



Convention on Access to Information,
Public Participation in Decision-making and
Access to Justice in Environmental Matters
(Aarhus Convention)

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Ref: ACSR/C/2023/16 (Netherlands)
(Please use this reference in your reply)

14 February 2024

Excellency,

I have the honour to address you in my capacity as UN Special Rapporteur on environmental defenders under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

As you may be aware, article 3 (8) of the Aarhus Convention requires that “Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement.” The Netherlands has been a Party to the Aarhus Convention since 2004.¹

At its seventh session (Geneva, 18–21 October 2021), the Meeting of the Parties to the Aarhus Convention adopted decision VII/9 on a rapid response mechanism to deal with cases related to article 3 (8) of the Convention.² Decision VII/9 establishes the rapid response mechanism in the form of an independent Special Rapporteur on environmental defenders under the authority of the Meeting of the Parties. At its third extraordinary session (Geneva, 23–24 June 2022), I was elected, by consensus, by the Meeting of the Parties as the Convention’s Special Rapporteur on environmental defenders.

In accordance with the mandate in decision VII/9, I write to bring to your attention information I have received concerning the alleged persecution, penalization and harassment of Extinction Rebellion Netherlands and seven individuals, Mr. Tomas van der Wansem, Mr. Cor Burger, Ms. Tessel Hofstede, Mr. Lucas Pieter Adriaan Winnips, Mr. Sieger Gerjan Sloot, Mr. Jelle de Graaf and Mr. Paul Hendriksen, in connection with the exercise of their rights under the Aarhus Convention.

Extinction Rebellion Netherlands is a local group of the international grass roots organization Extinction Rebellion. Extinction Rebellion Netherlands organizes sit-ins, roadblocks and other types of peaceful protests in the Netherlands in relation to the climate and ecological crises. The seven individuals named in this complaint are participants in these activities organized by Extinction Rebellion Netherlands.

Based on the information received, Extinction Rebellion Netherlands and the seven named individuals are environmental defenders within the meaning of the ninth preambular paragraph of decision VII/9.³

¹ See https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=en.

² Available at: https://unece.org/sites/default/files/2022-01/Aarhus_MoP7_Decision_on_RRM_E.pdf.

³ Ibid.

According to the information received, peaceful protests in the form of roadblocks undertaken by Extinction Rebellion Netherlands calling upon the Netherlands to stop subsidizing fossil fuel industries were met with the use of force by law enforcement officers. The seven named individuals were each subject to arrest on criminal charges in connection with their involvement in the peaceful protests and five of the named individuals have subsequently been prosecuted, convicted and sentenced. Based on the information received, the following events and alleged acts of penalization, persecution or harassment against Extinction Rebellion Netherlands and the seven named individuals have taken place:

Acts of peaceful civil disobedience – roadblock of Utrechtsebaan/A12

1. On 6 July, 21 September, 15 October, 26 November, and 21 December 2022 and 28 January, 11 March, 27 May and 9 September 2023, and thereafter daily at noon, Extinction Rebellion Netherlands engaged in demonstrations in the form of a roadblock on the Utrechtsebaan/A12 between the House of Representatives and the Ministry of Economic Affairs and Climate in The Hague. The demonstrations were peaceful and attracted significant public and media attention. As a result, the number of demonstrators participating in these roadblocks expanded significantly. Based on the information received, this included over 7,500 demonstrators on 27 May 2023, and approximately 25,000 demonstrators on 9 September 2023.
2. Extinction Rebellion Netherlands made public announcements prior to engaging in each demonstration. It also made requests to the Department of Waterways and Public Works on multiple occasions to block off the road to ensure the safety of the protesters.
3. Due to the passing of a motion by the House of Representatives calling for a phase-out plan to end fossil subsidies, Extinction Rebellion Netherlands ended its demonstrations on Utrechtsebaan/A12 on 5 October 2023.

Responses by the Party concerned to roadblock of Utrechtsebaan/A12

Use of water cannons to disperse demonstrators

4. Since March 2023, water cannons have been used repeatedly by law enforcement to force demonstrators, including children and youth, to leave the road and, allegedly, to facilitate arrests.
5. I was provided with video footage of the use of water cannons against peaceful protesters engaged in blocking the Utrechtsebaan, showing, on certain occasions, that water cannons were aimed at the heads of protesters with what appears to be very strong water pressure. I have also seen photographic images of the injuries and bruising allegedly caused by the use of the water cannons.
6. On 3 October 2023, members of Extinction Rebellion brought a claim for preliminary relief against The Netherlands and the municipality of the Hague in relation to the use of water cannons against the peaceful protesters on Utrechtsebaan. The District Court of The Hague rejected the claimants' request on 13 October 2023, but specifically noted that "All XR demonstrations have been peaceful" and that there had been at least one incident in which the use of the water cannons had a disproportionate effect on a number of demonstrators.

The Court also noted that there were no guidelines for the use of the water cannons in The Netherlands.⁴

7. On 22 November 2023, two members of Extinction Rebellion brought a criminal complaint in relation to the use of water cannons on 18 September 2023 against the peaceful protesters on Utrechtsebaan, alleging violations of articles 300 and/or 372 of the Criminal Code as well as of international human rights law. The investigation allegedly remains pending and no prosecution has been initiated as of yet.

Arrests and subsequent criminal proceedings

8. Based on the information received, at each demonstration those demonstrators who refused law enforcements' requests to leave the road were arrested, though in most cases not prosecuted. The number of peaceful protestors that were arrested at each demonstration, however, were significant.
9. Some of the demonstrators taking part in the above-mentioned demonstrations were arrested for, and in some cases charged with, serious criminal offences. These offences included (i) sedition or incitement to block a road, with a maximum penalty of 5 years imprisonment (see para. 10 below); (ii) blocking a road, with a maximum penalty of 9 years imprisonment (see paras. 11-12 below); and (iii) preparation to block a road, with a maximum penalty of 4.5 years imprisonment (see para. 13 below).
10. On 2 August 2023, The Hague District Court found seven members of the public, who had used social media to call upon the public to join the demonstrations, guilty of "sedition" and sentenced them to community service, ranging from 30 to 60 hours, to be replaced by 15 to 30 days of detention, if the community service was not duly executed. Among those found guilty and sentenced were five of the individuals named in the present letter: Mr. de Graaf, Mr. Hendriksen, Ms. Hofstede, Mr. Sloot and Mr. Winnips. The abovenamed individuals have appealed their conviction and sentence imposed by The Hague District Court on 2 August 2023. Their appeals are currently pending.
11. On 10 September 2023, Mr. Burger and Mr. van der Wansem were arrested for the criminal offence of "blocking a road" and thereafter interrogated by the police. On 20 September 2023, Mr. Sloot was arrested and interrogated by the police for the same offence. Following his interrogation, Mr. Sloot was verbally informed that he would not be prosecuted for that charge of blocking a road. He, however, has not received a formal, written confirmation as of the date of this letter.
12. In contrast, based on the information received, as of the date of this letter, possible charges against Mr. Burger and Mr. van der Wansem for the offence of blocking a road remain pending. Based on the information received, since the offence of blocking a road is classified as a serious offence (*misdrijf*) under Dutch law, as soon as the public prosecution service processes a police report of such an offence, it becomes part of an individual's record even if the public prosecutor has not yet taken a decision whether to prosecute. Such record would be flagged in a "certificate of good conduct" (*verklaring omtrent gedrag*) as required for certain occupations, like teachers, healthcare workers, law clerks or day-care workers. It may also have implications for immigration or visa applications.

⁴ Judgment of District Court of The Hague, 13 October 2023, available at: <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBDHA:2023:15385> (Dutch only).

13. On 13 October 2023, Mr. Hendriksen, Mr. Winnips and Ms. Hofstede were arrested for the criminal offence of “preparing to block a road”. Based on the information received, while the prosecutor decided not to pursue these cases on the basis that there was not sufficient evidence, the details of their arrest (including the alleged offence committed) may appear on the individuals’ certificate of good conduct, as described in para. 12 above.

Taking of DNA samples

14. The five individuals named in the present letter found guilty of sedition on 2 August 2023, Mr. de Graaf, Mr. Hendriksen, Ms. Hofstede, Mr. Sloot and Mr. Winnips, were also ordered to provide a sample of their DNA, to be stored in a database for 20 years. They have each appealed the order to provide DNA.
15. On 19 December 2023, the Court jointly heard the appeals by the first group of individuals against the order to provide DNA, including three of the individuals named in the present letter, Mr. de Graaf, Mr. Sloot and Mr. Winnips. On 16 January 2024, the Court rejected the appeals as unfounded.
16. On 23 January 2024, the court jointly heard the appeals of the second group of individuals against the order to provide DNA, including two of the individuals named in the present letter, Mr. Hendriksen and Ms. Hofstede. On 6 February 2024, the Court rejected the appeals as unfounded.

Without prejudging the accuracy of the above allegations, I express my grave concern at the actions allegedly taken by the Dutch authorities in response to the peaceful protests against fossil fuel subsidies conducted by Extinction Rebellion Netherlands and the seven named individuals. Peaceful acts of civil disobedience, such as the roadblocks described above, are an essential component of democratic life and a legitimate exercise of fundamental rights, such as the freedoms of expression, association and assembly. Indeed, General Comment No. 37 of the UN Human Rights Committee on the right of peaceful assembly under article 21 of the International Covenant on Civil and Political Rights expressly provides that “Collective civil disobedience or direct action campaigns can be covered by article 21, provided that they are non-violent.”⁵ While potentially disruptive to daily lives, acts of civil disobedience should thus not be categorized as illegal or criminalized.

In this regard, it is important that I draw to your attention that the Aarhus Convention Compliance Committee has made clear that article 3 (8) of the Convention “is not limited in its application to acts of public authorities as defined in article 2, paragraph 2, of the Convention, but rather covers penalization, persecution or harassment by any State body or institution, including those acting in a judicial or legislative capacity”.⁶ This means that The Netherlands is bound by article 3 (8) of the Convention to ensure that persons are not penalized, persecuted or harassed in any way for exercising their rights under the Convention, including by its law enforcement officers, public prosecutors and courts.

In this context, I am deeply concerned about the alleged prosecution, conviction and sentencing, on 2 August 2023, of Mr. de Graaf, Mr. Hendriksen, Ms. Hofstede, Mr. Sloot and Mr. Winnips for the crime of sedition, for exercising their right to engage in peaceful protest to protect the environment.

⁵ General Comment No. 37 (2020) of the Human Rights Committee on the right of peaceful assembly, CCPR/C/GC/37, para. 16, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/232/15/PDF/G2023215.pdf?OpenElement>.

⁶ See the Compliance Committee’s findings on communication ACCC/C/2014/102 (Belarus), ECE/MP.PP/C.1/2017/19, para. 70, available at: <https://unece.org/fileadmin/DAM/env/pp/compliance/CC-58/ece.mp.pp.c.1.2017.19.e.pdf>.

I am also greatly troubled that The Hague District Court has ordered that DNA samples of these five individuals be taken and stored by the authorities for 20 years and that the appeal against that order of the first group of individuals has been rejected by the Court. The taking of DNA and subsequent storage for 20 years is a severe measure in response to the non-violent actions of these individuals, and it is deeply troubling that the measure has been affirmed on appeal.

I am also highly concerned at the arrest and interrogation by the police of Mr. Burger, Mr. van der Wansem and Mr. Sloot, for “blocking a road”, and of Mr. Hendriksen, Mr. Winnips and Ms. Hofstede, for “preparing to block a road”, when those individuals were likewise exercising their right to engage in peaceful protest to protect the environment. Based on the information provided, a criminal investigation into such offences, even if no formal charges are subsequently laid, carries potentially serious consequence for the lives of these individuals, including, as outlined above, with respect to their employment and in relation to immigration and visa applications.

Moreover, I also strongly object to the use of water cannons against persons engaged in peaceful protest to protect the environment. The use of water cannons is a dangerous, violent method to disperse protests and I am deeply concerned about their use against peaceful protestors, particularly when dispersal could have been achieved through other, non-violent means and, moreover, where children and youth were among the protestors. That such use was disproportionate on at least one occasion was confirmed by the 13 October 2023 judgment of The Hague District Court.

I am deeply concerned about the apparent lack of concrete guidelines in The Netherlands on the use of such water cannons, as found by The Hague District Court in its judgment. The lack of such guidance both creates a vacuum for abuse as well as prevents members of the public from being able to foresee and assess the potential consequences of engaging in peaceful protest and adjust their behaviour accordingly. I am highly disturbed by the images and videos of the use of water cannons against the peaceful protesters that I have been provided with.

As it is my responsibility, under the mandate entrusted to me by the Meeting of the Parties to the Aarhus Convention, to seek to clarify all complaints brought to my attention, I would be grateful for your response to the following matters:

1. Please provide any information and/or comments you may have on the allegations set out in the present letter.
2. Please explain the actions taken, if any, in response to this letter to ensure that:
 - a. The convictions and sentences of Mr. de Graaf, Mr. Hendriksen, Ms. Hofstede, Mr. Sloot and Mr. Winnips allegedly handed down by The Hague District Court on 2 August 2023 are overturned on appeal;
 - b. The DNA samples of these five named individuals taken as a result of the Court’s order of 2 August 2023 are removed from the authorities’ database and destroyed; and
 - c. Any possible criminal charges against Mr. Burger, Mr. van der Wansem and Mr. Sloot for “blocking a road” are promptly dropped.
3. In light of the findings of the District Court of The Hague on 13 October 2023 regarding the disproportionate use of water cannons against peaceful protesters in relation to the Utrechtsebaan protests and the lack of clear guidance on such use, please explain the actions taken, if any, to ensure that water cannons will not be used to disperse peaceful protestors in the future, including whether any concrete guidelines on the use of water cannons have been adopted to prevent future disproportionate use of water cannons by law enforcement officers.

4. Please provide any information on available trainings, guidelines or other guidance documents for law enforcement officers, public prosecutors and judges in responding to acts of civil disobedience, in line with international legal standards, including article 3 (8) of the Aarhus Convention and international human rights instruments.
5. Please describe the actions taken, if any, in response to this letter to ensure that Extinction Rebellion Netherlands and the seven named individuals are in the future able to exercise their right to engage in peaceful protest to protect the climate, in accordance with their rights of freedom of expression, assembly and association, without being subject to penalization, persecution or harassment for doing so.

I would appreciate receiving your response within 60 days, that is by **14 April 2024**. After this date, the present letter and the response received from your Excellency's Government may be made public on the Aarhus Convention's website.⁷ They will also subsequently be reported upon in my report to the eighth session of the Meeting of the Parties in 2025.

While awaiting your response, I urge that all necessary interim measures be undertaken to halt the alleged penalization, persecution, and harassment of Extinction Rebellion Netherlands and the seven named individuals and to prevent their reoccurrence. In this regard, your Excellency's Government should take great care, when looking into the allegations in the present letter, that nothing is done that could put Extinction Rebellion Netherlands and the seven named individuals at risk of further penalization, persecution, and harassment.

In the event that your investigations support or suggest the allegations to be correct, I urge you to ensure the prompt cessation of the alleged penalization, persecution, and harassment of Extinction Rebellion Netherlands and the seven named individuals and to ensure the accountability of any person(s) responsible therefor.

Please accept, Excellency, the assurances of my highest consideration.



Michel Forst
UN Special Rapporteur on environmental defenders under the Aarhus Convention

To: Her Excellency, Ms. Hanke Bruins Slot, Minister of Foreign Affairs of The Netherlands

Cc: Ms. Nicoletta Bouman, national focal point for the Aarhus Convention, Ministry of Infrastructure and Water Management, The Netherlands

⁷ Available at: <https://unece.org/environmental-policy/public-participation/correspondence-regarding-complaints-special-rapporteur>.