

Kennedy Van der Laan N.V.,
Molenwerf 16, 1014 BG Amsterdam
P.O. Box 58188, NL-1040 HD Amsterdam
t. +31 (0)20 5506 666
IBAN NL19INGB0662967615
BIC INGBNL2A, VAT nr. NL8173.15.019.B01
Chamber of Commerce no. 34261155
www.kvdl.com

By courier and e-mail

The State of the Netherlands
The Ministry of General Affairs
attn. Mr M. Rutte
PO Box 20001
2500 EA The Hague

your ref.

direct dial (secr.):

+31 20 55 06 881

our ref.

direct fax:

69498

+31 20 55 06 777

date

e-mail

11 May 2023

Michael.Bacon@kvdl.com

subject: **Pre-litigation letter for climate justice for the inhabitants of Bonaire**

Dear Mr Rutte,

1. In this letter, Angelo Vrolijk, Judmar Emerenciana, Helen Angela, Jackie Bernabela, Onnie Emerenciana, Danique Martis, Kjeld Masoud Kroon, and Greenpeace Nederland (hereinafter: **'the claimants'**) request your urgent attention to the acute threat of climate change for the safety and continued existence of Bonaire and its inhabitants. There is a grave threat, but there is also hope. This does require that the State, and you as prime minister, show leadership and take your responsibility. The State also has a legal obligation to do so, as will be explained below in this letter by the claimants.

The State must protect all its citizens against the consequences of the climate crisis, including the inhabitants of Bonaire.

2. Like Saba and Saint Eustatius, Bonaire has been a 'special municipality' of the Netherlands since 2010. Bonaire is within the Caribbean region, but forms part of the Netherlands. Inhabitants of Bonaire are Dutch nationals.
3. The location and geography of Bonaire make the island particularly vulnerable to the consequences of climate change. Climate change seriously threatens the life and living environment of the inhabitants of Bonaire. The consequences of climate change to Bonaire are already clear and will increase in seriousness.
4. Climate change means that one fifth of Bonaire runs the risk of being permanently inundated by the sea by the end of this century. Coral reefs that act as natural breakwaters are disappearing and heatwaves are increasing. Climate change is altering life on the island

permanently and threatens the life, health and sources of income of the inhabitants of Bonaire.

5. The State is obliged to take measures to protect everyone in the Netherlands, including the inhabitants of Bonaire, against dangerous climate change in an effective manner. However, the numerous measures the State has taken so far only apply to the European part of the Netherlands. The inhabitants of Bonaire, who are Dutch nationals, are therefore being unequally treated by the State without justification. This is unacceptable, all the more so because this unequal treatment also occurs in other areas, such as with respect to social security benefits and minimum income standards. As a result, the State treats the inhabitants of Bonaire as second-class citizens.
6. The claimants want the State to take its responsibility and implement measures immediately that will protect Bonaire and its inhabitants against the consequences of climate change, so that the inhabitants of Bonaire and their future generations will be able to continue to live safely on Bonaire and pass their traditions and culture on to their children. The culture of Bonaire must be able to continue to exist.
7. The accusations the claimants make against the State can be divided into two points.
8. Firstly, the State has failed to take appropriate measures to protect the inhabitants of Bonaire against the consequences of climate change (hereinafter referred to as '**adaptation**'). A great deal of information and research is available for the European part of the Netherlands and there are numerous laws and measures intended to afford this part of the Netherlands a high level of protection against dangerous climate change. These laws and measures expressly do not apply to Bonaire and the other special Dutch municipalities in the Caribbean (the **BES-Islands**) and the government has virtually no reliable information about these islands. This means that the inhabitants of Bonaire suffer damage and are exposed to unacceptable risks. This negligence on the part of the State is unlawful towards them, as will be explained further below.
9. Secondly, the State breaches its duties of care arising from, *inter alia*, Articles 2 and 8 of the ECHR (European Convention for the Protection of Human Rights and Fundamental Freedoms) by failing to contribute its fair share to the limitation of the global emission of greenhouse gases (hereinafter referred to as '**mitigation**'). The reports from the Intergovernmental Panel on Climate Change (IPCC) and research conducted by the Vrije Universiteit (VU) show that current global warming has already had a serious impact on life in the Caribbean region and specifically Bonaire. These findings are confirmed by witness statements made by inhabitants of Bonaire who are personally experiencing the consequences of climate change on a day to day basis. It is essential for the inhabitants of Bonaire that the global temperature increase is limited as much as possible and does not exceed the limit of 1.5 degrees (on a permanent basis). The Netherlands is obliged to contribute its full fair share to the global climate efforts. This requires that the Netherlands reduces its emission of greenhouse gases more quickly than it is doing at the moment.

10. With respect to these two points, it is important to be aware that adaptation and mitigation are closely linked. The lesser the global temperature rise, the fewer the adaptation measures that are required and vice versa. At the same time, an excessive temperature increase would not leave any room for meaningful adaptation measures that are intended to keep Bonaire habitable. This means that adaptation measures by themselves are insufficient. On the other hand, the effects of climate change are already such that adaptation measures to protect Bonaire more effectively are also necessary in the best-case scenarios.
11. Furthermore, the situation on Bonaire is exacerbated by the fact that the State does little to deal with various structural problems on Bonaire, including poverty. This increases the current and potential impact of dangerous climate change for the inhabitants of Bonaire. This is all the more painful in view of the colonial past and the responsibility the Netherlands bears for this past. It is clear that climate change is not only an ecological problem but also a social problem that results in inequality and injustice. The inhabitants of Bonaire are Dutch nationals and have the same rights as the people in the European part of the Netherlands. It is the obligation of the State to protect these rights, including when they are impacted by climate change

The State must take measures against dangerous climate change

12. The failure to implement appropriate adaptation and mitigation measures results in a breach by the State of the human rights of its citizens on Bonaire, which are protected *inter alia* by the ECHR. The State therefore acts unlawfully towards them. In order to end this unlawful situation, the claimants request the State to, in broad terms, do the following and record this in a written agreement with the claimants:
 1. The State must implement specific adaptation measures to protect the inhabitants of Bonaire against the consequences of climate change.
 2. The State must do its part to limit global emissions of greenhouse gases by delivering its fair share to the global effort to limit global warming to below 1.5 degrees.
13. These steps, which will be specified further below, will allow the State to comply with the obligation to 'do its part' to (also) protect the inhabitants of Bonaire in the climate crisis. The claimants provide a further explanation of their demands in this letter.

The climate crisis is having a major impact on Bonaire

14. The most recent IPCC report (AR6) confirmed that urgent action is required to limit the global temperature rise - when compared to pre-industrial values - to at most 1.5 degrees. This is the commitment the countries that are party to the Paris Agreement have made, in order to prevent the largest risks of dangerous climate change from materializing. Cutting global CO2 emissions in half by 2030 is necessary in order to reach this target.
15. The Dutch islands of the Caribbean region (the BES islands) and other so-called small islands are among the most vulnerable regions in the world where it concerns the impact of climate change. The IPCC reports repeat time and again that these regions are exposed to

'significant risks' due to a combination of 'several key risks' and that small islands will experience 'reduced habitability' as a result of climate change.¹ The IPCC reports also confirm the urgency of limiting global warming to 1.5 degrees for islands such as Bonaire, which are already confronted with rising temperatures, storms, changing precipitation patterns, sea level rise and coral bleaching, among other things.²

16. The State acknowledges these major risks. Minister Jetten emphasised this, for example, at the end of 2022:

'The risks of climate change to small islands, including the Caribbean Netherlands, are an important reason for the government to focus globally on limiting the global temperature increase to at most 1.5 degrees.'³

17. The inhabitants of Bonaire have been suffering from the impact of climate change for a considerable time. For example, the claimants living on Bonaire note that it has become increasingly hotter on Bonaire during their lifetime. One of them notes that nowadays it is almost impossible to go outside between 11 in the morning and 3 in the afternoon, especially for older people. Another claimant mentions that the heat has a negative impact on his mental health. Various claimants remember that as children they were able to play outside all day, but that this is now no longer possible.
18. In addition to heat, several claimants experience that the weather in general has become more extreme and unpredictable. They see that long periods of drought are followed by short, extremely heavy downpours. These result in serious floods, which render roads impassable and can make important facilities such as hospitals and schools inaccessible. They see that important nature conservation areas on Bonaire, which also play a large role in the culture of Bonaire, such as Lac Cai in the south of the island, are slowly disappearing under the rising sea levels. This already clearly demonstrates the vulnerability of Bonaire.
19. The stories from the inhabitants of Bonaire clearly show that they are already sustaining damage as a result of the consequences of climate change, and that further serious damage is a realistic and immediate possibility. However, the State has hardly carried out any research, into the specific (possible) consequences of climate change on Bonaire, nor into specific measures to limit these consequences. Greenpeace Nederland therefore

¹ IPCC, Assessment Report 6 (AR6), Working Group II (WGII): 'The reduced habitability of small islands is an overarching significant risk caused by a combination of several key risks facing most small islands even under a global temperature scenario of 1.5°C.'

² IPCC, AR6 WGII, chapter 15: 'A sense of urgency is prevalent among small islands in the combating of climate change and in adherence to the Paris Agreement to limit global warming to 1.5°C above pre-industrial levels. Small islands are increasingly affected by increases in temperature, the growing impacts of tropical cyclones (TCs), storm surges, droughts, changing precipitation patterns, sea level rise (SLR), coral bleaching and invasive species, all of which are already detectable across both natural and human systems.'

³ Appendix to the Proceedings II 2021-22, no. 2976.

engaged the Vrije Universiteit (VU), a university in Amsterdam, to analyse the consequences of climate change on Bonaire.⁴

20. The VU study shows that if the global average temperature increase exceeds 1.5 degrees large parts of Bonaire will be inundated, including places that have great cultural and historic value. This flooding process will be amplified by an increase in more severe storms and further erosion of the coral that acts as a barrier between the sea and the land, all of which are caused by climate change.⁵ Houses along the coast and culturally significant buildings such as the 'slave huts' are already exposed to a specific danger of flooding.
21. At the same time, climate change will result in ever longer and more intense periods of heat and drought. The VU study shows that the effects are already occurring and that '*significant impacts*' are to be expected with respect to the health of the inhabitants of Bonaire, such as heat stress and an increase of vector-borne diseases such as dengue and malaria:⁶

'Several of these effects are already observed on the island and will continue to influence Bonaire's public health. This confirms the fact that climate change is not an issue of the distant future, but rather one that is already occurring. Due to a predicted increase in the older population, Bonaire's population will become even more susceptible to heat-related stress disorders. Given the rising temperatures, this will lead to more severe and potentially lethal impacts.'

22. The report furthermore shows that there is a real and immediate risk that - without intervention - even further-reaching and irreparable damage will be caused to the coral reefs. In the worst-case scenario, the coral reefs will have disappeared entirely by 2050. The coral reefs have a large cultural significance and form an important part of the resources of the island. Coral reefs also play an important economic role on Bonaire due to tourism. Degradation of the coral reefs therefore not only has consequences for the natural environment, but also for the economy, employment and continued existence of culture on Bonaire. Coral reefs constitute a natural coastal protection against waves and storms. Damage to these coral reefs may result in Bonaire being less well-protected against the impact of climate change. The VU study shows that the loss of coral reefs could increase the power of the waves that reach the coast by 80% and the size of floods could increase by 41% in 2050, which increases the risk of inundation on Bonaire.⁷
23. The VU researchers emphasise in their study that the available scientific knowledge regarding the consequences of climate change on Bonaire is still limited, and that their findings should be interpreted as '*preliminary lower-bound estimates*' and that '*additional*

⁴ VU, *The impacts of climate change on Bonaire (2022-present)*.

⁵ VU, *An Assessment of the Impacts of Climate Change on Coastal Inundation on Bonaire*, 2022, p. 14, 22, 29. https://assets-us-01.kc-usercontent.com/d8b6f1f5-816c-005b-1dc1-e363dd7ce9a5/2fad60d3-a79d-4549-b727-eb0ec8e0b17d/IVM_R22-07_Coral.pdf

⁶ VU, *An Assessment of the Impacts of Climate Change on Coastal Inundation on Bonaire*, 2022, p. 72.

⁷ VU, *Impacts of Climate Change on Coastal Inundation on Bonaire*, p. 29.

*research may generate estimates of even more severe impacts of climate change in Bonaire.*⁸

Inequality compounds problems

24. This climate change takes place against the background of great poverty that exists on Bonaire and that is maintained by the Dutch government. Inequality between the BES Islands and the European Netherlands is a well-known problem. The Ombudsman concluded as early as in 2018 that the differences in living standards between the European and Caribbean Netherlands are unacceptable.⁹ Bonaire's consumer's association Unkobon has since initiated legal proceedings against the State to address social minimums, which are far below the level in the European Netherlands, while the *cost of living* on Bonaire is actually very high. This is also relevant to climate change: research has shown that the negative impact of climate change is disproportionately high on the people who live in poverty.¹⁰
25. The State's unequal treatment of its citizens in the European Netherlands and its citizens on Bonaire in all of these aforementioned areas is even more painful within the context of the colonial past. Until the abolition of slavery, the Netherlands profited enormously from the work of large numbers of enslaved people on Bonaire. The salt pans in the south of Bonaire were always an important source of income for the Netherlands. Many citizens of Bonaire are descendants of enslaved people who were forced to work by the Netherlands in appalling circumstances for hundreds of years. In view of this historic context, it was to be expected all the more of the State that it would be concerned about the equal treatment of its citizens on the BES Islands.

The government does not have any plan to protect the inhabitants of Bonaire.

26. The State has implemented numerous measures since 2007 in order to, in their own words, 'prepare the Netherlands for the consequences of climate change.'¹¹ It is stated in the National Climate Adaptation Strategy (**NAS**) from 2016, in which the State sets out adaptation measures for the Netherlands, that there are 'urgent effects' of climate change that demand immediate action from the State. This includes among other things heat stress among people as a result of extreme weather, the possible breakdown of the vital and vulnerable functions in society and damage to the health of people.

⁸ VU, *Impacts of Climate Change on Coastal Inundation on Bonaire*, p. 7.

⁹ Binnenlands Bestuur, *Ombudsman: Armoede op Bonaire onacceptabel*, 30 August 2018. <https://www.binnenlandsbestuur.nl/bestuur-en-organisatie/ombudsman-schrijvende-armoede-op-bonaire-onacceptabel>

¹⁰ For example, African Development Bank et al., also signed by the Netherlands, *Poverty and Climate Change: Reducing the Vulnerability of the Poor Through Adaptation*.

¹¹ Such as but not limited to the Delta Programme, the Water Programme, the National Water Plan, the National Climate Adaptation Strategies and the Climate Adaptation Administrative Agreement. The quotation comes from the website of the National Climate Adaptation Strategy, <https://klimaatadaptatienederland.nl/overheden/nas/>

27. In the NAS, the State emphasises repeatedly that the urgency of implementing measures to prepare the Netherlands for the consequences of climate change will only increase in 'the coming years'. This applies all the more so as the consequences of climate change in the Netherlands (still: according to the State) are 'already being experienced in greater severity than expected'. The evaluation of the NAS in 2022 confirms this: it shows that the implementation of the NAS will have to take place even more quickly because there is 'ever less time to adapt to the changing climate'.¹²
28. The State also implements adaptation measures within the context of the Delta Programme, and for example makes funds available to municipalities, provinces and water authorities for the purpose of the (accelerated) implementation of adaptation measures. The Minister of Infrastructure and Water Management announced this scheme in 2020 in a letter taking into account that 'acceleration and intensification of measures against flooding, heat stress, drought and the consequences of floods' is necessary because 'extreme weather conditions occur increasingly often'.¹³
29. These adaptation measures are based on detailed research that was performed or made possible by the State. In the NAS, the State emphasises the importance it attaches to basing its policies on sound research: 'Over the past decades, the Netherlands has made significant investments in research into the consequences of climate change and the measures that are required.'¹⁴ After all, climate adaptation is a 'knowledge-intensive policy theme' according to the State.¹⁵ The claimants are in agreement with the State in this respect.
30. The State therefore considers the preparation of 'the Netherlands' against climate change to be of great and urgent importance and it has therefore been the subject of intensive study for decades.
31. However, in this definition of 'the Netherlands', Bonaire is left out. None of the research conducted over the past decades and none of the various adaptation measures pertain to Bonaire (or, as the case may be, the BES islands). This is painfully illustrated by a quotation from the report entitled *Klaar voor klimaatverandering* (April 2020, 'Ready for climate change'):

'The analysis and variants of this [broad social reconsideration] do not include the effects of climate change on the Caribbean Netherlands because the problems of the islands have characteristics that are entirely different from those of the rest of the Netherlands, and the analysis would thus lose focus. Further study of the risks is nevertheless required.'¹⁶

¹² Evaluation of the NAS in 2022, as summarised on the State's website [Klimaatadaptatienederland.nl](https://klimaatadaptatienederland.nl/actueel/actueel/nieuws/2022/aanbevelingen-uitvoering-nas-versnellen/), <https://klimaatadaptatienederland.nl/actueel/actueel/nieuws/2022/aanbevelingen-uitvoering-nas-versnellen/>

¹³ *Parliamentary Papers II* 31 710, 2019-20, no. 77.

¹⁴ NAS, p. 33.

¹⁵ NAS, p. 33.

¹⁶ Central Government, *Klaar voor klimaatverandering: Brede maatschappelijke heroverweging*, 2020.

32. This further study did not occur. The State did not commission any study into the risks of climate change for Bonaire, which means that it is effectively flying blind with regard to that part of its territory. In addition, the State has not implemented (appropriate) adaptation measures to protect the inhabitants of Bonaire and the BES Islands against the consequences of dangerous climate change. This is highly problematic, all the more so because the State is well-aware that Bonaire and the BES islands are particularly vulnerable to the consequences of climate change and the State acknowledges and understands the urgency of the implementation of adaptation measures as explained above.¹⁷
33. These failures were also identified by authoritative agencies. Both the Netherlands Institute for Human Rights and the Advisory Council on International Affairs (AIV) made critical remarks regarding the lack of action on the part of the State in the area of climate change in the Caribbean Netherlands and the Caribbean part of the Kingdom.¹⁸ The UN Committee on the Elimination of Racial Discrimination concluded in 2021 that climate change on the Dutch Caribbean islands ‘*will threaten a plethora of human rights*’ and ‘*will disproportionately impact vulnerable groups.*’ The Committee expressed concerns about the lack of support from the State in this connection and made the following recommendations:
- ‘The Committee recommends that the State party initiate studies to understand the negative impact that climate change may have on people living in Dutch Caribbean islands. The Committee also recommends that the State party take measures to mitigate and protect vulnerable groups from the negative effects of climate change, and consider avenues to provide full support to the affected communities.’¹⁹
34. The State has not (yet) complied with these recommendations. This lack of action means that the State fails to comply with its obligation to protect the residents of Bonaire against the consequences of climate change.

The State is legally obliged to implement effective adaptation measures.

35. The inhabitants of Bonaire are already suffering damage as a result of the impact of climate change and are exposed to serious risks in the near and distant future. Their health, life,

¹⁷ In addition to the statements made by Minister Jetten, research repeatedly emphasised that climate change constitutes a major threat to Bonaire and that further research and further measures are urgently required. See for example A.O. Debrot, R.J.H.G. Henkens, P.J.F.M. Verweij, *Staat van de Natuur van Caribisch Nederland 2017: Een eerste beoordeling van de staat (van instandhouding), bedreigingen en managementimplicaties van habitats en soorten in Caribisch Nederland*, 2017, Wageningen Marine Research Wageningen UR (University & Research centre), Wageningen Marine Research rapport C086/17, p. 193.

¹⁸ See Netherlands Institute for Human Rights, *Recommendation: Naar een mensenrechtelijk aanvaardbaar voorzieningenniveau voor Caribisch Nederland*, April 2016. The quotations in this paragraph originate from this recommendation (p. 8) and Advisory Council on International Affairs, *Veiligheid en rechtsorde in het Caribisch gebied. Noodzakelijke stappen voor een toekomstbestendig Koninkrijksverband*, 2020, AIV recommendation 116, p. 21 et seq.

¹⁹ Committee on the Elimination of Racial Discrimination 25 August 2021, *Concluding observations on the combined twenty-second to twenty-fourth reports of the Kingdom of the Netherlands*, CERD/C/NLD/CO/22-24.

living environment and culture and those of future generations are threatened, which is evident from the VU study among other things. This applies all the more as the impact of climate change will be exacerbated due to the poverty and other social inequality on Bonaire as discussed above.

36. The inhabitants of Bonaire can rely on Articles 2 and 8 ECHR, the right to life and the right to family life (in addition to other rights such as the right to culture provided for in Article 27 of the International Covenant on Civil and Political Rights (ICCPR)). The above means that the State has a positive obligation to implement effective measures so that the inhabitants of Bonaire are protected in a practical and effective manner against the consequences of climate change. The State's failure to do so means that it acts wrongfully towards the inhabitants of Bonaire pursuant to Article 6:162 of the Dutch Civil Code (DCC). This applies all the more if the State acts contrary to the ban on discrimination (Article 14 ECHR and Article 1 paragraph 1 Twelfth Protocol to the ECHR).
37. The State has a certain degree of policy freedom where it concerns the choice of measures to be implemented. However, Article 2 and Article 8 ECHR provide that a State may at least be expected to implement 'reasonable and appropriate measures' to safeguard these rights for the inhabitants of Bonaire (see also Article 1 ECHR). If the State is aware that these rights are in jeopardy and does nothing or too little to safeguard the effective protection of its inhabitants, this constitutes a breach of Articles 2 and 8 ECHR.²⁰
38. This obligation to implement adequate measures weighs all the more heavily if the inhabitants in question run particular risks, as emphasised by the UN High Commissioner for Human Rights:

'States must ensure that appropriate adaptation measures are taken to protect and fulfil the rights of all persons, particularly those most endangered by the negative impacts of climate change such as those living in vulnerable areas (e.g. small islands (...)).'²¹

39. The High Commissioner notes in this connection that the State is also obliged to make 'adequate resources' available, in particular to communities that are vulnerable to the consequences of climate change and that are confronted with multiple structural problems:

'States must build adaptive capacities in vulnerable communities, including by recognizing the manner in which factors such as discrimination, and disparities in education and health affect climate vulnerability, and by devoting adequate resources to the realization of the economic, social and cultural rights of all persons, particularly those facing the greatest risks.'²²

²⁰ Cf. ECtHR 13 July 2017, no. 28342/05 (*Jugheli/Georgia*), legal ground 75-78, and ECtHR 27 January 2009, no. 67021 (*Tatar/Romania*), legal ground 88: '*L'obligation positive de prendre toutes les mesures raisonnables et adéquates pour protéger les droits que les requérants puisent dans le paragraphe 1 de l'article 8 implique, avant tout, pour les États, le devoir primordial de mettre en place un cadre législatif et administratif visant à une prévention efficace des dommages à l'environnement et à la santé humaine.*'

²¹ OHCHR, *Understanding Human Rights and Climate Change*, 2021, p. 2.

²² *Understanding Human Rights and Climate Change*, p. 2.

40. As evident from case law of the ECtHR, Articles 2 and 8 ECHR moreover demand that the State must have relevant and complete information concerning the risks concerned and share this information actively with its inhabitants who are exposed to these risks (see for example the *Budayeva* and *Oneryildiz*-judgments). This certainly applies to a 'knowledge-intensive policy theme' such as climate change. What is more, the State is obliged to grant residents relevant influence within a fair and transparent framework in any decision-making process relating to adaptation (see for example Articles 7 and 8 of the Aarhus Convention).
41. It is furthermore important that the State is not only obliged to implement adequate adaptation measures to safeguard the rights of the inhabitants of Bonaire, but it is also obliged to do so with due speed. This follows for example from the judgment of the Human Rights Committee (HRC) in the case concerning the inhabitants of the Torres Strait islands, which fall under the responsibility of Australia. In that case, the HRC held, based on the right to culture and family life, that the obligations of the State also include implementation of '*timely adequate adaptation measures*'. The ECHR also finds that failing to take action for a prolonged period of time while there are specific dangers may result in breaches of Articles 2 and 8 ECHR.²³
42. Article 14 ECHR and Article 1 paragraph 2 of the Twelfth Protocol to the ECHR provide in connection with the above that the State must never make a distinction between persons under its jurisdiction when safeguarding the rights and freedoms in the ECHR. Moreover, the State must always take account of other relevant rights, such as but not limited to the right to culture, the rights of children and the rights of women, when formulating adaptation policy.

The State fails to comply with its obligation to implement appropriate adaptation measures.

43. The claimants establish that the State acknowledges that:
- climate change is a major problem;
 - sound knowledge about and research into the consequences of climate change in the Netherlands is crucial;
 - the implementation of adaptation measures is of great and urgent importance because climate change is already causing damage at this moment; and
 - small islands, including the Caribbean Netherlands, are threatened in particular by climate change.
44. The claimants establish at the same time that:
- the State did not carry out or arrange for research into the consequences of climate change on Bonaire;

²³ ECtHR 28 February 2012, no. 17423/05 (*Kolyadenko/Russia*), legal ground 215-216.

- there is no legislation nor regulations that concern measures within the context of climate adaptation on Bonaire, the existing legislation and regulations concern only the European part of the Netherlands;
 - therefore no measures have been taken for the time being within the context of climate adaptation on Bonaire; and
 - the State has not made funds available for climate adaptation on Bonaire.
45. There is no legitimate reason for this essentially different treatment of the Dutch citizens on Bonaire when compared to Dutch citizens in the European part of the Netherlands. After all: all of these Dutch citizens are affected by the consequences of climate change. The State is simply failing to implement for part of its inhabitants those measures it has considered most urgent and important for a different part of its inhabitants for considerable time. The State is failing to protect the inhabitants of Bonaire by doing nothing about climate adaptation or, at any rate, it is not doing enough against the adverse consequences of climate change.
46. The inhabitants of Bonaire have a right to, and an interest in, expeditious and effective action connected to specific timescales. This urgency is strengthened by the fact that on Bonaire the State is years behind in implementing the required measures, while the consequences of climate change are already resulting in damage on Bonaire.

The State's recent actions are insufficient

47. Several Parliamentary questions were asked after publication of to the VU report and the concerns expressed by Greenpeace Nederland. Partly as a result thereof, the Ministry of Infrastructure and Water Management announced several measures within the context of climate change on Bonaire at the end of December 2022. However, these are insufficient to comply with the obligations that have been outlined above.
48. This already starts with the basis for these measures: there is no evidence that the State assumes or accepts that the *State* is subject to obligations pursuant to human rights where it concerns adaptation. It is ultimately the case that the State has a positive obligation to ensure that it complies with the standards arising from the ECHR. The State also has the power to make the funds and expertise available where it considers this necessary.
49. Furthermore, (virtually) no deadlines have been set and the commitments are insufficiently concrete and/or insufficiently far-reaching. Moreover, no legislation or regulations have been announced whereas as indicated above a comprehensive set of rules on adaptation already exists for the European part of the Netherlands. Nor is there a concrete commitment for the provision of funds to support Bonaire.

The State must do more as regards adaptation.

50. The claimants conclude that the State is currently failing and is acting unlawfully towards the inhabitants of Bonaire where it concerns adaptation, because (i) they are treated unequally without justification (Article 14 ECHR and Article 1 paragraph 1 of the Twelfth Protocol to the ECHR) and (ii) their rights pursuant to Articles 2 and 8 ECHR are being

breached. The State's failure is also in violation of its due care obligations under Article 6:162 DCC, which obligations are filled in by means of the convention obligations cited above.

51. The claimants therefore request the State, in the interest of the population of Bonaire, to communicate in writing within at most 6 weeks after the date of this letter whether the State is willing to consult with the claimants in order to reach a written agreement at the latest on 30 September 2023, which agreement will ensure that the level of protection of the inhabitants of Bonaire against the consequences of climate change is rendered at least equal to the protection of the inhabitants of the European part of the Netherlands in which connection the State will at least have made the following commitments and implemented the following measures:

- Confirmation to the claimants that all acts on the part of the State within the context of adaptation on Bonaire will be based on and comply fully with the requirements imposed on these measures by international human rights conventions ratified by the Netherlands;
- The immediate initiation of adequate scientific research into the historical, current and future consequences of climate change on Bonaire, making adequate funds available for this purpose and enabling such research on a permanent basis for an initial period of at least twenty years;
- The immediate initiation and sustained preservation of the dissemination of information among the residents of Bonaire concerning the (consequences of) climate change;
- The immediate analysis or, at any rate, the quickest possible analysis of the financial consequences of climate change for Bonaire that already exist and those that are anticipated, with respect to both damage and adaptation measures and further determination on that basis as to what amount in funds is to be made available;
- The timely formulation of an adequate adaptation plan based on both thorough scientific research and the wishes and needs of the inhabitants of Bonaire, and which complies with the requirements imposed with respect to such plans on the basis of the applicable standards for human rights;
- The determination and external communication of the shortest possible timetable within which the adaptation plan will be delivered;
- All of the above each time with actual involvement of the residents of Bonaire and fully in accordance with the international standards that apply to participation by interested parties in decision-making processes such as but not limited to the Aarhus Convention.

52. The above is within the State's control and is urgent and necessary to restore the imbalance between Bonaire and the European part of the Netherlands in the area of adaptation as

soon as possible. The claimants reserve the right to specify these demands further or to expand them, depending on the degree to which this is necessitated by developments relating to climate change. The claimants are of course willing to consult with the State concerning the further elaboration of the scientific research to be performed and the adaptation plan for example.

Preventing the main risks of climate change is crucial to the protection of Bonaire.

53. The main risks of dangerous and irreversible climate change can be prevented or, in any event, mitigated with adaptation measures, provided global warming is limited to at most 1.5 degrees when compared to pre-industrial levels. This assumption is embraced by the international community and also forms the basis for Dutch climate policy. However, it is important to emphasise that global warming by 1.5 degrees is by no means a 'safe' limit.
54. As indicated above, Bonaire is one of the most vulnerable regions in the world. Bonaire is located on a coral reef. The coral is therefore an important barrier against the sea for the population in addition to being an important source of income. This means that the community is particularly vulnerable to the consequences of climate change. The IPCC confirms in its latest report that adaptation limits are being reached more quickly for such communities, even if a large emissions reduction (a favourable scenario) in the future is assumed.²⁴
55. On Bonaire, the current global warming already has a major impact on the life and health of the people. This is confirmed inter alia by research of the VU and the IPCC reports. The IPCC confirms in its most recent report that the irreversible negative effects of climate change are already noticeable.²⁵ According to the IPCC, these negative effects will increase exponentially as a result of further global warming.²⁶
56. It is therefore crucial to a low-lying island in the Caribbean region such as Bonaire that the global warming is limited as much as possible. This is the only way the inhabitants of Bonaire and future generations will have a chance at a sustainable future.
57. In the event global warming exceeds 1.5 degrees, the IPCC argues that there is a 'high risk' that what are known as *tipping points* will be reached, which will cause global warming to enter a further, irreversible acceleration.²⁷ The 'limit' of 1.5 degrees is therefore not a safe limit, but a crucial limit for Bonaire. The State is therefore subject to a duty of care pursuant to human rights law to do everything within its power to limit global warming as much as possible and as soon as possible in order to avoid further loss and damage.

Carbon budget global reduction path towards climate neutrality

²⁴ IPCC, AR6 WGII, Chapter 15: 'The vulnerability of communities in small islands, especially those relying on coral reef systems for livelihoods, may exceed adaptation limits well before 2100 even for a low greenhouse gas emission pathway.'

²⁵ IPCC, AR6 Synthesis Report (SYR), Summary for Policymakers (SMP), A.2.3.

²⁶ IPCC, AR6 SYR, SMP, inter alia B.1.5.

²⁷ IPCC, AR6 SYR, Full report, 3.1.3.

58. According to the most recent figures of the IPCC and the World Meteorological Organization, the average temperature increase of the Earth was approximately 1.1 degrees in 2022 when compared to pre-industrial values. It is therefore late, but not yet impossible to limit the temperature rise to at most 1.5 degrees. This requires a fast and far-reaching reduction in emissions. This was also the conclusion of the IPCC in its most recent synthesis report. This was confirmed by the international community, including the Netherlands, at the last climate conferences in Glasgow (CoP26) and Sharm el-Sheikh (CoP27).
59. In order to realise the international limit of a temperature increase of at most 1.5 degrees (with a probability of more than 50%), the IPCC has calculated that the quantity of greenhouse gases that may still be emitted globally amounted to approximately 500 gigatonnes as from 2020.²⁸ In order to remain within this budget, it is necessary that at a global level a reduction of the emission of all greenhouse gases of 43% must be realised by 2030 and of 84% in 2050 when compared to the global emissions level in 2019. The CO₂ reduction must take place faster with a reduction of 48% in 2030 and 99% in 2050. Stated succinctly: keeping below the limit of 1.5 degrees requires a huge reduction effort worldwide, but it can still be achieved.

The Netherlands must contribute its *fair share* to the limitation of global emissions.

60. Not all countries have had the same share in the emission of greenhouse gases. Countries that benefited from industrialisation, such as the Netherlands, have been able to use a relatively large part of the carbon budget for their economic development and thereby created prosperity. It would not be fair if countries that used up a relatively large part of the carbon budget to stimulate their own economy were to now demand the remaining budget largely for themselves.
61. It was therefore agreed in the Paris Agreement partly for this reason that the Contracting States are obliged to make a contribution to the reduction of greenhouse gases that is based on 'fairness' and the principle of 'joint, but different, responsibilities and various possibilities in view of divergent national circumstances'. This contribution is also referred to in climate science as the *fair share* or 'honest' contribution by a country.
62. The Supreme Court held in the Urgenda ruling (2019) that the duty of care arising from Articles 2 and 8 ECHR implies that the State is obliged to do 'its share' in limiting the global emission of greenhouse gases. The Supreme Court also held that the State '(...) must substantiate properly that its policy meets the requirements to be imposed, which means that it conducts policy in which it remains above the lower limit of its *fair share*. According to the Supreme Court, account must be taken when elaborating this principle of *fair share* of broad-based scientific insights and internationally accepted standards, in which connection the IPCC reports are relevant.

²⁸ IPCC, AR6 SYR, SMP, B.6.1.

63. The fact that the contribution of the Netherlands to the global climate effort must therefore take place in accordance with the *fair share* principle consequently follows from the obligations to which the Netherlands has also committed in the Paris Agreement and that are confirmed by the Supreme Court.

The Netherlands makes an insufficient effort to counter dangerous climate change

The Dutch climate objectives do not constitute a fair share contribution

64. On 14 February 2023, the House of Representatives agreed to a legislative amendment regarding the current Climate Act: the climate objectives are increased from 49% to 55% emission reduction in 2030 and from 95% emission reduction in 2050 to climate neutrality in 2050, with the aim of negative emissions after 2050, all the while taking 1990 as reference year. In order to realise this objective ‘for certain’, the government agreed, in the Coalition Agreement, to focus policy on an emissions reduction of 60% in 2030 when compared to emission levels in 1990.

65. The increased climate objectives constitute an implementation of, and are identical to, the climate objectives included in the European Climate Act. However, the European objectives are insufficient. The Netherlands Bureau for Economic Policy Analysis (CPB) notes in its economic consideration concerning the climate objectives that the speed of CO₂ reduction in the European ‘fit for 55’ package is expected to be consistent with a 2 degrees objective, but that attainment of the limit of 1.5 degrees would demand further tightening.²⁹ Climate Analytics and the Climate Tracker developed in cooperation with the New Climate Institute also conclude following careful analysis that the European climate objectives do not constitute a *fair share* contribution and are insufficient for realisation of the limit of 1.5 degrees included in the Paris Agreement.³⁰

66. The Netherlands has not carried out its own research into what would constitute a *fair share* contribution to the global reduction of the emission of greenhouse gases in view of its specific circumstances and possibilities. Instead, the Netherlands seems to have aligned with EU climate policy without any further thought. The Netherlands Environmental Assessment Agency (PBL) therefore concluded that no fairness principles were taken into account in the determination of the Dutch climate objectives.³¹ The Dutch climate objectives therefore do not comply with the *fair share* obligation incumbent on the State pursuant to the Paris Agreement and international (climate) law.

The Netherlands also fails to comply with its own objectives

67. The claimants note in this connection that the State currently not only fails to comply with its obligation to determine climate objectives that make a *fair share* contribution to the global

²⁹ <https://www.cpb.nl/sites/default/files/omnidownload/CPB-Notitie-Economische-beschouwing-Fit-for-55-pakket.pdf>

³⁰ <https://climateactiontracker.org/countries/eu/> and <http://1p5ndc-pathways.climateanalytics.org/countries/european-union/>

³¹ PBL, *Reflectie op de leefomgevingsthema's in het coalitieakkoord 2021-2025*, 2021, p. 44.

effort to limit global warming to below 1.5 degrees, but is not even implementing sufficient measures to attain its own, insufficient climate objectives.

68. The two most recent Climate and Energy Report (KEV) reports of the PBL (2021 and 2022) show that the State is not on course to realise its own climate objectives for 2030. Even the most positive forecast, which is a 50% reduction in 2030 when compared to 1990, is still insufficient by 10% when compared to the target number (60%) assumed by the government in the Coalition Agreement. The recent Interdepartmental Policy Review (IBO) climate established that in 2030 there is a gap of 22 Mton CO₂eq³² between current policy and the 60% reduction objective for that year.³³
69. The claimants have taken note of the additional package of measures announced by the government on 26 April 2023 in order to realise its own climate objectives. The future will show whether those measures will be sufficient to realise its own climate objectives.
70. Pursuant to its duties of care under the ECHR and the international agreements concluded by the State, it is obliged to make an equitable contribution to the global climate effort. Current climate policy does not constitute an adequate elaboration of that obligation and so far insufficient measures have been implemented for even this policy. The State's failures in this area violate to the human rights of its citizens on Bonaire and other parts of the Kingdom and threaten their future and that of future generations. The State therefore certainly acts unlawfully by doing so. The State is obliged to increase the climate ambition to a level whereby it makes a full contribution to the climate effort.

What is the *fair share* of the Netherlands?

71. The government has not yet determined the lower limit of the *fair share* of the Netherlands. However, this has already been researched extensively in scientific literature and by various climate organisations and scientific institutions.
72. As early as 2021, eminent climate scientist Rajamani had already gathered a large number of scientific insights concerning the division of the mitigation challenge according to the broad-based honesty principles and international environmental law.³⁴ This study quantifies the mitigation every country should make based on - *inter alia* - its historical responsibility and capacities. The claimants are of the opinion that this study forms the most nuanced and broad-based application of the *fair share* principle. Based on this study, the Netherlands should have an emission of -27.31 Mton CO₂eq per year by 2030, according to a scenario in line with a maximum of 1.5 degrees global warming in 2100. This amounts to a reduction in the emission of all greenhouse gases of 112% in 2030 when compared to 1990.

³² CO₂ equivalents (CO₂eq) are all greenhouse gases.

³³ Central Government, *Scherpe doelen, scherpe keuzes: IBO aanvullend normerend en beprijzend nationaal klimaatbeleid voor 2030 en 2050*, 2023.

³⁴ L. Rajamani et al., 'National 'fair shares' in reducing greenhouse gas emissions within the principled framework of international environmental law' *Climate Policy* 2021, v. 21.

73. Climate Analytics calculated that in order to make a *fair share* contribution within the context of the 1.5 degree limit, the Netherlands must ensure an emission reduction in 2030 of **at least 95%** when compared to the level in 1990. This means that the carbon emissions may be, at most, 10 Mton CO₂eq in 2030. By way of comparison: national emissions in 2021 amounted to approximately 168 megaton CO₂eq.³⁵ In addition, this is the **top** of a bandwidth, which runs to at least -100 MtCO₂eq, as shown in the figure below. Furthermore, this calculation assumes significant reductions in emissions since 2020 that have not been realised.

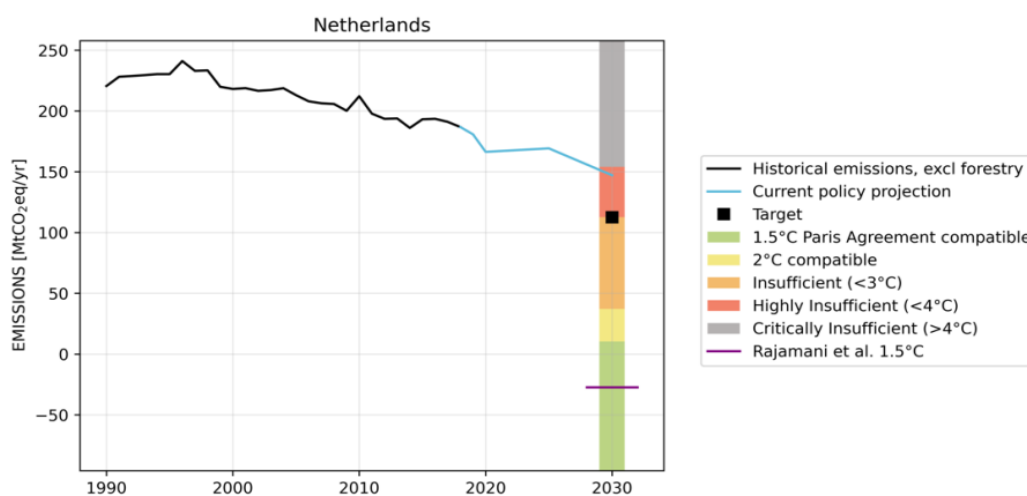


Figure 61 | Assessment of the Netherlands' 2030 target and projected emissions reductions with respect to its fair share of the mitigation effort required to achieve the LTTG of the Paris Agreement.

74. CE Delft and TNO conclude in a report from December 2022 that the Dutch *fair share* is already negative at this time. Based on the cumulative historical emissions since 1850, the CO₂ budget of the Netherlands since 2020 is -3,251 Mton in case of a scenario in line with a 67% probability of 1.5 degrees.³⁶ Contrary to the previous studies, CE Delft and TNO assume an overall budget still remaining for the Netherlands and not annual emissions.
75. In a report entitled *What is a fair emissions budget for the Netherlands*³⁷, the NCI compares the government's climate objectives with three methods for dividing up the worldwide reduction obligation. There is a gap between the *fair share* contribution determined for the Netherlands in Rajamani's study (-27.3 Mton in 2030) and the budget the Netherlands would use based on its own climate objectives up to and including 2050 of approximately 2400 Mton CO₂eq in total. This is equivalent to approximately 14 times the annual (2021) national emissions of the Netherlands.³⁸

³⁵ <https://climateanalytics.org/publications/2022/an-assessment-of-the-adequacy-of-the-mitigation-measures-and-targets-of-the-respondent-states-in-duarte-agostinho-v-portugal-and-32-other-states/>

³⁶ <https://ce.nl/publicaties/gaswinning-op-de-noordzee/>

³⁷ NCI, *What is a fair emissions budget for the Netherlands?*, 2022. The report was commissioned by Greenpeace Nederland.

³⁸ *What is a fair emissions budget for the Netherlands.*

76. All existing studies and calculations, including those of the State itself, show that a *fair share* contribution to a climate objective that assumes at most 1.5 degrees, means that the Netherlands must have reduced its emissions net zero in or even before 2030.
77. The claimants therefore request the State to confirm that a *fair share* contribution for the Netherlands means at least that it has limited the joint volume of the Dutch emission of all greenhouse gases by 100% in 2030, when compared to the level of 1990. The claimants are of the opinion on the basis of broad-based insights, which include that of the State itself, that this constitutes the absolute lower limit of what constitutes the *fair share* contribution of the Netherlands to the global climate effort to keep the average temperature rise beneath 1.5 degrees.

How should the Netherlands deliver its *fair share*?

78. The claimants request the State to determine and implement policy that is consistent and actually appropriate to remain above its *fair share* contribution.
79. It must be assumed in this connection that the *fair share* contribution is delivered as much as possible by means of the reduction of the national emission of greenhouse gases. This follows from the Paris Agreement. The climate policy that must be pursued by the State in order to comply with its *fair share* obligation should therefore focus primarily on this. However, the Paris Agreement also allows a country that is no longer able to make its *fair share* contribution by means of a national emission reduction, supplementary and alternatively to the national reduction measures, to make financial contributions and implement other international measures to reduce the emissions of other countries in an accelerated manner.
80. The Netherlands can make its *fair share* contribution to prevent dangerous climate change and the State take its responsibility to protect the human rights of its citizens on Bonaire and within other areas of the Kingdom by on the one hand reducing the national emissions as quickly as possible and, on the other hand, implementing supplementary international measures insofar as this is necessary.

The government can and must reduce national emissions more quickly

81. As indicated above, possibilities to assist other countries in their reduction obligations do not release the Netherlands from the obligation under the Paris Agreement to reduce its national emissions as soon as possible: national emissions must be reduced to zero as soon as possible.
82. Under the present climate policy, the Netherlands has allocated to itself an even larger share of the remaining carbon budget than that to which the Netherlands would be entitled on the basis of the current share in global emissions. The claimants are of the opinion that the Netherlands can and should reduce its national emissions more quickly.
83. The claimants are not the only ones to conclude that such an increase in the national reduction objectives is necessary. The PBL considered with respect to the European objectives in a policy letter dated 2 November 2020:

'The European objective of zero-emissions in 2050 is in line with the objective of ending up well below 2 degrees and may be perhaps be too slow for the 1.5 degree target, zero emissions in 2040 would be more appropriate for this.³⁹

84. The Secretary General of the UN António Guterres recently concluded:

'Specifically, leaders of developed countries must commit to reaching net-zero as close as possible to 2040, a limit they should all aim to respect. This can be done. Some have already set a target of as early as 2035.'⁴⁰

85. An objective as ambitious as the one advocated by the UN Secretary General should be feasible for the Netherlands. In December 2022, Ecorys published a report in which measures are presented that can be implemented and realise a national greenhouse gas reduction of 79% and 97% in 2030 and 2037 (when compared to 1990).⁴¹ There are several studies that confirm that the Netherlands and the EU are able to reduce their emissions more quickly than is intended on the basis of the current climate objectives.

86. In view of this feasibility, the claimants are of the opinion that as part of its *fair share* obligation the Netherlands must have *at least* reduced its national emission of greenhouse gases to net zero by 1 January 2040 at the latest.

87. The claimants therefore request the State to accelerate the national reduction of the emission of greenhouse gases when compared to the current intentions and objectives such that the emissions are reduced in a linear manner with immediate effect until they are zero on 1 January 2040 at the latest. The claimants consider it important to emphasise that this national reduction of the emission of greenhouse gases in itself does not constitute a fair share, but will make an important contribution to it. The Netherlands does still have to implement additional measures both in the Netherlands and abroad in order to realise the global *fair share* contribution to which it committed in the Paris Agreement.

88. Accelerating national climate policy and implementing its *fair share* by means of different measures will allow the State to do 'its part' and take its responsibility for the global long-term limit of 1.5 degrees. It is crucial to the future of Bonaire and its inhabitants that the State commits to these obligations as soon as possible and develops consistent policy to implement them.

Demands

89. In order to protect Bonaire against the extraordinary consequences of (further) climate change, the claimants demand on the basis of the above that the State consults with them in order to reach an agreement with regard to the following demands :

³⁹ PBL, *The European Climate Plan 2030*, 2020, p.44.

⁴⁰ <https://press.un.org/en/2023/sgsm21730.doc.htm>

⁴¹ Ecorys, *Beleidsomslagen voor het nationaal klimaatbeleid*, 2022.

<https://natuurenmilieu.nl/app/uploads/Rapport-Beleidsomslagen-Ecorys.pdf>

- 1) **The State must implement the necessary measures in the area of adaptation that are necessary to protect Bonaire adequately against the consequences of climate change, as set out above in paragraph 51.**
 - 2) **The State must develop and implement consistent and effective policy that guarantees that, in 2030, it will have realised a reduction of 100% of the Dutch emission of all greenhouse gases (CO₂eq) when compared to 1990 by means of the national reduction of greenhouse gases on the one hand and on the other hand by implementation of additional measures in an international context.**
 - 3) **As part of and for the purpose of realising the objective referred to under 2), the State must implement all measures that are necessary to ensure that on 1 January 2040 at the latest, the joint volume of the national emission of all greenhouse gases (CO₂eq) has reduced by 100% when compared to the emission in 1990, in which connection the emission reduction must take place in at least a linear manner.**
90. The claimants request that the State confirms in writing within at most six (6) weeks after the date of this letter, i.e. at the latest on 22 June 2023, that the State is willing to negotiate with the claimants in order to reach a written agreement regarding the demands set out above by 30 September 2023 at the latest. In the event no response is received within this time frame, or the parties are unable to reach a written agreement at the latest on 30 September 2023, the claimants will assume that the State is not willing to reach agreement or, at any rate, that further negotiation is pointless.
91. In that case, the claimants will submit this matter to the competent court. Naturally, they hope this will not be necessary and that the State will be willing to make the necessary commitments and to implement the measures that are necessary to enable the population of Bonaire and their future generations to continue to live safely on the island.

Yours sincerely,

Michael Bacon, Emiel Jurjens⁴², Minke de Haan and Rebecca van der Weerdt

Attorneys

⁴² Emiel Jurjens is employed as a lawyer at the Prakken d'Oliveira law firm