sup>6</sup> and there is environmental pollution (pollution of water and ground water becoming saltier).

Locals describe it as a disaster in slow motion. Thousands of buildings need to be reinforced, more than 100 houses should be repaired immediately.

According to Eurostat Groningen is one of the wealthiest regions within the EU, due to its gas extraction. Based on that, it probably should be. However, Eurostat does not account for the fact that this wealth is not distributed to the people of Groningen: the Netherlands as a whole and other province far away profit most from the money made by selling the gas. Groningen in fact still is the poorest province of the Netherlands.<sup>7</sup>

On top of this, we see that the situation in Groningen brings a lot more than damage to property, but also inequality and frustration because almost all gas revenues were spent outside of Groningen.<sup>8</sup>

Houses (with mortgages) are hard to impossible to sell, people experience arbitrary handling of compensation claims, difficulty obtaining legal insurance to cover costs on seeking remedies, because it is a 'known fact' that people in Groningen have a conflict with Shell and Exxon (the owners of NAM). People with damage to their houses also have to put up with having to move out of their houses for longer periods of time and strange people who show up to measuring and probe the condition of their property.

On top of that, there is the psychological stress and damage that occurs due to earthquake stress. People have real stress and fear of a severe quake and its consequences; parents and their children cannot sleep at night - afraid their house might collapse. Groningen has the highest number of suicides in The Netherlands. A psychiatrist explains the earthquakes of being one of the factors explaining higher suicide numbers and speaks of supporting people from this province based on complaints due to the earthquakes: insomnia, fear and depression.<sup>9</sup>

The College voor de Rechten van de Mens, the Dutch NHRI, in 2015 confirmed that The State ignores human rights in Groningen and concluded that the rights to health, security and safe and adequate housing and living conditions are at stake. It proclaimed that the State is primarily responsible to guarantee these rights are respected, protected and fulfilled.<sup>10</sup>

In addition to those human rights, the right to life and family life, as protected under ICCPR and the European Convention on Human Rights is also threatened and violated in Groningen.

The general human rights principle of equity is also at stake, whereas the people of Groningen have provided with wealth a lot of monetary wealth for the whole country, receiving relatively little of that money in return. However, they have to live with the earthquakes, the damages thereof to their property and to their health. This impacts the people of Groningen today, but also their children and future generations. Therefore the principle of intergenerational equity is also at stake in Groningen.

### **Business and Human Rights and Access to Remedies**

Besides taking too little action to restrict the amount and impact of the earthquakes, remedies are often hard to obtain for people with damage.

The Dutch State often points at the NAM, the Shell and Exxon owned company, which explores the gas, as being responsible for dealing with damages and complaints for the people of

Groningen. However, the Dutch State remains primarily responsible based on human as confirmed by the UN Guiding Principles on Business and Human Rights. These principles require the State to ensure that the NAM does not violate the human rights of the people in Groningen and that effective human rights due diligence is implemented by NAM. In the context of the Guiding Principles, human rights due diligence comprises an on-going management process that a reasonable and prudent enterprise needs to undertake, in the light of its circumstances (including sector, operating context, size and similar factors) to meet its responsibility to respect human rights.<sup>11</sup>

The Dutch government has recently decided to lower the amount of gas extracted per year. Still gas drilling is continued, still new earth quakes arise, even very recent, causing major damage to many houses. The Dutch government is in the news on a daily basis on things that change on what damage can be reported and how it will be assessed and what will be paid. The people of Groningen do not trust the authorities dealing with the damage claims to be independent and honest. After so many years with their human rights violated and ignored, they distrust the Dutch (The Hague) government.

The UN Committee on Economic Social and Cultural Rights recommended The Netherlands in 2017 (E/C.12/NLD/CO/6) to: take measures to ensure physical safety and mental health of the people residing in the area of gas extraction in Groningen, as well the security and safety of their homes; provide proper compensation to the victims; and prevent future occurrences of damages related to gas extractions. It has not done so and we (again) request the Committee to recommend The Netherlands to do so.

### **3 RELEVANT HUMAN RIGHTS PROTECTED UNDER ICCPR**

#### **Article 1 of the Covenant**

Because of the earth quakes and continuous gas extraction (causing more earth quakes), many people of Groningen are limited in their right to freely pursue their economic, social and cultural development.

#### **Article 2 of the Covenant**

Furthermore, as the revenues of the gas extractions benefits other people in The Netherlands most and, in sharp contrast to that, they alone have to carry all the burdens from the earth quakes, the people living in the earth quake impacted areas of Groningen acknowledge that the State does not 'undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind'.

#### **Article 6 of the Covenant**

The right to life, is proclaimed in article 6 as "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Your Committee had explained how States often interpret this right to narrowly<sup>12</sup>: "The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy..."



The link with the examples of corporate or governmental activities causing pollution of the air, soil and water (expansion airports Lelystad, Tata Steel and Chemours) is obvious. So is the link to the situations in Groningen. This has become even clearer at the end of last year (2018):

Your Committee has affirmed in CCPR/C/GC/36 (General Comment 36 on the Right to Life), here is a short overview on relevant statements on the right to life under the Covenant:

- The right to life concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity. Article 6 ICCPR guarantees this right for all human beings, without distinction of any kind.
- Deprivation of life involves an intentional or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission. It goes beyond injury to bodily or mental integrity or threat thereto.
- The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include ... degradation of the environment, ... deprivation of land, territories and resources, ... and homelessness.
- States parties must further take adequate measures of protection, including continuous supervision, in order to prevent, investigate, punish and remedy arbitrary deprivation of life by private entities.
- State parties must take appropriate measures to protect individuals against deprivation of life by other States, international organizations and foreign corporations operating within their territory or in other areas subject to their jurisdiction. They must also take appropriate legislative and other measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction, but having a direct and reasonably foreseeable impact on the right to life of individuals outside their territory, including activities taken by corporate entities based in their territory or subject to their jurisdiction, are consistent with article 6, taking due account of related international standards of corporate responsibility, and of the right of victims to obtain an effective remedy.
- The measures called for addressing adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter..., and other measures designed to promote and facilitate adequate general conditions.
- States parties should also develop strategic plans for advancing the enjoyment of the right to life.
- Furthermore, States parties should also develop, when necessary, contingency plans and disaster management plans designed to increase preparedness and address natural and man-made disasters, which may adversely affect enjoyment of the right to life, such as hurricanes, tsunamis, earthquakes...
- The duty to protect the right to life requires States parties to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats.
- The arbitrary deprivation of life of an individual may cause his or her relatives mental suffering, which could amount to a violation of their own rights under article 7 of the Covenant.

- Torture and ill-treatment, which may seriously affect the physical and mental health of the mistreated individual could also generate the risk of deprivation of life.
- Article 24, paragraph 1, of the Covenant entitles every child “to such measures of protection as are required by his status as a minor on the part of his family, society and the State.” This article requires adoption of special measures designed to protect the life of every child, in addition to the general measures required by article 6 for protecting the lives of all individuals. When taking special measures of protection, States parties should be guided by the best interests of the child, by the need to ensure the survival and development of all children and their well-being.
- 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.
- States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach.

#### **Articles 17 and 24 of the Covenant**

In addition to what is set out under article 6 before, articles 17 (interference with privacy, family, home) and 24 (the child’s right to measures of protection as are required) are also not protected sufficiently. As the Dutch Children’s Ombudsman echoed in her position paper in 2018<sup>13</sup>: From this report:

- Children and young people, in addition to problems caused by the earthquakes themselves, mainly suffer from the unrest and the associated stress that life in the area entails. This includes both 'derived' stress from their parents and caregivers, and stress that they 'directly' experience. Many children indicate that they feel pressure and stress in their families because of the way damage repair and reinforcements are being dealt with. Their parents suffer from this and so do they. The constant uncertainty and the tensions that are felt in families as a result are very stressful for children. The constant adaptation of the plans, including plans for reinforcements on the houses, and the time frame around the relocations is a stress factor often mentioned by children. The Children’s Ombudsman quoted a boy saying to her:
- "Sometimes they say the houses need not be reinforced, then suddenly they should. Four years ago we heard for the first time that we had to leave our house. Two years ago a plan finally came, and now it seems that we have to move in a few months."

- Children, just like their parents, cannot comprehend that their house is found safe enough at one time and then not. Decision to postpone reinforcements are therefore problematic for children and negatively impacts their interests.

### **European Convention of Human Rights and court cases**

On June 5th 2019, World Environment Day, the Council of Europe Commissioner for Human Rights Ms. Dunja Mijatović released a strong and excellent in depth statement “Living in a clean environment: a neglected human rights concern for all of us”<sup>14</sup>.

It includes statements on air pollution (*‘more than 9 out of 10 people worldwide breathe polluted air, contributing to a third of all deaths by stroke, cardiovascular and respiratory diseases’*), waste and toxic materials and climate change.

She clearly and correctly sets out that:

*“Despite the absence in the Convention of a specific reference to the environment, the European Court of Human Rights has clearly established that various types of environmental degradation can result in violations of substantive human rights, such as the right to life, to private and family life, the prohibition of inhuman and degrading treatment, and the peaceful enjoyment of the home. Moreover, the European Committee of Social Rights has interpreted the right to health included in the Charter to encompass the right to a healthy environment. The Court’s jurisprudence shows that states should not only investigate violations and compensate individual victims, but that they also have an obligation to prevent such violations from occurring in the first place, including through general and precautionary measures to address environmental risks in a systemic manner. In certain circumstances, these obligations extend to controlling pollution caused by third parties, such as private companies.”*

And, after referring to your Committee’s general comment (36 on the right to life):

*“The urgency, the interdependence between human rights and the environment, as well as the standards to be respected by states, are clear. We now must turn the page on poor governance and short-sighted, careless politicking, and act to preserve our future.”*

Even though the standards and State obligations are clear, they are not implemented, monitored and enforced in The Netherlands. The Dutch State might live up to its standards under environmental treaties and regulations but does not meet its human rights obligations. In fact, it does not implement, monitor or enforce in environmental matters based on human rights.

Dutch citizens and NGOs have successfully taken the State / Dutch government to court in several cases recently involving climate change and air pollution. These cases have been built on a violation of the State of human rights, including the right to life as protected under ICCPR, causing a tort and requesting the court to declare these violations to be a tort and thus to force the State to change its behavior (and act on climate change and air pollution – living up to its promises and obligations). This causes debate amongst politicians, many of which think judges should not interfere with the freedom of parliament to make policies (on issues like climate change and air pollution).

Similarly, the Dutch State proclaims that companies can be held accountable for (environmental) human rights violations, by suing them.

But this is the world upside down. People should not have to rely on the court to correct the State. State obligations have been made clear by many UN human rights bodies and courts, including the Human Rights Council, CESCR and your Committee. The Dutch State should be aware and proactively acting on its positive obligations in relation to human rights linked to environmental issues. And the people should not have to sue these companies; the State should ensure their rights are not violated by businesses. And act to prevent human rights violations and harm, stop companies that do, prosecute those involved and ensure that the people of The Netherlands fully enjoy their human rights.

This has also been confirmed in two recent cases by the European Court of Human Rights:

In the case of **Jugheli and others vs. Georgia** nr. 38342/05, 13/07/2017 on air pollution, the Court said (underlined by author):

- *“...the Court 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”*
- *“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 whose lives might be endangered by the inherent risks”*
- *It is within the Court’s jurisdiction to assess whether the Government approached the problem with due diligence and gave consideration to all the competing interests. In this respect the Court reiterates that the onus is on the State to justify, using detailed and rigorous data, a situation in which certain individuals bear a heavy burden on behalf of the rest of the community.*

In the case of **Cuenca Zarzoso v. Spain** nr. 23383/12, 16 April 2018 on noise and vibrations exceeding levels allowed, the Court said (underlined by author):

- It can also deal with an application, which *“does not concern interference by public authorities with the right to respect for the home, but their failure to take action to put a stop to third-party breaches of the right relied on by the applicant”*
- *The Court agrees with the Government that the City Council took various measures in order to solve the problem... However, the Court observes that those measures were insufficient in this particular case.*
- *Regulations to protect guaranteed rights serve little purpose if they are not duly enforced and the Court must reiterate that the Convention is intended to protect effective rights, not illusory ones. The Court has repeatedly emphasised that the existence of a sanction system is not enough if it is not applied in a timely and effective manner”.*

This last line is such a clear statement, also for the duty of States to protect people against corporate human rights violations, that I would like to repeat it, including ICCPR:

Regulations to protect human rights under the International Convention on Civil and Political Rights serve little purpose if they are not duly enforced. The Convention is intended to protect effective rights, not illusory ones. This means that the existence of a sanction system is not enough if it is not applied in a timely and effective manner.

#### **Climate Change and UPRs recommendations:**

We do not think the Committee needs to be informed about the Urgenda Climate Case. This famous case, won in the first two instances by Urgenda, is now under review at its highest Dutch instance: the Supreme Court.

We understand that your Committee will not elaborate on the content of this case, but wish to report that – similarly to other environmental issues - The Netherlands is not taking a human rights based approach when it comes to climate change issues. Even though it clearly is. Confirmed by the Human rights Council, but also through many UPR and CESCR recommendations: Between 2016 and 2019 we found issues related to climate change were discussed with respect to 37 States under UPR reviews.

The following section outlines some of the major concerns about climate change and environment protection considered in the UPR process. Following the structure of the previous section, these references are listed in chronological order.

- During the 2016 UPR of Zimbabwe, African states raised the problem that *“the effects of climate change had adversely affected the implementation of social and economic rights”*. Zimbabwe and Namibia were pointed out the necessity to redirect resources *“away from national social programmes”*<sup>15</sup> such as health and education, towards the provision of food.<sup>16</sup>
- Similarly, Tanzania emphasized its commitment to address food sufficiency and sustainability in a context of climate change. And it received recommendations by The Maldives and Haiti in relation to climate change (on mitigation and adaption 134.125)<sup>17</sup>
- The Seychelles took the opportunity of the universal periodic review to stress the need *“for the world to pay attention to the issue of protecting the environment, especially reducing gas emissions”*, emphasising *“the irrefutable link between climate change, the environment and human rights”*.<sup>18</sup>
- This irrefutable link has been also underlined by other states in the next UPR cycles. For example, in 2017, the Maldives recommended to the United Kingdom to place *“children’s rights at the center of climate change adaption and mitigation strategies”*<sup>19</sup>.
- It is also interesting that India referred to the principle of climate justice, talking about its policies to address the problem of global warming and to ensure environmental sustainability.<sup>20</sup> In this analysis, all the states concerned referred to strategy plans, including examples of implementation of laws for environmental protection and climate change.
- For example, Cabo Verde stated that its *“government had intensified the production of renewable energies and had developed strategies to manage the risks posed by climate change as a matter of priority”*<sup>21</sup>.
- In 2019, States made several statements relating to actions taken to promote, protect and fulfill human rights connected to the environment and climate change. To begin with, Nicaragua claimed it made *“important strides towards addressing the challenges of climate*

*change, such as the transformation of its electricity production grid, which increased the production of renewable energy to 50.72 per cent in 2018.”<sup>22</sup>*

- In the same way, countries severely affected by climate change, such as Vietnam, Ethiopia and Bhutan expressed their commitment to the environment in the national reports. For example, Vietnam mentioned the 2016-2020 Target Program for Climate Change Adaptation and Green Growth, which aims to mitigate the effect of climate change and environmental degradation. During the period 2013-2015 the Vietnamese government earmarked substantial amount of money to mitigating natural disasters. These investments are expected to be tripled over 2016-2020 period.<sup>23</sup>

**A recent CESCR recommendation on Climate Change to Argentina:**

The necessity to promote alternative and renewable energy sources was also expressed by the Committee on Economic, Social and Cultural Rights after reviewing the Fourth Argentinian National Report. CESCR recommended Argentina to reconsider its plans for the large-scale exploitation of shale gas and oil in Vaca Muerta region, in order to ensure compliance with the Paris Agreement.

These concluding observations are important for two reasons:

First, the committee pointed out that the exploitation of non-renewable energy sources constitutes a threat to the environment and public health. Second, in considering those affected by exploitation of the environment, CESCR like your Committee in General Comment 36 on the right to life, explicitly considered future generations as rights holders.

It stated: “The Committee is concerned that this hydraulic fracturing plan runs counter to the State party’s commitments under the Paris Agreement and would have a negative impact on global warming and on the enjoyment of economic and social rights by the world’s population and future generations.”<sup>24</sup>

It’s obvious that this links to the situation in Groningen and current (even in the UNESCO World Heritage protected Waddensea) gas drilling. Also to new recent plans and permits of the Dutch government to allow for new drilling for gas, gas extraction and fracking, for instance near the town of Ternaard<sup>25</sup>. As stated on economic and social rights, your Committee could frame it for civil and political rights and we will ask for (and repeat) this in the requested recommendations:

“The Committee is concerned that gas extraction, hydraulic fracturing and other fossil fuel plans runs counter to the State party’s commitments under the Paris Agreement and would have a negative impact on global warming and on the enjoyment of civil and political rights by the world’s population and future generations.”

#### **4. THE NETHERLANDS DOES NOT ACT ON 2017 HRC AND CESCR RECOMMENDATIONS:**

Also very relevant is the fact that this is not new for the Netherlands, it has been made aware about these human rights violations and the business and human rights relevance before in the UPR and CESCR reviews in 2017 and received 'concerns' 'calls' and 'recommendations', some very specific to the situation in Groningen. It has not acted on these, nor on its own conclusions in that regard.

##### **The UPR and Human Rights Council Recommendations in 2017:**

Via Human Rights Council Resolution A/HRC/36/15, The Netherlands received seven strong recommendations on business and human rights (No. 131.106 to 131.112) two of which with explicit reference to (the adverse effect on the enjoyment of human rights and) the environment.

In its reply, The Netherlands accepted most recommendations and stated "The Netherlands is committed to preventing involvement of any Dutch companies in human rights abuses" (UN Document A/HRC/36/15/Add.1). The Netherlands (see comment on 131.110) confirmed:

"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 with this last sentence clearly confirmed that it knows that it is its duty to protect its citizens from corporate human rights violations and (linked to 131.110) environmental damages. This statement is in line with human rights law and should have had big impact on (and requires action from) the Dutch Government in its actions regarding business impact on human rights linked to environmental issues in the Netherlands, such as climate change and air pollution in general, but also the extraction of natural resources, like the gas exploration by NAM in Groningen. It means that The Netherlands has confirmed that it is aware of and accepts the duty to ensure that companies (e.g. NAM, Chemours and Tata Steel, see chapters 2. and 2.1) comply with human rights standards. It has confirmed this but does not act on it.

- The Netherlands does not use human rights impact assessments and proper due diligence based on human rights in matters in relation to the environment (examples: big governmental projects like expanding an airport or highways, giving permits to and supervision of companies that pollute the air, water or soil).
- The Netherlands does not have a human rights monitoring mechanism, also not for business and human rights.
- The Netherlands does not take appropriate and effective measures to ensure compliance with human rights obligations for companies operating in its territory.

## The recommendations after its review of The Netherlands by CESCR in 2017<sup>26</sup>

In its 2017 recommendations, CESCR:

- Regrets that the National Action Plan on Business and Human Rights only contains guidelines primarily for Dutch companies operating abroad, and that it does not provide for formal monitoring mechanisms.
- Is concerned at reports of damages to people's homes in Groningen in the Netherlands due to gas extractions and the polluting oil refinery in Curacao.
- Is concerned at reports of serious damage to the environment and to indigenous people's livelihoods caused in Peru by a company domiciled in The Netherlands; and

Recommends that the Netherlands:

- (a) include a formal monitoring mechanism in the Action Plan on Business and Human Right
- (b) take measures to ensure compliance with human rights obligations for companies operating in the territory of the State party;
- (c) take measures to ensure physical safety and mental health of the people residing in the area of gas extraction in Groningen, as well the security and safety of their homes; provide proper compensation to the victims; and prevent future occurrences of damages related to gas extractions;
- (d) expedite an overhaul of the oil refinery industry in Curacao with a view to averting pollution;
- (e) remove the legal and practical obstacles to holding accountable companies domiciled under the State party's jurisdiction, for violations of economic, social and cultural rights, resulting from their operations on the national territory or abroad.

So, adding to the UPR recommendations, CESCR was very outspoken on the duties of the Netherlands in relation to environmental issues and human rights in relation to business activities.

Contrary to the UPR recommendations, it explicitly referred to the natural resources and gas extraction in Groningen. Not only does The Netherlands need to take steps to "ensure the safety of the people in Groningen", The Netherlands must deal with the core issue at stake: it needs to "prevent future occurrences of damages related to gas extractions," meaning, based on the fact that gas extraction is causing the earthquakes, that The Netherlands must ensure that the NAM ceases to extract gas.

Just like the 2017 UPR Recommendation mentioned, as far as we know, the State did not follow up on these recommendations. Not at all as far as we know, but not sufficiently surely, as the earth quakes and impact on the lives of people in Groningen continue.



## **5. RECOMMENDATIONS REQUESTED:**

Based on this we reaffirm and provide statements, which your Committee could include in its feedback to The Netherlands. We end with recommendations that we request for the Committee to give to The Netherlands.

We reaffirm, based on the words from the European Court of Human Rights in environmental matters and third-party activities, which we transfer into ICCPR wording:

Regulations to protect human rights under the International Convention on Civil and Political Rights serve little purpose if they are not duly enforced. The Convention is intended to protect effective rights, not illusory ones. This means that the existence of a sanction system is not enough if it is not applied in a timely and effective manner.

As your Committee confirmed in General Comment 36, 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. It is clear that this includes air, soil and water pollution and dangerous activities such as gas extraction causing earth quakes.

We ask your Committee, like CESCR in 2017, to also express your concern about the reports of damages to people's homes in Groningen in the Netherlands due to gas extractions and the polluting businesses and airports, of which specific examples have been given in IJmuiden, Dordrecht and Lelystad, and the impact these activities have on the human rights protected under ICCPR of people in The Netherlands.

We ask your Committee, like CESR in 2018 on Argentina, to express your concern that: Gas extraction, hydraulic fracturing and other fossil fuel plans runs counter to the State party's commitments under the Paris Agreement and would have a negative impact on global warming and on the enjoyment of civil and political rights by the world's population and future generations.

We ask your Committee, like the Human Rights Council in 2017, to express that you support effective control of and accountability for human rights violations and environmental damage resulting from companies operating in the Netherlands, but also for the global or overseas operations of companies registered or headquartered in the Netherlands.

### **We request the Committee to recommend the Netherlands to:**

- 1) Take appropriate and effective measures to ensure physical safety and mental health of the people residing in the area of gas extraction in Groningen, as well the security and safety of their homes; provide proper compensation to the victims; and prevent future occurrences of damages related to gas extractions;
- 2) Take appropriate and effective measures to ensure physical safety and mental health of people residing in areas of air, soil or water pollution, prevent negative impact from governmental, corporate or other non-state actors, provide proper compensation to the victims; and prevent future occurrences of damages;

- 3) Introduce and implement formal human rights-based assessments and monitoring mechanisms in environmental standards and (environmental) impact assessments;
- 4) Ensure relevant governmental officials and civil servants are sufficiently trained on and take into consideration human rights with regards to environmental issues;
- 5) Provide people appropriate access to information on human rights and environmental hazards and pay due regard to the precautionary approach;
- 6) Include a formal monitoring mechanism in the Action Plan on Business and Human Rights;
- 7) Take appropriate and effective measures to ensure compliance with human rights obligations for companies operating in the territory of The Netherlands, but also for the global or overseas operations of companies registered or headquartered in the Netherlands;
- 8) Remove the legal and practical obstacles to holding accountable companies domiciled under the State party's jurisdiction, for violations of civil and political rights, resulting from their operations on the national territory or abroad;
- 9) 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 lives might be endangered by the inherent risks; and / or
- 10) 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 of the human rights protected under ICCPR of people, present and future generations.

## Endnotes

- 1 See for example the OHCHR website of the Special Rapporteur on human rights and the environment
- 2 For instance see: <http://blog.oup.com/2015/07/urgenda-netherlands-climate-change/>
- 3 Information from [https://en.wikipedia.org/wiki/Groningen\\_gas\\_field](https://en.wikipedia.org/wiki/Groningen_gas_field)
- 4 A good overview on this topic can be found here: <http://td-er.nl/2015/04/07/exponentiele-groei-aardbevingen-2/>
- 5 News article in Dutch: <http://www.nu.nl/binnenland/3706594/dijken-in-groningen-sneller-verstevigd-aardbevingen.html>
- 6 <http://nos.nl/artikel/2131884-grondwaterpeil-groningen-stijgt-schrikbarend-door-aardbevingen.html>  
See: <https://www.cbs.nl/en-gb/news/2010/46/bloemendaal-and-wassenaar-richest-dutch-municipalities>
- 8 An informative paper by Nicolette Marié from Groningen on this: <http://accentaigu.nl/wp-content/uploads/2015/06/How-a-nations-gas-wealth-turns-into-a-nations-crime-scene.pdf>
- 9 <http://www.groningerkrant.nl/2015/09/zelfdodingen-in-groningen/>
- 10 See: <https://www.mensenrechten.nl/berichten/nederland-negeerde-mensenrechten-groningen>
- 11 See for instance [http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf)
- 12 Human Rights Committee, General Comment 6, Article 6 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 6 (1994)
- 13 Position paper by the Dutch Children's Ombudsman of 21 June 2018, only available in Dutch: <https://www.dekinderombudsman.nl/nieuws/nog-steeds-te-weinig-aandacht-voor-kinderen-in-aardbevingsgebied-groningen?id=785>
- 14 See: <https://www.coe.int/en/web/commissioner/-/living-in-a-clean-environment-a-neglected-human-rights-concern-for-all-of-us>
- 15 A/HRC/34/8, ¶ 7.
- 16 A/HRC/32/4, ¶ 8.
- 17 A/HRC/33/12, ¶ 27.
- 18 A/HRC/32/13, ¶ 22.
- 19 A/HRC/36/9, ¶ 134.189.
- 20 A/HRC/36/10, ¶ 18.
- 21 A/HRC/39/5, ¶ 28.
- 22 A/HRC/WG.6/33/NIC/1, ¶ 107.
- 23 A/HRC/WG.6/32/VNM/1, ¶ 90-91.
- 24 UN Committee on Economic, Social and Cultural Rights (CESCR), U.N. Doc. E/C.12/ARG/CO/4. ¶13.
- 25 See <https://www.waddenvereniging.nl/onswerk/gaswinning>
- 26 E/C.12/NLD/CO/6