



Ministry of Foreign Affairs

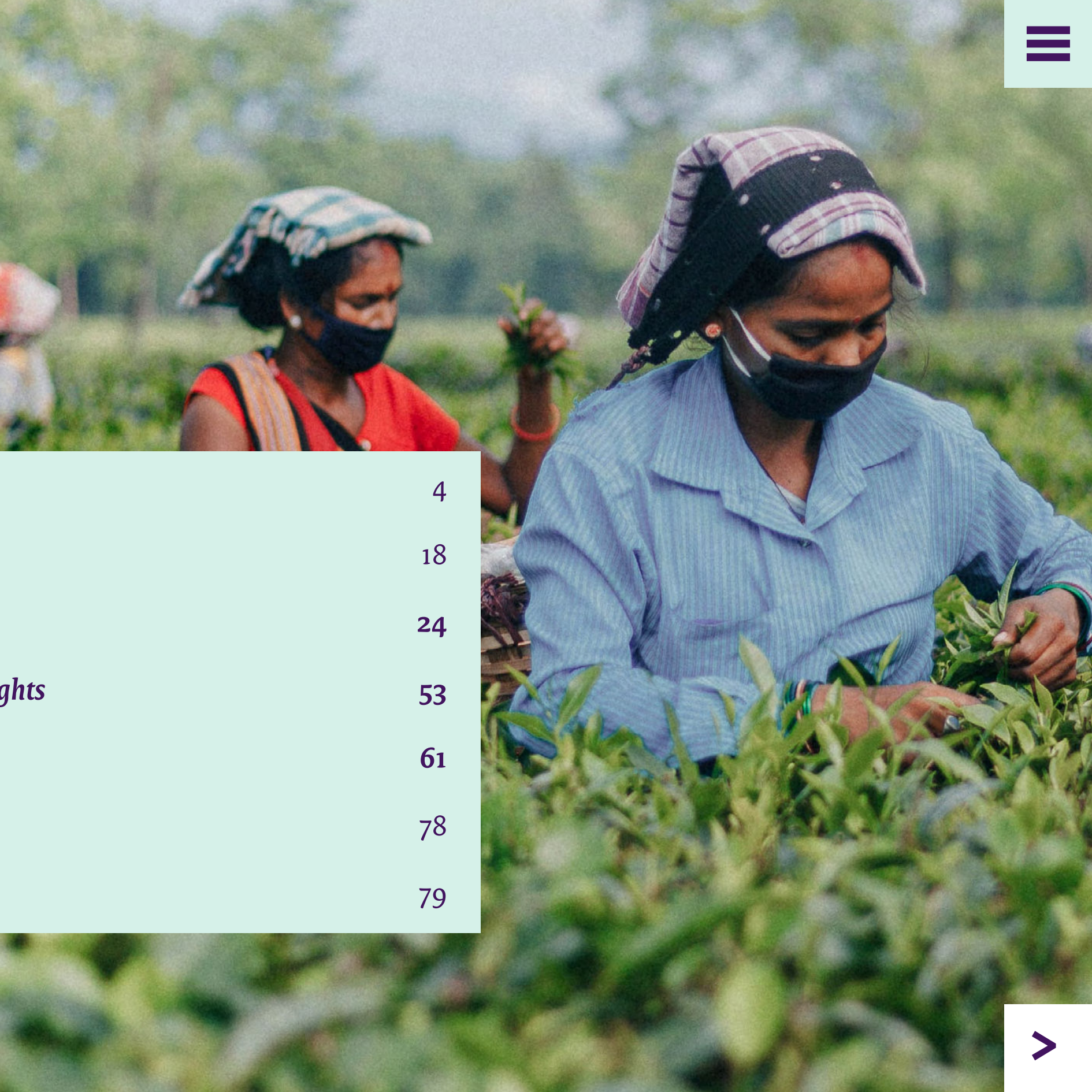
# > National Action Plan

# **&** Business Human Rights





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# > Executive summary

The Netherlands is committed to protecting and promoting human rights around the world. Sustainable development and the Sustainable Development Goals cannot be achieved without also protecting and respecting human rights. This is a task for government, the business community and the general public.

At UN level, the Netherlands has committed itself to the United Nations Guiding Principles for Business and Human Rights (UNGPs). These form the foundation on which states and businesses can build their human rights efforts. Many states have drawn up a National Action Plan on Business and Human Rights (NAP) to implement the UNGPs. The first such plan by the Netherlands was published in 2014. The action points detailed in the Netherlands' 2014 NAP have since then either been implemented or constitute ongoing obligations. In this revised NAP, the government therefore outlines its current policy and what steps it will be taking in the coming years to apply the UNGPs in the current context.

The action points detailed in the Netherlands' 2014 NAP have since then either been implemented or constitute ongoing obligations

### The action plan is based on the three pillars of the UNGPs:

**PILLAR 1** ‘State duty to protect human rights’, focuses on the further incorporation of business and human rights into the Netherlands’ national, European and foreign policy, on policy coherence and on a number of themes for which the government has particular responsibility for policy implementation.

**PILLAR 2** ‘The corporate responsibility to respect human rights’, focuses on measures resulting from a policy review on responsible business conduct (RBC), with specific focus on due diligence legislation, sector-wide cooperation and an RBC support office.

**PILLAR 3** ‘Access to Remedy’, is given greater emphasis in this NAP than in the previous one, with a focus on various forms of access to remedy and the linkages between them.

To make this NAP as concrete as possible, one or more action points are listed under each theme of each pillar, with objectives, the parties responsible for implementation and timelines. The themes are based on the UNGPs, the

National Baseline Assessment (NBA) and the response to the NBA by the government at the time. The themes and the related action points are outlined below.

The Ministry of Foreign Affairs (BZ) coordinated the process of revising this action plan. The interministerial collaboration with six other ministries (Interior and Kingdom Relations (BZK), Economic Affairs and Climate Policy (EZK), Finance (FIN), Infrastructure and Water Management (I&W), Justice and Security (J&V), and Social Affairs and Employment (SZW)) will continue to monitor the implementation of the action points and to ensure a continuing sharp focus on business and human rights.

To make this NAP as concrete as possible, one or more action points are listed under each theme of each pillar, with objectives, the parties responsible for implementation and timelines



# > Pillar 1

ACTION POINTS PILLAR 1	Aim	Responsible party	Timeline
Combating abuses of migrant workers			
Implement report by Migrant Worker Protection Task Force.	Prevent abuses of migrant workers.	SZW (coordinating ministry), Interministerial Project Team on Migrant Workers leads and monitors.	Annual report on EU labour migration to House of Representatives, reporting on progress on a number of recommendations, each with their own timeline.
Modernise article 273f of the Criminal Code.	Improve prosecution of offenders.	J&V (coordinating ministry for whole of article 273f), SZW responsible for tackling labour exploitation.	The House of Representatives will be updated in the summer of 2022.





ACTION POINTS PILLAR 1	Aim	Responsible party	Timeline
Combating labour market discrimination			
Any follow-up activities aimed at combating labour or labour market discrimination (e.g., legislation, research or communication) will, where appropriate, refer to relevant business and human rights frameworks: the UNGPs and OECD Guidelines.	Integrate relevant international frameworks and action plans.	SZW	From 2022
Draw up an Action Plan on Labour Market Discrimination referring where relevant to the UNGPs and OECD Guidelines.	Integrate relevant international frameworks and action plans.	SZW	2022



ACTION POINTS PILLAR 1	Aim	Responsible party	Timeline
Central government procurement			
Implement International Social Conditions (ISC) in the 2022-2025 Sustainable Public Procurement (SPP) manifesto.	Strengthen implementation of ISC.	I&W (on behalf of SPP ministries).	Start in spring of 2022, continuing until 2025.
Measure impact of SPP at all government levels.	SPP impact monitor.	National Institute for Public Health and the Environment (RIVM), commissioned by I&W, on behalf of other SPP ministries.	Biennial monitor.
Private-sector instruments			
Implement OECD Guidelines in the EZK instruments.	Bring grants frameworks in line with RBC obligations and responsibilities.	EZK; Netherlands Enterprise Agency (RVO) commissioned by EZK.	End 2022: RBC framework implemented in pilot study with 16 instruments. From 2023: RBC framework implemented in remaining EZK instruments.
If necessary, amend the Ministry of Economic Affairs and Ministry of Agriculture, Nature and Food Quality (Grants) Framework Act.	Bring grants frameworks in line with RBC obligations and responsibilities.	EZK	2022





ACTION POINTS PILLAR 1	Aim	Responsible party	Timeline
Protect human rights defenders			
Sharpen the focus on human rights defenders in the area of business and human rights within existing human rights protection programmes.	Integrate protection programmes and risk prevention for human rights defenders into private sector development programmes.	BZ	2022-2024
Draft a plan of action to initiate a dialogue between embassies, the Dutch business community and human rights defenders to better identify environmental, social and security risks (early warning) and to take early action on them (early action).	Work with human rights defenders to integrate protection programmes and the prevention of environmental, social and security risks into embassies' Multiannual Country Strategies (MACS).	BZ	From 2022







ACTION POINTS PILLAR 1	Aim	Responsible party	Timeline
Doing business in conflict areas and fragile states			
Include the UNGPs and conflict sensitivity in the Multiannual Country Strategies (MACS) of embassies in fragile states, through dialogue between embassies, implementing organisations, the business community, and with local stakeholder involvement.	Further improve integration of conflict sensitivity into foreign policy.	BZ	From 2022
Develop conflict sensitivity guidelines for the Dutch business community in collaboration with businesses, NGOs and implementing organisations, and distribute them via the RBC support office.	Inform businesses on conflict sensitivity.	BZ in collaboration with implementing partners and appropriate businesses in the Netherlands and abroad.	From 2022





ACTION POINTS PILLAR 1	Aim	Responsible party	Timeline
Sustainable trade with and investment in developing countries			
Strengthen collaboration between ministries by establishing an interministerial working group to conduct a permanent dialogue on sustainable trade and investments, focusing on specific high-risk value chains with a strong Dutch footprint.	Enhance learning capacity regarding policy coherence on sustainable trade and investments and on business and human rights.	All ministries involved, with BZ taking the initiative.	From 2022
Research, monitor and evaluate the impact on developing/producing countries of national, European and international sets of rules and standards aimed at improving the sustainability of trade and investments, where possible under the auspices of the EU and supported by local stakeholder consultations.	Enhance learning capacity regarding policy coherence on sustainable trade and investments and on business and human rights.	BZ	On introduction of new proposals and during implementation.





ACTION POINTS PILLAR 1	Aim	Responsible party	Timeline
Foreign trade and investment			
Strive to ensure that negotiations maintain the generous character of a new Generalised Scheme of Preferences (GSP) and strengthen the GSP provisions with a social, labour and climate focus.	Integrate appropriate international business and human rights frameworks into GSP agreements.	BZ	Up to end 2023
Strive for ambitious commitments and robust compliance with agreements on trade and human rights, working conditions and the environment during negotiations on new and existing EU trade agreements.	Integrate appropriate international business and human rights frameworks into the EU's trade policy strategy.	BZ	Start 2022 - end of negotiations



# > Pillar 2

ACTION POINTS PILLAR 2	Aim	Responsible party	Timeline
Due diligence and CSRD			
Negotiate ambitious due diligence legislation at EU level within existing frameworks.	Implement suitable due diligence legislation at EU level.	BZ	From 2022
Develop national due diligence legislation mindful of maintaining a level playing field with neighbouring countries and of the implementation of potential EU legislation.	Improved application of RBC by businesses via both EU and national legislation.	BZ	2022-2025
Negotiate the Corporate Sustainability Reporting Directive (CSRD).	National implementation of reporting obligations in line with the CSRD.	J&V, FIN	The Directive is expected to be adopted by EU legislators in 2022.





ACTION POINTS PILLAR 2	Aim	Responsible party	Timeline
Sector-wide cooperation			
Define the frameworks for sector-wide cooperation as part of the RBC policy mix.	Support sector-wide cooperation in order to apply due diligence.	BZ	2022
RBC support office			
Further detail and develop the RBC support office in collaboration with RVO.	Support businesses in their application of due diligence.	BZ	March-August 2022
Set up the RBC support office.	Support businesses in their application of due diligence.	RVO	From September 2022







# > Pillar 3

ACTION POINTS PILLAR 3	Aim	Responsible party	Timeline
Improve information provision to affected parties			
Develop and actively disseminate an accessible digital guide for rightsholders, in several languages.	Improve information on the options for access to remedy in the Netherlands.	BZ	2022-2023
Improve information provision to businesses on remedy			
Include access to remedy in the information offered by the RBC support office (see Pillar 2).	Collect and make available information on access to remedy.	BZ	From September 2022
Support the World Benchmarking Alliance.	Provide details of the progress made by multinational enterprises in a number of high-risk sectors on access to remedy.	BZ	2022-2026





ACTION POINTS PILLAR 3	Aim	Responsible party	Timeline
Strengthen complaints and dispute mechanisms			
Strive in EU negotiations for incorporation into legislation of all six steps in the OECD Guidelines.	Include access to remedy (step 6 of due diligence) as an integral part of EU legislation on due diligence.	BZ	From 2022
Promote collaboration on step 6 of due diligence (complaints mechanism) and participation in the policy framework for new style sector-wide cooperation.	Encourage businesses to implement step 6 of due diligence.	BZ	2022
Strengthen civil society			
Maintain strategic collaboration with civil society in development cooperation countries.	Strengthen civil society’s access to remedy.	BZ	2021-2025



ACTION POINTS PILLAR 3	Aim	Responsible party	Timeline
Strengthen non-legal state mechanisms			
Encourage cooperation and follow-up by businesses of recommendations made by the National Contact Point (NCP) for OECD Guidelines.	Improve effectiveness of the NCP in facilitating access to remedy.	BZ	2023-2024
Improve access to judicial mechanisms			
Conduct annual monitoring of the Class Action (Financial Settlement) Act (WCAM) and carry out an evaluation in 2025 looking specifically at access to Dutch courts by foreign rightsholders.	Monitor access to Dutch law by foreign rightsholders.	J&V	2020-2025
Make efforts at European level to include human rights as a ground for an exception to the Rome II Regulation.	In due course revise the Rome II Regulation to include human rights as a ground for an exception with the aim of establishing the law of the European member state involved as the applicable law.	J&V	2022-2030





ACTION POINTS PILLAR 3	Aim	Responsible party	Timeline
Toegankelijkheid juridische mechanismen vergroten			
Investigate how grounds of jurisdiction are applied.	Create clarity about grounds of jurisdiction based on <i>forum necessitatis</i> .	J&V, BZ	2022-2023
Improve the provision of information regarding opportunities and monitor the number of applications in international liability cases with a human rights component.	Raise awareness of regular legal aid options and get a clear picture of the current use of such aid.	J&V, BZ, Legal Aid Council	2022-2025





# > Introduction

## Background

**The Netherlands works to protect and promote human rights around the world. Sustainable development and achieving the United Nations' 17 Sustainable Development Goals (SDGs) are impossible without also protecting and respecting human rights. This is a task of government as well as the business community and the general public.**

The Netherlands is committed to a number of common UN principles related to human rights in the business sector. These principles are laid out in the United Nations Guiding Principles for Business and Human Rights (UNGPs)<sup>1</sup>, a global framework unanimously adopted by the United Nations Human Rights Council (UNHRC) in 2011. The UNGPs lay down a set of principles on which states and businesses can base their human rights efforts. Since 2011 the UNGPs have become a global authoritative framework with which to prevent and address the negative impacts of business activities on human rights. For example, the UNGPs were included in the OECD Guidelines for Multinational Enterprises<sup>2</sup> (OECD Guidelines) and in the revised Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration)<sup>3</sup>.

The UNGPs have also found their way into policy at European level, with the Non-Financial Reporting Directive<sup>4</sup> and the Conflict Minerals Regulation<sup>5</sup>. The 2021 Shell judgment<sup>6</sup> illustrates how the UNGPs have become more than merely soft law. The court established that the responsibility of businesses to respect human rights applies to all businesses, irrespective of their size, sector, operational context, ownership and structure.<sup>7</sup>

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- 1 United Nations Human Rights Office of the High Commissioner, Guiding Principles for Business and Human Rights (2011).
  - 2 Organisation for Economic Co-operation and Development (OECD), OECD Guidelines for Multinational Enterprises (2011).
  - 3 International Labour Organization, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (2017).
  - 4 European Union, Directive 2014/95/EU as regards the disclosure of non-financial and diversity information (2014).
  - 5 European Union, Regulation 2017/821/EU laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.
  - 6 The Hague District Court, case number / cause list number: C/09/571932 / HA ZA 19-379 (May 2021).
  - 7 Ministry of Economic Affairs and Climate Policy, Letter to parliament with analysis of Shell judgment, DGBI-TOP / 21271745 (December 2021).







Several international organisations, including the Office of the UN High Commissioner for Human Rights<sup>8</sup>, the European Union<sup>9</sup> and the Council of Europe<sup>10</sup>, have called on states to draft a National Action Plan on Business and Human Rights (NAP) for the implementation of the UNGPs. The Netherlands was one of the first countries to respond to this call in 2014. At the time of publication of this current NAP, 26 countries have drafted a National Action Plan on Business and Human Rights and 20 more are in the process of doing so.

The action points detailed in the Netherlands' 2014 NAP have either been implemented or constitute ongoing obligations. The first NAP was thus in need of revision. A request to that effect was made by the House of Representatives.<sup>11</sup> The work on business and human rights is thus never complete. The COVID-19 pandemic has shown how fragile human rights still are around the world and threatens the progress that has been made on that front over the past few years.

In this NAP the government outlines its current policy and the steps that it will be taking in the coming years to ensure that the UN Guidelines for Business and Human Rights will be applied in the Netherlands.

### The United Nations Guiding Principles for Business and Human Rights

As a policy framework for the relationship between the business community and human rights, the UNGPs were developed under the leadership of UN Special Representative, Professor John Ruggie. They are sometimes also referred to as the Ruggie framework.

The UNGPs distinguish between responsibilities of states and of companies, and make clear how these responsibilities are linked. The three pillars of the UNGPs are illustrated in Figure 1.

The Netherlands is committed to a number of common UN principles related to human rights in the business sector

<sup>8</sup> UN Doc. A/HRC/RES/26/22, 2 (2014).

<sup>9</sup> European Commission: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Renewed EU Strategy 2011-14 for Corporate Social Responsibility (2011).

<sup>10</sup> Council of Europe, Declaration of the Committee of Ministers on the UN Guiding Principles on Business and Human Rights (2014).

<sup>11</sup> Motion by MPs Bram van Ojik and Sadet Karabulut, Parliamentary Paper 32 735, no. 252 (July 2019).





# United Nations Guiding Principles on Business and Human Rights

I

State duty to protect human rights

*State Duty to Protect*



II

The responsibility of the business community to respect human rights

*Corporate Responsibility to Respect*



III

The right to effective remedy

*Access to Remedy*





In 2021, on the 10th anniversary of the UNGPs, the UN conducted a survey which showed that the UNGPs have become the authoritative global framework for business and human rights. Building on this survey, the UN has developed a UNGPs 10+ roadmap<sup>12</sup> covering the next 10 years. It stresses policy coherence and encourages partnerships between states, businesses, rightsholders, trade unions, civil society organisations and international organisations to tackle the root causes of business-related human rights violations. Its emphasis is on the importance of directly involving local rightsholders, including women. This requires also taking other internationally recognised publications such as ‘Gender Dimensions of the UNGPs’ into account, alongside the UNGPs 10+ roadmap.<sup>13</sup>

Together with the OECD Guidelines, the UNGPs provide an internationally accepted framework for action on international responsible business conduct (RBC).<sup>14</sup> Alongside human rights, the OECD Guidelines also explicitly focus on other themes such as the environment, combating corruption and protecting consumer interests. The government expects all Dutch businesses to endorse the OECD Guidelines and to act in accordance with them. This means that businesses also endorse the UNGPs, as the OECD Guidelines refer to the UNGPs and the section of the OECD Guidelines on human rights was drawn up in line with the UNGPs.

Since the publication of its first NAP, the Netherlands has also committed itself through the UN to the 2030 Agenda for Sustainable Development and has set itself the target of achieving all 17 Sustainable Development Goals (SDGs) which make up the Agenda by 2030.<sup>15</sup> The OECD Guidelines and the UNGPs offer businesses and states a framework for action to contribute to the SDGs.

Alongside the NAP, the government has also published a National Action Plan on Human Rights<sup>16</sup>. This plan explains how the government intends to protect and promote human rights in the Netherlands, its aims and priorities, and the role of other bodies, institutions and the general public.

**A revised action plan**

With its revision of the National Action Plan for Business and Human Rights the government aims to formulate a comprehensive agenda on business and human rights with renewed Dutch ambitions giving substance to the obligations outlined in the UNGPs. The operationalisation of the UNGPs is not only an important theme within the Netherlands’ national and foreign human rights policy, but also as part of Dutch policy on development cooperation and foreign trade aimed at building more sustainable value chains.

12 UN Working Group on Business and Human Rights, Raising the Ambition – Increasing the Pace, UNGPs 10+: a Roadmap for the Next Decade of Business and Human Rights (December 2021).  
13 UN Working Group on Business and Human Rights, ‘Gender Dimensions of the UNGPs’ (2019).  
14 In 2020 the OECD Working Party on Responsible Business Conduct initiated a stocktaking exercise to assess the OECD Guidelines, their implementation and the OECD’s work on responsible business conduct. The goal of the exercise was to clarify whether the guidelines remain fit for purpose. The Working Party will use the results in decision-making on any follow-up actions.

15 Parliamentary Paper 26485, no. 232.  
16 Ministry of the Interior and Kingdom Relations, National Action Plan on Human Rights (December 2020).





The Ministry of Foreign Affairs coordinated the process of redrafting this action plan. The Netherlands Institute for Human Rights carried out a National Baseline Assessment (NBA)<sup>17</sup> to investigate to what extent the UNGPs have been implemented. The NBA indicates how legislation and policy can, if necessary, be tightened. Discussions with businesses, civil society organisations and experts were followed in December 2020 by a response with an appraisal by the previous government.<sup>18</sup> Annexe 1 describes the revision process in more detail. Consultations with national and foreign stakeholders formed an important part of the revision process. Examples include national stakeholder consultations about the draft NAP led by the Social and Economic Council (SER) and discussions with local stakeholders about the NAP and related themes, organized in collaboration with Dutch embassies in Africa and Asia.

The NBA concludes that, broadly speaking, policy and legislation relating to business and human rights is well developed in the Netherlands. The NBA also notes that access to information about the UNGPs and the OECD Guidelines for Multinational Enterprises (OECD Guidelines) via governmental and semi-governmental agencies has greatly improved since the publication of the first NAP in 2014. In terms of the substance of the NAP, the study identifies a number of concerns about each of the UNGP pillars, which will be discussed per pillar below. The researchers conclude that the previous NAP was primarily descriptive

and that the new NAP should include more SMART<sup>19</sup> action points. The subsequent appraisal therefore includes a commitment to incorporate a number of specific action points (including a timeline and monitoring) in the NAP.

This NAP aims to further:

- 1 publicise the importance of human rights to the Netherlands;
- 2 clarify the government's role;
- 3 promote respect for human rights by Dutch companies nationally and abroad;
- 4 contribute to international policy development.

<sup>17</sup> Netherlands Institute for Human Rights, National Baseline Assessment on business and human rights (2020).

<sup>18</sup> Government response to the National Baseline Assessment (NBA) on business and human rights (December 2020).

<sup>19</sup> 'Specific, measurable, achievable, realistic and time-related'.



### How this NAP is structured

Like the previous NAP, and in accordance with the NBA and the appraisal of it, this action plan is organised in line with the three pillars of the UNGPs. The main elements of each pillar are summarised in order to align it with the NBA and the appraisal by the previous government. Where applicable, the extent to which the NAP diverges from this and why is indicated.

**PILLAR 1** ‘State duty to protect human rights’, focuses on the continued incorporation of business and human rights into the Netherlands’ national, European and international policy, on policy coherence and on a number of themes for which government has a particular responsibility for policy implementation.

**PILLAR 2** ‘The corporate responsibility to respect human rights’, focuses on measures resulting from a review of RBC policy, with specific focus on due diligence, sector-wide cooperation and the RBC support office.

**PILLAR 3** ‘Access to remedy’, is given greater emphasis in this NAP than in the previous one, with a focus on various forms of access to remedy and the linkages between them.

Compliance with the UNGPs is thus achieved within all pillars through a mix of national, European and international measures. One or more action points for each theme, with clear timelines and owners, ensure that this NAP is as concrete as possible.

The last part of the NAP details the envisaged monitoring and interministerial cooperation required to maintain the focus on business and human rights.

Like the previous NAP, and in accordance with the NBA and the appraisal of it, this action plan is organised in line with the three pillars of the UNGPs





# > Pillar 1

*The state duty to protect human rights*

States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

UNGP 1





With a clear human rights policy agenda, new and existing policy instruments can become mutually reinforcing. Such a policy agenda and comprehensive vision must be applicable to human rights both internationally and within the Netherlands. As highlighted in the UNGPs 10+ roadmap,<sup>20</sup> policy coherence is a major priority. A comprehensive view of how other policy areas impact the protection of human rights will improve the implementation of the UNGPs and prevent mutually contradictory regulations or separate frameworks. It could likewise also enhance the effective implementation of existing policy instruments.

Increased policy coherence can bolster government action. One of the findings of the NBA was that there is a lack of broader integration of human rights and the UNGPs into policy instruments. The NBA researchers also concluded that the previous NAP was primarily descriptive. With the stated aim of improved policy coherence in mind, they concluded that the new NAP should include an ambitious policy agenda with clear action points, aims and monitoring. This will enable the NAP to give direction to central government-wide policy on business and human rights.

**Based on the findings of the NBA and on multi-stakeholder consultations, Pillar 1 of the new NAP will address the following issues:**

- The NAP will act as a central government-wide, coherent policy agenda for business and human rights. Its aim is to optimise the use of relevant national and international policy instruments with the inclusion of a ‘business and human rights’ perspective.
- Possibilities will be explored for more closely aligning central government procurement and tendering and grant frameworks with the duties and responsibilities entailed in RBC.
- A survey of Dutch businesses will determine whether there is a need for any additional instruments specifically aimed at conducting business in conflict areas.
- Local stakeholders will be adequately consulted when the NAP is revised.
- The authorities will aim to include clear timelines for the implementation of the action points in the new NAP as well as specific performance indicators that can be used to monitor progress.

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<sup>20</sup> UN Working Group on Business and Human Rights, Raising the Ambition – Increasing the Pace, UNGPs 10+: a Roadmap for the Next Decade of Business and Human Rights (December 2021).



## Inclusion of ‘business and human rights’ in the Netherlands’ national policy

### Labour market policy and employment law

Human rights violations by businesses, including violations of labour rights, persist in the Netherlands, despite existing policy instruments aimed at preventing them. Although Dutch foreign policy considers violations of labour rights to be a human rights matter<sup>21</sup>, NBA researchers concluded that within the Netherlands the issue is seldom viewed from the perspective of human rights and is more frequently approached in the framework of employment legislation and collective labour agreements<sup>22</sup>. In many cases, human rights obligations are implemented at national level through employment law. This is also how the NAP approaches this issue.

### *Combating abuse of migrant workers*

Migrant workers make a major contribution to the local and national economy. Various sectors, including agriculture and horticulture, construction and logistics, are dependent on migrant labour. Migrant labour will continue to be important to the Dutch economy and society in the coming years.

However, the COVID-19 pandemic has painfully exposed how many violations migrant workers still have to contend with. Examples include substandard housing, underpayment and unhealthy and unsafe work – all areas in which workers’ dignity is undermined. These are often exacerbated by multiple forms of dependency on employers including, for example, the workers’ irregular status, compulsory accommodation and accumulated debt. Female labour migrants face additional risks such as domestic and sexual violence.

That is why in 2020 the Dutch government set up the Migrant Worker Protection Task Force. Headed by Emile Roemer, the Task Force aimed to make recommendations for the structural improvement of migrant workers’ living and working conditions and on reducing their dependence on their employer. This will facilitate better protection of their human rights including the right to fair employment conditions and the right to protection from unemployment. The Task Force made 50 recommendations on how to improve the position of labour migrants. Full implementation of the report should make a valuable contribution to business and human rights, with the mandatory certification of employment agencies being particularly significant.

21 We refer here to the OECD’s due diligence norms, the UNGPs, the ILO’s fundamental conventions, UN human rights treaties and the EU’s equal treatment directives.

22 Government response to the National Baseline Assessment (NBA) on business and human rights (December 2020).



## A serious problem in tackling labour exploitation is the grey area between poor employment practices and human trafficking

The government seeks to exclude employment agencies which exploit labour migrants from the market. The Task Force report also states that the interdependence between housing, work, transport and care must cease. Because health insurance is often arranged through the employer, if a worker loses their job they also lose access to insurance. The fact that the employer or employment agency is also the landlord can lead to excessive dependence, with an employee possibly forced to leave their place of residence when their job ends. As agreed in the coalition agreement 'Looking out for each other, looking ahead to the future', the government is elaborating plans for the compulsory

certification of employment agencies that proves that they comply with all relevant legislation and that they deal properly with issues such as appropriate remuneration and housing. The specific substance of these requirements and the certification system to be established will be worked out in consultation with social partners. To be a success, the compulsory certification system will require extra investments targeted at enforcement and monitoring. The details of a compulsory certification system will be shared with the House of Representatives in mid-2022. The Task Force further specifically recommends that labour users working with foreign employees should be transparent about this in their annual report.

A serious problem in tackling labour exploitation is the grey area between poor employment practices and human trafficking. In order to expedite the prosecution of perpetrators of human trafficking, including labour exploitation, the coalition agreement foresees modernising article 273f of the Criminal Code. One of the aims is to make the entire system more accessible and to increase criminal liability for labour exploitation.





ACTION POINTS PILLAR 1	Aim	Responsible party	Timeline
Combating abuse of migrant workers			
Implement report by Migrant Worker Protection Task Force.	Prevent abuse of migrant workers.	SZW (coordinating ministry); Interministerial Project Team on Migrant Workers leads and monitors.	Annual report on EU labour migration to House of Representatives, reporting on progress on the various recommendations, each with its own timeline.
Modernise article 273f of the Criminal Code.	Improve prosecution of perpetrators.	J&V (coordinating ministry for whole of article 273f); SZW responsible for tackling labour exploitation.	The House of Representatives will be informed in the summer of 2022.







### *Combating labour market discrimination*

The NBA refers to the National Action Plan on Labour Market Discrimination as an example of the broader integration of the UNGPs into policy instruments. The Action Plan on Labour Market Discrimination was presented in 2018, and included a range of activities aimed at combating this discrimination. These included activities focusing on improved monitoring and enforcement, on research and on raising awareness among and communication to employers and employees. Combating discrimination in the recruitment and selection of

trainees is also part of the approach. This action plan ran until 2021 and is being replaced in 2022 with a new Action Plan on Labour Market Discrimination. Any follow-up activities aimed at combating labour market discrimination will, as appropriate, refer to business and human rights frameworks such as the UNGPs and the OECD Guidelines for Multinational Enterprises as well as the ILO's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. Consideration will also be given to which activities, such as legislation, research or communication, are suitable to refer to.





ACTION POINTS PILLAR 1	Aim	Responsible party	Timeline
Combating labour market discrimination			
Refer where appropriate to relevant business and human rights frameworks – the UNGPs and OECD Guidelines – in any follow-up activities aimed at combating labour or labour market discrimination (e.g., legislation, research or communication).	Integrate relevant international frameworks and action plans.	SZW	From 2022
Draw up an Action Plan on Labour Market Discrimination referring where relevant to the UNGPs and OECD Guidelines.	Integrate relevant international frameworks and action plans.	SZW	2022





## Central government procurement and private-sector instruments

In relation to Pillar 1, the NBA appraisal notes that improved policy coherence can bolster government efforts on business and human rights. The government is looking for possible ways of aligning both central government procurement and grants frameworks for the business community with RBC duties and responsibilities.

### Government procurement

The government wants its procurement practices to set an example and contribute to the application of RBC by businesses. Government procurement totalled approximately €16 billion in 2021.<sup>23</sup> The government's new central government procurement strategy, 'Procurement with Impact'<sup>24</sup> presented in 2019, takes sustainable, social and innovative procurement as its new point of departure. In 2021 the government presented its new National Plan for Sustainable Public Procurement (SPP)<sup>25</sup> for 2021-2025 aiming to encourage compliance by contracting authorities, including central government agencies.

The government's central procurement strategy includes the International Social Conditions (ISCs). These have applied to all EU contract award procedures since 2017 and aim to establish more sustainable international supply chains by preventing or responding to risks related to working conditions, human rights and the environment. The ISCs are one of the contractual conditions obliging contractors to apply due diligence.

Lessons can be learned from the various studies and evaluations which have taken place since the introduction of the current ISC policy framework in 2017.<sup>26</sup> The government has promised to improve the application of ISC in its central procurement process partly based on these lessons. On 13 June 2022 the government published an ISC implementation plan<sup>27</sup> to meet this commitment. This document describes the steps that will be taken to improve the implementation of international procurement conditions.

23 Central Government Operational Management Annual Report for 2021.

24 Ministry of the Interior and Kingdom Relations, 'Inkopen met impact' ('Procurement with Impact'), October 2019.

25 Ministry of Infrastructure and Water Management, 'Opdrachtgeven met ambitie, inkopen met impact' ('Commissioning with Ambition, Procurement with Impact'), January 2021.

26 PIANOo Public Procurement Expertise Centre, *Ketenverantwoordelijkheid (Internationale sociale voorwaarden) PIANOo (Public Procurement Expertise Centre)*.

27 Ministry of the Interior and Kingdom Relations, *Uitvoeringsagenda Internationale Sociale Voorwaarden (Implementation Agenda on International Social Conditions)*, May 2022



The ISC Implementation Plan includes three lines of action:

**LINE OF ACTION 1: Improve implementation of the current ISC policy framework**

The government's drive to improve the current ISC policy framework will focus on strengthening contract management in relation to international social conditions. Focusing on improving knowledge and knowledge sharing and developing practical tools will better enable stakeholders to apply and follow up on contractual requirements, including providing in a timely manner a risk analysis, an improvement plan and a publicly available annual report. One example of this is the ISC support centre set up by the PIANOo Public Procurement Expertise Centre.<sup>28</sup> The implementation of the ISC policy is moreover guaranteed in the individual plans of the eight risk categories. Finally, monitoring of the application and follow-up of ISC policy will be improved, among other things by enhancing coherence between the various instruments and by identifying and implementing clear and actionable Key Performance Indicators (KPIs) in already existing instruments.

**LINE OF ACTION 2: Expand the application of ISCs**

In addition to the compulsory application of international social conditions in public procurement contracts above the European threshold, the government also encourages the voluntary application of ISCs in other procurement processes. BZ, BZK and SZW will take a leading role in the application of ISC policy in all public procurement, both generic and specific. Alongside actions aimed at stimulating the voluntary application of international social conditions, the government plans to carry out two studies into the feasibility and desirability of an expansion of the ISC policy framework. Finally, it will initiate campaigns to inform various actors about compulsory and voluntary application of ISCs in central government public procurement.

<sup>28</sup> In the autumn of 2021 the PIANOo Public Procurement Expertise Centre set up a pilot ISC support centre. Since then the support centre has provided practical help to procurement officers in the application of ISCs in public procurement processes during tendering and contracting.

### LINE OF ACTION 3: Improve policy coherence

This includes both administrative and substantive improvements. For example, central government website content should be consistent in its message about legislation and procurement policy. Other points of focus include how ISC procurement policy relates to the approach set out in the UNGPs and to due diligence policy as set out in the OECD Guidelines. Existing documents on ISC policy such as guidelines and specifications will, where possible, be brought in line with the OECD Guidelines for Multinational Enterprises and the UNGPs. Furthermore, subnational authorities will be encouraged to apply ISCs via buyer groups in which public and private contracting authorities collaborate on a shared vision and strategy to improve the sustainability of a specific product category.

Although the ISC implementation plan relates specifically to central government public procurement, instruments promoting the application of ISCs will be made broadly available. This will stimulate the application of ISCs by subnational authorities and ensure that the implementation agenda is consistent with the ambitions formulated in the National Plan on Sustainable Public Procurement for 2021-2025. Progress on the ISC implementation plan will be noted each year in the Central Government Operational Management Annual Report.

Under the National Plan on Sustainable Public Procurement, central government commits to maintaining the SPP desk at the PIANOo Public Procurement Expertise Centre, to maintaining and developing the SPP criteria tool<sup>29</sup>, to establishing a special ISC Procurement Academy and to providing access to an SPP self-evaluation tool to help procurement services implement and monitor sustainable procurement. It has also published a guide to monitoring and assuring SPP.<sup>30</sup> The government is drawing up a new SPP Manifesto for 2022-2025 to encourage sustainable commissioning and procurement, including ISCs, by government bodies and other parties. The buyer groups mentioned above also often apply ISCs.

A human rights platform for municipalities was set up in 2021 as a result of the National Action Plan on Human Rights<sup>31</sup>. The platform enables municipalities to include business and human rights considerations in their procurement processes.

<sup>29</sup> SPP criteria tool ([mVICriteriaTool.nl/en](https://mVICriteriaTool.nl/en)).

<sup>30</sup> Ministry of Infrastructure and Water Management, Handreiking Monitoring en contractuele borging MVI (Guide to SPP Monitoring and Contractual Safeguards) (2021).

<sup>31</sup> Ministry of the Interior and Kingdom Relations, National Action Plan on Human Rights (December 2020).



ACTION POINTS PILLAR 1	Aim	Responsible party	Timeline
Public procurement			
Implement ISCs in the renewed SPP Manifesto 2022-2025.	Strengthen implementation of ISCs.	I&W (on behalf of SPP ministries).	Start in spring of 2022, continuing until 2025.
Measure impact of SPP at all levels of Dutch government.	SPP impact monitor.	National Institute for Public Health and the Environment (RIVM), commissioned by I&W, on behalf of other SPP ministries as well.	Biennial monitor.





### *Private-sector instruments*

The Netherlands aims to further align its international private-sector instruments with RBC obligations and responsibilities by incorporating into them a comprehensive approach to human rights. This will be based on the OECD Guidelines for Multinational Organisations and the UNGPs.

Any business using the government's international financing instruments or requesting any other support focussed on international entrepreneurship, will have to show that it adheres to the OECD Guidelines and implements due diligence on its international supply chain. This will also take into account the responsibility of businesses to respect human rights in accordance with the UNGPs given that the OECD Guidelines refer to the UN's 'Protect, Respect and Remedy' framework<sup>32</sup>, which includes a chapter on human rights drafted in line with the UNGPs. Implementing organisations such as the Netherlands Enterprise Agency (RVO), Atradius Dutch State Business, the Dutch development bank FMO and Invest International all set these conditions. They have also drafted their own RBC frameworks specifically for their own services and products, based on international standards including the UNGPs. An evaluation of RBC policy in 2019 found that large implementing organisations and their clients, the businesses receiving financial support, all address the business community's responsibilities for human rights. The evaluation also found that they need to focus more on access to remedy (by affected rightsholders), in accordance with

their role, for example via a complaints mechanism. This will be discussed in Pillar 2 as one of the steps in the due diligence process.

In 2020 the Ministry of Economic Affairs and Climate Policy (EZK) commissioned RVO to map out how RBC can proportionately and lawfully be anchored in the ministry's implementing instruments for EZK-financed schemes.<sup>33</sup> In 2021 the Ministry began phasing in the RBC framework (OECD Guidelines) step-by-step into its instruments. The RBC framework must be implemented by means of a pilot project in all 16 instruments and sub-instruments by the end of 2022, with the aim of implementing the RBC framework in all EZK business instruments from 2023 onwards.<sup>34</sup> To this end RVO can rely on past experience in applying the RBC framework to BZ instruments.

32 United Nations, 'Protect, Respect and Remedy: A Framework for Business and Human Rights' (September 2010).

33 RVO study, 'MVO Implementatie in het EZK-instrumentarium' ('Implementing RBC in EZK Instruments') (2020).

34 Letter to parliament, 'Toepassend IMVO op EZK-bedrijfsleveninstrumentarium' ('Applying RBC to EZK Business Instruments') (2021).







The Ministry of Economic Affairs and Climate Policy encourages businesses through its instruments to adopt RBC, in four key ways. It: 1) provides information about RBC, 2) gives advice about various RBC risks and how to deal with them, 3) assesses whether a company conducts its business in line with the UNGPs/OECD Guidelines and, 4) in the course of a support programme, monitors how a business deals with RBC risks.<sup>35</sup>

The Ministry of Economic Affairs and Climate Policy and Ministry of Agriculture, Nature and Food Quality (Grants) Framework Act stipulates that not all RBC core tasks can be applied as desired to all EZK instruments as the Act does not allow any requirement not linked to a grant objective. A broad obligation to apply due diligence may provide a solution to this problem. As soon as a decision is made on what form this will take, a decision will be made on whether to amend the Framework Act.

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<sup>35</sup> Letter to parliament, 'Toepassing IMVO op EZK-bedrijfsleveninstrumentarium' (2021).





ACTION POINTS PILLAR 1	Aim	Responsible party	Timeline
Private-sector instruments			
Implement OECD Guidelines in EZK instruments.	Bring grants frameworks in line with RBC obligations and responsibilities.	EZK; RVO commissioned by EZK	End 2022: RBC framework implemented in pilot study with 16 instruments. From 2023: RBC framework implemented in remaining EZK instruments.
If necessary, amend the Ministry of Economic Affairs and Ministry of Agriculture, Nature and Food Quality (Grants) Framework Act.	Bring grants frameworks in line with RBC obligations and responsibilities.	EZK	2022





## Including ‘business and human rights’ in the Netherlands’ foreign policy

### Broad human rights policy

#### *Protecting human rights defenders*

The work of human rights defenders is vital to the protection of human rights. Examples include trade union leaders fighting for workers’ rights, land rights for local communities, environmental defenders championing the human rights of the local population and employees suffering the negative environmental effects of business activities, as well as journalists and academics investigating abuses. Human rights defenders also contribute to a stronger civil society, an important condition for a well-functioning democracy governed by the rule of law.

Human rights defenders fighting for indigenous, land and environmental rights – often in connection with economic activities – are some of the most vulnerable human rights defenders, with female defenders facing additional risks. The work of human rights defenders is increasingly undermined by strategic legal proceedings against public participation.<sup>36</sup> 3,100 incidents were reported between 2015 and 2021<sup>37</sup> and in 2021 358<sup>38</sup> human rights defenders

around the world lost their lives as a result of state and non-state violence.<sup>39</sup> Many of these defenders (59%)<sup>40</sup> were fighting for indigenous, land and environmental rights, often in connection with economic activities.

In accordance with international law governments are required to protect human rights defenders against attack from others, to protect and guarantee their rights and to refrain from any activities that violate their rights. Protection of and support for human rights defenders is therefore one of the priorities of the Netherlands’ human rights policy. Capacity building and protection programmes offer assistance at various levels, by means of projects, multilateral efforts and diplomatic support.

36 Strategic Lawsuits Against Public Participation (SLAPPs) are lawsuits in which human rights defenders are subjected to criminal sanctions or fines. This topic was also highlighted during national and international stakeholder consultations.

37 Business and Human Rights Resource Centre, ‘SLAPPED but not Silenced: Defending Human Rights in the Face of Legal Risks’ (2021).

38 Front Line Defenders, ‘Global Analysis 2021’ (2022).

39 These are only the reported cases; the actual number is probably much higher.

40 Front Line Defenders, ‘Global Analysis 2021’ (2022).



The Human Rights Fund (MRF) strives to protect and promote human rights around the world, with a particular focus on environmental activists and land rights defenders.<sup>41</sup> Furthermore, delegated MRF funds contribute to the Lifeline Consortium which focuses, among other things, on indigenous populations and environmental protectors. It also contributes to Planet Protectors and to Shelter and Resilience for Human Rights Defenders, thus supporting indigenous land and environmental defenders in Central America. Through the Power of Voices (PoV) partnerships the Netherlands also supports human rights defenders who highlight business-related violations of labour and environment rights or who identify investments which have a negative impact on people and their environment. Local governments and civil society organisations, including representatives of indigenous people, work together as strategic partners to strengthen the rights, including land rights, of indigenous populations and enhance respect for their environment. The Netherlands aims to improve access to its protection and capacity-building programmes for human rights defenders working on violations resulting from business practices.

The Netherlands aims to improve access to its protection and capacity-building programmes for human rights defenders working on violations resulting from business practices

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41 Ministry of Foreign Affairs, Human Rights Fund Grant Policy Framework 2019-2021 (2019).





### Improved protection of Colombian human rights defenders

In Colombia the Netherlands offers financial assistance to the Colombian Commission of Jurists (CCJ), a human rights organisation that contributes to the development of safety and protection mechanisms for Colombian human rights defenders. They do this by developing strategies for litigation aimed at protecting and defending land belonging to farmers, indigenous populations and African heritage communities. The CCJ also raises visibility for human rights defenders and civil society leaders at local, national and international levels and promotes civil society participation in local and national institutions dealing with the prosecution, investigation and punishment of serious violations of human rights defenders' rights. In this way the organisation helps strengthen the voice of human rights defenders in the Colombian government's decision-making processes and improve the Colombian legal system. This is important in combating human rights violations resulting from business activities.



*Partner organisation taking part in a remembrance ceremony  
in Munchique, Colombia (2021)*



Multilateral forums pay systematic attention to the most vulnerable human rights defenders, including those advocating for indigenous, land and environmental rights. The Netherlands consistently presses for specific mention of these target groups in the official texts negotiated in the Human Rights Council and the Third Committee of the UN General Assembly.

Lastly, the Dutch government provides diplomatic support to human rights defenders through its embassies. This support includes attending trials of human rights defenders and highlighting specific cases to the authorities.

In addition to its protection programmes, the Dutch government seeks to invest more, together with key stakeholders, to prevent the escalation of violent and non-violent conflict between the Dutch business community and local stakeholders, by entering into dialogue at embassy level with human rights defenders, Dutch businesses and other stakeholders. Human rights defenders tend to represent local stakeholders such as local communities and employees, who are often denied a voice and have few opportunities to raise concerns

about the possible negative consequences of business activities. The Dutch government accordingly seeks to focus on how the embassies and the Dutch business community can enter into dialogue with human rights defenders to better identify these risks (early warning) and address them in a timely manner (early action).

Multilateral forums pay systematic attention to the most vulnerable human rights defenders, including those advocating for indigenous, land and environmental rights



ACTION POINTS PILLAR 1	Aim	Responsible party	Timeline
Protecting human rights defenders			
Sharpen the focus on human rights defenders in the area of business and human rights in existing human rights protection programmes.	Integrate protection programmes and risk prevention for human rights defenders into private sector development programmes.	BZ	2022-2024
Draft a plan of action to initiate a dialogue between embassies, the Dutch business community and human rights defenders to better identify environmental, social and security risks (early warning) and to take early action on them (early action).	Work with human rights defenders to integrate protection programmes and prevention of environmental, social and security risks into embassies' Multiannual Country Strategies (MACS).	BZ	From 2022







### *Integrating responsibilities in conflict areas and fragile states into policy*

States should pay particular attention to the human rights risks that can occur when enterprises conduct business in conflict areas, and help ensure that businesses do not exacerbate existing risks. States must also take action against businesses which become involved in human rights abuses.<sup>42</sup> Although the due diligence procedures described in the UNGPs and the OECD Guidelines are not fundamentally different for conflict areas (the guidelines are based on proportionality, so the higher the risk, the more complex the procedures), the Dutch government notes that there may be extra risk of human rights abuses. This is in line with the report on doing business in conflict areas by the UN Working Group on Business and Human Rights<sup>43</sup>, which states that ‘heightened’ due diligence is required in conflict areas. Dutch efforts in fragile states and conflict areas are therefore partly based on a ‘conflict-sensitive approach’. This approach aims to take better account of the unforeseen effects of business activities in the community and to ensure that activities do not exacerbate existing conflicts or lead to new ones.

The Netherlands is committed to collaborating with other donors and organisations in making joint analyses which include a gender dimension. An example here is Dutch investment in the International Finance Corporation’s (IFC) Conflict Affected States in Africa (CASA) initiative. A conflict-sensitive approach to private sector development was central in the 13 fragile states in which this IFC project was implemented. Furthermore, the European Conflict Minerals Regulation<sup>44</sup>, which came into effect in January 2021, requires all EU businesses importing certain metals and minerals to apply due diligence.<sup>45</sup> All EU member states must appoint a national supervisory authority to monitor businesses’ compliance with this Regulation. In the Netherlands this is the Human Environment and Transport Inspectorate (ILT).<sup>46</sup> Regular meetings between the European Commission and member states aim to ensure uniform implementation of the Regulation.

<sup>42</sup> Netherlands Institute for Human Rights, National Baseline Assessment (2020).

<sup>43</sup> UN Working Group on Business and Human Rights, Business, Human Rights and Conflict-affected Regions: Towards Heightened Action (2020).

<sup>44</sup> European Parliament and Council, Regulation (EU) 2017/821 (2017).

<sup>45</sup> The main conflict minerals are tin, tantalum, tungsten and gold. These are defined as conflict minerals because they are often extracted in unstable regions and there is a link between extraction activities and abuses such as violence and forced labour. Mining and illegal trade is often in the hands of armed groups which finance their activities from the proceeds. ([EU website](#))

<sup>46</sup> The ILT was assigned this task in the Conflict Minerals Regulation Implementation Act (Bulletin of Acts and Decrees 2021, 44). The ILT can impose orders subject to a penalty on companies and has supervisory powers as set out in section 5.2 of the General Administrative Law Act.





The Ministry of Foreign Affairs has drawn up conflict sensitivity guidelines for private sector development<sup>47</sup> for its staff in The Hague and at its embassies around the world as well as for employees of implementing partners, with the aim of making conflict sensitivity a cross-cutting component of Dutch foreign policy. The guidelines explain the possible context-specific risks and responsibilities of conducting business in conflict-sensitive regions. Conflict-sensitive policy requires the early identification of conflict and instability risks (early warning) so that these can be addressed in a timely manner (early action). The involvement of local stakeholders is advisable here.

In discussions with responsible ministries and exploratory consultations with stakeholders on the NAP focus areas an effort was made to determine whether Dutch businesses need additional mechanisms when conducting business in conflict areas. These discussions generated insufficient information to conclude that there is a need for additional mechanisms. The topic was therefore raised again during national stakeholder consultations. The results indicated that communication about existing mechanisms within government as well as with the business community needs to be improved and that businesses require conflict sensitivity guidelines.

The government guidelines will, when applicable, be addressed in embassies' Multiannual Country Strategies, with implementing organisations and in dialogue with the Dutch business community in order to improve the integration of conflict sensitivity into Dutch foreign policy. Furthermore, conflict sensitivity guidelines for the Dutch business community will be drawn up in collaboration with companies, NGOs and implementing organisations, with an additional focus on Dutch SMEs. These guidelines can be used to carry out the contextual analyses that businesses need to complete before doing business in such areas. As noted in chapter 2 of this NAP, businesses and implementing organisations share this responsibility with governments. Businesses are thus likewise expected to assume responsibility, especially in relation to conflict areas and fragile states.

The RBC support office for Dutch businesses abroad can provide a means of disseminating the forthcoming conflict sensitivity guidelines for the business community more widely.

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47 Ministry of Foreign Affairs, 'Conflict Sensitive Private Sector Development' (2019).





ACTION POINTS PILLAR 1	Aim	Responsible party	Timeline
Doing business in conflict areas and fragile states			
Include UNGPs and conflict sensitivity in the Multiannual Country Strategies (MACS) of embassies in fragile states through dialogue between embassies, implementing partners and the business community, and with local stakeholder involvement.	Further improve integration of conflict sensitivity into foreign policy.	BZ	From 2022
Develop conflict sensitivity guidelines for the Dutch business community in collaboration with businesses, NGOs and implementing organisations and distribute them via the RBC support office.	Inform businesses about conflict sensitivity.	BZ in collaboration with implementing partners and relevant businesses in the Netherlands and abroad.	From 2022



## Development cooperation

### *Sustainable trade with and investment in developing countries*

Development cooperation policy on business and human rights focuses on improving the sustainability of production and international value chains in and with developing countries in a way that helps reduce poverty and inequality. To this end it is important that a) the interests and specific situation of the developing countries in question are taken into account when designing measures aimed at making trade and investments more sustainable, and b) developing countries are supported in the transition required to meet these commitments to inclusive, green economic development.

The interests and specific circumstances of developing countries must be taken into account when drafting national, European and international agreements aimed at improving the sustainability of trade and investments. Examples include developing standards on deforestation and the climate, the circular economy, land use rights, labour, foreign trade and investments and RBC. The cornerstone of this is to determine the development impact of efforts to make trade and investment more sustainable, especially the impact on vulnerable groups such as indigenous peoples, small-scale producers, workers and agricultural labourers, with a particular focus on women and young people. This should reinforce the efforts' positive effects and, as far as possible, prevent and mitigate any negative side effects.

Developing countries receive several forms of support. First, bilateral and EU- and World Bank-led discussions take place with governments in developing countries about the transition towards greater sustainability, and ways of reducing poverty and inequality in the course of this transition. Second, Dutch civil society organisations such as trade unions and employers' organisations receive funding to, on the one hand, strengthen sister organisations in developing countries (for example through dialogue with other local stakeholders) and, on the other, to advocate at international level the interests of, in particular, small-scale producers and workers. Third, a range of Dutch and international implementing organisations make efforts to improve the business climate and supplementary government policy in developing countries, focusing particularly on SME producers as the ones playing the most significant role in poverty alleviation. Examples include providing access to financial services, improving infrastructure and building capacity for entrepreneurs and their trade associations. Fourth, efforts are made to increase the sustainability of international value chains by working jointly with businesses, civil society organisations and other levels of government on improved procurement practices and new revenue models with a focus on work, a living wage and income, land rights and land use and the elimination of child labour.



## The Trade Union Cofinancing Programme for Decent Work for All

One of the most important goals of trade unions around the world is decent work for all (SDG 8). Mondiaal FNV, the international arm of the Dutch Trade Union Confederation FNV, collaborates with the Ministry of Foreign Affairs to implement the Netherlands' Trade Union Cofinancing Programme (VMP). With Dutch government financing, Mondiaal FNV supports trade unions in the Global South, for example in participating in social dialogue. This strengthens trade unions' mandate to negotiate employment conditions on behalf of employees and with employers and governments on legislation.

An essential precondition for decent work is that trade unions can organise freely and are recognised as a negotiating partner by employers and governments. The VMP promotes respect for the right to organise by working with local partners and other actors in areas where this democratic freedom is not respected. Examples include the VMP's contribution in Ghana to research and to bolstering the Ghana Trades Union Congress, resulting in social dialogue with the government and employers; social dialogue in Rwanda resulting in the introduction of certificates recognising work experience, thus enabling low-skilled workers in the construction industry to improve their career prospects; and the important role played by trade unions in Ethiopia in drafting the first minimum wage law.

In addition to engaging in social dialogue, trade unions stand up for individuals, for example in cases of sexual intimidation and dismissal or threats of dismissal due to trade union membership. Unions also champion the right to collective bargaining at company and industry level, and defend victims of unsafe working practices on palm oil plantations and in the construction industry. In addition, Mondiaal FNV works with partners in value chains, for example through the RBC agreements.







Further strengthening cooperation between ministries and between Dutch government and other stakeholders can help ensure that the establishment of national, European and international sustainability frameworks and standards and their impact on and support of developing countries mutually reinforce each other even more (learning capacity for coherence). This is particularly important in specific risk sectors and value chains such as cacao, textiles and palm oil which have a significant Dutch footprint. In addition to a separate, permanent interministerial dialogue to be established, the focus will be on lastingly improving learning capacity regarding these activities, so that risks are addressed and mitigated.

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these activities, so that risks are  
addressed and mitigated





ACTION POINTS PILLAR 1	Aim	Responsible party	Timeline
Sustainable trade with and investment in developing countries			
Strengthen collaboration between ministries by establishing an interministerial working group to conduct a permanent dialogue on sustainable trade and investments, focusing on specific high-risk value chains with a strong Dutch footprint.	Enhance learning capacity regarding policy coherence on sustainable trade and investments and on business and human rights.	All ministries involved, with BZ taking the initiative.	From 2022
Research, monitor and evaluate the impact on developing/producing countries of national, European and international sets of rules and standards aimed at improving the sustainability of trade and investments, where possible under the auspices of the EU and supported by local stakeholder consultations.	Enhance learning capacity regarding policy coherence on sustainable trade and investments and on business and human rights.	BZ	On introduction of new proposals and during implementation.





## Foreign trade and investment

Trade and investment agreements need to not only broaden and deepen countries' economic relationship but also contribute to improved labour rights and environmental protection. EU trade and investment agreements, for example, include commitments on promoting and implementing obligations relating to fundamental labour rights and on honouring commitments agreed in multilateral environmental treaties.

The Netherlands endeavours in the EU and beyond to provide economic support to developing countries, for example through favourable trade rules. The Generalised Scheme of Preferences (GSP), for example, enables least developed countries to import goods into the EU without paying import duty. The European Commission has submitted a new proposal to replace the current GSP, which expires at the end of 2023. The Commission proposal would make some changes aimed at improving the social, labour and climate dimensions of the Scheme. The government is on the whole supportive of the European Commission's proposals and will continue its efforts during ongoing negotiations to preserve the generous nature of the instrument. By linking the ratification and effective implementation of international agreements to tariff preferences, the GSP promotes the right to development and respect for human rights in developing countries.

As part of the EU's new trade policy strategy, the European Commission is reviewing its approach to trade and sustainable development commitments in trade agreements and aims to present the outcome for discussion at the European Council in mid-2022. The Netherlands has contributed to this review and will build on its current commitment to ambitious and rigorous compliance with agreements on trade and sustainable development, to ensure that parties take action on a non-discriminatory basis to protect public interests such as human rights, labour conditions and the environment.

EU trade agreements also factor in the discrepancy between the level of economic development of trading partners. Examples of such agreements include the Economic Partnership Agreements (EPAs) which the EU has negotiated with various African, Caribbean and Pacific (ACP) developing countries and with trading blocs. EPAs are asymmetrical trade agreements, with the EU giving full access to its market ('duty and quota-free'). The EPA partners, on the other hand, can completely exclude certain products from liberalisation, while other products have long transition periods. Such agreements are therefore dependent on the level of development and the capacity of country markets to open up to outside competition. The European Commission's negotiating mandate with ACP countries was modernised and expanded in 2019 to include, among other things, sustainable development and investments.



EPAs are also governed by the Cotonou Agreement and as such have a strong focus on development. EPAs should therefore also be seen as a useful platform through which ACP countries and the EU can discuss technical assistance for sustainable development. A striking example of this is the cacao initiative in Ghana and Côte d’Ivoire. The Dutch government supports the European Commission’s efforts to further develop the EPAs into comprehensive accords.





ACTION POINTS PILLAR 1	Aim	Responsible party	Timeline
Foreign trade and investment			
Strive to ensure that negotiations maintain the generous character of a new Generalised Scheme of Preferences (GSP) and strengthen the GSP provisions with a social, labour and climate focus.	Integrate appropriate international business and human rights frameworks into the GSP Regulation.	BZ	Up to end 2023
Strive for ambitious commitments and robust compliance with agreements on trade and human rights, working conditions and the environment during negotiations on new and existing EU trade agreements.	Integrate relevant international business and human rights frameworks into the EU's trade policy strategy.	BZ	Begin 2022 to end of negotiations.



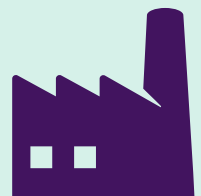


# > Pillar 2

## *Corporate responsibility to respect human rights*

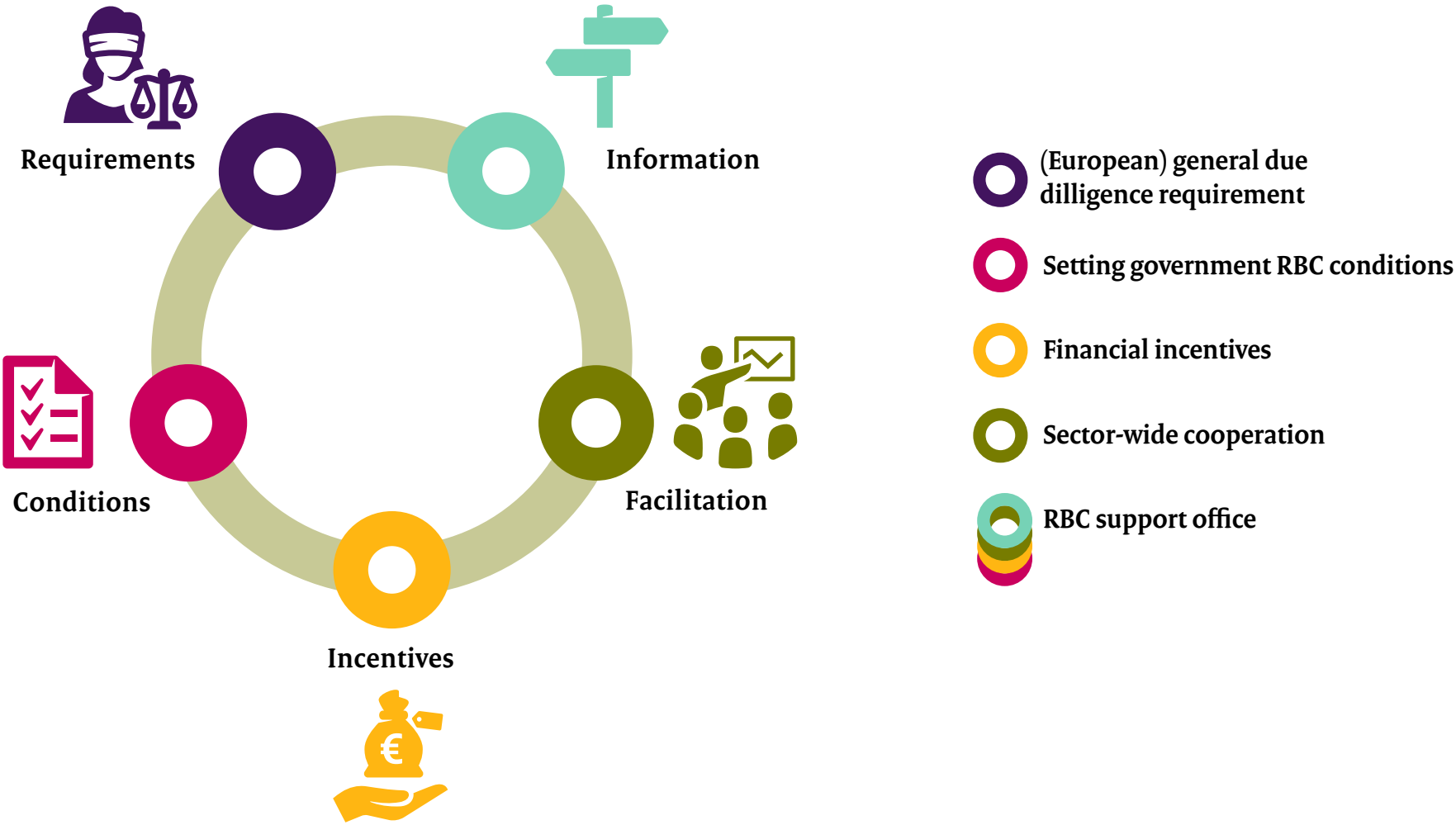
Businesses should respect human rights. This means that they should avoid infringing the human rights of others and should address adverse human rights impacts with which they are involved.

UNGP 11





Pillar 2 of the UNGPs details the responsibility of the business community to respect human rights. The RBC policy<sup>48</sup> is a mix of mutually reinforcing measures which together should lead to effective change in corporate conduct. A key element is a general obligation to conduct due diligence, ideally at European level. Other aspects of the policy mix include an RBC support office for businesses (the ‘one-stop shop’ for businesses seeking or requiring to implement RBC), revised sector-wide cooperation and extra RBC conditions imposed on companies claiming government support, for example via private-sector instruments. With these measures, the government aims to give businesses the most effective incentives possible to apply RBC (figure 2).



**Figure 2 The RBC policy model**

Three RBC policy measures which help support businesses in their duty to respect human rights are a general obligation to conduct due diligence, sector-wide cooperation and the RBC support office. Pillar 1 details the RBC conditions related to, for example, procurement, and the use of financial incentives as part of this RBC policy model.

<sup>48</sup> Ministry of Foreign Affairs, RBC policy document, ‘From Giving Information to Imposing Obligations: A New Impulse for Responsible Business Conduct’, Parliamentary Paper 26 485, no. 337 (October 2020).





## Due diligence at EU level

A general due diligence obligation, ideally at European level, is the key element in the smart mix of RBC measures. This obligation should not only promote RBC but also respect a level playing field for businesses, prevent fragmentation and enhance impact. The government therefore welcomed the publication on 23 February 2022 of the European Commission's proposed Corporate Sustainable Due Diligence Directive (CSDDD).<sup>49</sup> This proposal is the first step towards European legislation. It aims to encourage businesses to contribute to respect human rights and the environment in their own operations and throughout their value chains.

The Netherlands also has its own responsibilities. The 2021-2025 coalition agreement 'Looking out for each Other, Looking Ahead to the Future'<sup>50</sup> details agreements committing the Netherlands to encouraging RBC legislation in the EU and to introducing national RBC legislation that promotes a level playing field with neighbouring countries and implementation of forthcoming EU legislation. The Commission's proposal will therefore form the basis of a national policy proposal, in anticipation of the forthcoming CSDDD.

The aim is for the two proposals to run parallel to each other, so that any anticipated changes to the draft Directive can be included in the national legislative process.

The proposed EU Corporate Sustainability Reporting Directive (CSRD – see next section) is also relevant in relation to due diligence. This revised Directive will require a larger number of businesses to be transparent in their reporting on relevant sustainability criteria and the due diligence processes applied. In addition to this legislative proposal on reporting, the inclusion of a due diligence process is an approach used in several EU instruments, such as the proposal for an EU Regulation to combat deforestation, the planned Batteries Regulation and the Conflict Minerals Regulation referred to above.

49 Proposal for a Corporate Sustainability Due Diligence Directive: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0071> (February 2022).

50 2021-2025 coalition agreement: <https://www.government.nl/documents/publications/2022/01/10/2021-2025-coalition-agreement> (December 2021).





### Corporate Sustainability Reporting Directive (CSRD)

Non-financial reporting obligations were applicable to all listed companies with more than 500 employees since 2017. The annual report of these companies must include information on how they respect human rights. The European Commission's recent legislative proposal<sup>51</sup> on CSRD requires a greater number of businesses than before to provide information on the impact of sustainability factors on the company as well as the company's impact on people and the planet. The draft Directive's scope includes all large credit institutions and insurance companies, all large enterprises and all listed companies, with the exception of listed micro-companies. In line with the UNGPs, accountability should be given of the due diligence process, including a description of any negative impacts in the company's value chain resulting from its own activities or from its business relations and supply chain. The Commission's proposal is that large, listed companies and other large enterprises, banks and insurance companies should start reporting as of financial year 2023, and small and medium-sized listed companies as of financial year 2026.

The European Commission's recent legislative proposal on CSRD requires a greater number of businesses than before to provide information on the impact of sustainability factors on the company as well as the company's impact on people and the planet

<sup>51</sup> European Commission: Proposal for a directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) no 537/2014, as regards corporate sustainability reporting (April 2021).







ACTION POINTS PILLAR 2	Aim	Responsible party	Timeline
Due diligence and CSRD			
Negotiate ambitious due diligence legislation at EU level within existing frameworks.	Implement suitable due diligence legislation at EU level.	BZ	From 2022
Develop national due diligence legislation mindful of maintaining a level playing field with neighbouring countries and of the implementation of potential EU legislation.	Improve application of RBC by businesses via both EU and national legislation.	BZ	2022-2025
Negotiate the Corporate Sustainability Reporting Directive (CSRD).	National implementation of reporting obligations in line with the CSRD.	J&V, FIN	The Directive is expected to be adopted by EU legislators in 2022.



## Sector-wide cooperation

In the first NAP the government fleshed out Pillar 2 with a policy focused on RBC agreements. This policy was based on voluntary sector-wide cooperation between the business community, government and civil society. The RBC policy document ‘From Giving Information to Imposing Obligations’<sup>52</sup> notes the need for and advantages of sector-wide cooperation. An evaluation by the Royal Tropical Institute<sup>53</sup> shows that RBC agreements contribute to a greater awareness of due diligence but only reach 1.6% of businesses in high-risk sectors. Aligned with this, the Ministry of Foreign Affairs’ Policy and Operations Evaluation Department (IOB) concluded that although the RBC agreements reach a number of Dutch companies in high-risk sectors, these agreements are inadequate to cover all high-risk businesses and sectors.<sup>54</sup> Although the approach clearly has added value, a policy based on RBC agreements does not cover enough businesses and significant improvements to sector-wide cooperation are possible.

The government aims to continue to encourage sector-wide initiatives aimed at implementing due diligence and at raising its impact on specific themes or value chains, in line with the OECD Guidelines and the UNGPs. By collaborating with civil society organisations, businesses can impact the value chain by making linkages and jointly increasing their influence. There is a connection between

the development of financial support mechanisms for sector-wide due diligence and the development of the other components of the RBC policy mix, particularly legislation. A supervisor authority role requires a change in the government’s role in sector-wide cooperation on due diligence. This means it is time to discontinue the RBC agreements in their current form. The government will continue to be part of the current RBC agreements for the agreed time frame and will continue to participate in ongoing negotiations towards the end. As part of the RBC policy mix, the new instrument for sector-wide cooperation aims to facilitate the implementation of due diligence by businesses through collective action on one or more steps of the process.

The government will investigate to what extent sector-wide initiatives can be incorporated into existing modalities and financing arrangements for sector-wide cooperation and in which cases additional financial and other support is necessary, for example via the RBC support office. The government’s financing requirements will impose certain demands on initiatives and will focus on substantive aspects such as accountability, transparency and reporting. Customisation will remain key here. The government will try to have the conditions and substantive frameworks for this new style of sector-wide cooperation in place by the summer of 2022.

<sup>52</sup> Ministry of Foreign Affairs, ‘From Giving Information to Imposing Obligations’ (October 2020).

<sup>53</sup> Royal Tropical Institute, Evaluation of the Dutch RBC Agreements 2014-2020 (July 2020).

<sup>54</sup> Ministry of Foreign Affairs, IOB evaluation: ‘Mind the Governance Gap, Map the Chain’ (September 2019).



ACTION POINTS PILLAR 2		Aim	Responsible party	Timeline
Sector-wide cooperation				
Define the frameworks for sector-wide cooperation as part of the RBC policy mix.		Support sector-wide cooperation in order to apply due diligence.	BZ	2022

RBC support office

The new RBC support office will form a one-stop shop for RBC policy by supporting all businesses, including those that do not (as yet) fall under the scope of current legislation, in their application of due diligence. In addition to its informative role, other instruments such as grants can also be entrusted to the support office. The support office can provide resources to businesses and promote knowledge exchange between businesses and the embassy network.

Services offered by the RBC support office may include:

- Supporting businesses in the implementation of the OECD Guidelines and the UNGPs, including providing information and guidance through the different steps of the due diligence process.
- Offering and providing risk-specific knowledge and expertise, for example about major RBC risks such as the right to form trade unions and bargain collectively, a living wage, combating child labour and gender-related risks, or about RBC risks in specific sectors or geographic regions.





The support office must prevent the fragmentation of services and help reduce the administrative burden for businesses. Although the support centre as a central point of contact is new, many of the services it brings together are not. Knowledge built up in recent years by organisations such as RVO, the SER, the National Contact Point for the OECD Guidelines (NCP), the Sustainable Trade Initiative (IDH) and MVO Nederland can be made available through the RBC

support office. Specific training programmes and other targeted solutions can be developed on the basis of developments in the types of issues that businesses are concerned about. The support office’s approach will also include proactively sharing lessons learned and new developments so that individual businesses do not have to constantly reinvent the wheel. RVO will act as the support office’s implementing partner.

ACTION POINTS PILLAR 2	Aim	Responsible party	Timeline
RBC support office			
Define the frameworks for sector-wide cooperation as part of the RBC policy mix.	Support sector-wide cooperation in order to apply due diligence.	BZ	March-August 2022
Set up the RBC support office.	Support businesses in their application of due diligence.	RVO	From September 2022



# > Pillar 3

## *Access to effective remedy*

As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

UNGP 25





The UNGPs stipulate that a state's obligation to protect against human rights abuses by companies includes the duty to take appropriate judicial, administrative, legislative or other steps to ensure that when such abuses occur within their territory or jurisdiction those affected have access to effective remedy. Remedy can include offering apologies, rehabilitation, compensation or sanctions as well guarantees of non-repetition of the abuse.<sup>55</sup>

Among states' obligations is an obligation to publicise information about existing mechanisms, including information on how they work and the support available to access them. The UNGPs state that a mechanism is a routinised, state-based or non-state-based, judicial or non-judicial process through which a grievance or complaint concerning business-related human rights abuse can be raised and remedy can be sought.<sup>56</sup> The UNGPs distinguish between state-based mechanisms (judicial or non-judicial) and non-state-based mechanisms.

The National Baseline Assessment (NBA)<sup>57</sup> concluded that several improvements are possible in terms of access to remedy. Aside from commissioning a study into the calibre of Dutch law in the light of the UNGPs, the previous NAP did not specifically deal with the right to effective remedy. The action points below therefore largely reflect the analysis (the NBA) carried out by the Netherlands

Institute for Human Rights. Earlier policy evaluations were also taken into account and information was gathered during consultations about the options available for improving access to remedy in the Netherlands.

Improved and more effective access to remedy requires an ecosystem of remedy, meaning that affected parties must have access to a variety of channels for various forms of remedy. The instruments should run in tandem, as not all violations require the same remedy. For example, legal recourse is probably the best way to deal with serious human rights violations, whereas a complaints mechanism may provide quicker and better remedy for less severe violations of labour rights. The proposed due diligence legislation will strengthen this ecosystem, creating a stronger legal basis on which to call European businesses to account regarding any violations. The due diligence legislation will also require businesses to comply with step 6: setting up a complaints mechanism. These efforts to strengthen both state-based and non-state-based mechanisms will lead to the creation of an ecosystem for remedy for affected parties.

<sup>55</sup> United Nations Guiding Principles on Business and Human Rights (UNGPs) (2011).

<sup>56</sup> United Nations Guiding Principles on Business and Human Rights (UNGPs) (2011).

<sup>57</sup> 'Bedrijfsleven & Mensenrechten – Een onderzoek naar de stand van de implementatie van de United Nations Guiding Principles on Business and Human Rights in Nederland' ('Business and Human Rights: An Assessment of Progress on the Implementation of the United Nations Guiding Principles on Business and Human Rights in the Netherlands'), Netherlands Institute for Human Rights (2020).





## Improving the provision of information to affected parties

Ideally, human rights abuses, including violations of labour rights, should be addressed where they take place and effective remedy is offered locally. Yet in some circumstances a mechanism in the Netherlands may be the best recourse, for example if there is no effective local mechanism or if a Dutch enterprise is involved in the violation. However, victims and their representatives may not always have a clear picture of the possibilities for remedy in the Netherlands. Consultations with civil society organisations on the revision of the NAP made it clear, for example, that affected parties were not always aware of the possibility of accessing regular legal aid in cases of international liability.

The government will produce an accessible digital guide describing the judicial and non-judicial remedies available to parties abroad who have been affected by Dutch companies (through their international supply chains). This guide will clearly describe the possibilities for initiating a judicial or non-judicial process and what support, such as legal aid, is available. The guide can follow Germany's example.<sup>58</sup> In response to consultations, the guide will where possible take account of the additional hurdles faced by marginalised groups and unequal power relationships. This will include a gender perspective.

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<sup>58</sup> German







ACTION POINTS PILLAR 3	Aim	Responsible party	Timeline
Improving information provision to affected parties			
Develop and actively disseminate an accessible digital guide for rightsholders, in several languages.	Improve information on the options for access to remedy in the Netherlands.	BZ	2022-2023

Improving the provision of information to businesses

Over the past few years the government has contributed in several ways to improving the provision of information to businesses about access to remedy. The launch of the [www.startmetoesorichtlijnen.nl](http://www.startmetoesorichtlijnen.nl) website is an example of how businesses are informed about their responsibility to provide remedy within their due diligence processes. Likewise, government has in recent years worked closely with businesses and civil society organisations on RBC agreements. With its responsibility to inform, the Dutch National Contact Point (NCP) for the OECD Guidelines has also contributed to these efforts. A number of RBC agreements have further elaborated on access to remedy.

The Dutch Banking Sector Agreement<sup>59</sup>, for example, has investigated the role of financial institutions in offering remedy, and the Sustainable Clothing and Textile Agreement has set up an independent joint complaints mechanism<sup>60</sup>. At the same time many companies are still struggling with the question of how exactly to offer remedy for possible human rights violations deeper in their value chains. It is not always clear how to deal with this, especially, for example, if the business in the Netherlands is just one of the buyers of a product or raw material.

59 Social and Economic Council, Discussion paper: [Working Group: Enabling Remediation, Dutch Banking Sector Agreement](#) (May 2019).  
60 Dutch Agreement on Sustainable Garments and Textile, [‘Complaints and Disputes’](#), Accessed on 12 October 2021.



The government is therefore making efforts to improve the access of Dutch businesses to existing knowledge and information about the implementation of due diligence. The planned RBC support office (see also Pillar 2) will help businesses, including SMEs, implement the OECD Guidelines and the UNGPs. Information about access to remedy is one of the services the support office can offer.

Moreover, the Fund for Responsible Business (an RVO scheme) is collating experiences on setting up a complaints mechanism and on offering remedy. The aim is to make tangible the practical steps businesses can take to set up complaints and dispute mechanisms. These positive examples and practical tips will be shared with other businesses and interested parties, with the RBC support office possibly playing a role.

Internationally the government will participate in the benchmarking<sup>61</sup> efforts of the World Benchmarking Alliance (WBA) on access to remedy by large enterprises in the agricultural, textile, mineral and ICT producing industries.<sup>62</sup> These benchmarks are published annually by the WBA and indicate to what extent multinational enterprises offer remedy. Knowing and showing<sup>63</sup> plays a role in stimulating businesses to get active in providing access to remedy.

These benchmarks are published annually by the WBA and indicate to what extent multinational enterprises offer remedy

61 A reference framework for comparing the performance of different companies.

62 World Benchmarking Alliance, 2021.

63 Understanding and making public private efforts towards remedy helps encourage businesses to take access to remedy more seriously.



ACTION POINTS PILLAR 3	Aim	Responsible party	Timeline
Improving information provision to businesses on remedy			
Include access to remedy in the information offered by the RBC support office (see Pillar 2).	Collect and make available information on access to remedy.	BZ	From September 2022
Support the WBA.	Provide details of the progress made by multinational enterprises in a number of high-risk sectors on access to remedy.	BZ	2022-2026



## Strengthening complaints and dispute mechanisms

The government expects businesses to conduct due diligence in accordance with the OECD Guidelines as described in Pillar 2. This includes the responsibility of businesses to address negative consequences via a complaints or dispute mechanism. Step 6 of the due diligence process (provide or cooperate in remediation) also contributes to the non-state-based component of the due diligence ecosystem.

Dutch companies often have an internal complaints mechanism for employees. A complaints and dispute mechanism as described in the UNGPs should, however, also be accessible to all actually or potentially injured parties outside the company. This prevents legal proceedings and plays an important role in prevention, as it offers scope to report evidence of abuses and thus prevent escalation. Businesses themselves can use the information from complaints, as part of their due diligence process, to identify negative consequences of their activities. An effective complaints mechanism can thus help trace systemic problems.

The NBA concluded that dispute settlement (including the results of dispute settlement) and remedy organized by businesses themselves still receive little attention.<sup>64</sup> This is in line with the monitoring study into the application of the

OECD Guidelines by businesses in the Netherlands, which showed that so far only very few businesses are working on offering access to remedy.<sup>65</sup>

The government points out that providing access to remedy is an essential step in the OECD Guidelines and must form part of a broad obligation to conduct due diligence. To this end the government will continue in the years ahead to encourage the establishment of complaint and dispute mechanisms as an element of access to remedy.

## Access to remedy in sector-wide cooperation

The instrument for sector-wide cooperation will support businesses in collaborating on due diligence processes. Establishing a collective complaints mechanism may be one form of collaboration. See Pillar 2 for more details of sector-wide cooperation. As stipulated by the UNGPs and the OECD Guidelines, businesses have an individual responsibility to establish a functioning complaints and disputes mechanism and it is the responsibility of the supervisory authority to call individual businesses to account where necessary. Businesses may find it logical to work with other companies on this obligation, as sector-wide collaboration agreements can help participating businesses set up complaints mechanisms and make them accessible. This can contribute towards lower costs, increased efficiency and greater independence.

<sup>64</sup> The Netherlands Institute for Human Rights, *Business and Human Rights: An Assessment of Progress on the Implementation of the United Nations Guiding Principles on Business and Human Rights in the Netherlands* (August 2020).

<sup>65</sup> Ernst & Young, *Monitoringsproject onderschrijving OESO-richtlijnen en UNGP's* (Project monitoring corporate endorsements of the OECD Guidelines and UNGPs) (2019).



ACTION POINTS PILLAR 3	Aim	Responsible party	Timeline
Strengthening complaints and dispute mechanisms			
Strive in EU negotiations for incorporation into legislation of all six steps in the OECD Guidelines.	Include access to remedy (step 6 of due diligence) as an integral part of EU due diligence legislation.	BZ	From 2022
Promote collaboration on step 6 of due diligence (complaints mechanism) and participation in the policy framework for new style sector-wide cooperation.	Encourage businesses to implement step 6 of due diligence.	BZ	2022





Strengthening civil society

A strong civil society is a precondition for an ‘ecosystem of remedy’. In 2020 the Ministry of Foreign Affairs published a grants framework on strengthening civil society worldwide. As of 1 January 2021 there are 42 consortia aimed at forging a more robust civil society in various fields.<sup>66</sup> The Ministry of Foreign Affairs

not only provides funding but is also a partner and can, when appropriate and possible, take diplomatic measures to help these consortia achieve their goals. This is also the case for the Netherlands’ Trade Union Cofinancing Programme. As part of this programme, CNV International and Mondiaal FNV (the international arms of Dutch trade union federations) are supporting workers’ organisations so that complaints can be lodged and dealt with as locally as possible.

<sup>66</sup> Ministry of Foreign Affairs, Kamerbrief inzake versterking maatschappelijk middenveld (Letter to Parliament on Strengthening Civil Society), Parliamentary Paper 34 952 no. 87 (July 2021).

ACTION POINTS PILLAR 3	Aim	Responsible party	Timeline
Strengthening civil society			
Maintain strategic collaboration with civil society in development cooperation countries.	Strengthen civil society’s access to remedy.	BZ	2021-2025





## Strengthening non-judicial state mechanisms

### National Contact Point for OECD Guidelines (NCP)

All countries adhering to the OECD Guidelines for Multinational Enterprises are required to set up a National Contact Point (NCP). This is already an important non-judicial state-based mechanism for remedy in the Netherlands. The Dutch NCP's main tasks are to:

- improve businesses' awareness and implementation of the OECD Guidelines;
- handle issues raised by individuals, civil society organisations and businesses in disputes related to the implementation of the OECD Guidelines;
- carry out cross-company studies at the government's request.

The Ministry of Foreign Affairs' Policy and Operations Evaluation Department (IOB) commissioned an evaluation of the NCP's performance in 2019. The evaluation made recommendations and led to an increase in the NCP's capacity.<sup>67</sup> Compared to other NCPs internationally, the Dutch NCP is often seen as performing well. Yet consultations for this NAP indicated that stakeholders feel that participation and follow-up of recommendations could be better.

After approximately one year, the NCP is now publishing an evaluation of the implementation of recommendations made in their final statements. The consultations concluded that implementation of NCP recommendations is sometimes too limited once a process has been concluded. There is also a clear tendency by businesses not to accept the NCP's offer of mediation after a complaint has been received. Both of these are problems for effective remedy. The government values a well-functioning NCP as one of the state-based mechanisms for access to remedy. It is therefore important to continue to reinforce the NCP and its recommendations.

One way of doing this is to give the NCP's work more weight in trade instruments. A company's attitude to a possible NCP notification is already taken into account when considering its participation in trade missions. A balanced expansion of this practice to other instruments will encourage cooperation of business in an NCP process.

<sup>67</sup> Ministry of Foreign Affairs, Kamerbrief inzake IOB-evaluatie NCP (Letter to Parliament on the IOB Evaluation of the NCP), Parliamentary Paper 26 485 no. 308 (November 2019).





## Heineken NCP procedure

An instance was notified with the Dutch National Contact Point (NCP) in October 2015 concerning an alleged human rights violation caused by the unlawful dismissal between 1999 and 2003 of 168 employees from the Bukavu factory of Bralima, a Heineken subsidiary in the Democratic Republic of the Congo (DRC). According to the notification, Bralima took advantage of the political unrest in the DRC to expedite the dismissal of a large number of employees by seeking permission to do so from the rebel forces rather than the competent labour inspectorate. As the parent company, Heineken should have been aware of this and used its influence to prevent the violation of the employees' labour rights. The former employees held Heineken responsible and demanded compensation for the damage incurred.

The NCP in the Netherlands, which promotes compliance with the OECD Guidelines, facilitated a meeting between the parties at the Dutch embassy in Uganda. This resulted in the drafting of a 'roadmap'. The parties used this roadmap to finalise an agreement on financial compensation by Heineken to the 168 former employees. Heineken also made changes to its policy on operating in conflict areas. The details of the agreement remain confidential. This agreement, signed in 2017, can be called unique, as mediation by NCPs in cases relating to the OECD Guidelines seldom results in financial compensation.

[Final Statement former employees of Bralima vs. Bralima and Heineken](#)







A further concern raised during consultations is that NCP proceedings are sometimes halted or postponed if the claimants start another process for remedy elsewhere. The UNGPs specify that different mechanisms should be able to exist side by side. The Dutch NCP will continue its efforts to ensure that NCP proceedings go ahead irrespective of any parallel proceedings.

ACTION POINTS PILLAR 3	Aim	Responsible party	Timeline
Strengthening non-judicial state-based mechanisms			
Encourage cooperation and follow-up by businesses of NCP recommendations.	Improve effectiveness of the NCP in facilitating access to remedy.	BZ	2023-2024





## Improving access to judicial mechanisms

### Criminal law

Criminal law includes penal provisions for the violations of specific RBC norms such as corruption, soil pollution, human trafficking and money laundering, as well as specific penalties for infringements of environmental legislation. In all cases the company's duty of care is relevant to determining whether criminal liability has been incurred.

In the Netherlands the initiative in launching criminal proceedings lies with the Public Prosecution Service. However, the NBA concluded that there are few criminal proceedings against Dutch businesses in cross-border cases.<sup>68</sup> The Public Prosecution Service did recently start criminal proceedings under the EU's Timber Regulation after a Dutch company evaded enforcement under administrative law.<sup>69</sup>

### Legal aid

Access to the Dutch legal system depends partly on the costs to the affected parties of starting civil proceedings. Discussions with human rights lawyers and NGOs representing victims have made it clear that they know little or nothing about existing legal aid opportunities. Regular legal aid can help with legal

costs. Non-Dutch victims can also have recourse to it when claiming damages against parent companies in the Netherlands.

The government will pursue efforts to increase knowledge of and access to current legal aid options, and will monitor how often requests for legal aid in international liability cases are rejected and on what grounds. An evaluation in 2025 will thus be able to state whether the current legal aid options form an obstacle for rightsholders.

### Access to civil law

The Class Action (Financial Settlement) Act (WCAM) entered into force on 1 January 2020.<sup>70</sup> This Act makes it possible to settle damages collectively in joint proceedings. Groups of victims of human rights violations caused by Dutch businesses can use this law, making it unnecessary to litigate individually to claim damages. An evaluation of the WCAM is planned for 2025. Until then the law will be monitored annually and discussed with stakeholders including representatives of affected parties involved in international liability cases. The annual monitoring process will start looking at international liability cases which were declared inadmissible. The 2025 evaluation will also consider whether access to Dutch law has changed for the worse for organisations supporting victims of human rights abuses.

<sup>68</sup> Netherlands Institute for Human Rights, 'Business & Human Rights' (National Baseline Assessment), 2020, p. 44.

<sup>69</sup> Public Prosecution Service, <https://www.om.nl/actueel/nieuws/2021/03/24/om-vervolging-voor-import-%E2%80%99hout%E2%80%99-uit-myanmar>.

<sup>70</sup> Kingdom of the Netherlands, *Wet van 20 maart 2019 tot wijziging van het Burgerlijk Wetboek en het Wetboek van Burgerlijke Rechtsvordering teneinde de afwikkeling van massaschade in een collectieve actie mogelijk te maken (Wet afwikkeling massaschade in collectieve actie)*, Bulletin of Acts and Decrees 130, Parliamentary Paper 34 608 (2019).





**Applicable law: Rome II**

If a court considers itself competent to rule on a case of international civil law, the question arises which law is to be applied. The Rome II Regulation states that the applicable law is determined on the basis of where the damage has occurred.<sup>71</sup> In cases of human rights violations abroad the applicable law is thus the law of the country concerned. The NBA expressed concern that if foreign law applies in a dispute, victims may have recourse to fewer remedies than under Dutch law.<sup>72</sup> The European Parliament has also called for Rome II to be amended to address this problem.<sup>73</sup> A study commissioned by the European Commission into experiences, problems and the application of the Rome II Regulation was published in October 2021.<sup>74</sup> It is up to the European Commission to review the Regulation. The government would support a broad review of Rome II, which should include discussions on the applicable law in cases of human rights violations in international value chains.

71 Regulation (EC) No 864/2007 of the European Parliament and the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).  
72 The Netherlands Institute for Human Rights, ‘Business and Human Rights: An Assessment of Progress on the Implementation of the United Nations Guiding Principles on Business and Human Rights in the Netherlands’ (August 2020).  
73 European Parliament, Report with Recommendations to the Commission on Corporate Due Diligence and Corporate Accountability (September 2020).  
74 British Institute of International and Comparative Law (BIICL), European Commission Study on the Rome II Regulation (October 2020).

**Grounds for jurisdiction of Dutch courts**

The law of international jurisdiction often takes as its point of reference the jurisdiction of the court in the defendant’s country of domicile. This is also the case for Dutch and European rules on international jurisdiction. Another point of reference for Dutch and European rules on international jurisdiction is the place where the human rights violation took place or where the immediate damage occurred. Therefore, if a company established in the Netherlands is named in a case pertaining to a human rights violation the Dutch courts are competent to hear the claim. This is also the case if the violation took place outside of the Netherlands. The Dutch court is not necessarily competent to hear the complaint if the violation concerns a company established outside the Netherlands and if the violation took place and damage occurred outside the Netherlands. Some countries, however, do not have an accessible or adequately functioning legal system and victims thus risk being deprived of legal remedy. The government is actively pursuing this concern in international bodies such as the Hague Conference on Private International Law.

The NBA also notes that in cross-border civil proceedings that have thus far been pursued in the Netherlands, the defendants included Dutch partners as well as subsidiaries based in other countries. As far as is known no legal proceedings have as yet been conducted in the Netherlands involving damage caused by partners in the value chain of Dutch companies other than foreign subsidiaries, that is, non-group company liability. In this connection the Council of Europe has made recommendations about the grounds for jurisdiction of



national courts, and these have been enshrined in Dutch law. The fact that no proceedings have taken place may indicate that the rules surrounding this are unclear and that claimants do not consider such cases to be winnable. In line with the NBA, the government is planning to review how these grounds of jurisdiction are applied and whether it would be appropriate to tighten them up in instructions, for example.

### Amending the law of evidence

The NBA also notes a number of practical obstacles to legal access to remedy. One such potential obstacle is the parties' possible unequal access to information, with victims requiring access to internal corporate information as a prerequisite to taking legal action. Related to this is the burden of proof in liability cases, in which victims may find it difficult to obtain the evidence necessary for their case. The NBA also notes that the high costs associated with complex international cases may form an obstacle to starting proceedings.

The House of Representatives is debating a bill that proposes simplifying and modernising the law of evidence.<sup>75</sup> The bill aims to improve access to justice by removing, where possible, the obstacles caused by limited information and lack of evidence in establishing and proving the relevant facts, to enable litigants to properly substantiate their legal claims. To this end both parties will be required to collect and share all relevant information as much as

One such potential obstacle is the parties' possible unequal access to information, with victims requiring access to internal corporate information as a prerequisite to taking legal action

possible before the start of proceedings. If one of the parties does not have access to documents that are significant for its case, it can request access to them, if necessary through the court, from opposing or third parties. This improved right of inspection is an important part of the bill. Clarifying access to information which falls under the right of inspection should remove any disparity between parties in access to information concerning relevant facts which infringe on the principle of a fair trial. At the same time the government is wary of documents being shared under the auspices of the right of inspection which are not relevant to the proceedings or in which the requesting party does not have a clear interest. The right of inspection is therefore necessarily

<sup>75</sup> Parliamentary Papers II, 35 498. Following the general election this bill was declared controversial by the House of Representatives and its consideration has therefore been suspended for some time.





bound by conditions which primarily serve to prevent ‘fishing expeditions’ for information in which there is no clear interest or whose existence is unknown. The requesting party will therefore have to clearly substantiate its request to inspect. This requirement ensures that there is an appropriate balance between the interests of the party requesting the information and those of the party in possession of it.

The bill does not introduce any amendments to provisions relating to the law of evidence on the burden of proof or on the division of the burden of proof.

Currently the burden of proof (and the risk that the court will not accept the facts as true) lies with party stating the facts. The court, however, already has several means at its disposal to take into account the parties’ unequal access to information, for example by imposing more stringent demands on the party with greater access to knowledge or by proceeding from a factual presumption that the stronger party must then refute rather than one that the party with a knowledge deficit has to assert and prove. By customising this process the government feels that it has addressed the concern expressed in the NBA and the UNGPs that the burden of proof is a potential hurdle to accessing remedy.





ACTION POINTS PILLAR 3	Aim	Responsible party	Timeline
Expanding access to judicial mechanisms			
Conduct annual monitoring of the WCAM and carry out an evaluation in 2025 looking specifically at access to Dutch courts by foreign rightsholders.	Monitor access to Dutch law by foreign rightsholders.	J&V	2020-2025
Make efforts at European level to have human rights included as a ground for exception to the Rome II Regulation.	In due course revise the Rome II Regulation to include human rights as a ground for an exception with the aim of establishing the law of the European member state involved as the applicable law.	J&V	2022-2030
Investigate how grounds for jurisdiction are applied.	Create clarity about grounds of jurisdiction based on forum necessitatis.	J&V, BZ	2022-2023
Improve the provision of information regarding opportunities and monitor the number of applications in international liability cases with a human rights component.	Raise awareness of regular legal aid options and get a clear picture of the current use of such aid.	J&V, BZ, Legal Aid Council	2022-2025





# Monitoring and reporting

The NAP outlined 33 action points to be implemented between 2022 and 2026. Progress will be monitored by the interministerial working group involved in the review of the NAP. The working group will meet as often as necessary to share results and findings.

The working group will consider the progress made on the action points for each theme. It will present an annual progress report to the House of Representatives. If warranted by the results, this may also include additional or more stringent action points.

The Ministry of Foreign Affairs is responsible for convening the working group and drafting the report. The ministries and implementing organisations tasked with carrying out the various NAP action points are responsible for delivering the results and sharing relevant findings with each other.

Every two years the draft progress report will be shared with a focus group comprised of representatives of the business community, civil society organisations and experts.

The progress report will be based on the complete list of action points and will provide an overview and concise explanation of the progress made on each pillar and on the themes within each pillar. The report on the results of the programme ‘Together Against Human Trafficking’<sup>76</sup> may be used as a source of inspiration.

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<sup>76</sup> Ministry of Justice and Security, Together Against Human Trafficking programme results (November 2020).



# Annexes

## Annexe 1: Development of this revised action plan

The Netherlands was one of the first countries to develop an NAP, in 2014. The action points detailed in that plan have since either been implemented or constitute ongoing obligations. This first NAP was thus in need of revision, and a request to that effect was made by the House of Representatives.<sup>77</sup>

The Ministry of Foreign Affairs coordinated the process of developing this revised action plan. It formed an interministerial working group for this purpose comprised of the Ministries of Economic Affairs & Climate Policy, Infrastructure & Water Management, Finance, Interior & Kingdom Relations, Justice & Security, and Social Affairs & Employment. The process consisted of the following phases:

### 1. Making preparations and gathering ideas (January - December 2020)

Prior to the drafting of this revised NAP, in 2020 the Netherlands Institute for Human Rights conducted a National Baseline Assessment (NBA)<sup>78</sup>. It collaborated with the Danish Institute for Human Rights and Utrecht University to produce a status report on the extent of the UNGPs' implementation. They looked at national and international developments, the impact of the Netherlands' 2014 NAP, the implementation of the action points and the current level of the UNGPs' implementation in the Netherlands. Discussions with businesses, civil society organisations and experts were followed in December 2020 by a response to the NBA from the previous government with a letter to parliament setting out the key points of its commitment to the revised NAP.<sup>79</sup>

<sup>77</sup> Motion by MPs Bram van Ojik and Sadet Karabulut, Parliamentary Paper 32 735 no. 252.

<sup>78</sup> Netherlands Institute for Human Rights, National Baseline Assessment on Business and Human Rights (August 2020).

<sup>79</sup> Government response to the National Baseline Assessment on Business and Human Rights (December 2020).



## 2. Analysis and elaboration of the NAP (January 2021 - February 2022)

The recommendations and ideas about policy priorities set out in the government's response were collated, elaborated and discussed in the interministerial working group. Consultations were held in July 2021 with representatives of the business community, civil society organisations, implementing organisations and other experts on the main ideas behind the action plan and the draft version of it in a meeting led by the SER. The SER led another consultation meeting in January 2022 following a written discussion on the draft NAP. In addition to the consultations in the Netherlands, embassies conferred with local stakeholders (civil society, the business community and experts) in Africa and Asia to discuss policy and action points with a cross-border impact from a local perspective. Particular efforts were made to hear the views of women whenever local stakeholders were approached.

## 3. Refining and decision-making

DInput for the draft NAP was collated and processed. The government took a decision on the new NAP in July 2022.





**Annexe 2: Terminology and abbreviations**

<b>BZ</b>	Ministry of Foreign Affairs	<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>BZK</b>	Ministry of the Interior and Kingdom Relations	<b>OECD Guidelines</b>	OECD Guidelines for Multinational Enterprises: RBC standards for entrepreneurs operating across borders
<b>Due diligence</b>	Efforts businesses are expected to make to avoid involvement in human rights violations. The importance of due diligence is underlined in the UN Guiding Principles (UNGPs) and OECD Guidelines.	<b>RBC</b>	responsible business conduct
<b>EZK</b>	Ministry of Economic Affairs and Climate Policy	<b>Remedy</b>	measure intended to correct or avoid an undesirable action
<b>I&amp;W</b>	Ministry of Infrastructure and Water Management	<b>RVO</b>	Netherlands Enterprise Agency
<b>IOB</b>	Policy and Operations Evaluation Department	<b>SDGs</b>	Sustainable Development Goals
<b>J&amp;V</b>	Ministry of Justice and Security	<b>SER</b>	Social and Economic Council
<b>NAP</b>	National Action Plan on Business and Human Rights	<b>SZW</b>	Ministry of Social Affairs and Employment
<b>NBA</b>	National Baseline Assessment	<b>UNGPs</b>	United Nations Guiding Principles on Business and Human Rights: RBC guidelines drawn up by the UN and OECD
<b>NCP</b>	National Contact Point	<b>WCAM</b>	Class Action (Financial Settlement) Act





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