



NV: GEV-MR 228/2023

The Permanent Mission of the Kingdom of the Netherlands to the United Nations and other international organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights. With reference to the Joint Communication of 26 October 2023 (AL NLD 3/2023) of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable development; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of Indigenous Peoples and the Special Rapporteur on the human rights to safe drinking water and sanitation, the Permanent Mission has the honour to inform the Office as follows.

The Government of the Kingdom of the Netherlands first wishes to reiterate that it fully supports and values the mandates of the Special Rapporteurs and the Working Group. It gives serious consideration to their views. The Government of the Kingdom of the Netherlands will always seek to respond and actively engage with UN mandate holders, and it has extended a standing invitation to all UN mandate holders falling under special procedures. The Government of the Kingdom of the Netherlands is open to dialogue with its international partners on the protection of human rights in the Netherlands, in a spirit of self-reflection and with a view to further improving the observance of human rights. In this context, the Government of the Kingdom of the Netherlands appreciates the opportunity provided by the Special Rapporteurs and the Working Group to issue observations regarding the alleged human rights violations and abuses of members of the Native Community of Santa Clara de Uchunya, in the Ucayali region of Peru.

The Permanent Mission of the Kingdom of the Netherlands to the United Nations and other international organisations in Geneva avails itself of the opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 22 December 2023



To the Office of the High Commissioner for Human Rights
Geneva

Response of the Kingdom of the Netherlands to the letter from OHCHR with reference AL NLD 3/2023

The Government of the Kingdom of the Netherlands (hereinafter: the Government) responds as follows to the Joint Communication of 26 October 2023 from the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable development; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of Indigenous Peoples and the Special Rapporteur on the human rights to safe drinking water and sanitation.

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

The Government takes due note of the serious concerns raised in the Joint Communication regarding the human rights and environmental impacts of the activities of the Peruvian palm oil company Ocho Sur P. SAC.

The Dutch company Bunge Loders Croklaan, mentioned as one of the main buyers of products from Ocho Sur, has confirmed that it has taken measures and blocked further purchases from Ocho Sur. Bunge Loders Croklaan stated as follows in its grievances log: 'Unless and until such claims and the underlying issues are fully addressed, in accordance with applicable law, Bunge sustainability and human rights policies (and the relevant international standards upon which they are grounded), Ocho Sur will remain blocked in Bunge's supply chain.'¹

In addition to this letter, it may be relevant to mention the notification to the Netherlands' National Contact Point for Responsible Business Conduct (NCP) from AIDSESEP, FECONAU, FPP, IDL, Kené, EIA and CCCA concerning an alleged violation of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (hereinafter: OECD Guidelines) by Louis Dreyfus Company B.V. The issues raised in the submission concern an alleged violation of the OECD Guidelines concerning, inter alia, the failure of Louis Dreyfus Company B.V. to conduct adequate due diligence through its decision to source, and continue sourcing, palm oil from Ocho Sur Group (of which Ocho Sur P. SAC is part).

The Dutch NCP is a non-judicial complaints mechanism established by the Dutch government in compliance with the OECD Guidelines. The Dutch NCP operates independently from the Dutch government.

¹ From [the Bunge Loders Croklaan Grievances log](#): 'Ocho Sur is not a direct supplier to Bunge. In 2022, Bunge made clear to its Tier 1 suppliers its requirement that it not receive any palm oil products sourced from Ocho Sur. While Ocho Sur has reported through its own website and 2023 Progress Report remediation actions, such as the integration of new sustainability team members, launching of sustainability policy and grievance tracker, intention to application for RSPO membership, participation on the NDPE IRF tool, and carbon footprint report, serious questions remain including claims from the Santa Clara de Unchunya Native Community regarding the land in question and Free Prior and Informed Consent, deforestation, environmental degradation, and appropriate human rights practices. Additionally, civil and/or criminal claims in Peru and in other forums may be pending. Unless and until such claims and the underlying issues are fully addressed, in accordance with applicable law, Bunge sustainability and human rights policies (and the relevant international standards upon which they are grounded), Ocho Sur will remain blocked in Bunge's supply chain.'

- 2. Please provide information on the measures the Government of your Excellency has taken, or is considering taking, to ensure that business enterprises, domiciled in your territory, and/or jurisdiction respect human rights in all their activities, including with regard to their supply chain.**
- 3. Please provide information on concrete progress made by the Government of your Excellency in requiring or encouraging business enterprises domiciled in your territory and/or jurisdiction to implement human rights due diligence processes, in accordance with the UN Guiding Principle on business and human rights, including with regard to their supply chain.**

The government of the Netherlands expects all Dutch enterprises to align their business practices with the OECD Guidelines and the United Nations Guiding Principles on Business and Human Rights (hereinafter: UNGPs). These guidelines and principles set out the responsibility of businesses to identify and address risks in their international value chains. This includes engaging in meaningful stakeholder consultation and providing remedy where applicable. The government of the Netherlands drew up its first National Action Plan on Business and Human Rights in 2014 and revised it in 2022 (for more information, please see the answer to question 5).

Dutch policy on responsible business conduct (RBC) is part of the Dutch National Action Plan on Business and Human Rights and consists of a smart mix of measures to foster business respect for human rights. Measures include an RBC support centre serving as a 'one-stop shop' for businesses that wish – or are required – to adopt RBC principles; financial incentives for sectoral cooperation on RBC; and the setting of RBC conditions for businesses that request government support or take part in public procurement procedures. These measures are meant to support the core objective of the policy, which is to establish a broad due diligence obligation for businesses at European level. The government's intention is that this smart mix of measures will sufficiently motivate businesses to adopt effective RBC.

The Government believes EU legislation on RBC is necessary in order to achieve a level playing field for companies and a positive impact in production countries. On 14 December 2023, a provisional agreement was reached on the EU's Corporate Sustainability Due Diligence Directive (CSDDD). The CSDDD will require companies to identify and prevent, bring to an end, or mitigate the actual and potential impacts of their activities on the environment and on human rights abuses. The Netherlands has taken ambitious positions on the substance of the directive and has consistently pushed for a swift adoption of the final directive.

4. Please provide information on the measures the Government of your Excellency has taken against deforestation in the context of business activities

As mentioned above, the Government expects all businesses to align their business practices with the OECD Guidelines and UNGPs and carry out risk-based due diligence to avoid and address adverse impacts such as deforestation. The Netherlands has made efforts to promote RBC through voluntary agreements with business, trade unions and civil society stakeholders. In over a dozen sectors, the agreements have raised awareness of standards and encouraged dialogue and exchange on better business practice. In addition to these non-binding guidelines the Government supports mandatory due diligence obligations in global value chains at European level, including to address deforestation concerns.

In addition to the aforementioned and provisionally agreed CSDDD, the Government supports the new EU Regulation on Deforestation-free Products (EUDR), which aims to minimise the risk of deforestation and forest degradation associated with products that are placed on the EU market. The regulation sets mandatory due diligence rules for all operators and traders who place or make available the following high-deforestation risk commodities on the EU market or export these from the EU market: palm oil, cattle, wood, coffee, cocoa, rubber and soy. The EUDR entered into force on 29 June 2023 and its obligations will apply from 30 December 2024.

5. Please provide information on the steps the Government of your Excellency is taking or considering taking to ensure that individuals affected by the activities of business enterprises domiciled in your jurisdiction have access to remedy in your country through judicial or extrajudicial State-based mechanisms.

The Government promotes RBC in a variety of ways. In 2022, it published a revised National Action Plan on Business and Human Rights,² describing actions grouped according to three pillars of the UN's Guiding Principles for Business and Human Rights: the state duty to protect human rights (pillar 1), the corporate responsibility to respect human rights (pillar 2), and access to effective remedy (pillar 3).

Ideally, human rights abuses, including those related to labour rights, should be addressed where they take place and an effective remedy should be offered locally. A mechanism in the Netherlands may be preferred in some cases, for example when there is no effective local mechanism or when an enterprise domiciled in the Netherlands is involved in the violation. The revised National Action Plan on Business and Human Rights describes the actions the Dutch Government will take with regard to access to remedy, including publishing information about existing mechanisms and how they work and what support is available for individuals who want to access them.

More concretely, an important element of the third pillar (access to effective remedy) of the revised National Action Plan is the development and active dissemination of an accessible, multilingual digital guide for rights holders, which is intended to clarify options for access to remedy in the Netherlands. To promote RBC in the second pillar, the Government applies the policy mix of mutually reinforcing measures as described above. Through the voluntary policy measures, the government promotes compliance with the OECD Guidelines and the UNGPS, for example through sectoral RBC agreements. In terms of mandatory measures, as urged by the Government of The Netherlands, providing or contributing to remedy has been made an integral part of the CSDDD. This includes provisions on mandatory grievance mechanisms as well as provisions on civil liability.

The Government recognises the need for action to address human rights abuses committed by, or with the involvement of, companies domiciled in the Netherlands. The Rome II Regulation states that the applicable law is determined on the basis of where the damage occurred. In cases of human rights abuses abroad, the applicable law is therefore the law of the country concerned. Depending on the circumstances of the case, business enterprises incorporated in the Netherlands may be subject to the jurisdiction of the Dutch courts, and these may be competent to hear a claim pertaining to allegations of human rights abuses, even if they took place outside the Netherlands. Protecting the rights of potential victims of human rights abuses and their representatives is an element of the due diligence methodology that the policy mix aims to promote, in accordance with the aforementioned international standards.

² <https://www.government.nl/documents/publications/2022/11/8/national-action-plan-business-and-human-rights>.