Input on behalf of **JustLaw** by:

* **Mr. Jan van de Venis, LLM** - Expert human rights lawyer and, i.a. Vice Chair of the Network of Institutions for Future Generations[[1]](#footnote-1) and UN Harmony with Nature Expert[[2]](#footnote-2).
* **Ms. Sonia Marcantonio, LLM** – Intern on Human Rights, UN Human Rights Reporting on Environmental Issue and Sustainable Development.

On the request of the UN Special Rapporteur on Human Rights and The Environment,
For his thematic report, as per Human Rights Council Resolution 37/8,
To be presented to the Human Rights Council in March 2020, focusing on good practices specifically related to the implementation of the right to a safe, clean, healthy and sustainable environment and on experience and best practices of States at the national and regional levels with regard to human rights obligations relating to the environment,
We submit the following:

**Introduction on this report which specific focus on UN Human Rights Reporting**

This short report examines different documents in order to give an overview “on experience and best practices of States at the national and regional levels with regard to human rights obligations relating to the environment”, it focusses on (the impact of) UN Human Rights Reporting over the last few years and includes:

1. National reports, recommendations and outcomes resulting from the UN Universal Periodic Review (UPR) between 2016 and 2019.
2. Recommendations by the UN Committee on Economic Social and Cultural Rights (CESCR)Review, more specificallyon the Periodic Reviews of Argentina and the Netherlands.
3. References to the work and reports of the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.
* ***References in UPRs and by CESCR on Business and Human Rights (‘BHR’)***

Business activities have a profound impact on the environment and on the people’s enjoyment of human rights; either positively or negatively. Violations of human rights can arise by acts or omissions of enterprises, but also from the State’s failure to introduce and implement national policies aimed at protecting individuals’ human rights from interference by third parties.
This section examines business and environmental human rights issues through the analysis of national reports, working groups discussions and CESCR’s reviews of the UPR between 2016 and 2019. Substantial progress has been made during the period considered. Mining companies and children’s rights are two topics frequently discussed.

At any rate, all the States expressed the necessity to outline a national plan on human right and businesses, and to establish independent national human rights mechanisms, in accordance with the Paris Principles and with the UN Guiding Principles on Business and Human Rights. In 2016, Belgium noted that the **first challenge** in implementing an effective national plan “consist in integrating the various existing instruments into a coherent whole and adding activities in areas that had not yet been addressed.” Belgium has many instruments to deal with, and among those it mentioned national bodies independent to the executive, such as the National Commission on the Rights of the Child or the Centre for Equal Opportunities and mediation.[[3]](#footnote-3)

During the 2016 and 2017 Universal Periodic Reviews, the Netherlands was the State to give the most recommendations to other countries on business and human rights in general. For example, in 2016, the Netherlands recommended “Develop and adopt a national action plan on business and human rights” to Estonia[[4]](#footnote-4), Latvia[[5]](#footnote-5), Namibia[[6]](#footnote-6) and Singapore[[7]](#footnote-7). Likewise, in 2017, the Netherlands advised Brazil[[8]](#footnote-8) and Ecuador[[9]](#footnote-9) to introduce national plans on business and human rights, “including measures on access to remedy”, “with meaningful consultations with the affected communities”. [[10]](#footnote-10) It must be noted that in addition to these recommendations, the Dutch Government “expressed its willingness to share its experiences in developing a national action plan on business and human rights”.[[11]](#footnote-11) We acknowledge that National Action Plans on Business and Human Rights (‘NAP BHR’) can play an important role, especially when it comes to human rights and the environment.

In fact, UN reporting mechanisms can contribute to the adoption of more sustainable laws, policies and practice of States towards businesses. The 2017 UPR and CESCR reporting processes on the Netherlands serve as an example for that. This specific case concerns policies in the area of natural resources extraction. In short, The Netherlands’ province of Groningen lies on top of a big gas field and the extractive activities by a company called NAM (which is 100% owned by ExxonMobil and Shell – both have 50% of shares) are causing numerous, increasing and increasingly stronger earthquakes. Buildings are damaged and are slowly collapsing, ‘a disaster in slow motion’ it is called by the people in Groningen. This includes irreplaceable historical sites, such as medieval churches and centuries old farms. In addition to material damages, locals suffer from stress and fear. Parents and children cannot sleep at night, afraid that their house might collapse.

Through Human Rights Council Resolution A/HRC/36/15, The Netherlands received seven strong recommendations on business and human rights (No. 131.106 to 131.112) two of which with explicit reference to (the adverse effect on the enjoyment of human rights and) the environment.
In its reply[[12]](#footnote-12), The Netherlands accepted most recommendations and confirmed:

* The Netherlands is committed to preventing involvement of any Dutch companies in human rights abuses, also in relation to palm oil and soy production;
* The aim of its adopted NAP BHR precisely is to prevent companies, particularly Dutch companies, from abusing human rights, either directly or within supply chains; and
* Even though Dutch companies can be held liable in civil or criminal proceedings for extraterritorial human rights abuse, it remains primarily the duty of the host State to protect its citizens from human rights abuse by domestic as well as transnational companies.

These reactions can definitely be seen as a good practice: The Netherlands confirms that it has a duty to protect its citizens from corporate human rights violations and environmental damages.
This statement has a big impact on (and requires action from) the Dutch Government in its actions regarding business impact on human rights linked to environmental issues in the Netherlands, such as climate change and air pollution in general, but also the extraction of natural resources, like the gas exploration by NAM in Groningen.[[13]](#footnote-13)

Besides the UPR recommendations, the CESCR (in reviewing the sixth periodic report of the Netherlands) was also concerned about the situation in Groningen and made a strong recommendation: “..(c) take measures to ensure physical safety and mental health of the people residing in the area of gas extraction in Groningen, as well the security and safety of their homes; provide proper compensation to the victims; and prevent future occurrences of damages related to gas extractions”.[[14]](#footnote-14)

CESCR also recommended: “a) Include a formal monitoring mechanism in the Action Plan on Business and Human Rights.” We think that should be a (new) standard too. So i) countries should have a NAP BHR, which ii) includes human rights obligations and impact in relation to the environment and iii) should have a formal monitoring mechanism. In fact, we think NHRIs are very well placed to do so.

Following those recommendations, the situation dramatically changed in Groningen. The population started to take part in numerous protests which have led the Dutch Minister in charge to declare on 29 March 2018 that – despite the gas reserves allowing for a continuation of 25 years after 2030 – there would be no more gas extraction after 2030. It is not possible to prove a causal link between the outcome of The Netherlands UPR and CESCR reviews and the improvement of the situation of the people in Groningen. However, the process and outcome of the review have empowered the people of Groningen. This is further supported by the following: After a new earthquake in May 2019 and a report (on the request of the Minister of Foreign Affairs) by the Dutch OECD guidelines National Contact Point (also from May 2019, only in Dutch), which confirmed that the companies involved in the gas extraction in Groningen do too little on (their) human rights (due diligence)[[15]](#footnote-15), it appeared in newspapers and on a big tv show[[16]](#footnote-16) where it was confirmed that these businesses and the State are not living up to their obligations and own statements when it comes to BHR and the environment.

Finally on BHR, in the latest UPR cycle in May 2019 Norway responded to the South African recommendation relating to human rights and the business sector (131.186). Here, the Norwegian government directly states that it “expects Norwegian companies with international operations to comply with OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.”[[17]](#footnote-17) To that end, the Norwegian government launched a national action plan, and most interestingly, in 2018 it introduced a National Contact Point (an administrative portal) which provides companies information and guidance in order to exercise due diligence and consult those affected by their activities. The innovative element of this reform is that the government provides advise to multinational companies to help resolve individual cases. Moreover, “*Norges Bank has prepared documents explaining how it expects companies in which the Government Pension Fund Global invests to ensure respect for human rights, including children’s rights, in their activities. The Government has adopted ethical guidelines for observation and exclusion of companies in the Fund’s portfolio. These are designed to ensure that the Fund does not invest in grossly unethical activities*” [[18]](#footnote-18)
This should have a major impact on business in and from Norway, but also – as this pension fund is a global major investor, to BHR and the environment worldwide.

- ***References in UPRs and by CESCR to Climate Change and Environment Protection***

Issues related to climate change were discussed with respect to 37 States under UPR reviews between 2016 and 2019. The following section outlines some of the major concerns about climate change and environment protection considered in the UPR process. Following the structure of the previous section, these references are listed in chronological order.

* During the 2016 UPR of Zimbabwe, African states raised the problem that “*the effects of climate change had adversely affected the implementation of social and economic rights”.* Zimbabwe and Namibia were pointed out the necessity to redirect resources “away from national social programmes”[[19]](#footnote-19) such as health and education, towards the provision of food.[[20]](#footnote-20)
* Similarly, Tanzania emphasized its commitment to address food sufficiency and sustainability in a context of climate change. And it received recommendations by The Maldives and Haiti in relation to climate change (on mitigation and adaption 134.125)[[21]](#footnote-21)
* The Seychelles took the opportunity of the universal periodic review to stress the need “*for the world to pay attention to the issue of protecting the environment, especially reducing gas emissions*”, emphasising “*the irrefutable link between climate change, the environment and human rights”*.[[22]](#footnote-22)
* This irrefutable link has been also underlined by other states in the next UPR cycles. For example, in 2017, the Maldives recommended to the United Kingdom to place “*children’s rights at the center of climate change adaption and mitigation strategies”[[23]](#footnote-23).*
* It is also interesting that India referred to the principle of climate justice**,** talking about its policies to address the problem of global warming and to ensure environmental sustainability.[[24]](#footnote-24) In this analysis, all the states concerned referred to strategy plans, including examples of implementation of laws for environmental protection and climate change.
* For example, Cabo Verde stated that its “*government had intensified the production of renewable energies and had developed strategies to manage the risks posed by climate change as a matter of priority”*[[25]](#footnote-25).
* In 2019, States made several statements relating to actions taken to promote, protect and fulfill human rights connected to the environment and climate change. To begin with, Nicaragua claimed it made “*important strides towards addressing the challenges of climate change, such as the transformation of its electricity production grid, which increased the production of renewable energy to 50.72 per cent in 2018.”[[26]](#footnote-26)*
* In the same way, countries severely affected by climate change, such as Vietnam, Ethiopia and Bhutan expressed their commitment to the environment in the national reports. For example, Vietnam mentioned the 2016-2020 Target Program for Climate Change Adaptation and Green Growth, which aims to mitigate the effect of climate change and environmental degradation. During the period 2013-2015 the Vietnamese government earmarked substantial amount of money to mitigating natural disasters. These investments are expected to be tripled over 2016-2020 period.[[27]](#footnote-27)
* Ethiopia included the right to a clean and healthy environment in its Constitution and introduced several green-polices such as the Climate-Resilient Green Economy Strategy (CRGE). It also provided examples of implementation (i.e in 2019, Ethiopia shut down four tanneries over toxic waste emission).[[28]](#footnote-28)
* Bhutan emphasised that its commitment to the environment is manifested also in the Constitution which *“mandates 60 percent of land area to be maintained under forest cover for all times”.[[29]](#footnote-29)* In the 2019 national report*,* it also discussed the importance of the recommendations and described several initiatives to implement the suggestions of other states. For instance, Bhutan has implemented two projects to mitigate climate change organised under the National Adaptation Programmes of Action (NAPA). The first is the hydropower project aimed at addressing the need to withstand catastrophic Glacial Lake Outburst Floods and earthquakes.
Early warning systems have been installed in 3 river basins of Punakha, Wangdue and Bumthang.[[30]](#footnote-30)The second project consist of a basic seismic monitoring network and emergency communication facilities aimed at creating a comprehensive disaster response mechanism.[[31]](#footnote-31)
* ***References in UPRs and by CESCR regarding the Rights of Future Generations***

Constitutions, international conventions and agreements or declaration on the environment and sustainability often express concerns about the adverse impacts of environmental degradations on future generations. Sometimes they even give rights to future generations, like the Aarhus conventions which recognises both the right to a healthy and clean environment and our duty to protect and improve it for future generations:

*“Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.”[[32]](#footnote-32)*

Notably, in the Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainableenvironment**,** the special Rapporteur mentioned future generations in the definition of sustainable development. This is indeed defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.[[33]](#footnote-33)

Environmental degradation resulting from today’s activities inevitably affects children’s health even before they are born. For example, the harm from air pollution starts when unborn children are still in the womb. Thus, using the expression of the Special Rapporteur on hazardous substances and wastes, children are “pre-polluted”[[34]](#footnote-34)becauseof the mothers’ exposure to toxic environmental chemicals during pregnancy. Consequences include impacts on fertility, neurodevelopment and cancer. There is an urgent need to introduce and implement laws and policies which consider future generations’ needs, especially in relation to human rights obligations relating the environment.

During the Universal Periodic Review cycles, several states mentioned the rights of future generations from different perspectives and referring to various rights. Those references include support by the international community, food security *for* future generations of children, policies to ensure intergenerational fairness.

Between 2016 and 2019, five states explicitly referred to the future of its people or to future rights in their National Reports or during the working groups discussions, namely: Niger, Palau, Tunisia, the United Kingdom and Vanuatu. The recommendations and statements are listed in chronological order:

* To begin with, Niger pointed out the numerous challenges that need to be met in order to comply with human rights obligations and to maintain its commitment. To this end, it called on the “international community to support it in its determination to promote better governance and balanced social and economic development”. Niger specifically asked for technical support to ensure a better future for its people.[[35]](#footnote-35)
* Palau linked preservation of the oceans and food security to protection of future generations. In its report, it emphasised that “the President of Palau had successfully secured a protection measure for the oceans through the Marine Sanctuary Act, which is intended to ensure food security for future generations of children*.*” Furthermore, Palau (in the same way that Niger asked) called on the support of the international community and stressed that the protection of its people is inextricably linked to the promotion of human rights. Finally, it referred to the Sustainable Development Goals and to the great opportunity for the Human Right Council to use the Universal Periodic Review process for monitoring situations and addressing violations. [[36]](#footnote-36)
* The 2017 Tunisian national report clearly describes its constitutional framework and the sections dedicated to the protection of the environment. The recent Tunisian Constitution explicitly includes the concept of future generations and establishes an independent constitutional body to regulate the rights of future generations. In the preamble, Tunisia expresses the necessity of “contributing to the preservation of a healthy environment that guarantees the sustainability of our natural resources and bequeathing a secure life to future generations”. Furthermore, Art 42 confirms this necessity by mentioning the state duty to “protect cultural heritage and guarantees it for future generations”. However, it is not enough to include these rights in the constitution. It is necessary to effectively implement them by enacting specific laws which will actually protect them.
To that end, Saudi Arabia recommended to Tunisia to “Continue efforts to pursue the legislative efforts of the sustainable development commission for future generations”. [[37]](#footnote-37)
* During a working group in May 2017, the Maldives recommended the United Kingdom, which was the state under review, to “Place children’s rights at the center of climate change adaption and mitigation strategies”.[[38]](#footnote-38) The United Kingdom noted the recommendation and provided an exhaustive answer including interesting examples. The UK mentioned “Government’s policies and programmes on the environment and framework for improving the environment within a generation”. It is important to note the use of the term generation, and thus, the consideration of future right holders.
The most relevant example provided is about the Scottish government policy on climate justice. This policy “aims to avoid the worst impacts of climate change falling on the poor and vulnerable, including children”, and most importantly, recognises the issue of intergenerational fairness. Therefore, on 3 April 2017, the Scottish Government signed a letter of cooperation with the Government of California on climate change. In this letter, it is stated that failing to take swift action to combat climate change will cost future generations dearly. Let’s not forget to mention that based on the Well-being for Future Generations Act, Wales has a Future Generations Commissioner[[39]](#footnote-39).
* Finally, in its recent 2019 national report Vanuatu listed a series of policies aimed at encouraging green economic growth and development through investing in low impact industries and modern technologies. These polices seek to mitigate environmental degradation with a view to ensuring the well-being of future generations.[[40]](#footnote-40)
* The necessity topromote alternative and renewable energy sources was also expressed by the Committee on Economic, Social and Cultural Rights after reviewing the Fourth Argentinian National Report. The CESCR recommended Argentina to reconsider its plans for the large-scale exploitation of shale gas and oil in Vaca Muerta region, in order to ensure compliance with the Paris Agreement. These concluding observations are important for two reasons:
First, the committee pointed out that the exploitation of non-renewable energy sources constitutes a threat to the environment and public health. Second, in considering those affected by exploitation of the environment, the committee explicitly considered future generations as rights holders. It stated: “The Committee is concerned that this hydraulic fracturing plan runs counter to the State party’s commitments under the Paris Agreement and would have a negative impact on global warming and on the enjoyment of economic and social rights by the world’s population and future generations.”[[41]](#footnote-41)

Last but not least, we would like to mention, as a best practice, the growing call for the set-up of (three) **Guardians for Future Generations.**[[42]](#footnote-42)

Initiated by Mary Robinson, former President of Ireland and former High Commissioner for Human Rights, and the Mar Robinson Foundation – Climate Justice, a growing group of ‘Friends of Future Generations’ is calling for these Guardians at UN level.

The initiative confirms that:

* We all envision future generations living in health and harmony.
* There is a moral imperative to ensure that future generations of humanity can live full and healthy lives, underpinned by the dignity and rights promised by the Universal Declaration of Human Rights and other human rights treaties.
* Due to climate change, unsustainable resource exploitation, worsening global inequality and wars, the window of opportunity to hand over a safe and equitable world to future generations is rapidly closing.
* In order to consider their needs, we must look upon the decisions we take today through the eyes of future generations and allow our actions to be guided by the concept of intergenerational equity.
* The needs of Future Generations are to be given consideration in today’s decision making.
* One way of ensuring that the commitments made to intergenerational equity in international agreements and UN resolutions are applied in practice is to provide representation of future generations at the United Nations level.
* This growing Group of Friends of Future Generations therefore propose the set-up of the Global Guardians for Future Generations.

We will still have to see what will become of this initiative.

However - and obviously - acknowledging and effectively respecting, protecting and fulfilling the right to a safe, clean, healthy and sustainable environment at the international level and sharing and getting more experience and best practices of States at the national and regional levels with regard to human rights obligations relating to the environment, will benefit future generations.

* ***Concluding***

To conclude, the examples listed above are focused specifically on UPR and CESCR reporting and aim to show how UN Human Rights Reporting is one of the instruments available to fill certain gaps in human rights and environmental protection. It also, via CESCR and UN Human Rights Council recommendations, contributes to the continuous development of human rights law in relation to the environment and, specifically, to the right to a safe, clean, healthy and sustainable environment (for present and future generations).

By addressing concrete or potential human rights violations in relation to the environment in UN Human Rights Reporting, e.g. violations by businesses, of children’s rights, in relation to climate change and protecting future generations, States inter alia share information, create dialogue and give each other feedback and recommendations, which enable concrete follow up, solutions and better practices on human rights and the environment.

1. See: <http://futureroundtable.org/en/web/network-of-institutions-for-future-generations/about> [↑](#footnote-ref-1)
2. See: <http://www.harmonywithnatureun.org> [↑](#footnote-ref-2)
3. A/HRC/32/8, ¶17. [↑](#footnote-ref-3)
4. A/HRC/32/7, ¶ 123.126. [↑](#footnote-ref-4)
5. A/HRC/32/15, ¶120.47. [↑](#footnote-ref-5)
6. A/HRC/32/4, ¶ 137.85. [↑](#footnote-ref-6)
7. A/HRC/32/17, ¶166.107. [↑](#footnote-ref-7)
8. A/HRC/36/11, ¶ 135.51. [↑](#footnote-ref-8)
9. A/HRC/36/4, ¶ 120.4. [↑](#footnote-ref-9)
10. A/HRC/36/11, ¶ 135.51, A/HRC/36/4, ¶ 120.4. [↑](#footnote-ref-10)
11. A/HRC/32/4, ¶ 126. [↑](#footnote-ref-11)
12. A/HRC/36/15/Add.1, ¶131.107-131.112 [↑](#footnote-ref-12)
13. Jan Van de Venis, The contribution of United Nations Human Rights Reporting to more sustainable Businesses – the example of natural gas extraction in the Netherlands; In Natural resources exploitation: business and human rights. LexisNexis 2018. p.8. [↑](#footnote-ref-13)
14. E/C.12/NLD/CO/6, ¶ 12 ( c ). [↑](#footnote-ref-14)
15. Only available in Dutch, here: <https://www.oesorichtlijnen.nl/ncp/nieuws/2019/04/23/publicatie-ncp-onderzoek-naar-de-olie--en-gassector-en-de-oeso-richtlijnen> [↑](#footnote-ref-15)
16. Tv show, also only in Dutch: <https://www.npostart.nl/POMS_KN_15506168> [↑](#footnote-ref-16)
17. A/HRC/WG.6/33/NOR/1 ,¶104. [↑](#footnote-ref-17)
18. A/HRC/WG.6/33/NOR/1 ,¶ 105. [↑](#footnote-ref-18)
19. A/HRC/34/8, ¶ 7. [↑](#footnote-ref-19)
20. A/HRC/32/4, ¶ 8. [↑](#footnote-ref-20)
21. A/HRC/33/12, ¶ 27. [↑](#footnote-ref-21)
22. A/HRC/32/13, ¶ 22. [↑](#footnote-ref-22)
23. A/HRC/36/9, ¶ 134.189. [↑](#footnote-ref-23)
24. A/HRC/36/10, ¶ 18. [↑](#footnote-ref-24)
25. A/HRC/39/5,¶ 28. [↑](#footnote-ref-25)
26. A/HRC/WG.6/33/NIC/1, ¶ 107. [↑](#footnote-ref-26)
27. A/HRC/WG.6/32/VNM/1, ¶ 90-91. [↑](#footnote-ref-27)
28. A/HRC/WG.6/33/ETH/1, ¶ 37. [↑](#footnote-ref-28)
29. A/HRC/WG.6/33/BTN/1, ¶ 59. [↑](#footnote-ref-29)
30. A/HRC/WG.6/33/BTN/1, ¶65. [↑](#footnote-ref-30)
31. A/HRC/WG.6/33/BTN/1, ¶66. [↑](#footnote-ref-31)
32. Preamble of the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, Aarhus, Denmark, on 25 June 1998 [↑](#footnote-ref-32)
33. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/58, ¶ 67. [↑](#footnote-ref-33)
34. A/HRC/33/41, ¶ 5 [↑](#footnote-ref-34)
35. A/HRC/32/5, ¶ 51. [↑](#footnote-ref-35)
36. A/HRC/32/11, ¶ 24**.** [↑](#footnote-ref-36)
37. A/HRC/WG.6/27/L.3, ¶ 125.50. [↑](#footnote-ref-37)
38. A/HRC/36/9, ¶ 134.189. [↑](#footnote-ref-38)
39. More info see: http://futuregenerations.wales [↑](#footnote-ref-39)
40. National report of Vanuatu, A/HRC/WG.6/32/VUT/1 ,¶ 13 [↑](#footnote-ref-40)
41. UN Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations on the fourth periodic report of Argentina, 1 November 2018, U.N. Doc. E/C.12/ARG/CO/4. ¶13. [↑](#footnote-ref-41)
42. See <https://www.mrfcj.org/resources/global-guardians-a-voice-for-future-generations/> [↑](#footnote-ref-42)