



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

This report, with specific focus on health, 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)
- Wemos

This report was authored by Jan van de Venis on behalf of Stand Up For Your Rights, with contributions and support from Wemos and Milieudefensie (Friends of the Earth Netherlands). These NGOs have all interrelated with the UN before, through work on health, environmental issues and sustainable development – often specifically in relation to human rights.

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1. INTRODUCTION

The undersigned NGOs welcome the opportunity provided by the Office of the High Commissioner on Human Rights to submit a stakeholders' report for the Second Universal Periodic Review (UPR) of the Kingdom of the Netherlands, to be held during the 13th session of the Human Rights Council in 2017.

Because of their statutory goals and missions, the undersigned NGOs choose to focus on environmental and health issues in relation to human rights. Due to the restricted number of pages allowed for this report, its contents are limited to and focussed on the most pressing matters of concern regarding the respect for and the protection and fulfilment of human rights in 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 human rights in the Netherlands.
For present and future generations.

2. APPLICABILITY OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The undersigned NGOs note with concern that the Netherlands does not consider provisions on economic, social and cultural rights in human rights treaties to be directly applicable and binding. The Dutch government has been urged - on various occasions - by the Commissioner for Human Rights of the Council of Europe, as well as various treaty bodies, to ensure that provisions of international human rights treaties are directly applicable. Courts in the Netherlands have copied the Dutch government's position, upon which the Dutch government in turn has used the rejection of the direct applicability of treaty provisions on economic, social and cultural rights (notably the ICESCR and CEDAW) by the courts as a justification for its own position.

The Committee on Economic Social and Cultural Rights (CESCR), in General Comments 3 and 91 and in its Concluding Observations on the Dutch reporting, E/C.12/NLD/CO/3, November 2006, as well as the Committee on the Elimination of Discrimination against Women (CEDAW/C/NLD/CO/5) have confirmed this should change.

In relation to many human rights, especially those linked to health and environmental issues, this creates an extra hurdle for those who invoke their rights and seek access to justice because they proclaim that their rights have been violated. As we will see at a later point in this submission, a practical solution has been created through civil law: people now invoke human rights from ICESCR and case law of human rights courts and communications, conclusions, general comments and resolutions of treaty bodies in relation to these rights as the basis, as part of the moral imperative and/or as part of the Dutch government's duty of care towards citizens in civil tort / civil liability claims against the government. This recently has happened in cases on climate change and air pollution.

Even though such cases can be done and won through such civil tort / civil liability cases, it is not the access to justice on human rights as foreseen and proclaimed by the UN human rights bodies, CESCR in particular.

We urge the Dutch government to take the recommendations received from CESCR and other relevant treaty bodies to heart and carefully re-evaluate its position.

We recommend that the Human Rights Council urges The Netherlands to reassess and mend its current position that ICESCR provisions and provisions in UN human rights instruments related to economic, social and cultural rights are not directly applicable.

3. THE DUTCH NATIONAL HUMAN RIGHTS INSTITUTION, GENERAL FUNDING AND SDGS

The authors of this report are pleased that the Dutch government has established a National Institute for Human Rights (NHRI) according to the Paris Principles. Our Dutch NHRI is called “College voor Rechten van de Mens”.²

The Institute has an important role to play in putting national issues in a human rights perspective. Recognizing socio-economic and (sustainable) development issues as human rights, both by the people and authorities, is an important step in their protection and implementation.

The Institute has confirmed the importance of a human rights based approach to the Sustainable Development Goals (SDGs) at international events, including reporting on the Merida Declaration (“The Role of National Human Rights Institutions in implementing the 2030 Agenda for Sustainable Development”³) follow up by The Institutes Chair at the Global Alliance of National Human Rights Institutions (GANHRI) meetings in Geneva March 2016 and by supporting the Merida Declaration⁴.

Nevertheless, in terms of the functioning of the new Institute, authors regret to see that the Dutch Institute has budgetary / capacity issues. One explanation for that is the substantial increase in tasks attributed to the - former - Equal Treatment Commission, which tasks are now transferred to the new Institute, but are not matched by a proportionate raise of the financial means to properly discharge of these tasks. Another problem is that The Institute lacks funding to effectively work on new or specific issues or areas, such as on the implementation of the SDGs in The Netherlands. This, even though the Institute itself wants to do so and The Netherlands has signed up to the SDGs, agreeing to its human rights based text, goals, targets and indicators. Although The Netherlands has started to implement and translate the global SDGs into national targets and policies, The Dutch Institute has not received specific or general additional budget to work on a Human Rights Based Approach to SDGs, as proclaimed by the SDGs itself (including in SDG 16 on inclusive, effective and accountable institutions), as wanted by The Institute (see before) and as set out in the Merida Declaration.

By agreeing on the SDGs, The Netherlands has agreed to “...implement the Agenda for the full benefit of all, for today’s generation and for future generations. In doing so, we reaffirm our commitment to international law and emphasize that the Agenda is to be implemented in a manner that is consistent with the rights and obligations of states under international law.” as set out in point 18 of the SDGs. Human rights principles and standards are now strongly reflected in this ambitious new global development framework, along with intergenerational equity.

OHCHR on its websites confirms the importance of a human rights based approach to sustainable development: “OHCHR has made a strong contribution to the integration of human rights throughout the process to define the SDGs and will seek to ensure that strategies and policies to implement the 2030 Agenda are human rights-based. In this regard, it will be crucial to ensure that the 2030 Agenda is implemented with the support of the necessary resources and political commitment.”⁵

The authors of this report agree to this. The Netherlands needs to provide with the necessary resources and commitment for the Dutch NHRI to independently work on all human rights issues, including on working on a human rights based approach for (monitoring) the implementation of SDGs.

We recommend that the Human Rights Council urges The Netherlands to ensure that the Dutch National Institute for Human Rights is provided with sufficient resources and support to independently work on all human rights issues in The Netherlands, including on monitoring and implementing the Sustainable Development Goals.

In addition to what has been set out before on OHCHR, the SDGs text, goals and targets and the Merida Declaration and the Rights Based monitoring by NRIs, we also see that UN human rights bodies (including very recently the Committee on the Rights of the Child - as set out later in chapter 4.1) are

addressing the SDGs. A Rights Based Approach to SDGs is crucial for The Netherlands to implement the SDGs.

We recommend the Human Rights Council to advise the Netherlands to develop and implement clear human rights based criteria and indicators for the realisation of the Sustainable Development Goals in the Netherlands. The progression on the specific goals and implementation of the Sustainable Development Goals should be periodically reviewed and evaluated based on these criteria and indicators.

4. HUMAN RIGHTS AND ENVIRONMENTAL AND HEALTH ISSUES IN THE NETHERLANDS

The OHCHR website of UN Special Rapporteur (SR) human rights and the environment, John Knox, states: “*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.*”⁶

These words are not just mentioned on SR Knox’ websites, they are reiterated, acknowledged and reaffirmed in and through many UN documents, including UN Human Rights Council Resolutions, General Comments and OHCHR and SRs 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 in relation to concrete health and environmental issues in The Netherlands. Dutch politicians and government representatives have also 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.”⁷.

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.

Article 12 ICESCR stipulates the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. General Comment 14⁸ further (under 35.) explains the obligation to fulfil: “States are also required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data.

For this purpose, they should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil...”. Furthermore, the progressive realisation of the right to health means (General Comment 14 under 30. and 31.) “..that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of article 12.”

A recent concrete example of the lack of human rights compliance in this respect:

The Netherlands recently raised the maximum speed limit on several highways from 120 to 130 kilometres per hour. This implies more CO2 emission (contributing to climate change), more particulate matter and other air pollution (more illnesses and deaths due to air pollution), more noise pollution and a higher risk of

(lethal) accidents, due to less control and higher impact in accidents. This was all known when the decision was taken, also that the benefits (e.g. less travel time) are extremely limited. Thus the negative impacts on health-related human rights were not sufficiently addressed, weighed and/or followed up on.

Contrary to the obligations based on human rights to i) expeditiously and as effectively move towards reducing air pollution and ii) formulate and implement national policies aimed at reducing and eliminating air pollution, The Netherlands moved into the opposite direction.

Although we understand this UPR is not a complaint procedure for this specific case (and this will not result into a ruling), this is one example that shows us that The Netherlands at least needs to be reminded of its human rights obligations in relation to health and environmental issues.

We recommend that the Human Rights Council insists that the Netherlands develops a set of criteria and indicators for legislation, policies and enforcement measures to be assessed on its potential impact on health and environment related human rights. The human rights impact of all health and environmental legislation and policies should be analysed in advance. The criteria should also be applied to existing policy and on the human rights impacts by non-state actors. All health infringing policies should be periodically reviewed and evaluated after implementation.

4.1 AIR POLLUTION

In addition to what has already been presented above in relation to (the obligation to fulfil and progressive realisation of) the right to health, we would like to report that, despite some improvements, the right to life and right to health of people in the Netherlands, especially in urban areas, continues to be severely compromised by prevailing and prolonged exposure to ambient air pollution, in contravention of European and international safety levels for acceptable pollution rates: in the Netherlands about 3-5% of the total burden of disease is caused by air pollution.⁹

Air pollution in The Netherlands causes people to be ill (cardiovascular and lung diseases, heart attacks and arrhythmias, affects the central nervous system and the reproductive system and can cause cancer) and to die (particulate matter, PM, causes still birth and premature death). As with SO₂, NO_x in air pollution contributes to acid deposition but also to eutrophication of soil and water. In addition, recent research has shown that NO_x, independent of PM, reduces life expectancy. Currently, average life expectancy in the Netherlands is reduced 9 months by PM exposure and an additional 4 months due to NO₂ exposure, resulting in a total loss of life expectancy of the entire population of on average over a year.

Recent studies also reveal that on 40% of Amsterdam city streets where air pollution is measured, levels of NO₂ are higher than allowed per European clean air regulations.¹⁰ Also in several other cities and nearby some major farms, air pollution limit values are exceeded. In August 2016, Friends of the Earth Netherlands (Milieudefensie) therefore launched a lawsuit against the Dutch state to require the State to take further measures in this regard, and to ensure within half a year, compliance with relevant European air pollution regulation.¹¹

As these European limit values are far too weak to properly protect health, they also ask the state to take measures in order to meet the WHO Air Quality Guidelines, which for PM are 50% more stringent than the current EU limit values.¹²

The Committee on Economic Social and Cultural Rights makes several clear references to environmental hygiene and the impacts of (air) pollution on health, including ‘the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health’. Moreover states ‘should refrain from unlawfully polluting air’ and ‘should formulate and implement national policies aimed at

reducing and eliminating pollution of air, water and soil, including pollution by heavy metals such as lead from gasoline'. Finally, 'the failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries' is a violation of the obligation to protect the right to health.¹³

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 strive to meet the higher WHO Guidelines to protect the right to the highest attainable standard of health for its citizens effectively.

The right to life is codified (under Article 6 ICCPR) " 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." Human Rights Committee General Comment No. 6 explains how States often interpret this right to narrowly¹⁴: "5. Moreover, the Committee has noted that the right to life has been too often narrowly interpreted. 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 air pollution is obvious.

Impact of air pollution on Children, CRC and the UN Committee on the Rights of the Child:

The UN Committee on the Rights of the Child, very recently on 9 June 2016, in Concluding Observations for the United Kingdom (CRC/C/GBR/CO/5) was very clear about the relationship between air pollution and the rights of the child (and mentioned the Sustainable Development Goals):

"67. The Committee is concerned at the high level of air pollution that directly affects child health in the State party and contributes to the negative impact of climate change affecting various rights of the child, both in the State party and in other countries.

68. With reference to Sustainable Development Goal 1, Target 1.5, the Committee recommends that the State party, including the devolved administrations in relation to devolved matters; (a) Set out a clear legal commitment, with appropriate technical, human and financial resources, to scale up and expedite the implementation of plans to reduce air pollution levels, especially in areas near schools and residential areas;"

Surely the same concerns and recommendations apply to Dutch children. In addition to mentioning children as a specific group, unborn children, elderly and people with chronic diseases should be mentioned as they are particularly vulnerable to the impacts of air pollution¹⁵.

Special Rapporteur on human rights and hazardous substances Baskut Tuncak very recently confirmed in his August 2016 Human Rights Council Report¹⁶:

"Every child has the inherent right to life and States are duty-bound to ensure to the maximum extent possible the survival and development of the child." and "States must prevent childhood exposure to toxics to protect the right of all children to life, survival and development."

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 with regard to keeping our current water sources clean).

Improving air quality has positive health and economic impacts (less people ill equals 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.

We recommend the Human Rights Council to insist that the Netherlands takes immediate and concrete actions on air pollution, e.g. through various regulatory measures and with focus on specific groups such as (unborn) children and elderly. Such measures should aim to ensure that the highest attainable level of clean air is realised, with as a minimum form of protection the most stringent international safety levels for air pollution and health (i.e. the WHO Guidelines).

Air pollution has cross boundary causes and impacts. A significant part of the air pollution in The Netherlands originates from pollution created abroad (e.g. industry and traffic in our neighbouring countries). Similarly, a large part of the air pollution produced in the Netherlands is exported abroad. In fact, the amount of air pollution exported from the Netherlands is 3 times as high as the amount that is imported. This demands European policy, next to local and national action.

The Maastricht Principles on Extraterritorial Obligations in the area of Economic, Social and Cultural Rights (Maastricht Principles)¹⁷, constitute an international expert opinion, restating human rights law on Extra Territorial Obligations. Forty international law experts from all regions of the world issued the Maastricht Principles on 28 September 2011. These experts include current and former members of international human rights treaty bodies, regional human rights bodies, as well as former and current Special Rapporteurs.

The Maastricht Principles call on States to take responsibility with regard to Extra Territorial Impact and proclaim that States must adopt and enforce measures to protect economic, social and cultural rights through legal and other means, including diplomatic. This indeed is required to protect and respect the human rights of the people of The Netherlands and all other countries.

We recommend the Human Rights Council to urge the Netherlands to take immediate and concrete actions on air pollution to ensure the reduction of pollution in and from other States that impacts the human rights of people, present and future generations, in The Netherlands, through, inter alia diplomatic and legal efforts.

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4.2 CLIMATE CHANGE

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

In past years, the Netherlands has pursued as an official policy to reduce greenhouse gases with 17%, instead of minimum reduction efforts of 25% as required by international climate agreements – so as to keep to maximum 2 degrees warming. In fact, recent discussions leading up to the new UNFCCC Paris Agreement affirm now that a maximum warming level of 2% is insufficient and that 1,5% should be strived for. Accordingly, efforts and targets have to be improved.

In 2015/2016, organization Urgenda filed and subsequently won a lawsuit in the Court of First Instance against the Dutch state on behalf of itself and 900 Dutch citizens. The Court ruled that the Netherlands has to step up efforts on greenhouse gas reductions, in line with international treaty obligations to this effect.¹⁸ This goes again to the need to respect international environmental safety levels that help to ensure respect for human rights, including in the area of health. The effects of climate change for the Netherlands, as listed in the Urgenda case, are considerable.²²⁴ The Dutch State decided to appeal the ruling of the Court. This case has primarily been ruled as a tort case under Dutch law, however civil and political human rights law was judged to be relevant as was the case law of the European Court of Human Rights. The Dutch court included intergenerational equity in the verdict, confirming the principle of fairness towards future generations.

Parties to this report consider this reporting cycle an excellent opportunity to clarify the great importance and implications of the ICESCR in matters of climate change as well, in particular ‘the right to health’ as

also set out in the WHO Factsheet on Health and Climate Change.¹⁹ The applicability of the right to health in climate change, and the severe health effects of climate change, was also affirmed by the UN Human Right Council recently, and in the preamble of the UNFCCC Paris Agreement of December 2015 along with inter-generational equity²⁰.

In the past years, the relationship between climate change and human rights has received increasing attention from the Human Rights Council and international bodies, including the Conference of the Parties to the United Nations Framework Convention on Climate Change. The OHCHR calls for a Rights Based Approach to Climate Change on its website²¹ and Special Rapporteur John Knox has given a comprehensive outline on this in his early 2016 “Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment” (A/HRC/31/52), in which he concludes: human rights norms clarify how States should respond to climate change. As the Paris Agreement recognizes, whenever States take action to address climate change, they should respect, protect and consider their respective obligations on human rights. Complying with human rights obligations not only helps to protect the rights of everyone affected by climate change. As the Human Rights Council has affirmed, it also promotes policy coherence, legitimacy and sustainable outcomes.

The Human Rights Council has adopted several resolutions on climate change, including resolutions 7/23, 10/4, 18/22, 26/27, 29/15 and (most recently in July 2016) 32/34²².

In this last resolution, the Human Rights Council welcomes the Paris Agreement adopted under United Nations Framework Convention on Climate Change, which acknowledges that climate change is a common concern of humankind, and that parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, as well as intergenerational equity. Furthermore, this resolution recognizes the urgent need for early ratification, acceptance or approval and full implementation of the Paris Agreement and welcoming the adoption of the 2030 Agenda for Sustainable Development, including, *inter alia*, its Goal 13, which calls for urgent action to combat climate change and its impact.

Parties to this report consider that The Netherlands does not take sufficient action to combat climate change in and outside The Netherlands, despite its duties under international agreements and human rights law.

We recommend the Human Rights Council to insist that the Netherlands takes immediate and dedicated national action on greenhouse gas reductions and meet, at a minimum, internationally required and agreed reduction targets for mitigating harmful climate change. This includes that The Netherlands needs to insure (human rights) commitment and compliance by non-state actors, such as business.

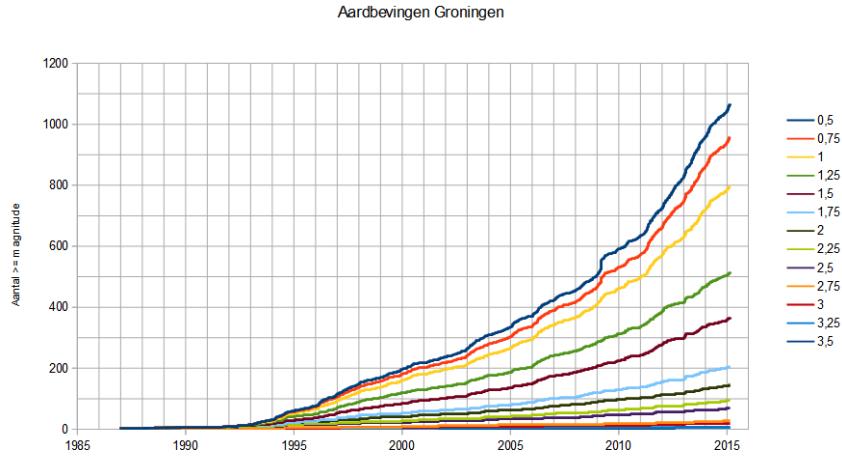
We recommend the Human Rights Council to advise the Netherlands to develop and implement clear human rights based criteria and indicators to ensure the Paris Agreement is realised in the Netherlands, which includes intergenerational equity, specific groups and compliance by non-state actors, such as business. The progression on the specific goals and implementation of the Paris Agreement should be periodically reviewed and evaluated based on these criteria and indicators.

4.3 EARTH QUAKES DUE TO GAS EXTRACTIONS

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 has produced around 1,700 billion cubic meters which represents 60% of the total reserves of the field but the remaining is expected to last for another several decades, to up to 50 years.

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.²³

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.²⁴ This is shown in this figure (amount of earthquakes >= 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 people²⁵ and a large chemical park in the area. Farmland is subsiding, drains are broken, the groundwater level is disturbed and sometimes rising²⁶ 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 given to the people of Groningen; the Netherlands as a whole and other provinces far away profit most from the money made by selling the gas. Groningen in fact still is the poorest province of the Netherlands.²⁷

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.²⁸

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.²⁹

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.³⁰

In addition to those human rights, the right to life and family life, as protected under ICCPR and the European Convention on Human Rights and the (long term) sustainability elements - protecting currently clean sources - of the right to water, are 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.

Human Rights and Business 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 rights.

This is also confirmed through the UN Guiding Principles on Business and Human Rights. These same Principles require the State to ensure that effective human rights due diligence is implemented by NAM. "The legal obligations of the State to respect and protect human rights are additional to the enterprise's own responsibility to respect human rights and do not diminish it in any regard. The human rights due diligence process should uncover risks of non-legal (or perceived) as well as legal complicity and generate appropriate responses." and "Due diligence has been defined as "such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent [person] under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case".

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.³¹

The Netherlands should take appropriate action on the exploitation of gas, respecting, protecting and fulfilling the human rights of the people of Groningen and should implement a human rights based approach to the issues in Groningen in relation to the gas extraction, which should include clear duties for business in general, the NAM in particular and should take into account intergenerational equity.

We recommend the Human Rights Council to insist that the Netherlands takes immediate and dedicated national action on the gas extraction in Groningen, which includes clear human rights based criteria, goals and indicators to ensure that human rights violations are prevented as much as possible, damage is mitigated, the benefits of gas exploitation is equally shared and effective remedies are realised.

This action should include includes future/long-term impact assessment, the principle of intergenerational equity and compliance by non-state actors, ensuring, inter alia, thorough and effective human rights due diligence processes for (the NAM and other) businesses involved. The specific goals and indicators should be periodically reviewed and evaluated to ensure progression.

Endnotes:

- 1 UN-Committee for Economic Social and Cultural Rights, CESCR, General Comment 3 and 9.^[1]
- 2 For some pages of The Netherlands Institute for Human Rights website in English:
<https://www.mensenrechten.nl/mission-and-ambition>
- 3 The Mérida Declaration. The Role of National Human Rights Institutions in implementing the 2030 Agenda for Sustainable Development. A download is available:
<http://nhri.ohchr.org/EN/ICC/InternationalConference/12IC/Background%20Information/Merida%20Declaration%20FINAL.pdf>
- 4 Regional report from ENNHRI session 1: Merida Declaration follow up by Ms. Adriana VAN

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- DOOIJEWERT, the Netherlands Institute for Human Rights On the occasion of ICC 29 Room XIX, Palais des Nations Geneva, Switzerland
22 March 2016. A download is here:
<http://nhri.ohchr.org/EN/ICC/GeneralMeeting/29/Theme%20201%20NHRI%20experiences%20with%20the%20second%20cycle%20UPR/Session%201%20-Merida%20Declaration%20follow%20up%20ENNHR%20by%20Ms%20van%20Dooijewert,%20the%20Netherlands%20Institute%20for%20Human%20Rights.pdf>
- 5 OHCHR website on the 2030 agenda. See:
<http://www.ohchr.org/EN/Issues/MDG/Pages/The2030Agenda.aspx>
- 6 OHCHR website of the Special Rapporteur on human rights and the environment. See:
<http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SREnvironmentIndex.aspx>
- 7 For instance see: <http://blog.oup.com/2015/07/urgenda-netherlands-climate-change/>
- 8 UN-Committee for Economic Social and Cultural Rights, General Comment No. 14, The right to the highest attainable standard of health (art. 12 of the Covenant on Economic, Social and Cultural Rights), 11 Augustus 2000, E/C.12/2000/4.
- 9 More information on Dutch air quality, see <http://www.rivm.nl/media/milieu-en-leefomgeving/hoeschoonisonzelucht/>
- 10 For instance, see: 'Friends of the Earth Netherlands challenging State about Air Pollution', Newspaper: Parool (2 August 2016) <http://www.parool.nl/binnenland/milieodefensie-daagt-staat-om-luchtvervuiling~a4350196/>; Also see <http://www.ggd.amsterdam.nl/gezond-wonen/milieu-buitenhuis/luchtkwaliteit/>
- 11 Friends of the Earth Netherlands, 'Dutch State being sued about Air Pollution', (2 August 2016) <https://milieodefensie.nl/luchtkwaliteit/nieuws/dagvaarding-recht-op-gezonde-lucht>
- 12 WHO Air Quality Guidelines (2005), here:
http://www.who.int/phe/health_topics/outdoorair/outdoorair_aqg/en/
- 13 UN-Committee for Economic Social and Cultural Rights, General Comment No. 14, The right to the highest attainable standard of health (art. 12 of the Covenant on Economic, Social and Cultural Rights), 11 Augustus 2000, E/C.12/2000/4.
- 14 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)
- 15 For people with chronic diseases, see for instance, See
<http://bmjopen.bmj.com/content/5/9/e009075.full.pdf>
- 16 Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, A/HRC/33/41:
27. Every child has the inherent right to life and States are duty-bound to ensure to the maximum extent possible the survival and development of the child. A holistic concept of childhood development should include consideration of factors such as freedom from exposure to toxics and pollution, as such exposure can have an adverse impact on the child's physical, mental, psychological and social development.⁵⁰ The child's right to life, survival and development is contingent upon the realization of the rights to health, to food, water and adequate housing, and to a healthy environment, as well as to physical integrity and to information.
28. Exposure to toxic chemicals during crucial periods of development can affect the way in which genes are expressed, leading to deadly or adverse developmental outcomes for some children. Often these are not seen at birth, when a seemingly healthy child may in fact have suffered disruptions to his development that may lead to a higher probability of diseases and disabilities later in life, and in many cases premature death. States must prevent childhood exposure to toxics to protect the right of all children to life, survival and development.
- 17 For a download of the Maastricht Principles on ETOs:
https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf
- 18 Court of First Instance, Case No. ECLI:NL:RBDHA:2015:7196, (24 June 2015). Also see:
<http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2015:7196>
- 19 WHO Factsheet on Health and Climate Change, via:
<http://www.who.int/mediacentre/factsheets/fs266/en/>

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- 20 Human Rights Council Resolution 29/15 (22 July 2015), available at:
http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/29/15; See also Hesselman and
Toebes: 'The human right to health and climate change: A legal perspective', 31 October 2015,
available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2688544.
- 21 See: <http://www.ohchr.org/EN/Issues/HRAAndClimateChange/Pages/HRClimateChangeIndex.aspx>
- 22 Human Rights Council Resolution 29/15 (22 July 2015)
- 23 Information from https://en.wikipedia.org/wiki/Groningen_gas_field
- 24 A good overview on this topic can be found here: <http://td-er.nl/2015/04/07/exponentiele-groei-aardbevingen-2/>
- 25 News article in Dutch: <http://www.nu.nl/binnenland/3706594/dijken-in-groningen-sneller-vers tevigd-aardbevingen.html>
- 26 <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>
- 28 An informative paper by Nicolette Marié from Groningen on this: <http://accenttaigu.nl/wp-content/uploads/2015/06/How-a-nations-gas-wealth-turns-into-a-nations-crime-scene.pdf>
- 29 <http://www.groningerkrant.nl/2015/09/zelfdodingen-in-groningen/>
- 30 See: <https://www.mensenrechten.nl/berichten/nederland-negeerde-mensenrechten-groningen>
- 31 See for instance http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf