



TRADING AT ANY COST

DUTCH GOVERNMENT PUTS ECONOMIC INTERESTS BEFORE PROTECTING HUMAN RIGHTS

AMNESTY
INTERNATIONAL



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GLOSSARY

CSR and ICSR	<p>CSR indicates Corporate Social Responsibility and is used in this report as the translation of the Dutch term ‘Maatschappelijk Verantwoord Ondernemen (MVO)’. ICSR indicates International Corporate Social Responsibility and is used in this report as the translation of the Dutch term ‘Internationaal Maatschappelijk Verantwoord Ondernemen (IMVO)’. Even though the Dutch government increasingly uses the term Responsible Business Conduct in its English-language publications to point towards both CSR and ICSR, the terms were prominently used in Dutch policy documents throughout the research period and still are oftentimes used by the Dutch government.</p> <p>Please note that CSR and ICSR are terms favoured by the Dutch Government, not by Amnesty International, which uses the one term Corporate Accountability. This report solely uses the terms CSR and ICSR in its analyses to adequately reflect Dutch policy and practices.</p>
Human rights due diligence	<p>All companies have the responsibility to respect all human rights wherever they operate, and throughout their operations, value chains and business relationships. Human rights due diligence is a corporate, proactive and ongoing process to identify, prevent, mitigate and account for the impacts of their operations on human rights. This process is established to fulfil the responsibility to respect human rights.</p>
NAP	National Action Plan on Business and Human Rights
OECD Guidelines	Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises
Roskomnadzor	Russia’s federal media and communications regulator
Rule of law	<p>The rule of law is the principle of governance according to which all people, institutions and entities, public and private, including the state itself, are accountable under laws that are publicly promulgated and equally enforced and independently adjudicated and which are consistent with international human rights norms and standards. It includes the principles of equality before the law, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.</p>
RVO	<p>The Netherlands Enterprise Agency (Rijksdienst voor Ondernemend Nederland). The RVO is part of the Ministry of Economic Affairs and Climate Policy and plays an important role in carrying out the government’s policies aimed at developing a “conducive business climate” for Dutch businesses.</p>
UN Guiding Principles	UN Guiding Principles on Business and Human Rights

EXECUTIVE SUMMARY

For over a decade, the Netherlands has put its trading interests above its duty to protect against human rights abuse by companies operating under its jurisdiction.

This report, based on Amnesty International research conducted between March and December 2022, shows that the Dutch government has incentivized Dutch companies to do business in China, Saudi Arabia and Russia without ensuring human rights due diligence responsibilities are met. These countries are characterized by severe repression of freedom of expression, association and assembly, a lack of rule of law and by high human rights risks for companies. Such repressive contexts create risks of systemic and grave human rights harm and require heightened due diligence, which must include assessing the impact that the businesses might have on the perpetuation of the repression. In these contexts, the Dutch government should warn companies of the heightened risks, communicate clear heightened due diligence standards, and set conditions for receiving government support.

Amnesty International research shows that, as part of its trade policies since 2011, the Dutch government provided extensive diplomatic and financial support to Dutch companies with (planned) activities in China, Saudi Arabia and Russia. It did so without adequately warning them of the high risks, and without sufficiently communicating heightened due diligence standards. In addition, the Dutch government set only vague and noncommittal human rights due diligence conditions for receiving government support. The Dutch government therefore failed in its duty to protect human rights.

In this report, Amnesty International also assessed the due diligence practice of a number of companies operating or formerly operating in sectors with heightened human rights risks: the tech sector in China and Russia, and the construction sector in Saudi Arabia. In China and Russia, the risks relate to state-organized mass surveillance and repression. In Saudi Arabia, the risks relate to migrant workers' rights and forced evictions, among other things. These risks call for heightened due diligence, yet Amnesty International found that the quality of human rights due diligence by the companies was generally poor.

The Dutch government's reluctance to adequately mainstream human rights in its policies towards China, Saudi Arabia and Russia, coupled with its active trade policy that encouraged Dutch companies to enter these high-risk markets, sent a message to repressive states that their dire human rights records had no consequences for their trade relations.

Due diligence responsibilities

The UN Guiding Principles on Business and Human Rights (UN Guiding Principles) are a key part of the global framework for the respective duties and responsibilities of states and businesses in managing adverse impacts on human rights. They make clear that companies' responsibility to respect human rights exists independently of a state's ability or willingness to fulfil its own human rights obligations. Companies are required to perform due diligence by taking steps to identify, prevent, address and account for human rights risks and abuses in their value chains. Due diligence is an ongoing, proactive process through which companies "know and show" what they do about potential and actual adverse impacts of their activities. Since 2011, these principles have also been reflected in the revised Organisation for Economic Co-operation and Development's Guidelines for Multinational Enterprises (OECD Guidelines), which detail the due diligence steps companies must take to ensure they respect human rights in their global operations.

The home states of companies should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. Where a state owns or controls an enterprise, or when it supports or services one, it should put measures in place to protect against human rights abuse, including by requiring human rights due diligence. When the risk of becoming involved in grave abuses is particularly high, the company must carry out heightened due diligence.

The repressive situations in China, Saudi Arabia and Russia pose just such high risks while simultaneously undermining the ability of companies to conduct effective, let alone heightened, human rights due diligence. In Saudi Arabia, there is no independent civil society. In Russia and China, civil society is severely repressed and restricted. This makes it extremely difficult for companies to develop an accurate analysis of how their involvement may impact human rights and therefore put in place measures to mitigate the risks and monitor progress. Such situations mean companies should take special precautionary measures to ensure they do not exacerbate the human rights situation.

Prioritizing trade over human rights

Since 2011, the Dutch government has designated China and Saudi Arabia as priority countries in its trade policies. Russia too was deemed a priority country until the full-scale invasion of Ukraine in February 2022. Neither the human rights risks connected to business operations nor the general human rights situations played a role when the government selected priority countries. On the contrary, the well-documented increased repression in all three countries had no effect on the designations. It seems that the government did not assess how stimulating Dutch business with and in priority countries could impact the human rights situation in them, thereby failing to conduct its own due diligence. It appears that the only factor that mattered was the economic opportunities these countries offered Dutch companies.

Regarding **Saudi Arabia**, after the murder in 2018 by Saudi government agents of Saudi journalist Jamal al-Khashoggi in the Saudi consulate in Istanbul, Turkey, and the wave of arrests of Saudi human rights defenders that same year, officials in the Dutch Ministry of Foreign Affairs decided to strengthen economic relations with Saudi Arabia. Internal government correspondence stressed that, “it is in the end a political decision” whether the “Khashoggi case” is “closed” and “we can turn the Saudi page”. The government also continues to promote business opportunities in the Saudi megaproject NEOM, despite serious concerns regarding forced displacement of tribal communities to make way for the project and reports of people sentenced to death for protesting against their displacement.

Regarding **China**, the human rights situation continues to deteriorate. An expanding “national security” legal architecture has intensified the crackdown on civil society and increased censorship and surveillance. Chinese authorities increasingly target human rights defenders, lawyers, activists and NGO workers to silence dissent and criticism. Gross human rights violations continue in regions including Xinjiang. Yet the Dutch government still incentivizes trade with China without ensuring that heightened human rights due diligence responsibilities are met.

Regarding **Russia**, despite numerous and serious human rights concerns for over a decade, including increased repression of freedom of expression, assembly and association, the Dutch government continued to promote business opportunities there until the full-scale invasion of Ukraine in 2022, without giving clear warnings of the high human rights risks. Indeed, at the end of 2019, despite Russia’s annexation of Crimea, occupation of Eastern Ukraine and increased repression of basic freedoms, the Netherlands was the third most important trading partner for Russia and the second largest investor. Around 3,000 Dutch companies were active there and the Dutch Foreign Affairs Minister noted, “Russia is one of the cabinet’s priority countries for international business”.

Diplomatic and financial support

As part of the country prioritization, the Dutch government has offered extensive financial and diplomatic support to Dutch companies with planned or ongoing activities in China, Saudi Arabia and Russia since 2011. At least 64 Dutch trade missions have been sent to these countries at the national level, and local or provincial authorities have organized even more. Declaring “adherence to the OECD Guidelines” - a simple tick-the-box exercise - is the only corporate accountability-related condition that has been stipulated for all types of national missions.

The Netherlands’ economic mission network, comprising embassies, consulates and Netherlands Business Support Offices, has played a key role in supporting Dutch companies in Saudi Arabia, China and Russia. For example, the Dutch Foreign Affairs Minister indicated that in 2020 alone, Dutch companies requested economic services from the networks in China, Russia and Saudi Arabia around 3,100 times. The government has given core parts of this support without setting any human rights due diligence conditions.

The Dutch government has also made available a wide range of incentives to companies, including financial support. However, most financial instruments do not require companies to present credible human rights due diligence plans.

Amnesty International’s research casts serious doubt on the corporate accountability threshold set by the government in order for companies to benefit from financial and other types of support, inclusion on trade missions, and on the government’s vetting of companies applying for such support.

Poor human rights diligence by Dutch companies

The failings of the Dutch government do not exonerate companies of their responsibilities to conduct human rights due diligence. Amnesty International’s study of the human rights due diligence practice of 14 Dutch companies in high-risk sectors in China, Saudi Arabia and Russia found that most appeared not to have

carried out any effective human rights due diligence. Only one company explicitly acknowledged restrictions on freedom of expression, association and assembly in the country in question.

Transparency about human rights due diligence practices was poor. Particularly with respect to China and Russia, companies showed limited awareness of potential human rights risks and impacts of doing business in these countries. Several companies with links to Saudi Arabia said they had never uncovered any harms. Given the widespread nature of labour rights abuses in the country, this is a highly unlikely outcome of a due diligence process.

Worryingly, most of the companies were reluctant to seek independent perspectives on human rights risks. Only two said its contact with the Dutch government had included discussions of human rights due diligence issues.

Need for urgent action

As a result of these findings, Amnesty International is calling on the Dutch government to take urgent action, including to:

- ensure businesses respect human rights by establishing mandatory human rights due diligence standards;
- align its foreign trade policy with its human rights obligations, taking into account the potential impact of the trade policy on the human rights situation in the priority countries;
- develop general principles for state responses and companies' due diligence in heightened human rights risk contexts; and
- provide clear and explicit warnings and information to businesses of the heightened risks in repressive countries like China, Saudi Arabia and Russia and proactively take additional steps to help businesses identify, prevent and mitigate the human rights-related risks of their activities and business relationships.

Amnesty International is also calling on companies to take action, including to:

- respect human rights and carry out robust human rights due diligence addressing human rights risks and harms connected with their products, services and value chains;
- conduct heightened due diligence when operating in contexts of high human rights risks in repressive countries such as China, Saudi Arabia and Russia;
- take extra precautions to ensure their actions do not exacerbate the human rights situation; and
- involve stakeholders and civil society, in particular human rights defenders, in the process of identifying and assessing the human rights risks.

1. METHODOLOGY

The main research for this report was done between March and December 2022.

Firstly, Amnesty International mapped out the key international standards related to the responsibility of businesses to respect human rights and the duty of states to protect against corporate human rights abuse, focusing on the need for heightened due diligence in high-risk regions and areas. This legal framework for human rights due diligence in repressive countries underpins the recommendations in the final chapter of this report.

Secondly, Amnesty International mapped out the Dutch regulatory framework on international corporate social responsibility (ICSR) and indicated where it did or did not provide for heightened due diligence responsibilities and duties in high-risk regions and areas.¹ While international standards often do not make the distinction between 'national' and 'international' corporate social responsibility (CSR), the Dutch government does (see Chapter 3).² National CSR policy belongs to the portfolio of the Ministry of Economic Affairs and Climate Policy, ICSR to the Ministry of Foreign Affairs.³ As this research mainly looks at Dutch companies with planned or ongoing activities in China, Russia and Saudi Arabia, the main focus is on ICSR and the main actor is the Ministry of Foreign Affairs.

Thirdly, Amnesty International analysed the repressive context in China, Saudi Arabia and Russia and its impact on human rights due diligence. It also researched some of the specific human rights risks for companies with activities in the tech sector in China and Russia, and the construction sector in Saudi Arabia. This research is based on previous and current Amnesty International research, media reporting and reporting by other human rights organizations.

Fourthly, Amnesty International selected 14 Dutch companies to assess the quality of their human rights due diligence practices in China, Russia and Saudi Arabia.⁴ These include five companies active in the tech sector in China; four active or formerly active in the tech sector in Russia; and five active in the construction sector in Saudi Arabia.⁵ Amnesty International collaborated with FairSquare Projects, a London-based human rights non-profit organization, in conducting research into these companies' due diligence practices. This research was done from April to October 2022. FairSquare Projects and Amnesty International asked all selected companies to complete a written questionnaire on human rights risks and human rights due diligence (see text of questionnaire in Annex 2). Of 14 questionnaires sent, 8 written responses were received during the research period and one company answered some of the questions in an oral conversation. Several companies subsequently answered follow-up questions to the questionnaire. Using the companies' responses, media reporting and the information available on the companies' websites, FairSquare Projects assessed the adequacy and effectiveness of the various aspects of their approach to managing human rights risks and conducting human rights due diligence. These findings are summarized in this report. The summarized findings were shared with the companies, which were invited to respond. Relevant responses are included in this report. The decision to include Russia in this research was taken prior to Russia's full-scale invasion of Ukraine that began on 24 February 2022, and the subsequent outflow of foreign companies from Russia. The conflict was cited by one business as a reason it could not engage with the survey.

Lastly, Amnesty International analysed Dutch government policies and practice between 2011 and 2022 when supporting Dutch companies with planned or ongoing activities in China, Saudi Arabia and Russia, and the extent to which human rights due diligence was integrated into and/or conditional to this support.

¹ With regards to the business sectors studied in this report, the Dutch government addresses some of the human rights risks involved in other types of regulations, such as export control regulations. This research strictly focuses however on the Dutch ICSR regulatory framework.

² Recent Dutch policy documents, including the 2022 National Action Plan Business and Human Rights, seem to highlight new governmental tendencies towards favoring just the one term Responsible Business Conduct (RBC) and making inter-ministerial collaboration and the connected nature of CSR and ICSR more explicit. The distinction between CSR and ICSR was however prominent throughout most of the period covered by this research and continues to be important up till this day. See: Ministry of Foreign Affairs, "National Action Plan Business and Human Rights", July 2022, https://www.government.nl/binaries/government/documenten/publications/2022/11/8/national-action-plan-business-and-human-rights/22_387+NAP+Bedrijfsleven+%26+Mensenrechten_EN_def.pdf

³ Letter from the Minister for Foreign Trade and Development Cooperation, TK 2019-2020, 26485, nr. 319, 22 November 2019, <https://www.tweedekamer.nl/downloads/document?id=2019D47762>, p. 8

⁴ The international headquarters of these companies are (and in one case, was) registered in the Netherlands and therefore we term these companies "Dutch companies" here and in the remainder of the report.

⁵ For the purposes of this report, the term "companies active or formerly active in the tech sector" needs to be understood as including a broad range of companies active in fields including biotech, semiconductors, telecom and IT.

Amnesty International asked the Ministry of Foreign Affairs to complete a questionnaire on 9 May 2022 (see text of questionnaire in Annex 3). The Ministry responded on 15 July 2022. Amnesty International submitted a second request for information on 21 July 2022. On 1 September 2022, a meeting with representatives from the Ministry addressed outstanding questions. As indicated in Chapter 5, the Ministry of Foreign Affairs declined to answer several questions and answered several questions incompletely. Even though these instances of non-transparency and inconsistency proved highly problematic and a serious obstacle in gaining a complete picture of the diplomatic and financial support provided to Dutch companies in relation to activities in China, Russia and Saudi Arabia, Amnesty International used the answers of the Ministry as a general framework to develop its analysis. Amnesty International also based its analysis on a review of publicly available evaluations of Dutch government policies; government websites related to doing business in China, Saudi Arabia and Russia; ministers' answers to questions of members of parliament; conversations with government officials; and government officials' statements in the media and at public events. On 28 February 2023, Amnesty International shared its analysis (Chapter 5 of this report) with the Ministry of Foreign Affairs, with the request to check the text for factual inaccuracies. Amnesty International appreciates the extensive response received from the ministry on 16 March 2023. Factual inaccuracies pointed out by the ministry that were undisputed by Amnesty International were adjusted in the report. Where the ministry contradicted its earlier answers, Amnesty International pointed this out in the report. Comments of the ministry regarding current or upcoming changes of government policy or practices were included by Amnesty International.

2. LEGAL FRAMEWORK FOR HUMAN RIGHTS DUE DILIGENCE

2.1 KEY INTERNATIONAL STANDARDS

RESPONSIBILITY OF BUSINESSES

All around the world, businesses are responsible for human rights abuses. They can cause, contribute to or be directly linked to them through their operations, value chains and business relations. Companies have a responsibility to respect human rights wherever they operate. This requires that they “avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur”.⁶ This responsibility is reflected in the UN Guiding Principles on Business and Human Rights (UN Guiding Principles), the authoritative global framework for the respective duties and responsibilities of states and business enterprises in managing adverse impacts on human rights, which were universally adopted in 2011 by the international community.⁷

As the UN Guiding Principles make clear, companies’ responsibility to respect human rights exists independently of a state’s ability or willingness to fulfil its own human rights obligations.⁸ In other words, a company must still act to ensure respect for human rights in its operations even when the host state has an inadequate regulatory framework or is unable or unwilling to protect against human rights violations and abuses. This means that enterprises must “not take advantage of operating environments that provide insufficient protection for human rights to lower their own standard of conduct”.⁹

Companies are required to perform due diligence by taking steps to identify, prevent, address and account for human rights risks and abuses in their value chains.¹⁰ Due diligence is an ongoing, proactive process through which companies “know and show” what they do about potential and actual adverse impacts of their activities, including impacts connected to their business relations.¹¹ It is a primary tool for business enterprises to live up to their responsibilities to prevent harm in the value chain. The value chain includes all upstream and downstream activities, business relations and investment chains related to the development, production, sale, distribution and usage of an enterprise’s operations, products and services.

As of 2011, these principles have also been reflected in the human rights chapter of the revised OECD Guidelines for Multinational Enterprises (OECD Guidelines). These detail the due diligence steps companies must take to ensure they respect human rights in their global operations.¹² The OECD Due Diligence Guidance for Responsible Business Conduct describes six steps for how this should be carried out:

- 1) Embed responsible business conducts into policies and management systems.
- 2) Identify and assess actual and potential adverse impacts associated with the business’s operations, products or services or those linked to a business relationship.
- 3) Cease, prevent or mitigate adverse impacts.
- 4) Track implementation and results.
- 5) Communicate how impacts are addressed.
- 6) Provide for or cooperate in remediation when appropriate.¹³

Businesses should particularly identify areas where “the risk of adverse human rights impacts is most significant, whether due to certain suppliers’ or clients’ operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence”.¹⁴

⁶ OECD Guidelines for Multinational Enterprises, 2011 edition, Part I, Chapter IV ‘Human Rights’, para 42.

⁷ UN Guiding Principles on Business and Human Rights (UN Guiding Principles)

⁸ UN Guiding Principles, Principle 11 including Commentary.

⁹ Office of the UN High Commissioner for Human Rights (OHCHR), *The corporate responsibility to respect human rights: an interpretative guide*, 2012, p. 77.

¹⁰ UN Guiding Principles, Principle 17.

¹¹ UN Guiding Principles, Principles 15(b) and 17.

¹² OECD Guidelines for Multinational Enterprises, 2011 edition.

¹³ OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018.

¹⁴ UN Guiding Principles, Principle 17, including Commentary.

If a company identifies that it may cause or contribute to human rights abuses, and that it cannot prevent them, the only possible course of action is to not undertake the activity. Companies should also “enable the remediation of any adverse human rights impacts they cause or to which they contribute”.¹⁵

DUTY OF STATES

States have a duty to protect against human rights abuse by third parties operating under their jurisdiction, including business enterprises.¹⁶ Home states should “set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations”.¹⁷ Where a state owns or controls an enterprise, or when it supports or services one, it should put measures in place to protect from human rights abuse, including by requiring human rights due diligence.¹⁸ The closer a business is to the state, or the more it relies on state support, the stronger the state’s policy rationale for doing this.¹⁹

When it comes to general state regulatory and policy functions, states should:

- enforce laws requiring businesses to respect human rights;
- provide businesses with effective guidance on how to respect human rights throughout their operations; and
- encourage, and where appropriate require, businesses to communicate how they address their human rights impacts.²⁰

2.2 CARRYING OUT DUE DILIGENCE IN REPRESSIVE COUNTRIES

The responsibility of businesses to carry out due diligence remains the same regardless of the context of operations. However, the scope and means of due diligence varies depending on the risk of human rights impacts, and the nature and context of a business’s operation.²¹ They are based on a concept of proportionality: the higher the risk, the more thorough and accurate due diligence must be. This means that when a company’s risk of becoming involved in grave human rights abuses is particularly high, the company must carry out heightened due diligence.²² In the course of this human rights due diligence, companies must strengthen their understanding of the context in which they operate and must ensure that their activities do not contribute to the conditions creating the risk of grave human rights harm.²³

The UN Guiding Principles highlight conflict-related situations as a context that requires heightened due diligence.²⁴ Conflict-affected areas are characterized by lack of rule of law and a context in which the “host” state is unable to protect human rights adequately.²⁵

Repressive states are characterized by serious and systemic human rights violations, including severe restrictions on freedom of expression, association and assembly. The prevalence of human rights risks and actual and systemic harm requires, such as in conflict-affected contexts, heightened due diligence, and must also include the impact that the businesses might have on the (perpetuation) of the repression.²⁶ This

¹⁵ UN Guiding Principles, Principle 15.

¹⁶ UN Guiding Principles, Principle 1.

¹⁷ UN Guiding Principles, Principle 2.

¹⁸ UN Guiding Principles, Principle 4.

¹⁹ UN Guiding Principles, Principle 4, including Commentary.

²⁰ UN Guiding Principles, Principle 3.

²¹ UN Guiding Principles, Principle 17.

²² See United Nations Development Programme (UNDP), *Heightened Human Rights Due Diligence for business in conflict-affected contexts: A Guide*, 2022, p. 7.

²³ See UNDP, *Heightened Human Rights Due Diligence for business in conflict-affected contexts: A Guide*, 2022, p. 10.

²⁴ UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Report: *Business, human rights and conflict-affected regions: towards heightened action*, 21 July 2020, A/75/212, para. 13.

²⁵ UN Guiding Principles, Principle 7.

²⁶ While most of the literature on heightened due diligence refers to contexts of conflict-affected or post-conflict regions, important elements that apply to these areas are also present in repressive contexts. The OECD minerals supply chain guidance writes that high risk areas ‘may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence’. The OECD Due Diligence Guidance for Responsible Business Conduct notes that higher risks are posed by factors such as conflict, high rates of corruption, the presence of vulnerable groups or weak rule of law. The EU Conflict Minerals Regulation indicates that ‘conflict-affected and high-risk areas’ include ‘areas witnessing weak or non-existent governance and security [...] and widespread and systematic violations of international law, including human rights abuses’. These factors are all

applies to China, Saudi Arabia and Russia. These repressive states are characterized by serious human rights violations,²⁷ including severe restrictions on the freedom of expression association and assembly; a lack of rule of law;²⁸ and they are unwilling to protect human rights adequately and are actively involved in the systematic violation of human rights.²⁹ These repressive states and contexts require heightened due diligence, which must also include the impact that the businesses might have on the (perpetuation) of the repression. Chapter four will discuss in more detail the circumstances in the three countries and why they pose high risks of grave human rights harm.

COMPANY RESPONSIBILITIES UNDER HEIGHTENED DUE DILIGENCE

In contexts of heightened risks of serious human rights harm, companies should be vigilant and take special measures to ensure they do not exacerbate the situation.³⁰ Because businesses are not neutral actors in high-risk contexts, due diligence should enable a sound understanding of the interaction between activities and context.³¹ For instance, in a context of severe repression of freedom of expression and association, business operations might contribute to sustaining an inherently discriminatory and abusive regime. Companies should ensure that their economic operations are not benefiting from or exploiting the abuse committed by other parties, including the host state.³² This requires companies to thoroughly investigate the social and political context in which they operate. Among other things, heightened due diligence should include investigations into:

- weak or absent state structures;
- a record of serious violations of human rights; and
- warning signals that indicate a likelihood of mass violence or state-led persecution of individuals, such as the imposition of emergency laws, the suspension or interference with state institutions, and/or increasing politicization of identity.³³

Heightened due diligence is needed when there is “strict control or banning of communication channels; or [when] non-governmental organizations, international organizations, media or other relevant actors are

relevant to the contexts of China, Saudi Arabia and Russia. See: OECD, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition*, 2016, p. 13; OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018, p. 66; Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (Conflict Minerals Regulation), art. 2 (f).

²⁷ For an indication of international practice and expert opinions regarding this term, please refer to: Takhmina Karimova, “What amounts to ‘a serious violation of international human rights law’”, August 2014, Geneva Academy of International Humanitarian Law and Human Rights, Academy Briefing no. 6, p. 9. The briefing mentions that competent authorities concur in saying that the following violations, among others, are ‘serious’: Arbitrary arrests and detention; Enforced disappearance; Torture and other cruel, inhuman, or degrading treatment; Violations of the right to property, for example the destruction of houses and infrastructure. The briefing furthermore mentions that competent authorities largely concur in saying that the following violations, among others, may be considered ‘serious’: Discrimination; Failure by states to inquire into alleged violations of human rights; Failure by states to provide conditions of detention that meet international norms; Forced evictions; Restrictions on movement; Slave and forced labour; Violations of the right to freedom of expression and freedom of association.

²⁸ Rule of law is defined by Amnesty International as: The principle of governance according to which all people, institutions and entities, public and private, including the state itself, are accountable under laws that are publicly promulgated and equally enforced and independently adjudicated and which are consistent with international human rights norms and standards. It includes the principles of equality before the law, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.

²⁹ Amnesty International, *Report 2021-2022, The State of the World’s Human Rights*, (Index: POL 10/4870/2022), 2022, <https://www.amnesty.org/en/documents/pol10/4870/2022/en/>, China chapter, p. 124, Russian Federation chapter, p. 309, Saudi Arabia chapter, p. 316.

³⁰ UN Guiding Principles, Principle 23, including Commentary; and JustPeace Labs, *Technology in Conflict Conflict Sensitivity for the Tech Industry*, 2020, https://mcusercontent.com/718c5744a15d50373feda469c/files/78d1bafc-ffc5-4166-8c8a-bef74535f212/JustPeace_Labs_Conflict_Sensitivity_for_Tech_Industry_0720.pdf, p. 14.

³¹ UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Report: *Business, human rights and conflict-affected regions: towards heightened action* (previously cited), p. 10.

³² UN Guiding Principles, Principle 17, including Commentary.

³³ UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Report: *Business, human rights and conflict-affected regions: towards heightened action* (previously cited), pp. 5, 6.

expelled or banned”.³⁴ These indicators are all highly relevant to China, Saudi Arabia and Russia (see Chapter 4).

Particular contextual human rights risks might also impact on how due diligence can be carried out, in particular what measures and tools can be applied. For instance, meaningful stakeholder engagement is an elementary tool of due diligence for the identification and assessment of risks and the development and implementation of adequate measures.

Stakeholder involvement and the participation of civil society, in particular human rights defenders, are crucial. Human rights defenders can help businesses understand the concerns of affected stakeholders, especially when direct consultation with stakeholders is difficult.³⁵ Defenders also have a key role as a voice for affected stakeholders and communities, and often provide early warnings of human rights risks and adverse impacts.³⁶ The more complex the situation and its implications for human rights, the stronger the case for drawing on independent expert advice.³⁷ In a repressive context in which freedom of expression, association and assembly is limited, a company might not have access to this tool or might put people at risk when applying it.

Trade unions play an important role as well, gathering relevant information, tracking implementation and results, and providing for or cooperating in remediation.³⁸ In a repressive context, independent research and monitoring, meetings with stakeholders who can safely speak out and engage with employees, for example through trade unions, are difficult and often not without risks to those involved. Importantly, in such a context, businesses must ensure that individuals contacted during the due diligence work are adequately protected.³⁹

In high-risk countries, companies need to be extra cautious, monitor more regularly the implementation and results of due diligence, and be transparent about the due diligence process, especially when they have identified negative human rights impacts of their activities. Companies need to show how they carried out due diligence, how they tried to overcome challenges in the process and how they improved due diligence over time. For instance, if investigations on the ground were difficult, the company needs to show that it was able to gather sufficient information from external sources.

Companies also need to carefully consider whether they have sufficient leverage. Leverage is considered to exist “where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm.”⁴⁰ If a company has limited leverage, it needs to first consider whether it should invest at all. If it decides to proceed, it needs to show that it invested in increasing leverage. Simply claiming later that lack of leverage prevented the company from addressing negative human rights impacts is not an acceptable excuse.⁴¹ If the company cannot increase leverage over time, it has to responsibly disengage.

If there is a likelihood of serious human rights abuse and preventative measures are unable to address this, then companies should operate under the presumption of caution and not undertake the activity. The mere existence of allegations of human rights impact should, at a minimum, alert companies to the risk of having links to such abuses. The fact that adequate human rights monitoring has been hampered may itself say something about the risks and indicate the likelihood of a corporate activity being linked to them. Amnesty International holds the position that in circumstances when business enterprises have concluded that an

³⁴ UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Report: *Business, human rights and conflict-affected regions: towards heightened action* (previously cited), p. 6.

³⁵ UN Guiding Principles, Principle 18: ‘In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.’

³⁶ UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Report: *The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders*, 23 June 2021, A/HRC/47/39/Add.2, para. 11.

³⁷ UN Guiding Principles, Principle 19, including Commentary.

³⁸ OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018, pp. 25, 32, 35.

³⁹ The JustPeace Labs report ‘Technology in Conflict: Conflict Sensitivity for the Tech Industry’ describes some of the risks to stakeholders, which are also present in repressive contexts, and corresponding responsibilities of businesses:

“Undertaking enhanced due diligence also requires additional protections for individuals contacted during the due diligence work. [...] Being involved in due diligence processes could put them at risk of surveillance, arrest, detention, or other forms of abuse. Moreover, companies need to ensure that rights-holders are able to safely express their views, even when they are critical of company or government practices, without fear of reprisals.” JustPeace Labs, *Technology in Conflict: Conflict Sensitivity for the Tech Industry* (previously cited), p. 15.

⁴⁰ OECD Guidelines for Multinational Enterprises, 2011 edition, Commentary on General Policies, Para 19.

⁴¹ Centre for Research on Multinational Corporations (SOMO) and Justice for Iran (JFI), “Tread cautiously: Due diligence, responsible business conduct, and business relationships with land rights violators”, February 2022, SOMO & JFI discussion paper, <https://www.somo.nl/wp-content/uploads/2022/02/Tread-cautiously.pdf>, p. 2.

activity is likely to be linked to a significant human rights risk but are unable to come to further conclusions, they should exercise the presumption of caution and, until additional information is obtained, not undertake the activity.

HOME STATE RESPONSIBILITIES

States have the obligation to protect from human rights harm by third parties, including businesses. That is why home states of businesses have a role to play to ensure businesses under their jurisdiction, wherever they operate in the world, are not involved in human rights abuses. If risks of grave human rights harm are particularly high, this means states must act more thoroughly, accurately and carefully when putting measures in place to meet their obligation. These measures apply in particular when states actively encourage business operations with and in repressive countries, such as China, Saudi Arabia and Russia. For instance, a home state should conduct its own due diligence and assess how its trade policy and practices around stimulating business operations could impact on the human rights situation in the countries it prioritizes for trade promotion activities.⁴²

Home states should also establish mandatory due diligence standards that clarify expectations towards heightened due diligence. When businesses are confronted by heightened risks, the home states should provide additional support.⁴³ States should engage, at the earliest stage possible, with businesses to help them identify, prevent and mitigate human rights-related risks. They should also provide adequate assistance to businesses to assess and address the heightened risks of abuses.⁴⁴

States should not assume that businesses prefer or benefit from government inaction and should not hesitate to contact companies proactively.⁴⁵ States should also warn businesses of heightened risks and clearly communicate their expectations about business respect for human rights – and about due diligence standards – even in challenging environments.⁴⁶

Home states should capacitate companies to assess and address the risks of human rights abuses “by providing basic information and by assisting in identifying the tools necessary for business enterprises to do so”.⁴⁷ This does not mean that home states play a role in carrying out the companies’ due diligence responsibilities, but they can support them in navigating the context in which they operate. For instance, if companies have difficulty asserting leverage, they should be able to ask support from the embassy. The embassy could help raise the subject with the host state or help increase the companies’ leverage by fostering collective action from companies and creating coalitions of companies facing similar problems. This is especially important for small and medium-sized enterprises. To support companies, “States should ensure that their own agencies are sufficiently competent to provide useful and effective advice”.⁴⁸ The commercial and political officers of embassies have a role to play here.

With regards to business activities in high-risk areas, home states should set clear human rights conditions for government support for these activities, whether financial or diplomatic. Home states should use their key policy tools and levers to ensure that businesses engage in heightened due diligence when operating in high-risk areas. This may include linking access to export credit or investment finance to demonstrable heightened due diligence.⁴⁹

Heightened home state action is further needed, according to the UN Guiding Principles, to develop “early-warning indicators to alert government agencies and business enterprises to problems” and attach “appropriate consequences to any failure by enterprises to cooperate in these contexts, including by denying

⁴² UN Guiding Principles, Principle 1 and 7.

⁴³ UN Guiding Principles, Principle 7.

⁴⁴ UN Guiding Principles, Principle 7.

⁴⁵ UN Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, Report: *Business and human rights in conflict-affected regions: challenges and options towards State responses*, 27 May 2011, A/HRC/17/32, para. 9.

⁴⁶ UN Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, Report: *Business and human rights in conflict-affected regions: challenges and options towards State responses* (previously cited), para. 12.

⁴⁷ UN Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, Report: *Business and human rights in conflict-affected regions: challenges and options towards State responses* (previously cited), para. 14.

⁴⁸ UN Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, Report: *Business and human rights in conflict-affected regions: challenges and options towards State responses* (previously cited), para. 15.

⁴⁹ UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Report: *Business, human rights and conflict-affected regions: towards heightened action* (previously cited), p. 21.

or withdrawing existing public support or services, or where that is not possible, denying their future provision".⁵⁰ Closer cooperation between relevant government agencies, ministries and embassies is important to ensure policy coherence and assist companies in high-risk areas.

⁵⁰ UN Guiding Principles, Principle 7, including Commentary.

3. DUTCH INTERNATIONAL CORPORATE SOCIAL RESPONSIBILITY POLICIES

The OECD Guidelines and the UN Guiding Principles have been frames of reference for establishing the Dutch International Corporate Social Responsibility (ICSR)⁵¹ policy for a long time.⁵² However, as elaborated in this report, taking these international standards as frames of reference is not the same as consistently adhering to them.

This chapter gives an overview of the Dutch ICSR regulatory framework. It highlights the Dutch government's inadequate attention to heightened state duties and due diligence responsibilities for companies in high-risk settings.

3.1 DUTCH REGULATORY FRAMEWORK

PAST AND PRESENT POLICY MEASURES

The Netherlands is a member of the OECD and endorses the OECD Guidelines. As mandated for all governments adhering to these guidelines, the Netherlands has a National Contact Point for Responsible Business Conduct.⁵³ In 2013, the government published a National Action Plan on Business and Human Rights (NAP) for implementing the UN Guiding Principles.⁵⁴ It was revised in 2022.⁵⁵

The following measures are among the most important in the country's past and present ICSR policy:⁵⁶

- Sectoral cooperation in ICSR covenants, in which companies, social organizations and the government make agreements about compliance with the UN Guiding Principles and OECD Guidelines.

⁵¹ ICSR indicates International Corporate Social Responsibility and is used in this report as the translation of the Dutch term 'International Maatschappelijk Verantwoord Ondernemen (IMVO)'. CSR indicates Corporate Social Responsibility and is used in this report as the translation of the Dutch term 'Maatschappelijk Verantwoord Ondernemen (MVO)'. Even though the Dutch government increasingly uses the one term Responsible Business Conduct in its English-language publications, the terms were prominently used in Dutch policy documents throughout the research period and still are oftentimes used by the Dutch government. Please note that CSR and ICSR are terms favoured by the Dutch Government, not by Amnesty International, which uses the one term Corporate Accountability. This report solely uses the terms CSR and ICSR in its analyses to adequately reflect Dutch policy and practices.

⁵² During the past decade, the Dutch government adopted various policy documents regarding ICSR, some of which explicitly indicate the OECD Guidelines and the UN Guiding Principles as frames of reference. Important ICSR policy documents include, among others: Letter from the Secretary of State for Economic Affairs, Agriculture and Innovation, TK 2010-2011, 26 485, nr. 106, 27 April 2011, <https://www.tweedekamer.nl/downloads/document?id=2011D22253> (the first official document to introduce the term 'ICSR policy', explaining how it differs from 'CSR policy'); Letter from the Minister for Foreign Trade and Development Cooperation and the Minister of Economic Affairs, "Maatschappelijk Verantwoord Ondernemen loont", TK 2012-2013, 26 485, nr. 164, 28 June 2013, <https://www.tweedekamer.nl/downloads/document?id=2013D28049>; Ministry of Foreign Affairs, "Nationaal Actieplan bedrijfsleven en mensenrechten", April 2014, <https://globalnaps.org/wp-content/uploads/2017/11/netherlands-nap-nederlands.pdf>; Ministry of Foreign Affairs, "Van voorlichten tot verplichten: Een nieuwe impuls voor internationaal maatschappelijk verantwoord ondernemerschap", 2020, <https://www.tweedekamer.nl/downloads/document?id=2020D41368>; Ministry of Foreign Affairs, "Nationaal Actieplan Bedrijfsleven & Mensenrechten", July 2022, <https://www.tweedekamer.nl/downloads/document?id=2022D35662> – an official English translation is available at <https://www.government.nl/documents/publications/2022/11/8/national-action-plan-business-and-human-rights>.

⁵³ Ministry of Foreign Affairs, NCP, <https://www.oesorichtlijnen.nl/ncp> (accessed on 07 February 2023).

⁵⁴ Ministry of Foreign Affairs, "Nationaal Actieplan bedrijfsleven en mensenrechten", April 2014 (previously cited).

⁵⁵ Letter from the Minister of Foreign Affairs, TK2021-2022, 32 375, nr. 344, 14 September 2022, <https://www.tweedekamer.nl/downloads/document?id=2022D35661>. This letter presents the 2022 National Action Plan on Business and Human Rights to the House of Representatives, see Ministry of Foreign Affairs, "Nationaal Actieplan Bedrijfsleven & Mensenrechten", July 2022 (previously cited).

⁵⁶ The 2020 ICSR-policy document, entitled "From information to obligation: a new impulse for international corporate social responsibility", lists these measures as the main measures of the current (2020) Dutch ICSR-policy. They are largely reflective of the measures implemented since 2011 and continue to be important vectors after 2020. The measures have been enumerated in adapted wordings in this report, in order to reflect for some of them how they have been adapted and/or complemented after 2020. Ministry of Foreign Affairs, "Van voorlichten tot verplichten: Een nieuwe impuls voor internationaal maatschappelijk verantwoord ondernemerschap" (previously cited), p. 11.

- Activities aimed at getting large companies in the Netherlands to explicitly endorse the OECD Guidelines as a frame of reference for their international activities.⁵⁷
- Setting ICSR conditions within government procurement and for companies that want to use Dutch governmental tools benefiting the business community.
- Financial incentives for companies, such as contributions from the Fund to Combat Child Labor (FBK)⁵⁸ and the Fund for Responsible Business (FVO).⁵⁹
- Commitment to an integrated European approach in the field of ICSR.⁶⁰
- The national embedding of the Non-Financial Information Directive (RNFI),⁶¹ which requires large public interest organizations (such as brokerage firms, banks and insurers) to report on sustainability factors, including human rights.
- Information services, including through the National Contact Point for OECD Guidelines, information provided by the Netherlands Enterprise Agency (Rijksdienst voor Ondernemend Nederland – RVO) and information and other services provided by the newly established ICSR support service (IMVO Steunpunt)⁶² that was set up to become an ICSR “one-stop-shop”.⁶³

THE ‘SMART POLICY MIX’ OF 2020

After various evaluations of Dutch ICSR measures and their implementation,⁶⁴ which indicated ineffectiveness and a need to consider a more diverse mix of measures (including mandatory approaches),⁶⁵ the government formulated a “smart policy mix” (doordachte beleidsmix) in 2020. This forms the basis of the current Dutch ICSR policy.⁶⁶ Existing measures largely remained in place, yet were adapted and/or enhanced.

In essence, the Dutch government now specifies ICSR measures and corresponding policies in five categories that specify that the government:

- “informs”, including via the new ICSR support service;
- “facilitates”, including via the sectoral cooperation in ICSR covenants;
- “induces”, including via financial support for ICSR business initiatives;

⁵⁷ In 2013, the government formulated an ambition to get 90 percent of large companies in the Netherlands to explicitly endorse the OECD Guidelines by 2023 as a frame of reference for their international activities. This ambition has been monitored at (infrequent) times. See: Ministry of Foreign Affairs, “Van voorlichten tot verplichten: Een nieuwe impuls voor internationaal maatschappelijk verantwoord ondernemerschap” (previously cited), p. 14.

⁵⁸ RVO, Fonds Bestrijding Kinderarbeid (FBK), <https://www.rvo.nl/subsidies-financiering/fbk> (accessed on 7 February 2023).

⁵⁹ RVO, Fonds Verantwoord Ondernemen (FVO), <https://www.rvo.nl/subsidies-financiering/fvo> (accessed on 7 February 2023).

⁶⁰ The 2020 ICSR-policy document entitled “From information to obligation: a new impulse for international corporate social responsibility” lists ‘focusing on a European action plan’ as an example of this commitment, and also the focus of the government on enacting European due diligence legislation can be taken as an example. Ministry of Foreign Affairs, “Van voorlichten tot verplichten: Een nieuwe impuls voor internationaal maatschappelijk verantwoord ondernemerschap” (previously cited), p. 11, p. 24.

⁶¹ Besluit bekendmaking niet-financiële informatie, 2017, <https://wetten.overheid.nl/BWBR0039355/2017-03-24>

⁶² The support service was launched on 30 September 2022. RVO, Is uw bedrijf al bekend met IMVO?, <https://www.rvo.nl/nieuws/uw-bedrijf-al-bekend-met-imvo> (accessed on 7 February 2023). The site of the support service can be found here: RVO, IMVO-steunpunt voor bedrijven, <https://www.rvo.nl/onderwerpen/imvo-steunpunt> (accessed on 7 February 2023).

⁶³ Ministry of Foreign Affairs, “Van voorlichten tot verplichten: Een nieuwe impuls voor internationaal maatschappelijk verantwoord ondernemerschap” (previously cited), p. 28.

⁶⁴ The Ministry of Foreign Affairs refers to 2 advisory documents, 10 research documents and 8 consultations offering evaluative and/or advisory input: Ministry of Foreign Affairs, “Van voorlichten tot verplichten: Een nieuwe impuls voor internationaal maatschappelijk verantwoord ondernemerschap” (previously cited), p. 36 - 38. The list includes this extensive 2019 evaluation: Ministry of Foreign Affairs, “Mind the governance gap, map the chain – Evaluation of the Dutch government’s policy on international responsible business conduct (2012 – 2018)”, IOB Evaluation no. 422, September 2019, https://english.iob-evaluatie.nl/binaries/iob-evaluatie-eng/documenten/evaluations/2019/09/01/433-%E2%80%93-iob-%E2%80%93-evaluation-of-the-dutch-governments-policy-on-international-responsible-business-conduct-2012-2018-%E2%80%93-mind-the-governance-gap-map-the-chain/IOB_Evaluation_of_the_Dutch_government_s_policy_on_international_responsible_business_conduct_201909.pdf

⁶⁵ Ministry of Foreign Affairs, “Van voorlichten tot verplichten: Een nieuwe impuls voor internationaal maatschappelijk verantwoord ondernemerschap” (previously cited), p. 18, 19.

⁶⁶ Ministry of Foreign Affairs, “Van voorlichten tot verplichten: Een nieuwe impuls voor internationaal maatschappelijk verantwoord ondernemerschap” (previously cited), p. 24.

- “sets conditions”, including when it comes to using the government’s tools that promote business; and
- “compels”, setting a bottom limit for corporate ICSR stragglers.⁶⁷

The government indicates that “broad due diligence legislation”, which forms part of the “compel” category, is the most important component of the new policy mix. The government indicates that it primarily focuses on and commits to legislation at the EU level.

Several Dutch ICSR evaluations indicated that voluntary measures and standards alone proved insufficient to get companies to respect human rights wherever they operate. Due diligence legislation should thus be a central element within the Dutch policy mix. Legislation is urgently needed to establish clear, robust and enforceable cross-sectoral requirements on business enterprises, including financial institutions, to respect human rights and the environment and to carry out due diligence. Amnesty International, amongst others, is a proponent of establishing relevant rules at both EU and national levels, and calls on the Dutch government to enact national legislation. This report does not contain detailed discussions on EU and Dutch mandatory due diligence legislation, but in the following chapters, it does illustrate the need for such legislation.

ICSR measures discussed more in-depth in the report mainly include the information efforts undertaken by the Dutch government for Dutch companies that do or plan to do business in China, Saudi Arabia and Russia; and the extent to which the Dutch government sets human rights conditions for governmental support to businesses. These are evaluated against the heightened duty of the Dutch government when it comes to its companies doing business in high-risk settings.

3.2 HEIGHTENED DUE DILIGENCE IN THE DUTCH REGULATORY FRAMEWORK

NO COMPREHENSIVE POLICY

In the Netherlands, longstanding practice distinguishes national from international CSR policy.⁶⁸ National CSR policy focuses on influencing the behaviour of companies operating in the Netherlands (including foreign investors); ICSR policy focuses on the conduct of Dutch businesses operating abroad, involving trade with and investments in other countries.⁶⁹ As explained by the Ministry of Foreign Affairs in an evaluation of Dutch ICSR policy, national policy “stimulates corporate behaviour that goes beyond what Dutch law requires (assuming that Dutch law is sufficient and effectively enforced),” while ICSR policy “builds on the assumption that local laws in other countries are not sufficient and/or are not effectively enforced to protect human rights and other principles/values of the OECD Guidelines.”⁷⁰

ICSR policy is thus seen as needed to bridge the “governance gap”, understood as being “the limited ability of the government to regulate and enforce the extra-territorial corporate behaviour of Dutch businesses”, a problem arising mainly “when companies and their suppliers operate in countries with different (i.e. lower) [CSR] standards”.⁷¹ These countries are generally understood to consist of (on a sliding scale) upcoming economies, developing countries and fragile states.⁷²

This approach towards ICSR suggests that the government is aware of the heightened state duties and heightened corporate due diligence responsibilities when companies operate in a context of heightened

⁶⁷ Ministry of Foreign Affairs, “Van voorlichten tot verplichten: Een nieuwe impuls voor internationaal maatschappelijk verantwoord ondernemerschap” (previously cited), pp. 24 – 30.

⁶⁸ A 2019 evaluation report on Dutch ICSR policy (the IOB evaluation) traces back the use of the term ‘ICSR policy’ to 2011, even though there were some previous ICSR-related initiatives. The launch of government policy on ICSR is traced back to 2012, when the Rutte II administration took office and merged the portfolios of foreign trade and development cooperation. The newly appointed minister for Foreign Trade and Development Cooperation (BHOS, Buitenlandse Handel en Ontwikkelingssamenwerking – part of the Ministry of Foreign Affairs) became responsible for international CSR policy, the responsibility for national CSR policy was with the Ministry of Economic Affairs and Climate Policy (EZK, Economische Zaken en Klimaat). Ministry of Foreign Affairs, “Mind the governance gap, map the chain – Evaluation of the Dutch government’s policy on international responsible business conduct (2012 – 2018)” (previously cited), pp. 22, 35.

⁶⁹ Ministry of Foreign Affairs, “Mind the governance gap, map the chain – Evaluation of the Dutch government’s policy on international responsible business conduct (2012 – 2018)” (previously cited), p. 22, referring to the 2013 policy document ‘Corporate social responsibility pays off’ (KST 26.485-164, 2013).

⁷⁰ Ministry of Foreign Affairs, “Mind the governance gap, map the chain – Evaluation of the Dutch government’s policy on international responsible business conduct (2012 – 2018)” (previously cited), p. 23.

⁷¹ Ministry of Foreign Affairs, “Mind the governance gap, map the chain – Evaluation of the Dutch government’s policy on international responsible business conduct (2012 – 2018)” (previously cited), p. 14.

⁷² Letter from the Minister for Foreign Trade and Development Cooperation and the Minister of Economic Affairs, “Maatschappelijk Verantwoord Ondernemen loont” (previously cited), p. 18.

human rights risks. This is reflected in some Dutch ICSR measures, including the sectoral cooperation in ICSR covenants, set up for “those sectors in which the production-related social risks are high and company policy with regard to those risks needs to be strengthened as a matter of priority”.⁷³ It also includes ICSR-guidelines for embassies, which in 2012 distinguished between embassies in countries with “similar standards” (OECD and EU countries) and countries with “different” (lower) CSR standards. The latter were “encouraged to develop more activities, such as assisting companies with CSR challenges, providing knowledge of local CSR risks and putting them in touch with local and international actors”.⁷⁴

However, as this report shows, these measures do not amount to a comprehensive policy adequately covering higher risks, heightened company responsibilities and heightened state duties. Indeed, the ICSR covenants are only set up for some sectors⁷⁵ and the Dutch government itself indicated that they are inadequate to cover all high-risk businesses and sectors.⁷⁶ As a case in point, no ICSR covenant adequately covers the sectors and/or salient risks forming the focus of this report.

A 2019 evaluation of the ICSR practice of embassies showed insufficient implementation of the ICSR guidelines for embassies. The guidelines were subsequently reviewed, yet it appears that in their new version they do not integrate extra actions for embassies operating in countries with “different” CSR standards or higher CSR risks.⁷⁷ In fact, a recommendation to make it compulsory for embassies to develop a CSR strategy in countries with high CSR risks and intense trade relations with the Netherlands was “considered” by the Minister for Foreign Trade and Development Cooperation,⁷⁸ but seems not to have made it to the updated guidelines.⁷⁹ Furthermore, the minister explicitly stated that the government would not adopt a formulated recommendation that embassies should be encouraged to proactively contact Dutch companies and investors who do not seek rapprochement themselves, indicating that, “[i]t is the responsibility of companies themselves to have their due diligence in order when they operate in other countries”.⁸⁰ This reluctance to encourage proactive steps from embassies clashes with international standards described above, particularly in contexts of heightened risks.

NEED FOR ADAPTED APPROACHES

The Dutch government indicated it did not yet pay sufficient attention in its policy instruments to the higher risks of human rights harm linked to business operations in conflict areas (conflictgebieden).⁸¹ The 2022 Dutch National Action Plan Business and Human Rights (NAP) pays specific attention to the issue.⁸² The NAP mentions some past Dutch actions regarding a “conflict-sensitive approach” in fragile states and

⁷³ Letter from the Minister for Foreign Trade and Development Cooperation and the Minister of Economic Affairs, “Maatschappelijk Verantwoord Ondernemen loont” (previously cited), p. 6.

⁷⁴ Ministry of Foreign Affairs, *Mind the governance gap, map the chain – Evaluation of the Dutch government’s policy on international responsible business conduct (2012 – 2018)* (previously cited), p. 36, referring to the 2012 embassy guidelines which do not seem to be publicly available.

⁷⁵ Social and Economic Council of the Netherlands (SER), What agreements have been concluded?, <https://www.imvoconvenanten.nl/en/agreements> (accessed on 7 February 2023)

⁷⁶ Ministry of Foreign Affairs, Nationaal Actieplan Bedrijfsleven & Mensenrechten, July 2022 (previously cited), p. 58, referring to Ministry of Foreign Affairs, IOB evaluation: ‘Mind the Governance Gap, Map the Chain’ (September 2019).

⁷⁷ Neither the 2012 guidelines nor the 2019 guidelines seem to be publicly available, even though the Dutch government says they are. See: Ministry of Foreign Affairs, IMVO-richtlijnen voor ambassades nu ook online, <https://www.oesorichtlijnen.nl/actueel/nieuws/2016/03/07/imvo-richtlijnen-voor-ambassades> (accessed on 7 February 2023). At the time of writing, the link to the guidelines

(<https://www.rijksoverheid.nl/documenten/publicaties/2016/02/22/internationale-mvo-richtlijnen-voor-nederlandse-ambassades>) did not work. The factsheet “The ICSR-Guidelines for the Dutch Diplomatic Network” provides an overview of the 2019 guidelines. It doesn’t mention any heightened duties for embassies or other posts located in high-risk countries or regions. The factsheet is not readily available online. It was downloaded from an archived page. See: [via Wayback Machine] De IMVO-Richtlijnen voor het Nederlandse Postennet, Versie 2.0 - november 2019, snapshot of 18 January 2022, <https://web.archive.org/web/20220118235053/https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/publicaties/2016/02/22/internationale-mvo-richtlijnen-voor-nederlandse-ambassades/Factsheet+Richtlijnen+voor+internationaal+maatschappelijk+verantwoord+ondernemen+voor+het+Nederlandse+Postennet.pdf> (accessed on 7 February 2023).

⁷⁸ Letter from the Minister for Foreign Trade and Development Cooperation, TK 2019-2020, 26 485, nr. 319, 22 November 2019, <https://www.tweedekamer.nl/downloads/document?id=2019D47762>, p. 6.

⁷⁹ The factsheet “The ICSR-Guidelines for the Dutch Diplomatic Network”, only accessible via an archived page, makes no mention of this. [via Wayback Machine] De IMVO-Richtlijnen voor het Nederlandse Postennet, Versie 2.0 - november 2019 (previously cited).

⁸⁰ Letter from the Minister for Foreign Trade and Development Cooperation, TK 2019-2020, 26 485, nr. 319, 22 November 2019, <https://www.tweedekamer.nl/downloads/document?id=2019D47762>, p. 6.

⁸¹ Letter from the Minister for Foreign Trade and Development Cooperation, TK 2020-2021, 33 826, nr. 36, 1 December 2020, <https://www.tweedekamer.nl/downloads/document?id=2020D49259>, p. 9.

⁸² Ministry of Foreign Affairs, Nationaal Actieplan Bedrijfsleven & Mensenrechten, July 2022 (previously cited), p. 43.

conflict areas.⁸³ These include conflict sensitivity guidelines by the Ministry of Foreign Affairs for private sector development for its staff in The Hague and in embassies, as well as for employees of implementing partners – guidelines that do not seem to be publicly available.⁸⁴ The NAP includes the following action points:

- Conflict sensitivity guidelines will be developed for the Dutch business community in collaboration with businesses, NGOs and “implementing organizations”.⁸⁵
- The UN Guiding Principles and conflict sensitivity will be included in the Multiannual Country Strategies (MACs)⁸⁶ of embassies in fragile states through dialogue between embassies, implementing partners and the business community, and with local stakeholder involvement.⁸⁷

The NAP overlooks that conflict areas are only one example of contexts that are linked to heightened human rights risks and therefore require adapted responses. The Dutch government should, in addition to and/or in tandem with the implementation of stated NAP action points, develop general principles for state responses and companies’ due diligence in heightened human rights risk contexts, as well as provide requirements and recommendations for specific situations such as repressive contexts.

⁸³ Ministry of Foreign Affairs, Nationaal Actieplan Bedrijfsleven & Mensenrechten, July 2022 (previously cited), p. 43.

⁸⁴ Ministry of Foreign Affairs, Nationaal Actieplan Bedrijfsleven & Mensenrechten, July 2022 (previously cited), p. 44. The NAP refers to “Ministry of Foreign Affairs, ‘Conflict Sensitive Private Sector Development’ (2019).”, yet this document does not seem to be publicly available.

⁸⁵ Ibid. p. 45.

⁸⁶ In a MAC (in Dutch: MLS, Meerjaren Landen Strategie), “Dutch foreign policy as laid down in policy memorandums is translated to the context of a country. The (expected) developments in a country, the Dutch objectives and efforts, the intended impact and the insight into (potential) risks form a four-year framework for the efforts in that country.” Attachénotitie 2022, Staatscourant 2022, 17579, 7 July 2022, <https://zoek.officielebekendmakingen.nl/stcrt-2022-17579.pdf>, p. 5.

⁸⁷ Ministry of Foreign Affairs, Nationaal Actieplan Bedrijfsleven & Mensenrechten, July 2022 (previously cited), p. 45. There is a slight discrepancy between the Dutch version of the NAP (referring to multiannual strategies) and the English version of the NAP (referring to multiannual country strategies), yet as overarching diplomatic network regulations seem to only refer to multiannual country strategies (with no indication that there is a separate multiannual strategy for embassies), it seems that in both documents MACs (in Dutch: MLS) are meant. See: Attachénotitie 2022, Staatscourant 2022, 17579, 7 July 2022, <https://zoek.officielebekendmakingen.nl/stcrt-2022-17579.pdf>

4. HUMAN RIGHTS CONTEXT FOR BUSINESSES OPERATING IN CHINA, SAUDI ARABIA AND RUSSIA

This chapter looks at the human rights context in which companies operate or operated in China,⁸⁸ Saudi Arabia and Russia, including the widespread repression and specific salient human rights risks for companies. It also looks at the way this context can impact the process of conducting human rights due diligence.

4.1 CHINA

REPRESSION

Censorship

China is consistently ranked as one of the world's countries with the least press freedom.⁸⁹ The authorities maintain strict control over news reporting. Accreditation of journalists is done by the state and journalists face harsh penalties for critical comments. The authorities regularly communicate instructions to the media, often in the form of not-to-be-publicized directives.⁹⁰

The internet censorship system is one of the most extensive in the world. Social media posts that touch on banned or politically sensitive topics disappear within hours or even minutes. Real-name registration has become the norm for social media, and critical users face removal or worse forms of punishment. Thousands of websites remain blocked, including news sites such as that of *The New York Times* and social media hubs like YouTube, Twitter and Facebook.

Shrinking space for civil society

Since Xi Jinping became president in 2013, the space for human rights defenders in China has been shrinking fast. The crackdown against the New Citizens Movement,⁹¹ a loose network of grassroots activists promoting government transparency and exposing corruption, was the first clear sign that he would show zero tolerance to those questioning the government.

Other seminal moments included the “709 crackdown” that began in 2015 and saw almost 250 lawyers and activists questioned or detained.⁹² The same year, the government targeted activists working on social issues including labour rights and gender. Since 2017, the Foreign NGO Management Law⁹³ has imposed increased restrictions on foreign and domestic NGOs. In March 2021, a new policy was introduced to crack

⁸⁸ This report mainly uses information published in previous Amnesty International publications to discuss the repressive contact in China. These publications primarily include: Amnesty International, *Out of Control: Failing EU Laws for Digital Surveillance Export* (Index: EUR 01/2556/2020), September 2020, <https://www.amnesty.org/en/documents/eur01/2556/2020/en/>; Amnesty International, “Like we were enemies in a war” *China’s mass internment, torture and persecution of Muslims in Xinjiang* (Index: ASA 17/4137/2021), June 2021, <https://www.amnesty.org/en/documents/asa17/4137/2021/en/>; Amnesty International, Free the Five! Olympic Campaign for Freedom of Expression, <https://www.amnesty.org/en/latest/campaigns/2021/11/free-the-five-olympic-campaign-for-freedom-of-expression/> (accessed 8 February 2023).

⁸⁹ Reporters without Borders, Index 2022, <https://rsf.org/en/index?year=2022> (accessed 8 February 2023).

⁹⁰ China Digital Times, Directives from the Ministry of Truth, <https://chinadigitaltimes.net/china/directives-from-the-ministry-of-truth/> (accessed on 27 January 2023)

⁹¹ Amnesty International, “China: Hypocritical crackdown on anti-corruption campaigners”, 21 January 2014, <https://www.amnesty.org/en/latest/news/2014/01/china-hypocritical-crackdown-anti-corruption-campaigners/>

⁹² Amnesty International, “China: Wife of detained lawyer Yu Wensheng tells of ongoing fight for justice”, 9 July 2020, <https://www.amnesty.org/en/latest/campaigns/2020/07/wife-of-yu-wensheng-tells-on-fight-for-justice/>

⁹³ Amnesty International, *Laws designed to silence: The global crackdown on civil society organizations* (Index: ACT 30/9647/2019), February 2019, <https://www.amnesty.org/en/documents/act30/9647/2019/en/>

down on a range of unregistered social organizations, many of which had survived for decades in a “grey space” of tacit governmental tolerance.⁹⁴

Human rights violations in the name of ‘national security’

An expanding “national security” legal architecture has facilitated and structured the widening crackdown on civil society and the growing censorship and surveillance.⁹⁵ This includes, among other things, the 2015 National Security Law,⁹⁶ the Anti-Terrorism Law, the Cyber Security Law, the National Intelligence Law and the Foreign NGO Management Law. These laws use vague and overly broad concepts of “national security”. This is contrary to international human rights law and standards, which state that national security laws must be formulated narrowly and with precision so that individuals can foresee whether or not a particular act is unlawful.⁹⁷

These laws furthermore grant effectively unchecked powers to the authorities to protect these sweeping “national security” notions. They lack safeguards to protect against arbitrary detention and other infringements on human rights. The legal architecture is highly prone to misuse by the authorities to silence dissent, censor information and harass and prosecute human rights defenders. Since 2015, the authorities have increased their use of vague national security charges to prosecute lawyers, scholars, journalists, activists and NGO workers.

Global censorship

The Chinese government actively promotes its visions and narratives on human rights,⁹⁸ aiming to undermine and transform the international system of universal, binding and enforceable human rights norms. The government is increasingly aggressive when it comes to countering critique of its human rights record. It does not hesitate to use its growing clout in widely diverging realms, including condemning corporate human rights due diligence when it concerns human rights violations in China. In March 2021, foreign companies faced sudden boycotts in China following their decisions not to use Xinjiang cotton due to forced labour risks, and Chinese state officials subsequently denounced the companies in question.⁹⁹

In addition, the government is increasingly adamant in refusing transparency about what is happening in China. It blocks the international community from unfettered research and reporting access to Xinjiang and other regions, and invests energy globally in covering up human rights violations or attempting to sow doubt about them, and silencing critical views.

It is increasingly hard for foreign reporters to do their job in China. In 2020 and 2021, the Foreign Correspondents Club of China reported abysmal reporting conditions. They cited:

- the targeting of foreign correspondents in alleged national security investigations;
- cancelled press credentials;
- rejected visa renewal applications;
- increased pressure on Chinese nationals working for foreign media;
- state-backed online campaigns against journalists; and

⁹⁴ Holly Snape, “Cultivate Aridity and Deprive them of Air”, *Made in China Journal*, 21 April 2021, <https://madeinchinajournal.com/2021/04/29/cultivate-aridity-and-deprive-them-of-air/>

⁹⁵ Amnesty International, *China: Human rights violations in the name of “national security”: Amnesty International submission for the UN Universal Periodic Review, 31st session of the UPR Working Group, November 2018* (Index: ASA 17/8373/2018), March 2018, <https://www.amnesty.org/en/documents/asa17/8373/2018/en/>

⁹⁶ Amnesty International, “China: Scrap draconian new national security law”, 1 July 2015, <https://www.amnesty.org/en/latest/news/2015/07/china-scrap-draconian-new-national-security-law/>

⁹⁷ This and other requirements are prescribed by the principle of legality, a core general principle of law enshrined among others in article 11 of the Universal Declaration of Human Rights. An overall discussion of related international human rights law and standards (provided in an analysis related to the 2020 Hong Kong National Security Law) can be found here: Amnesty International, *Hong Kong: In the name of national security* (Index: ASA 17/4197/2021), 29 June 2021, <https://www.amnesty.org/en/documents/asa17/4197/2021/en/>, p. 19-20.

⁹⁸ David Ismail and others (editors), *Shifting Power and Human Rights Diplomacy- China*, Amnesty International Netherlands, February 2020, https://www.amnesty.nl/content/uploads/2020/02/STATEGIC-STUDIES-CHINA_webversie.pdf?x57439

⁹⁹ Emily Wang Fujiyama, “China pressures brands to reject reports of Xinjiang abuses”, AP News, 29 March 2021, <https://apnews.com/article/beijing-boycotts-forced-labor-china-asia-pacific-34c32a322be100d287cdd44a02e71700>

- threats of legal action against journalists.¹⁰⁰

Experts involved in corporate due diligence have also indicated that working conditions have become more complex, citing increased difficulty to understand the evolving sensitivities and increased number of “red lines” when doing research.¹⁰¹ Various social auditing institutions stopped working in Xinjiang, reportedly due to the oppressive conditions on the ground.¹⁰² Across the whole of China, conducting social auditing has become increasingly difficult. In recent years, due diligence difficulties have been compounded by Covid-19 restrictions and the suppression of civil society in Hong Kong.¹⁰³

HUMAN RIGHTS RISKS FOR TECH BUSINESSES AND THE CHINESE SURVEILLANCE COMPLEX

Businesses with activities or considering activities in China have a high number of risks to consider. This section focuses on human rights risks in the downstream of technology companies that are operating in or planning to operate in China, particularly on the risks of contributing to the Chinese surveillance complex.¹⁰⁴

Surveillance

Chinese state mass surveillance efforts have been established and steadily modernized since the inauguration of the People’s Republic of China in 1949. Today, Chinese law enforcement agencies have a wide range of advanced digital surveillance technologies, including biometric surveillance, to keep citizens under pervasive observation and control.¹⁰⁵

The use of surveillance technologies has been extensively documented in the Xinjiang region,¹⁰⁶ where Uyghurs and other ethnic groups are the prime targets of a comprehensive population monitoring programme. Biometric data on Xinjiang residents are collected and processed.¹⁰⁷ Biometric surveillance technologies, such as facial recognition and emotion recognition, are deployed to conduct ubiquitous surveillance.¹⁰⁸ The authorities envision these surveillance systems as a series of “filters” that pick out people with certain behaviour or characteristics that they believe indicate a threat. The systems enable authorities to implement fine-grained control, subjecting people to differentiated restrictions depending on their perceived levels of “danger”.¹⁰⁹ It is estimated that since 2017, up to 1 million or more Uyghurs and members of other ethnic groups have been held captive arbitrarily in internment camps and prisons in Xinjiang for reasons that include public or private displays of religious and cultural affiliation.¹¹⁰

¹⁰⁰ Foreign Correspondents’ Club of China, *Track Trace Expel: Reporting on China Amid a Pandemic*, Foreign Correspondents’ Club of China 2020 Annual Report, <https://www.dropbox.com/s/xye6bhhic0s4hqm/2020%20FCCC%20Report.pdf?dl=0>; Foreign Correspondents’ Club of China, *Locked Down or Kicked Out Covering China*, Foreign Correspondents’ Club of China Report on Media Freedom in 2021, <https://fccchina.org/wp-content/uploads/2022/01/2021-FCCC-final.pdf>

¹⁰¹ The China Project LIVE, “The Future of China Due Diligence: Where do you get your information and data?”, 27 April 2022, <https://www.youtube.com/watch?v=uwwigOATjyU>, minute 32:10

¹⁰² Nithin Coca, “Crisis of Confidence”, *The Wire China*, 26 June 2022, <https://www.thewirechina.com/2022/06/26/crisis-of-confidence/>

¹⁰³ Nithin Coca, “Crisis of Confidence”, *The Wire China*, 26 June 2022, <https://www.thewirechina.com/2022/06/26/crisis-of-confidence/>

¹⁰⁴ This report mainly uses an updated version of information published in previous Amnesty International publications to discuss surveillance in China. These publications primarily include: Amnesty International, *Out of Control: Failing EU Laws for Digital Surveillance Export* (Index: EUR 01/2556/2020), September 2020,

<https://www.amnesty.org/en/documents/eur01/2556/2020/en/>; Amnesty International, “*Like we were enemies in a war*” *China’s mass internment, torture and persecution of Muslims in Xinjiang* (Index: ASA 17/4137/2021), June 2021, <https://www.amnesty.org/en/documents/asa17/4137/2021/en/>.

¹⁰⁵ Human Rights Watch, “China: Police ‘Big Data’ Systems Violate Privacy, Target Dissent”, 19 November 2017, <https://www.hrw.org/news/2017/11/19/china-police-big-data-systems-violate-privacy-target-dissent>; Isabelle Qian and others, “Four Takeaways From a Times Investigation Into China’s Expanding Surveillance State”, *New York Times*, 21 June 2022, <https://www.nytimes.com/2022/06/21/world/asia/china-surveillance-investigation.html>

¹⁰⁶ Amnesty International, “*Like we were enemies in a war*” *China’s mass internment, torture and persecution of Muslims in Xinjiang* (Index: ASA 17/4137/2021), June 2021, <https://www.amnesty.org/en/documents/asa17/4137/2021/en/>.

¹⁰⁷ Human Rights Watch, *Eradicating Ideological Viruses: China’s Campaign of Repression Against Xinjiang’s Muslims*, 9 September 2018, www.hrw.org/report/2018/09/09/eradicating-ideological-viruses/chinas-campaign-repression-against-xinjiangs

¹⁰⁸ Darren Byler, “China’s Hi-Tech War on Its Muslim Minority”, *The Guardian*, 11 April 2019, <https://www.theguardian.com/news/2019/apr/11/china-hi-tech-war-on-muslim-minority-xinjiang-uyghurs-surveillance-face-recognition>; Sue-Lin Wong and Qianer Liu, “Emotion Recognition Is China’s New Surveillance Craze”, *Financial Times*, 1 November 2019, www.ft.com/content/68155560-fbd1-11e9-a354-36acbbb0d9b6

¹⁰⁹ Amnesty International, *Out of Control: Failing EU Laws for Digital Surveillance Export* (Index: EUR 01/2556/2020), September 2020, <https://www.amnesty.org/en/documents/eur01/2556/2020/en/>, p. 18.

¹¹⁰ Amnesty International, “*Like we were enemies in a war*” *China’s mass internment, torture and persecution of Muslims in Xinjiang* (Index: ASA 17/4137/2021), June 2021, <https://www.amnesty.org/en/documents/asa17/4137/2021/en/>.

The Uyghur people are also targeted for surveillance outside Xinjiang. A 2019 report documents 12 government projects across China, including various video surveillance initiatives, which specifically require Uyghur analytics.¹¹¹ This facilitates the recognition of the ethnicity of the Uyghurs and the extensive monitoring of their lives throughout the country.¹¹² In 2019, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression warned against the discriminatory use of profiling techniques specifically targeting the Uyghur population in China.¹¹³

Mass surveillance efforts are not limited to the Xinjiang region or to the Uyghur people. Advanced digital surveillance technologies have become a central feature of state control in all parts of the country.¹¹⁴ With the assistance of private tech companies,¹¹⁵ Chinese officials have prioritized the use of surveillance technologies to keep people under non-stop observation across the country, from megacities to tiny villages, online and offline.¹¹⁶

The omnipresence and high technological standard of the censorship and surveillance system greatly inhibits freedom of expression. The system directly punishes what is deemed inappropriate by the authorities and creates a climate of self-censorship, where growing groups of people are aware of the tight monitoring by the authorities of online and offline spaces and try to adjust their voices to avoid persecution. This adjustment is notoriously hard to get right. Official guidelines on forbidden content tend to be very vague. In addition, the definitions of “national security” and similar terms used to legitimize crackdowns are so sweeping that they lack any type of clarity and legal predictability. This creates an atmosphere of insecurity, where people think twice before they utter anything, and where they are often encouraged or even legally obliged to censor others.¹¹⁷

Risks faced by foreign tech companies operating in China

According to the UN Guiding Principles, technology companies can be directly linked to human rights harms through their products, services or solutions, even if those harms were caused by the actions of a third party.¹¹⁸ This includes situations where the end-use occurs beyond a company’s first-tier customer and user relationship, for example if the component or input is a critical factor in the technology being used to cause harm.¹¹⁹

Foreign tech companies operating in and/or exporting to China run a substantial risk of becoming entangled in the Chinese public security and surveillance complex, and therefore directly linked to the serious human rights violations perpetrated by the actors involved. This concerns not only companies directly involved in packaging, delivering or operating surveillance products, services and solutions. It also concerns companies such as hardware manufacturers and software developers, as well as business intermediaries such as distributors and system integrators.

Several recent reports have illustrated these risks for foreign tech companies. Amnesty International revealed in 2020 that three EU-based companies, including a Dutch company, exported digital surveillance tools to China.¹²⁰ These exports included facial and emotion recognition software for use by Chinese public security bureaus, criminal law enforcement agencies and/or government-related research institutes, including in the

¹¹¹ The report unearthed draft central government guidelines requiring such analytics. Charles Rollet, “China Government Spreads Uyghur Analytics Across China”, IPVM, 25 November 2019, <https://ipvm.com/reports/ethnicity-analytics>

¹¹² Paul Mozur, “One Month, 500,000 Face Scans: How China Is Using A.I. to Profile a Minority”, New York Times, 14 April 2019, www.nytimes.com/2019/04/14/technology/china-surveillance-artificial-intelligence-racial-profiling.html

¹¹³ UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report: *Surveillance and Human Rights*, 28 May 2019, UN Doc. A/HRC/41/35, para. 12.

¹¹⁴ Amnesty International, *Out of Control: Failing EU Laws for Digital Surveillance Export* (Index: EUR 01/2556/2020), September 2020, <https://www.amnesty.org/en/documents/eur01/2556/2020/en/>; Isabelle Qian and others, “Four Takeaways From a Times Investigation Into China’s Expanding Surveillance State”, New York Times, 21 June 2022, <https://www.nytimes.com/2022/06/21/world/asia/china-surveillance-investigation.html>

¹¹⁵ Amnesty International, *Out of Control: Failing EU Laws for Digital Surveillance Export* (Index: EUR 01/2556/2020), September 2020, <https://www.amnesty.org/en/documents/eur01/2556/2020/en/>

¹¹⁶ Amnesty International, *Out of Control: Failing EU Laws for Digital Surveillance Export* (Index: EUR 01/2556/2020), September 2020, <https://www.amnesty.org/en/documents/eur01/2556/2020/en/>, p. 19; Jessica Batke and Mareike Ohlberg, “State of Surveillance”, China File, 30 October 2020, <https://www.chinafile.com/state-surveillance-china>

¹¹⁷ Gabi Verberg, “Chinese Media Warn WeChat Group Admins: “You Can Be Arrested for What Happens in Your Group Chat””, What’s on Weibo, 1 May 2019, <https://www.whatsonweibo.com/chinese-media-warn-wechat-group-admins-you-can-be-arrested-for-what-happens-in-your-group-chat/>

¹¹⁸ UN Guiding Principles, Principle 13 and 17.

¹¹⁹ OHCHR, *Taking Action to Address Human Rights Risks Related to End-Use, A B-Tech Foundational Paper*, September 2020, <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/B-Tech/taking-action-address-human-rights-risks.pdf>

¹²⁰ Amnesty International, *Out of Control: Failing EU Laws for Digital Surveillance Export* (Index: EUR 01/2556/2020), September 2020, <https://www.amnesty.org/en/documents/eur01/2556/2020/en/>

region of Xinjiang. The investigation showed how the exports posed serious human rights risks linked to the Chinese state surveillance complex and the country's use and misuse of its criminal law system to restrict human rights. A 2021 media report mentioned these and other human rights risks in exports of DNA kits by a different Netherlands-based company to China.¹²¹ Other reports focused on US-based companies and showed how chips made by US companies have been used to power digital infrastructure behind China's surveillance state.¹²²

The integration of civil, military and government actors and goals in the Chinese tech context substantively heightens the human rights risks linked to foreign tech companies' operations in and/or exports to China. This integration is underscored in strategies such as the National Military-Civilian Integration Development Strategy, which aims to achieve comprehensive civil-military cooperation and underlies both long-term economic planning and concrete projects such as the innovation of (dual-use) technologies.¹²³ In addition, the Chinese party-state steers and controls Chinese businesses, including private ones, in a myriad of ways.

A particularly illustrative example involves public-private partnership (PPP) agreements concerning the development and management of public security and surveillance infrastructure. These are conducted between municipal authorities that need to operationalize national public security directives, and third-party contractors hired via competitive bidding processes.¹²⁴ Among other things, the agreements are used to operationalize Smart/Safe City and Internet of Things projects that require inputs from many types of entities. The widespread use of PPP agreements in the security industry creates a market structure where company growth is closely tied to state-driven infrastructure projects that present extensive human rights risks,¹²⁵ and where technological innovation is driven not only by the state but also by third-party contractors eager to address the growing needs of the Chinese state panopticon.¹²⁶

Given the repression in China and the substantial risk of becoming entangled in the Chinese public security and surveillance complex, and therefore becoming directly linked to the serious human rights violations involved, Dutch tech companies operating or planning to operate in China must conduct heightened human rights due diligence.

4.2 SAUDI ARABIA

REPRESSION

The Saudi Arabian government's rhetoric about reforms, which increased after the appointment in 2017 of Mohammed bin Salman bin Abdulaziz Al Saud as Crown Prince, centred on Vision 2030, a national plan to diversify the economy and end the country's dependence on income from oil.¹²⁷ Since the announcement of Vision 2030, the government has relaxed social restrictions and loosened the repressive guardianship system imposed on women. However, these reforms stand in stark contrast to the grim overall human rights reality.

Rights to freedom of expression, association and assembly

The authorities do not allow political parties, trade unions or independent human rights groups. They prosecute and imprison those who set up or participate in unlicensed human rights organizations. The 2015 Law on Associations excludes any mention of "human rights".¹²⁸ It extends wide discretionary powers to the Ministry of Human Resources and Social Development, including to deny licences to new organizations and disband the organizations if they "harm national unity". No independent human rights organization has been able to register under the law and several human rights defenders have been tried and sentenced for establishing such organizations. Saudi Arabia has no national human rights institution accredited with the

¹²¹ Dorine Booij and Siem Eikelenboom, "Dutch company sells China DNA kits for ethnic cleansing", Follow the Money, 13 November 2021, <https://www.ftm.eu/articles/qiagen-sells-dna-kits-china-ethnic-cleansing>

¹²² John Chan, "China's surveillance infrastructure powered by U.S. Tech", China Digital Times, 23 November 2020, <https://chinadigitaltimes.net/2020/11/chinas-surveillance-infrastructure-powered-by-u-s-tech/>

¹²³ Clingendael, "Technologische samenwerking met China", October 2021, https://www.clingendael.org/sites/default/files/2021-11/Rapport_Technologische_samenwerking_met_China.pdf, p. 24

¹²⁴ Charles Rollet, "Dahua and Hikvision Win Over \$1 Billion In Government-Backed Projects In Xinjiang", IPVM, 23 April 2018, <https://ipvm.com/reports/xinjiang-dahua-hikvision>

¹²⁵ Darren Byler, "In the Camps: China's Hi-Tech Penal Colony", 2021.

¹²⁶ An illustrative example of such close collaboration consists of the Chinese companies Hikvision and Dahua helping to write Chinese police video surveillance standards, see IPVM, "Dahua and Hikvision Co-Author Racial And Ethnic PRC Police Standards", 20 March 2021, <https://ipvm.com/reports/racial-ethnic-standards>

¹²⁷ Vision 2030 Kingdom of Saudi Arabia, <https://www.vision2030.gov.sa/> (accessed on 14 December 2022).

¹²⁸ Saudi Arabia, Law on Associations, 2015, <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/37e0768f-8e3c-493a-b951-a9a700f2bbb1/1>

UN.¹²⁹ The Saudi Arabia Human Rights Commission, established in 2005, is effectively a governmental organization.¹³⁰

The 2017 Law for the Crimes of Terrorism and its Financing has been widely used to prosecute peaceful activists before the Specialized Criminal Court (SCC), Saudi Arabia's counter-terror court.¹³¹ The law uses an overly vague definition of "terrorism", a "terrorist crime" and a "terrorist entity", which serves to criminalize the peaceful exercise of freedom of expression and is used to charge human rights defenders for their peaceful activism. It suppresses freedom of expression by imposing a prison sentence of 5-10 years for "directly or indirectly insulting" the King or Crown Prince in a way that impugns religion or justice.

The Anti-Cyber Crime Law is often invoked when convicting and sentencing government critics and human rights defenders for peacefully exercising their rights to freedom of expression and association, citing tweets and other online messages as evidence. Article 6 states that the "production, preparation, transmission, or storage of material impinging on public order, religious values, public morals and privacy, through the information network or computers" is a crime punishable by up to five years' imprisonment and a fine.¹³²

Repression of human rights defenders and the absence of space for civil society

A campaign to crush civil society and political opponents has been orchestrated at the highest levels of the government for years, especially since 2018. As of mid-2022, nearly all human rights defenders, women's rights activists, independent journalists, writers and activists in the country have been arbitrarily detained then released on condition of their silence and with travel bans, or have faced prolonged unfair trials before the SCC.¹³³

Freedom of expression has deteriorated further since Mohammed bin Salman became Crown Prince in 2017. The clampdown on dissent includes critics in the media and former officials, and has extended beyond its borders. Most notoriously, the killing of Jamal Khashoggi in Istanbul in Turkey laid bare the lengths to which the Saudi establishment would go to silence critics and increase the climate of fear.¹³⁴

Despite the long-awaited release in 2021 of all of the detained women human rights defenders, including Loujain al-Hathloul, the conditions placed on the releases effectively perpetuated violations of their rights. The conditions include bans on travelling, public speaking, the resumption of their human rights work and/or the use of social media.¹³⁵

The year 2022 saw new waves of arrests and convictions of individuals tried on an array of "terrorism" and cybercrime-related charges linked to their peaceful expression on social media. Between October and December 2022, Amnesty International documented the cases of 14 individuals sentenced to absurdly long prison terms ranging from 10 to 45 years following grossly unfair trials, primarily for their social media activity.¹³⁶ In August, Salma al-Shehab and Noura al-Qahtani were sentenced to 34 and 45 years in prison respectively for tweets that supported women's rights and detained activists. Noura al-Qahtani's sentence is the longest known prison sentence punishing free speech in Saudi Arabia, signalling an alarming deterioration of the human rights situation.¹³⁷ As of January 2023, Amnesty International had documented the cases of 67 individuals, including human rights defenders, journalists, poets and clerics, who had been prosecuted for exercising their rights to freedom of expression, association and assembly. Forty-four of them remained imprisoned in February 2023.¹³⁸

¹²⁹ UN OHCHR, UN Human Rights and NHRIs, <https://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx> (accessed on 14 December 2022).

¹³⁰ See for example the BBC's description of the Commission as "state-backed": BBC, "Saudi Arabia ends executions for crimes committed by minors, says commission", 27 April 2020, <https://www.bbc.co.uk/news/world-middle-east-52436335>

¹³¹ Saudi Arabia, Law on Counter Terrorism and its Financing, 2017, <https://laws.boe.gov.sa/Boelaws/Laws/LawDetails/57694209-3eed-46c7-a5d8-a9ed012761d4/1>

¹³² Saudi Arabia, Anti-Cyber Crime Law, 2007, https://www.cst.gov.sa/ar/mediacenter/publicationsandbrochures/Documents/PR_PRN_002A.pdf, article 6.

¹³³ Amnesty International, *Muzzling critical voices: Politicized trials before Saudi Arabia's Specialized Criminal Court* (Index: MDE 23/1633/2020), 6 February 2020.

¹³⁴ Nick Hopkins and Stephanie Kirchaessner, "'Credible evidence' Saudi crown prince liable for Khashoggi killing – UN report", The Guardian, 19 June 2019, <https://www.theguardian.com/world/2019/jun/19/jamal-khashoggi-killing-saudi-crown-prince-mohammed-bin-salman-evidence-un-report>

¹³⁵ Amnesty International, *Saudi Arabia's post-G20 crackdown on expression: Resumption of crackdown on free speech, human rights activism and use of the death penalty* (Index: MDE 23/4532/2021), August 3 2021.

¹³⁶ Amnesty International, "Saudi Arabia: Alarming crackdown on online expression", 14 February 2023, <https://www.amnesty.org/en/latest/news/2023/02/saudi-arabia-alarming-crackdown-on-online-expression/>

¹³⁷ Amnesty International, *Saudi Arabia: Joint Statement: Saudi authorities must release women's rights activist Salma al-Shehab* (Index: MDE 23/5993/2022), 29 August 2022.

¹³⁸ Amnesty International, "Saudi Arabia: Alarming crackdown on online expression", 14 February 2023 (previously cited).

There are no migrant rights organizations with formal standing in Saudi Arabia able to assist businesses in understanding human rights risks within their value chains. Trade unions do not exist. There are no housing advocates to evaluate state policies on land expropriation and their effect on residents' rights to housing. Independent media do not exist. International human rights organizations are not allowed to enter the country for research. Amnesty International faces difficulty to monitor and document human rights violations as a culture of fear has spread among the Saudi public, resulting in fewer people willing to share information.

HUMAN RIGHTS RISKS FOR BUSINESSES

Businesses with activities in or contemplating activities in Saudi Arabia have several human rights risks to consider. This section focuses on two of the key risks in the construction sector: abuse of migrant workers' rights and forced evictions.

A key aim of Vision 2030 is to decrease unemployment among Saudi nationals by reducing the country's dependency on migrant labour. However, the private sector continues to rely heavily on migrant workers, in particular for lower skilled labour. For instance, the megaprojects, which are an important part of Vision 2030, including the futuristic tech city NEOM, the leisure city of Qiddiya and the luxury tourism Red Sea Project, will require a large number of "blue collar" construction workers – roles exclusively filled by migrant workers in Saudi Arabia. The Red Sea Project alone is likely to involve at least 35,000 migrant workers.¹³⁹ Dutch companies active in the construction sector in Saudi Arabia, whether in the field of design, engineering, management consulting or actual construction, are therefore certain to be linked to migrant workers in their projects, whether as direct employees or employees of sub-contractors or business relations.

Around 10 million migrant workers are currently employed in Saudi Arabia. They are subject to one of the most restrictive forms of *kafala* in the region, a set of laws that comprises a restrictive sponsorship system that leaves workers reliant on employers for all the critical stages of their migration journey.¹⁴⁰ This system increases workers' vulnerability to a wide range of abuses, including forced labour, and creates an excessively unequal power relationship in which workers have limited and ineffective avenues open to them for redress. The outcome for migrant workers has been widespread abuse and exploitation, reported over decades.

Migrant workers often face gruelling working conditions and work long hours without breaks or days off. Many workers face irregular or non-payment of their agreed wages. They are subjected to verbal and physical abuse and have their passports regularly confiscated by abusive employers who act with impunity. Their residency in the country is tied to their employers, which makes the workers dependent on them and increases their vulnerability to abuses, including physical and sexual assault. Payment by workers of illegal recruitment fees in their home countries is a near-universal practice, and leaves them in debt and therefore fearful of leaving abusive jobs. Women domestic workers face some of the harshest working conditions as well as isolation, gender-based discrimination and violence. Domestic migrant workers are even excluded from the insufficient protections under the country's labour law.

Various reports have raised serious concerns about unexplained deaths of migrant workers: 10,416 people from India alone reportedly died in Saudi Arabia between 2012 and 2018.¹⁴¹ There are well-founded concerns that many such deaths in Gulf countries may be caused by working in extreme weather conditions.¹⁴²

The ban on trade unions leaves migrant workers unable to collectively re-balance the relationship with their employers to improve their working conditions and combat labour abuses. Labour courts were only introduced in late 2018, and it is unclear to what extent these courts are functioning.

In March 2021, Saudi Arabia's Ministry of Human Resources and Social Development announced limited reforms to its *kafala* system, allowing migrant workers to change jobs without the permission of their

¹³⁹ Global Construction Review, "Saudi Arabia picks teams to build village for 10,000 workers on Red Sea tourism mega-scheme", 24 July 2019, <https://www.globalconstructionreview.com/news/saudi-arabia-picks-teams-build-village-10000-worke/>

¹⁴⁰ ILO, *Employer-migrant worker relationships in the Middle East; Exploring scope for internal labour market mobility and fair migration*, 2017, https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_552697.pdf

¹⁴¹ Venkatesh Nayak, "RTI REVEAL: More than 10 Indian workers died every day in Gulf countries in the last six years; 117 deaths for every US\$ 117 remitted", Commonwealth Human Rights Initiative, undated, <https://www.humanrightsinitiative.org/blog/rti-reveal-more-than-10-indian-workers-died-every-day-in-gulf-countries-in-the-last-six-years-117-deaths-for-every-us-117-remitted->

¹⁴² Migrant-Rights.org, "Summer outdoor work bans end across the GCC, but heat stress continues", 2 October 2019, <https://www.migrant-rights.org/2019/10/summer-outdoor-work-bans-end-across-the-gcc-but-heat-stress-continues/>; and Amnesty International, *Qatar: "In the prime of their lives": Qatar's failure to investigate, remedy and prevent migrant workers' deaths* (Index: MDE 22/4614/2021), 26 August 2021.

employers on certain conditions.¹⁴³ The conditions include non-payment of salary for three consecutive months; expiry of the employee's work permit; and when an employer fails to attend two litigation hearings if a labour dispute has arisen. If migrant workers arrive in Saudi Arabia to find that they have been deceived about the terms and conditions of their work during the recruitment process, or are subjected to abusive working or living conditions by their employer, the question of whether or not they can change jobs still depends on their employer – the very person responsible for their abuse.

The reforms also stipulate that migrant workers can submit an online application to request an exit visa from the Ministry of Human Resources and Social Development. The application is shared with their employers. The criteria to accept this exit permit remains unclear. Moreover, workers who leave their employer without consent can still face the threat of being reported to the authorities for “absconding” from their employers, leaving them at risk of arrest and deportation. Under these conditions, migrant workers continue to be tied to their employers, who retain considerable control over their rights and freedom of movement.

The various megaprojects planned in Saudi Arabia involve the development of vast swathes of land. According to reports, the Red Sea Project will be the size of Belgium,¹⁴⁴ while the smart city NEOM is likely to be 35 times the size of Singapore.¹⁴⁵ There are human rights risks relating to the expropriation of land required for these projects, given the history of illegitimate land acquisition ahead of projects¹⁴⁶ and recent cases where development projects have led to arrests, violence and fatalities due to protests against the projects. As Dutch companies are involved in several of these megaprojects, these are risks that companies should pay particular attention to in their human rights due diligence process.

Most recently, the development of NEOM has seen violent confrontations over land acquisition and planned evictions. According to Bloomberg, many residents supported the project until it became clear in early 2020 that they would be expected to take compensation and leave the area.¹⁴⁷ In April 2020, after months of tension, security forces killed Abdul Rahim al-Huwaiti, leader of the Huwaitat tribe that had long lived on part of the land earmarked for NEOM. He had led resistance to the development and the removal of the Huwaitat from the area. In October 2022, Saudi human rights organization AIQST reported that the SCC had sentenced to death three members of the Huwaitat tribe for protesting against forced eviction from their homes.¹⁴⁸

In the coastal city of Jeddah, an ongoing large-scale demolition and eviction plan impacts half a million people in over 60 neighbourhoods, violates international human rights standards and discriminates against foreign nationals.¹⁴⁹ Saudi authorities failed to engage in genuine consultation with residents, provide adequate notice, or announce the amount of compensation and provide it to residents prior to the demolitions.

Given the general repression in Saudi Arabia, the widespread nature of labour rights abuses and the risks related to expropriation of lands, Dutch companies involved in the construction sector run a high risk of causing, contributing or being linked to harm. Companies should therefore conduct heightened human rights due diligence.

¹⁴³ Saudi Arabia, Ministry of Human Resources and Social Development, دليل المستخدم لخدمات مبادرة تحسين العالفة التعاقدية, March 14 2021, <https://hrsd.gov.sa/sites/default/files/13032021.pdf>

¹⁴⁴ Matthew Martin and Sarah Algethami, “Saudi Arabia’s Red Sea Development Seeks to Raise \$3.5 Billion”, Bloomberg, 26 August 2019, <https://www.bloomberg.com/news/articles/2019-08-26/saudi-arabia-s-red-sea-development-seeks-to-raise-3-5-billion>

¹⁴⁵ The National News, “Neom moves forward with second batch of payments to property owners”, 13 July 2020, <https://www.thenationalnews.com/business/economy/neom-moves-forward-with-second-batch-of-payments-to-property-owners-1.1048601>

¹⁴⁶ Land grabs by the state or by senior princes for development projects has been a longstanding area of controversy among citizens. In the late 1990s, a US Embassy cable detailed how “royal land scams increasingly have become a point of public contention”, detailing several large parcels of lands in Riyadh and Mecca which had been acquired illegitimately by senior royals, who “use their clout to confiscate land from commoners, especially if it is known to be the site for an upcoming project and can be quickly resold to the government for a profit”. See more here: Wikileaks, “Saudi royal wealth: where do they get all that money?”, https://wikileaks.org/plusd/cables/96RIYADH4784_a.html (accessed on 10 February 2023).

¹⁴⁷ Vivian Nereim, “Hope turns to doubt, Then Gunfire, as Saudi Megacity Emerges”, Bloomberg, 24 April 2020, <https://www.bloomberg.com/news/articles/2020-04-24/hope-turns-to-doubt-then-gunfire-as-new-saudi-megacity-emerges>

¹⁴⁸ AIQst, “Death sentences for men who refused to make way for Neom”, 10 October 2022, <https://www.alqst.org/en/posts/754>

¹⁴⁹ Amnesty International, “Mass demolitions and forced evictions marred by violations and discrimination”, 22 June 2022, <https://www.amnesty.org/en/latest/news/2022/06/saudi-arabia-mass-demolitions-and-forced-evictions-marred-by-violations-and-discrimination/>

4.3 RUSSIA

REPRESSION

Rights to freedom of expression, association and assembly

The human rights situation in Russia has been rapidly deteriorating since 2012, when a series of repressive laws were adopted, restricting fundamental freedoms and shrinking the civic space for human rights organizations and human rights defenders. Fundamental rights and freedoms have been and are being routinely violated.

Over the past decade, public assemblies organized by the political opposition have rarely received “authorization” and are thus “unlawful”, making participants and organizers open to prosecution. Legislation on “foreign agents” and “undesirable organizations” has been widely used to suppress dissent, as have prosecutions on trumped-up charges and other forms of pressure. Since 2012, threats and attacks against human rights defenders, journalists and civil society activists have been perpetrated with impunity.¹⁵⁰

The human rights situation further deteriorated in 2020, in the context of measures taken to address the Covid-19 pandemic, and in 2021 following mass protests against the detention and prosecution of leading opposition politician Aleksei Navalny. Authorities used the pandemic as a pretext to continue the crackdown on all dissent, including through amendments to a vaguely worded law on “fake news” and tightening restrictions on public gatherings.¹⁵¹ The government intensified repression against opposition and civic activists, peaceful protesters, journalists, lawyers, student activists, academics and artists.¹⁵² A slew of repressive legislation introduced new restrictions on freedom of peaceful assembly, expression and access to online information.

Laws introduced since the early 2000s have critically undermined the right to freedom of peaceful assembly.¹⁵³ It has become virtually impossible to hold peaceful protests without the risk of arbitrary detention. Protesters are often beaten by the police and ill-treated in detention, and face stiff penalties. Police enjoy impunity for even the most severe violence. In 2021 in Moscow, facial recognition technologies were reportedly used to identify and reprimand peaceful protesters.¹⁵⁴ The number of people detained in January and February 2021 for participating in protests supporting the opposition activist Aleksei Navalny, including through the use of CCTV cameras with facial recognition software, exceeded 17,500, according to the government’s own data.¹⁵⁵

Additionally, employees and students have been intimidated and prosecuted for taking part in protests or supporting opposition, and students have been expelled from educational institutions.¹⁵⁶

The government has been increasingly pressurizing and sanctioning with heavy fines global IT companies like Google, Apple and Meta for refusing to delete content that the government deems illegal or harmful,

¹⁵⁰ Amnesty International, *Amnesty International Report 2021/22: The State of the World’s Human Rights*, (Index: POL 10/4870/2022), 2022, <https://www.amnesty.org/en/wp-content/uploads/2022/03/POL1048702022ENGLISH.pdf>, p. 309

¹⁵¹ Amnesty International, *Amnesty International Report 2020/21: The State of the World’s Human Rights*, (Index: POL 10/3202/2021), April 2021, <https://www.amnesty.org/en/documents/pol10/3202/2021/en/>, p. 302

¹⁵² Amnesty International, *Amnesty International Report 2021/22: The State of the World’s Human Rights*, (previously cited), p. 311.

¹⁵³ Amnesty International, *Russia: No Place For Protest* (Index: EUR 46/4328/2021), 12 August 2021, <https://www.amnesty.org/en/documents/eur46/4328/2021/en/>, p. 4.

¹⁵⁴ Amnesty International, *Amnesty International Report 2021/22: The State of the World’s Human Rights* (previously cited), p. 310.

¹⁵⁵ Permanent Mission of the Russian Federation to the United Nations Office and other international organizations in Geneva, Information from the Russian Federation in response to the joint enquiry by special procedures of the Human Rights Council concerning alleged violations of the civil rights of participants in the mass unauthorized events in Moscow and other major Russian cities on 23 and 31 January and 2 February 2021, HRC/NONE/2021/SP/29, 20 April 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=36154>, p. 4.

¹⁵⁶ RFERL, “‘Why Don’t You Like Putin?’: Russian Students Pay A Heavy Price For Political Protests”, 13 April 2021, <https://www.rferl.org/a/russia-young-protesters-targeted-expelled-criminal-charges-navalny-putin/31201858.html>; Moscow Times, “Russian Student Journalists Face Jail Over Navalny Protest Video”, 14 April 2021, <https://www.themoscowtimes.com/2021/04/14/russian-student-journalists-face-jail-over-navalny-protest-video-a73585>; RFERL, “Six Officials At Moscow Prosecutor’s Office Reportedly Fired For Liking Posts By Navalny’s Foundation”, 22 October 2021, <https://www.rferl.org/a/moscow-prosecutor-fired-navalny-posts/31524661.html>; Amnesty International, “Police searches at student magazine are a new low for press freedom”, 14 April 2021, <https://www.amnesty.org/en/latest/press-release/2021/04/russia-police-searches-at-student-magazine-are-a-new-low-for-press-freedom>

including information about “unauthorized” public assemblies,¹⁵⁷ or for alleged data breach violations.¹⁵⁸ Russia’s federal media regulator Roskomnadzor can block websites found to contain information prohibited in Russia, and issue warnings and orders to remove content found to be “harmful”.¹⁵⁹ In December 2020, Roskomnadzor received further powers to block online resources – those found to “discriminate” against Russian pro-government media.¹⁶⁰ On 4 March 2022, Roskomnadzor blocked Facebook on the grounds that it had blocked access to several Russian media.¹⁶¹

On 11 March 2022, Moscow’s Tverskoy District court upheld the Prosecutor General’s office request to declare Meta an “extremist organization” and ban its activities in Russia. Roskomnadzor banned and blocked Facebook and Instagram owned by Meta. In March 2022 and October 2022, Meta was added to the list of “terrorist and extremist organizations”.¹⁶² Twitter was blocked in March 2022.

Internet communications have been increasingly controlled and restricted. In 1998, the government began to adapt Soviet-era surveillance technology, known as the System of Operative Investigative Activities (SORM), for the digital domain. Russia’s main intelligence service, the Federal Security Service (FSB), uses SORM to listen in on phone conversations, intercept emails and text messages, and track other internet communications, mostly without a court order.¹⁶³ The system enables police to track private email communications, identify internet users, and monitor their internet activity. Internet freedom advocates say the measure allows for surveillance by intelligence agencies and enables state authorities to control information and block content.¹⁶⁴ In principle, SORM is meant to fight legitimate goals, such as countering terrorism, but it is known to be used against other targets, such as political opponents and independent journalists, thus potentially leading to violations of the right to a private life and communication.¹⁶⁵

To supplement technological surveillance, starting in the early 2000s, the Russian state began to implement laws that in practice criminalize criticism of the government, legalize unfettered surveillance of citizens’ online activities, and increase state control of the Russian internet or Runet.¹⁶⁶

According to human rights activists, the Russian authorities routinely employ surveillance and other measures to spy on and intimidate citizens. They say the law lacks appropriate safeguards to prevent the misuse of the resulting data, especially without any judicial or public oversight over surveillance methods and technologies.¹⁶⁷

¹⁵⁷ Amnesty International, “Amnesty International recommendations to the EU and its member states: The EU Strategic Approach towards Russia”, December 2021, on file with Amnesty International.

¹⁵⁸ Forbes, “Russia Targets Apple And Google In Latest Anti-Silicon Valley Moves”, 19 July 2022, <https://www.forbes.com/sites/dereksaul/2022/07/19/russia-targets-apple-and-google-in-latest-anti-silicon-valley-moves/?sh=7d99633741f7>

¹⁵⁹ Some content could be legitimately blocked (e.g. child pornography) but other types of content are blocked or demanded to be removed in violation of the freedom of expression. For instance, dozens of websites publishing about LGBTI-issues have been blocked after the LGBT+ propaganda ban was adopted in December 2022, see RTVI, Роскомнадзор отчитался о блокировке более 300 сайтов с «пропагандой ЛГБТ» за полтора месяца, <https://rtvi.com/news/roskomnadzor-otchitalsya-o-blokirovke-bolee-300-sajtov-s-propagandoj-lgbt-za-poltora-mesyacza/>

¹⁶⁰ Tass, Путин подписал закон о блокировке интернет-ресурсов за цензуру против российских СМИ, 30 December 2020, <https://tass.ru/politika/10384489>

¹⁶¹ Interfax, Роскомнадзор решил заблокировать Facebook в России, 4 March 2022, <https://www.interfax.ru/russia/826396>

¹⁶² Moscow Times, “Russia Adds Meta to List of ‘Terrorist and Extremist’ Orgs”, 11 October 2022, <https://www.themoscowtimes.com/2022/10/11/russia-adds-meta-to-list-of-terrorist-and-extremist-orgs-a79057>

¹⁶³ New York Times, “When Nokia Pulled Out of Russia, a Vast Surveillance System Remained”, 28 March 2022, <https://www.nytimes.com/2022/03/28/technology/nokia-russia-surveillance-system-sorm.html>

¹⁶⁴ US State Department, *Russia 2021 Human Rights Report*, https://www.state.gov/wp-content/uploads/2022/04/3136152_RUSSIA-2021-HUMAN-RIGHTS-REPORT.pdf, p. 38-39

¹⁶⁵ Examples are the leaking of the phone conversations of Boris Nemtsov (the Russian opposition politician, murdered in 2015), and when during the 2013 Navalny trial his phone calls were cited in the case materials as proof of his guilt, everyone agreed that the police got access to the contents of phone calls thanks to SORM. See BBC Russian Service, “Прослушка телефонов в России: все по закону?”, 10 June 2013, https://www.bbc.com/russian/russia/2013/06/130610_russia_watch_and_Agentstvo_Nokia_ushla_iz_Rossii_no_ostavila_oborudovanie_kotoroe_ispolzuyut_rossiyskie_specluzhby_dlya_slezki, 29 March 2022, <https://www.agents.media/nokia-ushla-slezhka/>

¹⁶⁶ Alina Polyakova and Chris Meserole, “Exporting digital authoritarianism: The Russian and Chinese models”, Brookings, Foreign Policy, https://www.brookings.edu/wp-content/uploads/2019/08/FP_20190827_digital_authoritarianism_polyakova_meserole.pdf, p. 2.

¹⁶⁷ US State Department, *Russia 2021 Human Rights Report*, https://www.state.gov/wp-content/uploads/2022/04/3136152_RUSSIA-2021-HUMAN-RIGHTS-REPORT.pdf, p. 26.

Since 2012, Russia has adopted a raft of laws further restricting freedom of expression and the right to privacy online, including the infamous 2016 “Yarovaya Law”.¹⁶⁸ Justified on the grounds of “countering extremism”, this law requires all communications providers and internet operators to store metadata about their users’ communications activities, disclose decryption keys at the security services’ request, and use only encryption methods approved by the Russian government. In practical terms, this creates a backdoor for Russia’s security agents to access internet users’ data, traffic and communications. All communications providers and internet operators are required to store their data in ways that allow Russia’s security agencies to access it.¹⁶⁹

Human rights defenders

The situation of human rights defenders in Russia has deteriorated significantly since President Vladimir Putin began his third presidential term in 2012. The authorities passed laws imposing severe restrictions on the rights to freedom of association, assembly and expression. They sought to discredit individuals and NGOs (both Russian and international) involved in human rights work. Several mainstream media mounted smear campaigns against human rights defenders, portraying them as working for foreign paymasters to undermine the country’s security and “traditional values”.

Criminal proceedings have been launched against prominent human rights defenders, some of whom have been imprisoned. Human rights defenders are the targets of routine physical attacks and death threats, including by senior officials. Neither the attacks nor the threats are effectively investigated.¹⁷⁰ Since 2012, the authorities have targeted independent Russian NGOs through the “foreign agents” law¹⁷¹ and seek to cut foreign funding that enabled them to operate independently through the law on “undesirable foreign organizations”.¹⁷² The laws drastically reduce the funding available for Russian civil society organizations and in some cases put their existence at risk. By undermining public trust, these laws have driven a wedge between civil society organizations and the general public. They have also served as a barrier to the NGOs’ ability to engage in a working relationship with the authorities. Hundreds of independent NGOs have seen their funding shrink, reputations tarnished and staff intimidated. Dozens have been forced to close down.¹⁷³ Since its adoption in 2012, the “foreign agents” law has been extended to media, unregistered groups, individual journalists, lawyers, individual human rights defenders, activists and artists.¹⁷⁴

Other developments that further limit the impact of civil society have been government control of any non-formal educational and public awareness raising activities, and the frequent abuse of “anti-extremism” and “anti-terrorism” legislation.¹⁷⁵

¹⁶⁸ Meduza, “The Duma’s new ‘Big-Brother’ legislation kills Russia’s Internet companies and hurts ordinary Web users. Here’s how.”, 27 June 2016, <https://meduza.io/en/feature/2016/06/27/the-duma-s-new-big-brother-legislation-kills-russia-s-internet-companies-and-hurts-ordinary-web-users-here-s-how>

¹⁶⁹ Amnesty International, “Joint Public Statement: Russia: Telegram block leads to widespread assault on freedom of expression online”, 30 April 2018, <https://www.amnesty.org/fr/wp-content/uploads/2021/05/EUR4683222018ENGLISH.pdf> and RSF, “Russia: 52 NGOs urge UN to challenge restrictions to online expression and digital privacy”, 27 June 2018, <https://rsf.org/en/russia-52-ngos-urge-un-challenge-restrictions-online-expression-and-digital-privacy>

¹⁷⁰ Amnesty International, *Unfair game: Persecution of human rights defenders in Russia intensifies*, (Index: EUR 46/0950/2019), 17 September 2019, <https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR4609502019ENGLISH.pdf>

¹⁷¹ Federal law №121-FZ of 20 July 2012, published in Rossiiskaya Gazeta, “O vnesenii izmenenii v otdelnye zakonodatelnye akty Rossiiskoi Federatsii v chasti uregulirovaniya deiatelnosti nekoommercheskikh organizatsii, vypolniaiuschikh funktsii inostrannykh agentov” (“On amendments to certain acts of legislation of the Russian Federation regarding regulation of the activity of non-commercial organizations performing the functions of foreign agents”), 23 July 2012, <https://rg.ru/2012/07/23/nko-dok.html>. For subsequent changes to the law see: http://www.consultant.ru/document/cons_doc_LAW_132900/

¹⁷² Federal Law № 129-FZ of 23 May 2015, published in Rossiiskaya Gazeta, “O vnesenii izmenenii v otdelnye zakonodatelnye akty Rossiiskoi Federatsii” (“On amendments to certain acts of legislation of the Russian Federation”), on 26 May 2015, <https://rg.ru/2015/05/26/fz129-dok.html>

¹⁷³ Amnesty International, “Agents of the People, four years of ‘foreign agents’ law in Russia: consequences for the society”, (Index: EUR 46/5147/2016), 18 November 2016, <https://www.amnesty.org/en/documents/eur46/5147/2016/en/>, p. 4-6.

¹⁷⁴ Amnesty International, “New ‘foreign agents’ bill further erodes freedom of expression and association”, 19 November 2020, <https://www.amnesty.org/en/latest/news/2020/11/russia-new-foreign-agents-bill-further-erodes-freedom-of-expression-and-association/>

¹⁷⁵ Amnesty International, “Amnesty International recommendations to the EU and its member states: The EU Strategic Approach towards Russia” (previously cited), p.2.

Invasion of Ukraine

Following Russia's full-scale invasion of Ukraine in February 2022, the authorities unleashed an escalating attack against civil society and independent media in Russia. New laws were speedily passed, severely limiting the rights to freedom of expression, association and assembly and resulting in hundreds of criminal and thousands of administrative prosecutions. Other legislative action included the 2022 "foreign agents" law,¹⁷⁶ which drastically expanded the scope of the existing "foreign agents" legislation, and legal amendments that allow the Prosecutor General's Office without a court decision to ban foreign media and suspend Russian media licences for publishing "fake" information.¹⁷⁷ These legislative initiatives will have far-reaching and devastating consequences for human rights in Russia beyond the armed conflict.¹⁷⁸

The first months after the invasion saw mass prosecutions of peaceful anti-war protesters. Dozens of independent media and social media were blocked and a growing number of human rights defenders, human rights lawyers and journalists have been forced to flee the country.

HUMAN RIGHTS RISKS FOR BUSINESSES

Businesses active in Russia in the area of communication technologies or software development should take into account a number of human rights risks related to the use of hi-tech in political repression. Given the repressive context, the legalization of unfettered surveillance of citizen's online activities, widespread corruption and state control, companies involved in the technology and telecom sectors run a high risk of causing, contributing or being linked to such abuse. They should therefore conduct heightened human rights due diligence.

Over the past 10 years, internet communications have been increasingly controlled and restricted in Russia. As outlined above, the 2016 "Yarovaya Law" gives Russia's security agents a backdoor to access internet users' data, traffic and communications.¹⁷⁹ Foreign companies operating in the internet and telecom sector can only get a licence to operate in Russia if they comply with Russian legislation. This means they are obliged to create such a backdoor – putting at risk the data of their users, who might include human rights defenders, journalists, activists or others at potential risk of state surveillance.

Facial recognition software

Russia has also increased its public surveillance, including via CCTV and using facial recognition. Companies active in these areas should therefore be aware that their products may be used for purposes other than those originally intended. For example, Russian authorities use facial recognition technology to track down and persecute participants of peaceful protests and political opponents.¹⁸⁰

Indeed, authorities in dozens of cities have installed CCTV cameras under the pretext of public safety. By the end of 2020, approximately 200,000 government surveillance cameras had been installed in Moscow and equipped with Russian-developed automated facial recognition software as part of its "Safe City" programme. However, such facial recognition software is increasingly used against activists who criticize the government to prove their participation in "unauthorized protests" and press charges against them.

The system was initially installed in key public places, such as metro stations and apartment entrances, to scan crowds against a database of wanted individuals. During the protests on 21 April 2021 in support of Aleksei Navalny, authorities used facial recognition data to identify protesters, sometimes incorrectly, days after the demonstration.¹⁸¹ Over 150 people arrested during these peaceful protests across 18 Russian cities

¹⁷⁶ On 29 June 2022 the Russian State Duma passed a so called integrated "foreign agents" bill in the third reading. The new legislation expands the interpretation of the term 'foreign agent' and will make it easier for the Russian authorities to label domestic critics as 'foreign agents'. It will be enough to declare that the person or organization in question is under "foreign influence" to blacklist them as 'foreign agents'. See Meduza, "Under the influence Russian lawmakers set to pass integrated 'foreign agents' bill, broadening restrictions", 28 June 2022, <https://meduza.io/en/feature/2022/06/28/under-the-influence>

¹⁷⁷ Rossiiskaya Gazeta, "Генпрокуратура сможет приостанавливать лицензию СМИ за публикацию недостоверной информации", 19 July 2022, <https://rg.ru/2022/07/19/fejki-vpred-ne-projdet.html>

¹⁷⁸ Amnesty International, *Russian Federation: End censorship on voices against the war* (Index: EUR 46/5345/2022), 14 March 2022, <https://www.amnesty.org/en/documents/eur46/5345/2022/en/>

¹⁷⁹ Amnesty International, "Joint Public Statement: Russia: Telegram block leads to widespread assault on freedom of expression online", 30 April 2018, <https://www.amnesty.org/fr/wp-content/uploads/2021/05/EUR4683222018ENGLISH.pdf>, p. 1-2.

¹⁸⁰ OVD-Info, "The use of AI by the state to discourage the exercise of the freedom of assembly in Russia", May 2021, <https://www.ohchr.org/sites/default/files/Documents/Issues/DigitalAge/Submissions/CSOs/OVD-Info.pdf>, p. 2-5.

¹⁸¹ OVD-Info, "How Authorities Use Cameras and Facial Recognition against Protesters", 17 January 2022, <https://en.ovdinfo.org/how-authorities-use-cameras-and-facial-recognition-against-protesters> (last accessed 3 February 2023); Amnesty International, "Russia: Police target peaceful protesters identified using facial recognition technology", 27

were confronted with CCTV pictures as proof of their “illegal activities”.¹⁸² Dozens of people were visited by the police and prosecuted after the protest due to the use of facial recognition software.

The Russian repressive context makes it clear that this situation requires heightened due diligence by companies selling such software.

Telecommunications

Companies involved in telecommunications and data-processing should be aware that they might be forced by Russia’s law enforcement and security services to install SORM and data storage equipment and to store all traffic data for up to three years, granting the authorities virtually direct and unlimited access to user data. Sites or applications that help receive, transmit, deliver and/or process electronic messages must be registered in a special state register maintained by Roskomnadzor, the federal media and internet watchdog. Any messenger, social network, forum, blog or website where users can leave comments or reviews falls under the above-mentioned “Yarovaya Law”. Companies can be included in this register at the order of Roskomnadzor. They are then obliged to store information for up to one year and provide Russian police and security services with data and the means to decode encrypted messages from users upon request. This facilitates the authorities to spy on citizens without a court decision.

4.4 IMPACT OF REPRESSION ON HUMAN RIGHTS DUE DILIGENCE

As shown above, companies with activities in China, Saudi Arabia and Russia operate in a context of severe repression. This requires heightened due diligence by these companies, including assessing their potential impact on the (perpetuation of the) repression. Companies should not only look into the human rights risks salient in their line of work, but also consider the social and political context in which they operate. Heightened due diligence should include investigations into the violations of human rights and state-led persecution of individuals. Companies should also take care not to exacerbate the situation. In contexts where workers are not allowed to organize or speak freely, business operations risk contributing to, or being linked to, discrimination and repression. Companies should also ensure they are not benefiting from or exploiting the abuse committed by the Chinese, Saudi or Russian authorities.

The repression is also likely to impact the ability of companies to take effective due diligence steps, in particular when it comes to the identification, mitigation and monitoring of risks. The identification and assessment of human rights risks and potential impacts are essential to human rights due diligence. As part of these steps, businesses are expected to consult stakeholders or other credible, independent expert resources, such as human rights defenders.¹⁸³ Without such a consultative process, it becomes difficult for businesses to prevent and mitigate adverse human rights impacts. In China, Saudi Arabia and Russia there was (in the period under research) and is hardly any space left for independent civil society. This creates an acute challenge to the responsibility of businesses to collect reliable information and consult stakeholders and independent local civil society.

In these contexts, it may be very difficult for investors and businesses to analyse how their involvement in these countries may impact human rights. In the event of an actual negative human rights impact, businesses will also be at a serious disadvantage, as they will be limited in their ability to assert leverage to mitigate this impact or to remedy past abuses. The more complex the situation and its implications for human rights are, the stronger the case for the enterprise to draw on independent expert advice in deciding how to respond.¹⁸⁴ Businesses may still be able to consult experts based outside China, Saudi Arabia or Russia, including exiled activists, or even hire consultants within the country, to help conduct human rights due diligence. But even they may not be able to access all relevant information and provide an accurate assessment. Furthermore, genuine human rights due diligence in high-risk contexts requires detailed in-country engagement on relevant issues. The question is how this can be feasible in the repressive contexts of China, Saudi Arabia and Russia.

The fact that a number of due diligence tools are not (readily) accessible in the context of repression should push companies to be particularly thorough with regards to the measures that are still available, such as speaking with their embassy and consulting experts and international civil society. Moreover, the obstacles to due diligence are a warning in themselves and raise questions on how a company can operate within the system without risking perpetuating it. In circumstances when business enterprises have concluded that an

April 2021, <https://www.amnesty.org/en/latest/news/2021/04/russia-police-target-peaceful-protesters-identified-using-facial-recognition-technology/>

¹⁸² OVD-Info, “How Authorities Use Cameras and Facial Recognition against Protesters”, 17 January 2022, <https://en.ovdinfo.org/how-authorities-use-cameras-and-facial-recognition-against-protesters> (last accessed 3 February 2023)

¹⁸³ UN Guiding Principles, Principle 18, including Commentary.

¹⁸⁴ UN Guiding Principles, Principle 19, including Commentary.

activity is likely to be linked to a significant human rights risk but are unable to come to further conclusions, they should exercise the presumption of caution and, until additional information is obtained, not undertake the specific activity.

DUTCH COMPANIES' DUE DILIGENCE IN PRACTICE

Amnesty International looked into the quality of human rights due diligence practices of 14 Dutch companies active or formerly active in high-risk sectors in China, Saudi Arabia and Russia and the extent to which the Dutch government provided support in conducting it. Using information available on the companies' websites, media reporting and responses to a written questionnaire, the adequacy and effectiveness of the various aspects of the due diligence process was assessed. The companies selected are or were active in the tech sectors in China and Russia and the construction sector in Saudi Arabia (see Annex 1 for more details), sectors characterized by serious human rights risks.

Companies active in **China**: ASML, BESI, Boschman Advanced Packaging Technology, NXP and Qiagen.¹⁸⁵

Companies active in **Saudi Arabia**: Arcadis, Archirodon, Fugro, Royal HaskoningDHV and Strukton.¹⁸⁶

Companies that were active in **Russia**: Linxdatacenter, MessageBird, Noldus Information Technology, and Prosus.¹⁸⁷

A summary of the key findings of the assessment, without naming the individual company responses, is below.

KEY FINDINGS

Poor transparency

Companies must show how they carried out due diligence, how they tried to overcome challenges in the due diligence process and how they improved the process over time.¹⁸⁸ Transparency about human rights due diligence practices was found to be generally poor. As a rule, companies did not provide appropriately detailed information in published materials or in response to our questionnaire for us to be able to make a comprehensive assessment of their human rights due diligence practices.

Insufficient human rights policies

Businesses should have in place a policy to meet their responsibility to respect human rights.¹⁸⁹ Four companies with links to China had human rights policies in place. They expressed general human rights expectations towards business partners, mainly towards suppliers, but provided little insight into practical verification of human rights respect among their partners. Of the five companies operating in Saudi Arabia, four have human rights policies. Three expressed expectations that business partners respect human rights. However, no details were provided on how this is verified and what steps are taken if clients breach this expectation. Of the companies linked to Russia, only one had a human rights policy. None of the companies made any specific references to human rights in China, Saudi Arabia and Russia in their public documents.

No acknowledgement of restrictions on freedom of expression, assembly and association

Amnesty International asked companies how restrictions on freedom of expression, assembly and association affected their ability to conduct due diligence and how they responded to these obstacles. Only one company explicitly acknowledged these restrictions (in relation to Saudi Arabia). However, it did not reflect on how the repression affected its ability to do due diligence. It is particularly notable that tech companies linked to China and Russia displayed, in general, limited acknowledgment of the risk that products and technologies could be used by the state for targeted or mass surveillance.

¹⁸⁵ Their international headquarters are registered in the Netherlands as: ASML Holding N.V., BE Semiconductor Industries N.V., Boschman Groep B.V., NXP Semiconductors N.V. and Qiagen N.V.

¹⁸⁶ Their international headquarters are registered in the Netherlands as: Arcadis N.V., Archirodon Group N.V., Fugro N.V., Koninklijke HaskoningDHV Groep B.V. and Strukton Groep N.V.

¹⁸⁷ Their international headquarters are (or were, in the case of Linxdatacenter) registered in the Netherlands as: Linx Telecommunications Holding B.V., MessageBird Holding B.V., Noldus Information Technology B.V., Prosus N.V.

¹⁸⁸ UN Guiding Principles, Principles 17 and 21; OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018, p. 33.

¹⁸⁹ UN Guiding Principles, Principle 15 and 16; and OECD Guidelines for Multinational Enterprises, 2011 edition, Part I, Chapter IV 'Human Rights', Para 44.

Little identification of potential risks and actual harms despite known high risks

Disclosures on identified potential risks tended to focus on labour rights in supply chains. Some companies provided considerable detail in their annual reports or on their websites of efforts to audit and assess standards in their supply chains. This is a positive development. However, particularly with respect to China and Russia, companies gave limited indication of understanding or acknowledging the full spectrum of potential human rights risks and impacts of doing business in these countries, particularly with respect to downstream human rights impacts. On China, companies provided no information on identified harms in relation to use or misuse of the companies' products. On Russia, one company considered the Russian government's access to data only in 2015, when the government began to implement a programme to "secure" the internet. However, even then the company did not take adequate steps to protect its customers or their data. This is an indication of an absence of effective due diligence to identify and assess human rights impacts.

Three of the companies active in Saudi Arabia identified salient human rights risks that are relevant to migrant workers. None, however, mentioned the risks to migrant workers' rights explicitly. One company stated that its identification of adverse impacts on workers' rights only begins when workers are on site at construction projects. Another company showed limited understanding of its due diligence responsibilities, writing that because it is engaged in the design and project management of infrastructure projects, it is not "typically involved in construction or contracting projects". Worryingly, several companies reported that they had never uncovered any actual harms. Given the widespread labour rights abuses in the country, and the fact that some of these companies have been active in Saudi Arabia for decades, this is a highly unlikely outcome of a due diligence process, and casts doubts over the quality of these companies' due diligence.

Insufficient steps to cease, prevent or mitigate adverse impacts

Only five companies provided information on steps taken to prevent or mitigate risks. One company said it had blocked one product in China entirely and ended a business relationship by blocking a customer in China. Another company described interacting with a customer over alleged misuse of its software in Russia, but did not specify whether the business relationship had been ended, or the product blocked for that customer after the incident. Importantly, only some of the companies mentioned any efforts to use their leverage, or to seek to increase it. Several companies with links to Saudi Arabia even said that their limited role in large infrastructure projects (providing design, management or engineering services) takes place at such an early stage in the project and/or represents a small proportion of the overall budget, that there is limited leverage to raise issues or that it is unrealistic to expect them to raise questions about human rights concerns. Several said that while they were aware of issues relating to abuse of migrant workers, they were not directly involved in the construction phase of projects.

Little engagement with rights holders and other stakeholders

In general, companies displayed a reluctance to seek independent perspectives on human rights risks. Only one company said it had consulted and was maintaining a dialogue with an independent human rights expert. This is problematic, because in complex situations such as those in China, Saudi Arabia and Russia, there is a strong case for the company to draw on independent expert advice in assessing impacts and deciding how to respond.¹⁹⁰ None of the companies directly addressed the question of whether and how the repression impacted their ability to consult stakeholders.

Tracking implementation below par

In response to the question on how the company assesses the effectiveness of its response to adverse human rights impacts, none explicitly mentioned consulting potentially impacted stakeholders as part of the monitoring process. Only six companies provided general information on how the due diligences process is monitored, including by carrying out periodic assessments of business relationships. None of the others mentioned carrying out periodic assessments of business relationships to verify that risk mitigation measures are being pursued or to validate that adverse impacts have been prevented or mitigated.

¹⁹⁰ UN Guiding Principles, Principle 19, including Commentary.

Insufficient remediation when appropriate

Only one company provided a concrete example of having identified potential harm and the measures it had taken to prevent future negative impacts. One company said it knew of no impacts or instances that required remediation, and that if it is of the view that risks cannot be mitigated, it does not work on the project in question. Nevertheless, the company continues to be involved with major construction projects in Saudi Arabia, where abuse of migrant workers is known to be pervasive.

Little support from the Dutch government in conducting human rights due diligence

Five companies disclosed information about their interactions with the Dutch government. However, only two said their contact included discussions on human rights due diligence. This is of concern, as when businesses are confronted with heightened risks, home states should engage proactively to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships.¹⁹¹

CONCLUSION

Overall, the surveyed companies' human rights due diligence practice in China, Saudi Arabia and Russia was assessed as poor. Based on answers to the questionnaire and publicly available information, Amnesty International could not determine that the companies conduct effective, let alone heightened, human rights due diligence.

These findings are worrying. In high-risks contexts such as China, Saudi Arabia and Russia, there is potential for serious human rights harm. Yet the researched companies do not seem to undertake human rights due diligence in order to counter these higher risks. Only a minority of companies indicate that they have interacted on human rights due diligence with the Dutch government.

Most companies claim not to have identified any actual human rights harms, despite working in high-risk sectors. None of the companies reflected on the impact of repression on the due diligence process, despite serious concerns that this hampers companies' ability to identify and mitigate risks. The overall poor quality of the human rights due diligence process of these companies, most of them large, suggests that extra measures are needed to improve their and other companies' full adherence to the UN Guiding Principles and the OECD Guidelines.

¹⁹¹ UN Guiding Principles, Principle 7.

5. DUTCH GOVERNMENT'S TRADE POLICY: IGNORING RED FLAGS

The Dutch government is obliged to protect people and communities from human rights harm by businesses. The context of repression and heightened human rights risks in China, Saudi Arabia and Russia, as described in Chapter 4, requires the Dutch government to be extra cautious and take additional steps to ensure that businesses operating in those contexts are not involved in human rights abuses.

This means that the government should:

- warn businesses of the heightened risks and establish and communicate clear and heightened due diligence standards;
- at the earliest stage possible, help businesses identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
- ensure their own agencies are sufficiently competent to provide useful and effective advice;
- set clear human rights due diligence conditions for companies receiving government support for activities in these high-risk countries, and attach appropriate consequences to any failure by enterprises to cooperate in these contexts; and
- ensure close cooperation between relevant government agencies, ministries and embassies in order to ensure policy coherence and to effectively assist companies with planned or ongoing activities in high-risk areas.

In the past 10 years, the Dutch government has offered extensive financial and diplomatic support to Dutch companies that were planning or had ongoing activities in China, Saudi Arabia and Russia. According to the Ministry of Foreign Affairs, at least 64 trade missions to these countries were organized at the national level. The number of trade missions is likely to be significantly higher, as the ministry says it does not keep track of all missions organized at the local level or at the initiative of a professional sector.

A wide range of financial instruments was offered to Dutch companies that wanted to do business in the three countries. Government websites¹⁹² provided elaborate information on business opportunities in China, Saudi Arabia and, until the invasion of Ukraine in February 2022, Russia. Diplomatic missions and other Dutch governmental agencies were extensively involved in trade promotion activities. The Netherlands thus initiated, facilitated or encouraged business operations in contexts with heightened human rights risks. This creates a particular responsibility to ensure that the businesses involved are ensuring that they are not causing, contributing to or linked to human rights harm.

This chapter gives an overview of the support Dutch companies with planned or ongoing activities in China, Saudi Arabia and Russia received between 1 January 2011 and 1 June 2022, and the extent to which human rights, human rights due diligence and heightened human rights due diligence considerations were integrated into and/or conditional to this support.

5.1 PRIORITY COUNTRIES IN DUTCH TRADE POLICIES

TRADE PRIORITIZATION WITHOUT HUMAN RIGHTS CONSIDERATIONS

For years, China, Saudi Arabia and Russia have been important trade partners to the Dutch government. In the period under research, from 2011 to 2022, both China and Saudi Arabia were designated priority countries in Dutch trade policies. Russia was a priority country until the full-scale invasion of Ukraine in 2022.¹⁹³

The Dutch 2011 trade policy mentions China, the Gulf states and Russia in a list of 21 priority countries, stressing that “missions will be used even more than before for the promotion of trade and economic

¹⁹² For example RVO, www.rvo.nl (accessed on 8 February 2023).

¹⁹³ Letter from the Minister of Foreign Affairs, “Ruslandbrief”, TK 2019-2020, 35 373, nr. 1, 22 December 2019, <https://open.overheid.nl/repository/ronl-e695493d-6171-4858-a5f2-3af30dee0a21/1/pdf/24%20deu.pdf>, p. 11; and House of Representatives, TK 2022-2023, 36 200 XVII, nr. 10, 22 November 2022, <https://www.tweedekamer.nl/downloads/document?id=2022D43463>, answer to question 52.

diplomacy.”¹⁹⁴ The trade policy mentions China as one of the emerging markets of crucial importance for the Netherlands. The document also stresses that economic diplomacy becomes the guiding principle in Dutch international economic policy. The focus of bilateral economic diplomacy is on “countries with the greatest economic potential where the foreign government plays an important role in economic transactions”.¹⁹⁵

In the subsequent 2013 trade policy letter, China, the Gulf states and Russia were again listed as priority countries. The choice of these countries was based on the “ambitions of top sectors, the size of the market, growth opportunities of the countries and the extent to which the government can help with the removal of trade barriers.”¹⁹⁶ No reflections on the human rights situation in these countries or on the context in which human rights due diligence is conducted were included when discussing this choice.

The government also did not seem to have assessed how its trade policy and stimulating Dutch business operations with and in the priority countries could impact the human rights situation in them. The policy letter stressed that the government aims to give more attention to economic diplomacy in these countries, both in the “internationalization policy” for Dutch companies and in the work of the mission network. The rationale for a larger focus on economic diplomacy was that markets outside Europe are often “characterized by a larger role of the government in the economy” and “economic diplomacy could lead to opening doors for companies in sectors where [...] foreign governments have a strong intervention like energy and water.” The efforts of embassies were seen to be crucial.¹⁹⁷

The subsequent trade policy in 2018 has an even stronger focus on China and the Gulf states, including Saudi Arabia, as these were listed in a list of the top nine considered “strategic markets” in which the government supports Dutch companies’ ongoing or planned activities.¹⁹⁸ Development of multi-annual public-private programmes is seen as key, focused on the so-called top sectors.¹⁹⁹ Various public-private initiatives were subsequently set up.²⁰⁰ The government aimed to organize an economic trade mission to the top nine annually, preferably led by the responsible minister or state secretary.²⁰¹ Russia is named as an “emerging market that needs more assertive cultivation” and is included in the so-called “top 25” for which “tailor-made economic diplomacy” is made available.²⁰² Support to companies includes “extra efforts in economic diplomacy with regard to specific countries and regions that are relatively important for our international earning and/or innovative capacity.”²⁰³ The selection of the top 25 countries was based on criteria of the “economic weight” of these countries, the size of the mutual trade and investment flows, the interest of Dutch companies, and the existence of trade and investment restrictions.²⁰⁴ Again, the repressive context in China, Saudi Arabia and Russia or the human rights risks for companies were not considered in the selection.

¹⁹⁴ Letter from the Minister and State Secretary of Economic Affairs, Agriculture and Innovation, “Buitenlandse markten, Nederlandse kansen”, TK 2010-2011, 31 985, nr. 5, 24 June 2011, <https://zoek.officielebekendmakingen.nl/kst-31985-5.pdf>, p. 7.

¹⁹⁵ Letter from the Minister and State Secretary of Economic Affairs, Agriculture and Innovation, “Buitenlandse markten, Nederlandse kansen” (previously cited), p. 5.

¹⁹⁶ Letter from the Minister for Foreign Trade and Development Cooperation, “Wat de wereld verdient: Een nieuwe agenda voor hulp, handel en investeringen”, TK 2012-2013, 33 625, nr. 1, 5 April 2013, <https://zoek.officielebekendmakingen.nl/kst-33625-1.pdf>, p. 41.

¹⁹⁷ Letter from the Minister for Foreign Trade and Development Cooperation, “Wat de wereld verdient: Een nieuwe agenda voor hulp, handel en investeringen” (previously cited), p. 40.

¹⁹⁸ Letter from the Minister for Foreign Trade and Development Cooperation, TK 2019-2020, 34 952, nr. 86, 30 October 2019, <https://zoek.officielebekendmakingen.nl/kst-34952-86.pdf>, p. 7.

¹⁹⁹ Ministry of Foreign Affairs, “Investeren in Perspectief- Goed voor de wereld, goed voor Nederland”, May 2018, https://www.parlementairemonitor.nl/9353000/1/j4nvgs5kig27kof_j9vvi5epmj1ev0/vkoknc2tx7sy/f=/blg842376.pdf, p. 85.

²⁰⁰ Including Internationaal Strategisch Overleg (ISO), NLinBusiness (NLIB), Trade and Innovate (TINL) and NL Works (used to be “de Werkplaats”). Letter from the Minister for Foreign Trade and Development Cooperation, TK 2019–2020, 34 952, nr. 86 (previously cited), p. 9 and 10.

²⁰¹ Letter from the Minister for Foreign Trade and Development Cooperation, TK 2019–2020, 34 952, nr. 86 (previously cited), p. 7.

²⁰² Russia is included in the so-called Top-25 for which “tailor-made economic diplomacy” is made available. Russia is furthermore named as an “emerging market that needs more assertive cultivation”. See: Letter from the Minister for Foreign Trade and Development Cooperation, TK 2018-2019, 34 952, nr 30 Herdruk, 5 October 2018, <https://www.tweedekamer.nl/downloads/document?id=2018D47984>, p. 7, 8.

²⁰³ Ministry of Foreign Affairs, “Investeren in Perspectief- Goed voor de wereld, goed voor Nederland” (previously cited), p. 83.

²⁰⁴ Ministry of Foreign Affairs, “Investeren in Perspectief- Goed voor de wereld, goed voor Nederland” (previously cited), p. 83.

The 2022 trade policy retains the government's focus on China and the Gulf States, specifically mentioning China and Saudi Arabia in a list of 25 priority countries.²⁰⁵ The minister indicated that the selection of the 25 was based on weighing objective data on the size of a market, the bilateral trade between the Netherlands and that market, and the added value of economic diplomacy. In addition, (geo)political trends and developments, safety, innovative strength and cooperation and commitment to sustainability were considered.²⁰⁶ Again, the human rights situation of the countries was not included in the criteria for the selection.

In conclusion, in all trade policies since 2011, the Dutch government has not taken into account any considerations of human rights risks for companies, the possibilities to conduct effective human rights due diligence by companies and/or the general human rights situation when selecting priority countries for trade and investment. Also, it seems that the Dutch government did not assess how its trade policy and stimulating Dutch business operations with and in the priority country could impact on the human rights situation in the country, thereby failing to conduct its own due diligence.

PRIOR WARNINGS AGAINST 'BUSINESS AS USUAL' WITH RUSSIA

Before Russia's full-scale invasion of Ukraine started in February 2022, both Amnesty International and Russian human rights defenders urged the EU and its member states to use all engagement, including economic and political, to raise concerns about the rule of law and the crackdown on lawyers and civil society, and to exercise due diligence to ensure that such engagement does not directly or indirectly contribute to human rights harm or benefit structures involved in such harm. Russian human rights defenders warned that, given the rampant corruption and absence of the rule of law in Russia, there was a risk that trade and investment activities may link European governments and businesses to human rights violations.²⁰⁷

According to Russia's business ombudsperson's annual report, in 2020 most entrepreneurs did not consider Russia to be safe for business, feared arbitrary arrest and considered that court rulings were not independent.²⁰⁸ In February 2021, Amnesty International called on the EU High Representative for Foreign Affairs Joseph Borrell to counter "any perception that business with the EU continues as usual while the Russian authorities orchestrate a widescale clampdown on human rights and dissent."²⁰⁹

CHINA

In 2022, the Netherlands and China celebrated 50 years of diplomatic relations at ambassadorial level. Their bilateral relationship has been termed an "open and pragmatic partnership" – a unique qualification, as most Chinese partnerships are "strategic".²¹⁰ In this relationship, "[c]riticism is allowed, because partners may disagree on certain issues, but practical cooperation is paramount."²¹¹ The economic side of the relationship with China has been an explicit priority for the Dutch government for years. The government has facilitated and encouraged trade during the past decade (and more) and trade has steadily flourished. In

²⁰⁵ Ministry of Foreign Affairs, "Doen waar Nederland goed in is. Strategie voor Buitenlandse Handel & Ontwikkelingssamenwerking", June 2022, <https://open.overheid.nl/documenten/ronl-98f1d520800bbb8067bdd271ab313cb10a986b93/pdf>, p. 21, 26, 56.

²⁰⁶ House of Representatives, TK 2021-2022, 36 180, nr. 24, 12 October 2022, <https://www.tweedekamer.nl/kamerstukken/detail?id=2022Z16316&did=2022D34321>, answer to question 25.

²⁰⁷ Amnesty International, Amnesty International input to the European Parliament urgency resolution on Russia, 3 June 2021, on file with Amnesty International; "NGO recommendations on EU Policy towards Russia", 17 June 2021, p. 11, on file with Amnesty International (non-public document elaborated on the basis of a series of meetings Amnesty International coordinated between Russian human rights defenders and EU and EU member states officials in mid-June 2021).

²⁰⁸ The Moscow Times, "80% of Russian Business Owners Fear Arbitrary Arrest", 26 May 2021, <https://www.themoscowtimes.com/2021/05/26/80-of-russian-business-owners-fear-arbitrary-arrest-a74011>

²⁰⁹ Amnesty International, "Letter ahead of the HRVPs visit to Moscow", 2 February 2021, https://www.amnesty.eu/wp-content/uploads/2021/02/TIGO_IOR_30_2021_1443_Letter-ahead-of-the-HRVPs-visit-to-Moscow_WEB.pdf

²¹⁰ It was reportedly defined as such by both parties on the occasion of the visit of Xi Jinping to the Netherlands in 2014. See: Vincent Chang and Frank Pieke, *China, de EU en Nederland – Een Chinees Perspectief*, Leiden Asia Centre, 2017, <https://leidenasiacentre.nl/wp-content/uploads/2017/06/Rapport-CN-EU-NL-2017-finaal.pdf>, p. 45.

²¹¹ Vincent Chang, "Fifty years of diplomatic relations with China: an 'open and pragmatic' partnership", 6 June 2022, University of Leiden, <https://www.universiteitleiden.nl/en/news/2022/06/fifty-years-of-diplomatic-relations-with-china-an-open-and-pragmatic-partnership>

2021, China was the second most important import partner for the Netherlands and the ninth most important export partner.²¹²

The Dutch government consistently married trade opportunities to general political concerns in its China policy documents. Until 2019, the opportunities always seemed to outweigh the concerns, and there seemed to be optimism, however cautious, that China would eventually develop into a responsible global player respecting established international norms. Collaboration- and dialogue-focused tools were deemed most appropriate for the Netherlands to address human rights in China.²¹³

During the past decade, the Dutch government shaped its overall China policy in consecutive “China policy notes”.²¹⁴ These discuss various aspects of the relationship between China and the Netherlands, including trade and human rights, and contain the general outline of the Netherlands’ China policy. They differ considerably in terms of how they frame the relationship between the two countries.

The 2006 policy note seems to be primarily concerned with finding the best ways to profit from the immense opportunities China represents. It indicates: “The government sees China primarily as a country that offers opportunities and less as a country of threats”.²¹⁵ Even though China should continue to be addressed on “those policy areas that the Netherlands is critical of, such as human rights,” cooperation with China is key in all areas of the relationship, including politics.²¹⁶ In its 2013 China policy note, the Dutch government indicates that it strives for “a more coherent policy that takes maximum advantage of the opportunities that China offers the Netherlands, while keeping a sharp eye on the Chinese political and administrative reality in which bureaucracy, politics and business are closely intertwined.”²¹⁷ The policy note reserves a dedicated space to address human rights concerns with China, focusing on collaboration and dialogue as the main ways to “develop common values” and “respond to [issues of] joint interest”.²¹⁸ Emphasizing the importance of regular trade missions and indicating that the Dutch government needs to fulfil a “brokerage role” for Dutch companies, the 2013 China policy note reflects the 2013 Dutch trade policy.²¹⁹

The 2019 China policy note differed considerably from its predecessors. It put forward the creed “open where possible, protective where necessary” as a general guideline for Dutch dealings with China.²²⁰ While China was still seen as full of opportunities and an important trade and investment partner for the Netherlands, the 2019 policy note emphasized the risks that come with China engagement and with China’s changing domestic and international policies. The 2019 policy did not formulate new ways to address the changing human rights realities, yet it did focus renewed attention on the depth of the human rights crisis in China and highlighted China’s human rights impact abroad. Whereas the Netherlands still wanted to work with China based on common interests, the collaboration focus was much less pronounced compared to previous policy notes. Instead, prominent attention was given to protecting and championing the Dutch political and economic system in the engagement with China, including when it comes to Chinese efforts to destabilize the international norms deemed crucial by the Netherlands, such as universal human rights.

All China policy notes refer to corporate social responsibility. The 2006 China policy note indicated that the Dutch government would take up elements inherent in (enabling) corporate social responsibility in China, including transparency, and would “stimulate” Dutch companies to adopt corporate social responsibility in

²¹² CBS, “Nederland Handelsland- Export, import en investeringen”, 2022, <https://longreads.cbs.nl/nederland-handelsland-2022/>, p. 51, 55.

²¹³ Michiel Zonneveld, “Uri Rosenthal: ‘Ik heb het niet zo op het verwoorden van mooie intenties’”, *Wordt Vervolgd*, 1 June 2011, <https://www.amnesty.nl/wordt-vervolgd/uri-rosenthal-over-mensenrechten>; Ministry of Foreign Affairs, “Het Nederlandse China-beleid: Investeren in Waarden en Zaken”, 2013, <https://www.tweedekamer.nl/downloads/document?id=2013D43457>, p. 10.

²¹⁴ In this document, we briefly discuss the 2006, 2013 and 2019 China policy notes.

²¹⁵ Ministry of Foreign Affairs, “Beleidsnotitie China – Vormgeving van een bilaterale samenwerkingsrelatie met China voor de periode 2006-2010”, 2006, <https://zoek.officielebekendmakingen.nl/kst-29234-48-b1.pdf>, p. 22.

²¹⁶ Ministry of Foreign Affairs, “Beleidsnotitie China – Vormgeving van een bilaterale samenwerkingsrelatie met China voor de periode 2006-2010” (previously cited), p. 22.

²¹⁷ Ministry of Foreign Affairs, “Het Nederlandse China-beleid: Investeren in Waarden en Zaken” (previously cited), p. 2.

²¹⁸ Ministry of Foreign Affairs, “Het Nederlandse China-beleid: Investeren in Waarden en Zaken” (previously cited), p. 2, 8.

²¹⁹ Ministry of Foreign Affairs, “Het Nederlandse China-beleid: Investeren in Waarden en Zaken”, (previously cited), p. 10.

²²⁰ Ministry of Foreign Affairs, “Nederland-China: een Nieuwe Balans”, 2019, <https://www.tweedekamer.nl/downloads/document?id=2019D19428>. The creed is specifically mentioned in relationship to trade with China (p. 31), yet afterwards it was picked up by various politicians and knowledge institutions as the central overarching guideline for future China relationships. See for example: Frans-Paul van der Putten and others, *Dutch Views of China: Unfavourable and Deteriorating*, Clingendael, March 2021, https://www.clingendael.org/sites/default/files/2021-03/Barometer_Alert_Dutch_views_%20of_China_March2021.pdf, p. 3.

relationship to China.²²¹ The 2013 China policy note mentioned it under the heading “Investing in qualitative Chinese growth”, mentioning that the government encourages stakeholders to engage in corporate social responsibility and indicating that the Dutch government would take initiatives to raise corporate social responsibility with the Chinese authorities.²²² The 2019 China policy note stated that “[t]he government also supports stricter enforcement and stronger promotion of existing standards and norms, such as OECD standards with regard to... corporate social responsibility”²²³ and that “the government expects Dutch companies to adhere to international corporate social responsibility frameworks by identifying and tackling human rights violations and environmental pollution in their supply chains.”²²⁴

It is significant to note that throughout the past decade-plus years, corporate social responsibility has been marked as an important theme in consecutive China policies. The 2019 China policy note insisted on the respect of international corporate social responsibility standards. Corporate social responsibility presents itself as one of the issues that is well-served by ways of working propagated by the policy note, including the “linking of dossiers” and “cooperation and deliberation on shared interests and responsibilities” between various China-related (Dutch) stakeholders.²²⁵ Moreover, the 2019 policy note highlighted the importance of protecting and consistently propagating the Netherlands’ own human rights ‘values’ in its relationship with China. In a subsequent explanation of the Dutch human rights policy towards China contained in the 2019 policy note, the Minister of Foreign Affairs seemed to acknowledge that heightened action on corporate social responsibility fitted the overall policy framework well.²²⁶ However, as will be shown later in this report, the Dutch government still needs to strengthen this approach.

SAUDI ARABIA

The Dutch political relationship with Saudi Arabia dates back a 150 years. Throughout this period, the Netherlands maintained close, though at times strained and controversial, relations with Saudi Arabia. In various policy letters on Dutch foreign relations with Saudi Arabia, the Ministry of Foreign Affairs makes clear that the country is of great importance to the Netherlands due to Saudi Arabia’s economic and military power in the Arab region, the global position it has on the energy market and its role in the fight against terrorism. The consequences of “chaos and conflicts” in the region, the proximity of Europe and “the need to prevent further instability” are reasons given for seeing Saudi Arabia as a key ally in the region.²²⁷ Security, human rights and trade promotion are said to be important “accents” in its foreign policy towards Saudi Arabia, and the government aims to “work together in areas of common interest, such as: regional stability, the fight against international terrorism, unwanted foreign financing of religious organizations in the Netherlands and promoting trade and investments.”²²⁸

The Netherlands never formulated a public strategy similar to the China policy notes. In 2018 the Netherlands and Saudi Arabia signed a Memorandum of Understanding on Political Consultations” . The content of the memorandum was never made public, but according to the minister contained “a standard, non-binding agreement similar to that which the Netherlands has with many other countries”.²²⁹ It is unclear whether human rights are mentioned. In May 2022, the EU announced a “strategic partnership” with the Gulf Cooperation Council (GCC) aimed at “broadening and deepening” the relationship with the GCC.²³⁰ The announcement of the partnership included a commitment to continue the dialogue on human rights with the six GCC countries – Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

The government writes in policy letters that “a critical dialogue on human rights” is central to and cross-cutting in its integrated foreign policy towards Saudi Arabia.²³¹ It also says that, “the dialogue needs to be

²²¹ Ministry of Foreign Affairs, “Beleidsnotitie China – Vormgeving van een bilaterale samenwerkingsrelatie met China voor de periode 2006-2010” (previously cited), p. 20.

²²² Ministry of Foreign Affairs, “Het Nederlandse China-beleid: Investeren in Waarden en Zaken” (previously cited), p. 13.

²²³ Ministry of Foreign Affairs, “Nederland-China: een Nieuwe Balans” (previously cited), p. 30.

²²⁴ Ministry of Foreign Affairs, “Nederland-China: een Nieuwe Balans” (previously cited), p. 59.

²²⁵ Ministry of Foreign Affairs, “Nederland-China: een Nieuwe Balans” (previously cited), p. 97.

²²⁶ Letter from the Minister of Foreign Affairs, TK 2019-2020,35207, nr. 32, 11 November 2019, <https://zoek.officielebekendmakingen.nl/kst-35207-32.html>

²²⁷ Letter from the Minister of Foreign Affairs, TK 2015-2016, 34 300 V, nr. 55, 14 March 2016, <https://zoek.officielebekendmakingen.nl/kst-34300-V-55.html>, p. 2.

²²⁸ Letter from the Minister of Foreign Affairs, TK 2018-2019, 32 735, nr. 211, 18 October 2018, https://www.eerstekamer.nl/behandeling/20181018/brief_regering_huidige_nederlandse/document3/f=/vkswyef5yxi.pdf, p. 1.

²²⁹ Letter from the Minister of Foreign Affairs, TK 2017-2018, 34 775 V, nr. 67, 22 March 2018, <https://www.tweedekamer.nl/downloads/document?id=2018D21308>

²³⁰ Europese Commissie, “GCC: EU maakt strategisch partnerschap met de Golf bekend”, 18 May 2022, https://www.eerstekamer.nl/bijlage/20220518/persbericht_gcc_eu_maakt_3/document3/f=/vtagkes0kg2.pdf

²³¹ Letter from the Minister of Foreign Affairs, TK 2018-2019, 32 735, nr. 211, 18 October 2018, https://www.eerstekamer.nl/behandeling/20181018/brief_regering_huidige_nederlandse/document3/f=/vkswyef5yxi.pdf .

effective.”²³² However, in its relations with Saudi Arabia, human rights have been a sensitive topic that the government prefers to address behind closed doors and within an EU context, such as through the Human Rights Council or the human rights dialogues that have taken place annually since 2021. The government claims that silent diplomacy often works better because “public diplomacy can lead to counter reactions from conservative circles and therefore can have an adverse effect and less space for structural reforms.”²³³ The government also repeatedly stresses that Dutch influence on Saudi policy is “relatively modest”, and that this is why the Netherlands “aside from a critical bilateral dialogue [looks for] the path of influence through the EU, UN fora and conversations with the most important allies to Saudi Arabia: France, the UK and the US”.²³⁴ A parliamentary resolution in 2013 requesting the government to act more regularly and more visibly on human rights issues in Saudi Arabia has not changed this practice significantly.²³⁵

At least since 2011, Saudi Arabia has been a priority country in consecutive Dutch trade policies. The increased repression in the country since then, which severely intensified after Crown Prince Mohammed Bin Salman came to power in 2017, has not led to changes in Dutch trade policy towards the country. Only the tools used to promote trade were adapted at times when public scrutiny over Dutch relations with Saudi Arabia increased. For instance, a parliamentary resolution adopted after the killing of Saudi journalist Jamal Khashoggi in October 2018 requested the Dutch government to suspend all government visits and trade missions to Saudi Arabia “until there is clarity on the involvement of Saudi Arabia in the disappearance and likely murder of Khashoggi”.²³⁶ This meant that a planned high-level trade mission was cancelled and minister-led trade missions have not been organized to the country since.²³⁷ However, the Ministry of Foreign Affairs interpreted the resolution as only applying to visits by a minister, including minister-led trade missions. According to internal emails from the Ministry of Foreign Affairs released as part of a freedom of information request (Woo-verzoek) the “regular trade promotion activities by the mission” continued.²³⁸

Financial support also remained available to companies. The released documents show that officials in the Ministry of Foreign Affairs were eager to push for a resumption of trade missions at the ministerial level. Officials wrote in November 2020 that “it is a political decision whether the Khashoggi-case is completed from the Dutch perspective, and the resolution is dismissed and we can turn the page”.²³⁹ Saudi officials noticed the postponement of high-level ministerial visits and a “signal was given” that “bilateral relations were threatened to be neglected”.²⁴⁰

In January 2022, a government official stressed in an internal email that the aim was to “strengthen and broaden economic relations” with Saudi Arabia but that there was a need to “closely follow what is politically possible” in the Netherlands.²⁴¹ In fact, in the years after the murder of Jamal Khashoggi, the government offered increased support to Dutch companies with planned or ongoing activities in Saudi Arabia. Saudi Arabia remained in the top 9 priority countries until 2022 (when it became part of the top 25 priority countries), with six trade missions organized to the country in 2021 and 2022 alone. In September 2021, according to the released government correspondence, the government approved a new multiannual country strategy “with a strong economic component” for Saudi Arabia.²⁴²

²³² House of Representatives, Verslag van een schriftelijk overleg, “Actuele situatie in Noord-Afrika en het Midden-Oosten”, TK 2014-2015, 32 623, nr. 149, 6 May 2015, <https://zoek.officielebekendmakingen.nl/kst-32623-149.pdf>, p. 26.

²³³ House of Representatives, Verslag van een schriftelijk overleg, “Actuele situatie in Noord-Afrika en het Midden-Oosten” (previously cited), p. 27.

²³⁴ Letter from the Minister of Foreign Affairs, TK 2015-2016, 34 300 V, nr. 55 (previously cited), p. 3.

²³⁵ House of Representatives, TK 2013-2014, 32 735, nr. 96, 3 October 2013, <https://www.tweedekamer.nl/kamerstukken/moties/detail?id=2013Z18839&did=2013D39019>

²³⁶ House of Representatives, TK 2018-2019, 21 501-20, nr. 1373, 17 October 2018, <https://www.parlementairemonitor.nl/9353000/1/i9vwij5epmj1ev0/vksopvzvzpu>

²³⁷ De Volkskrant, “Minister Kaag annuleert handelsmissie naar Riyad na moord op Khashoggi”, 26 October 2018, <https://www.volkskrant.nl/nieuws-achtergrond/minister-kaag-annuleert-handelsmissie-naar-riyad-na-moord-op-khashoggi~b149412e/?referrer=https%3A%2F%2Fwww.bing.com%2F>

²³⁸ Platform Open Overheidsinformatie, “Bijlagen bij het besluit op Woo-verzoek over Koninkrijk Saoedi-Arabië-beleid na Khashoggi”, 15 November 2022, <https://open.overheid.nl/Details/ronl-66a9abbc39a163fdea8cbbfae71834953467c55/1>, p. 22.

²³⁹ Platform Open Overheidsinformatie, “Bijlagen bij het besluit op Woo-verzoek over Koninkrijk Saoedi-Arabië-beleid na Khashoggi” (previously cited), p. 33.

²⁴⁰ Platform Open Overheidsinformatie, “Bijlagen bij het besluit op Woo-verzoek over Koninkrijk Saoedi-Arabië-beleid na Khashoggi” (previously cited), p. 45.

²⁴¹ Platform Open Overheidsinformatie, “Bijlagen bij het besluit op Woo-verzoek over Koninkrijk Saoedi-Arabië-beleid na Khashoggi” (previously cited), p. 45.

²⁴² Platform Open Overheidsinformatie, “Bijlagen bij het besluit op Woo-verzoek over Koninkrijk Saoedi-Arabië-beleid na Khashoggi” (previously cited), p. 43.

RUSSIA

The decade of a deteriorating human rights situation in Russia between 2012 and 2022 did not lead to a drastic change in Dutch economic policy towards the country.²⁴³ Despite the crackdown on civil society after the widely contested elections in 2011 and 2012, the annexation of Crimea and the occupation of Eastern Ukraine in 2014, and despite the suspicions about possible Russian involvement in the downing of flight MH-17 over Eastern Ukraine on its journey between the Netherlands and Malaysia in 2014, Russia remained an important business partner for the Netherlands. In fact, after a dip in 2014, exports to Russia show renewed growth, recovering to the 2010 level.²⁴⁴

Between 2012 and 2015, the Dutch foreign policy with regard to Russia revolved around the concept of “dialogue”.²⁴⁵ The Netherlands-Russia friendship year in 2013, celebrating 400 years of diplomatic ties between the two countries, included a range of events to stimulate and highlight bilateral relations and “economical, cultural and political/societal” cooperation. President Putin visited the Netherlands in April 2013 and the Netherlands was present at the St Petersburg Economic Forum in June as an honorary guest.²⁴⁶ The festivities were accompanied by protests and diplomatic incidents,²⁴⁷ but despite this and serious human rights concerns around the 2013 “gay propaganda law” (an ‘assault on freedom of expression’ according to Amnesty International)²⁴⁸ and the restrictive impact of the 2012 “foreign agents” law (see section 4.3 above), the Dutch government saw no reason to cancel or limit planned events.²⁴⁹

In the policy adopted in October 2013, Russia was described as the “most important trade partner after the USA and China outside the European Union”, and the Russian economy “as a large and relatively nearby market, remains interesting for many companies”.²⁵⁰

Between 2015 and February 2022, the Netherlands conducted a two-track policy towards Russia of “pressure and dialogue”. In a 2015 policy letter on Russia, the Dutch Minister of Foreign Affairs stated that, as long as Russia persists in its interference in Eastern Ukraine, it would not be “business as usual” in bilateral relations.²⁵¹ The minister said the focus would shift from trade promotion and economic cooperation to “guiding, supporting and educating” the Dutch businesses already active in Russia.²⁵² He noted that contacts and cooperation will be treated “on a case-by-case basis”, including existing economic interests, and that the government “will continue to help Dutch companies and their business interests in Russia.”²⁵³ The impact of the annexation of Crimea and occupation of Eastern Ukraine on economic relations was assessed as “limited”, according to the minister, who added that despite the economic headwind many Dutch entrepreneurs and companies saw opportunities for the longer term and would like to stay active in Russia.²⁵⁴

In the next policy letter on Russia, issued in December 2019, the Minister of Foreign Affairs wrote that the cabinet did not see any reason to change the Russia policy. He acknowledged that the tendency of Russia to withdraw from the international rule of law and universality of human rights continued and that Russian authorities increasingly responded with repression to alleged threats to the establishment. The Dutch response to this focused on “protection of national security”, while “continuing to seek possibilities for

²⁴³ See consecutive Russia policy documents in 2013, 2015, 2019: Letter from the Minister of Foreign Affairs, TK 2013-2014, 33 750 V, nr. 9, 25 October 2013, <https://open.overheid.nl/repository/ronl-archieff-a4c4ae11-1885-4529-acfb-e5c9592626c4/1/pdf/kamerbrief-over-de-betrekkingen-met-rusland.pdf>; Letter from the Minister of Foreign Affairs, “Beleidsbrief betrekkingen met Rusland”, TK 2014-2015, 34 000 V, nr. 69, 13 May 2015, <https://open.overheid.nl/repository/ronl-archieff-d5179a13-abe9-42a5-a9dd-11e87ccd86fc/1/pdf/kamerbrief-over-betrekkingen-met-rusland.pdf>; Letter from the Minister of Foreign Affairs, “Ruslandbrief”, TK 2019-2020, 35 373, nr. 1, 22 December 2019, <https://open.overheid.nl/repository/ronl-e695493d-6171-4858-a5f2-3af30dee0a21/1/pdf/24%20deu.pdf>

²⁴⁴ [via Wayback Machine] RVO, “Handelscijfers Rusland-Nederland maart 2021”, snapshot 25 Januari 2022, <https://web.archive.org/web/20220125193333/https://www.rvo.nl/sites/default/files/2021/03/Handelscijfers-Rusland-maart-2021.pdf>, p. 13.

²⁴⁵ Letter from the Minister of Foreign Affairs, TK 2013-2014, 33 750 V, nr. 9 (previously cited), p. 1.

²⁴⁶ Letter from the Minister of Foreign Affairs, TK 2013-2014, 33 750 V, nr. 9 (previously cited), p. 5.

²⁴⁷ NOS Nieuws, “Ruslandjaar bol van incidenten”, 1 December 2013, <https://nos.nl/artikel/562934-ruslandjaar-bol-van-incidenten; DutchNews.nl>, “The Netherlands-Russia friendship year: the incidents”, 18 October 2013, <https://www.dutchnews.nl/news/2013/10/the-netherlands-russia-friends/>

²⁴⁸ Amnesty International, “Russia’s anti-gay ‘propaganda law’ assault on freedom of expression”, 25 January 2013, <https://www.amnesty.org/en/latest/news/2013/01/russia-anti-gay-propaganda-law-assault-on-freedom-expression/>

²⁴⁹ Letter from the Minister of Foreign Affairs, TK 2013-2014, 33 750 V, nr. 9 (previously cited), p.6.

²⁵⁰ Letter from the Minister of Foreign Affairs, TK 2013-2014, 33 750 V, nr. 9 (previously cited), p.7.

²⁵¹ Letter from the Minister of Foreign Affairs, “Beleidsbrief betrekkingen met Rusland” (previously cited), p. 11.

²⁵² Letter from the Minister of Foreign Affairs, “Beleidsbrief betrekkingen met Rusland” (previously cited), p. 12.

²⁵³ Letter from the Minister of Foreign Affairs, “Beleidsbrief betrekkingen met Rusland” (previously cited), p.12.

²⁵⁴ Letter from the Minister of Foreign Affairs, “Beleidsbrief betrekkingen met Rusland” (previously cited), p. 8.

dialogue with Russia” and “where possible and in the interest of our country, functional cooperation”, with a special mention of the “close interdependence in the field of energy”.²⁵⁵

At the end of 2019, the Netherlands was the third most important trade partner for Russia (behind China and Germany) and second largest investor. According to the 2019 Russia policy letter, around 400 Dutch companies were based in Russia at the time, around 3,000 Dutch companies were active in the Russian market, and the Russian market “remains, if only because of its size, attractive to Dutch investors”.²⁵⁶ The minister noted that “Russia is one of the cabinet’s priority countries for international business”.²⁵⁷ Within the restrictions of EU sanctions, the letter states, “the Dutch cabinet will, where needed, help Dutch companies in their business interests in Russia”. The letter indicates that because the Russian “state plays a large role in the Russian economy, economic dialogue will be of benefit for the Netherlands”.²⁵⁸ This dialogue would take place in “technical working groups” and would cover topics such as innovation, agriculture, transport and health. The letter contains some words on corporate accountability: “The Minister of Foreign Trade can meet her Russian colleague to add political content to the work of these working groups – an opportunity to stress the importance of stricter enforcement of international standards such as OECD-standards with regard to anti-corruption and ICSR. Dutch companies are expected to stick to the OECD guidelines with regard to anti-corruption, labour, human rights, chain responsibility and the protection of the environment and consumers.”²⁵⁹

PROMOTING ECONOMIC INTERESTS OVER OBLIGATION TO PROTECT

In all Dutch trade policies since 2011 neither human rights risks for companies, nor the general human rights situation, played a role in selecting priority countries. On the contrary, the deteriorating human rights situation in the countries had little or no effect on the importance given to trade with these countries. Countries were selected solely for the growth opportunities and profit potential for Dutch companies. While the repression in the countries concerned increased significantly over the past 10 years and serious human rights risks for companies were widely known, these factors were not considered when selecting Saudi Arabia and China (and Russia until the invasion of Ukraine) as focus countries in consecutive Dutch trade policies. The Dutch government also did not seem to assess how its trade policy and stimulating Dutch business operations with and in the countries could impact on the human rights situation in them, thereby failing to conduct its own due diligence.

By selecting these countries as priorities for trade promotion without including any analysis of and warnings about the heightened human rights risks, and by providing a wide array of incentives for companies with planned or ongoing activities in them, the Dutch government has been giving a clear signal that it considers doing business in these countries responsible and desired, and will promote economic interests over its obligation to protect.

Such government endorsement does not exonerate companies of their responsibilities to conduct human rights due diligence, but the message it gives to companies is that the government *wants* them to do business in Saudi Arabia and China (and wanted them to do business in Russia) despite the grim human rights situations in these countries.

When selecting priority countries for trade promotion, the Dutch government should carry out its own human rights due diligence and consider the human rights risks for companies in those countries and the general human rights context in which companies operate.

5.2 INFORMING AND WARNING COMPANIES

As part of the state’s obligation to protect, it must:

- engage early with businesses operating in or with actors from contexts with heightened human rights risks;
- warn them about existing and potential risks; and
- inform them about the required due diligence standards.

²⁵⁵ Letter from the Minister of Foreign Affairs, “Ruslandbrief” (previously cited), p. 2, 5.

²⁵⁶ Letter from the Minister of Foreign Affairs, “Ruslandbrief” (previously cited), p. 11.

²⁵⁷ Letter from the Minister of Foreign Affairs, “Ruslandbrief” (previously cited), p. 11.

²⁵⁸ Letter from the Minister of Foreign Affairs, “Ruslandbrief” (previously cited), p. 11.

²⁵⁹ Letter from the Minister of Foreign Affairs, “Ruslandbrief” (previously cited), p. 11.

The Netherlands Enterprise Agency (Rijksdienst voor Ondernemend Nederland – RVO)²⁶⁰ is part of the Ministry of Economic Affairs and Climate Policy and plays an important role in carrying out the government's policies aimed at developing a “conducive business climate” for Dutch businesses.²⁶¹ One of its tasks is to provide information to companies on the economic opportunities in specific countries.²⁶² However, when it comes to countries with heightened human rights risks, the Dutch government has the responsibility to also warn businesses of the heightened risks and establish and communicate clear heightened due diligence standards.²⁶³ The following focuses on the efforts of the Dutch government, particularly the RVO, to inform and warn companies about human rights risks and due diligence standards.

There are differences in the extent to which the Dutch government informs companies on the human rights risks in China, Saudi Arabia and Russia. Information on risks in China is more elaborate and easier to find than information on Saudi Arabia and Russia. On Saudi Arabia, key information is lacking and no clear warnings are given to companies. For Russia, information about human rights risks was only added to the Corporate Social Responsibility (CSR) pages on the RVO's website in or after 2017.²⁶⁴ As detailed below, for Saudi Arabia and Russia no information on the need for heightened due diligence is communicated, and for China this information is insufficient.

The Dutch government is generally inconsistent in its communication about the responsibility of businesses to engage in ICSR. Dutch-language government websites often indicate that companies need to “adhere to” OECD Guidelines in order to be eligible to receive support,²⁶⁵ yet other wordings are also used, including that the government expects all companies to engage in ICSR including by “complying with” the OECD Guidelines and the UN Guiding Principles.²⁶⁶ The English-language RVO page on ICSR mentions that “[t]he Dutch government expects Dutch companies that do business abroad to follow Corporate Social Responsibility and other guidelines.”²⁶⁷ Yet on the English-language website grouping all relevant information for resident and foreign entrepreneurs who want to establish a business or do business with the Netherlands,²⁶⁸ information provided by the RVO lists that the Dutch government only expects “larger companies” to implement an ICSR policy, a statement clearly at odds with the international standards to which the Netherlands has committed.²⁶⁹

²⁶⁰ The RVO was founded in 2014 and was born out of the fusion of the agencies “Agentschap NL” (resorting under the former Ministry of Economic Affairs) and “Dienst Regelingen” (resorting under the former Ministry of Agriculture, Nature and Food Quality). While it is beyond the scope of this report to discuss the role of the agencies predating RVO, please note that some documents that we refer to in this report (and most notably documents dated before 2014), are issued by “Agentschap NL”. See: Rijksoverheid, Rijksdienst voor Ondernemend Nederland (EZ): 2014, <https://actorenregister.nationaalarchief.nl/actor-organisatie/rijksdienst-voor-ondernemend-nederland-ez> (accessed on 7 March 2023)

²⁶¹ RVO, Over ons, <https://www.rvo.nl/onderwerpen/over-rvo> (accessed on 8 October 2022).

²⁶² The support offered by the RVO is extensive and does not only include the provision of information (for the use of which, the ministry mentioned, no CSR conditions are provided). On the following website an overview is presented: RVO, Internationaal ondernemen, <https://www.rvo.nl/internationaal-ondernemen> (accessed on 25 November 2022). Apart from the support directly related and/or directly mentioned on sites dedicated to business activities in China, Russia and Saudi Arabia, discussed in more detail below, the RVO also offers other types of support including: customized business partner support; the Orange Trade Mission Funds helping successful Dutch entrepreneurs with export plans; and the SME Lounge subsidy program that supports sector organizations wishing to present themselves at international fairs. See respectively: RVO, Zakenpartnersupport Op Maat, <https://www.rvo.nl/onderwerpen/persoonlijk-advies-buitenland/zakenpartnersupport-op-maat> (accessed on 8 February 2022); RVO, Oranje Handelsmissiefonds (OHMF), <https://www.rvo.nl/subsidies-financiering/ohmf> (accessed on 8 February 2022); RVO, MKB Lounge Subsidieprogramma, <https://www.rvo.nl/subsidies-financiering/mkb-lounge> (accessed on 8 February 2022).

²⁶³ As indicated in Chapter 2 of this report.

²⁶⁴ When exactly, Amnesty International has not been able to pinpoint, due to the fact that the page has been updated and internet archive Wayback Machine (<https://archive.org/web/>) only made a few snapshots of these pages during 2016-2020. See the difference between the snapshots taken of the Russia pages of [rvo.nl](https://www.rvo.nl) of 18 Sept 2020, <https://web.archive.org/web/20200918122812/https://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/rusland/mvo-rusland> and 27 Dec 2016, <https://web.archive.org/web/20161227222530/http://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/rusland/mvo-rusland>

²⁶⁵ RVO, OESO-richtlijnen voor IMVO, <https://www.rvo.nl/onderwerpen/mvo/oeso-richtlijnen> (accessed on 8 February 2023).

²⁶⁶ RVO, Informatie over MVO in het buitenland, <https://www.rvo.nl/onderwerpen/mvo/buitenland> (accessed on 8 October 2022).

²⁶⁷ RVO, Corporate Social Responsibility, <https://english.rvo.nl/information/corporate-social-responsibility> (accessed on 18 March 2023)

²⁶⁸ Business.gov.nl, About us, <https://business.gov.nl/about-us/> (accessed on 18 March 2023)

²⁶⁹ Business.gov.nl, International Corporate Social Responsibility (ICSR), <https://business.gov.nl/running-your-business/international-business/doing-business-abroad/international-corporate-social-responsibility-icsr/> (accessed on 8 February 2023)

CHINA

The RVO provides ample information on doing business in and with China. This includes an extensive landing-page on China with various chapters containing information for Dutch businesses wishing to work with or in China;²⁷⁰ a multitude of market and opportunity reports on various sectors and/or Chinese regions;²⁷¹ various e-learnings on doing business with China;²⁷² and an interactive “China business tool” meant to prepare entrepreneurs for doing business in and with China.²⁷³ In addition, there are multiple options for Dutch entrepreneurs to request personal advice.²⁷⁴ This is advertised ubiquitously on the China pages. Dutch companies can, for example, request a bespoke and free-of-charge market exploration.²⁷⁵

CSR is mentioned in some but not all of these documents. Market reports,²⁷⁶ for example, do not seem to integrate CSR considerations,²⁷⁷ yet the China business tool does offer an option to request CSR-related information. CSR in China is also explicitly mentioned on the RVO China landing-page. Most of the time, webpages and/or documents refer to one or more of the following documents: the CSR in China webpage;²⁷⁸ the ICSR Factsheet China;²⁷⁹ the CSR Risk Checker;²⁸⁰ and the e-learning course “ICSR when doing business in China”.²⁸¹

The various CSR-in-China documents insist that the Dutch government expects Dutch businesses to act in accordance with the UN Guiding Principles and the OECD Guidelines. However, they contain limited information on the specific human rights issues in China.²⁸² They also do not give clear indications on how to deal with these issues or how they affect the ability of companies to engage in human rights due diligence in China.²⁸³ A glaring omission concerns downstream due diligence. As highlighted in this report, human rights risks in the downstream of technology companies are particularly salient. Another marked absence concerns the ongoing and intensifying oppression of civil society and how this influences corporate due diligence.

The closest the Dutch government comes to signalling the need for heightened due diligence in China is in the ICSR Factsheet China, which says: “In China, keep in mind that sensitive human rights issues may not

²⁷⁰ RVO, Zakendoen in China, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/china> (accessed on 8 October 2022)

²⁷¹ An overview with further referral links can be found here: RVO, Zakelijke kansen in China, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/china/zakelijke-kansen> (accessed on 8 October 2022)

²⁷² RVO, E-learnings: Zakendoen in China, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/china/e-learnings> (accessed on 8 October 2022)

²⁷³ RVO, China business tool- be aware and prepare, <https://regelhulpvoorbereiden.nl/china/> (accessed on 8 October 2022)

²⁷⁴ RVO, Persoonlijk advies voor zakendoen in het buitenland, <https://www.rvo.nl/onderwerpen/persoonlijk-advies-buitenland> (accessed on 8 October 2022)

²⁷⁵ RVO, Marktverkenning, <https://www.rvo.nl/onderwerpen/persoonlijk-advies-buitenland/marktverkenning> (accessed on 8 October 2022)

²⁷⁶ For the purposes of this research, we looked at a limited selection of reports including: RVO NBSO Wuhan, “De Fotonica Sector (Opto-Electronica) in China”, May 2015, <https://www.rvo.nl/files/file/2015/05/De%20Fotonica%20Sector%20in%20China.pdf>; RVO, “China - Demographic and healthcare vulnerabilities driving health tech developments”, March 2022,

<https://www.rvo.nl/files/file/2022/03/AI%20Special%20Health%20China.pdf>; Health, Welfare and Sport Department at the Embassy of the Kingdom of the Netherlands in Beijing, “Regulatory Roadmap – Dutch medical device products to the Chinese Market”, undated, <https://www.rvo.nl/sites/default/files/2022-06/Regulatory%20Roadmap%20-%20Dutch%20Medical%20Devices%20Products%20to%20the%20Chinese%20Market.pdf>

²⁷⁷ In response to the Amnesty International findings that market reports related to China do not seem to integrate CSR considerations, the Ministry of Foreign Affairs replied in March 2023 that “all market studies that are now being set up contain an ICSR component”. It is unclear when the ministry started or will start consistently integrating an ICSR component in market studies. At the time of writing, the most recent China-related market report found on the RVO website (dated 14 October 2022), did not include an ICSR component. Ministry of Foreign Affairs’ response to Amnesty International draft report, 16 March 2023; Consulate General of the Kingdom of The Netherlands Guangzhou, “Guangdong’s Life Sciences and Health Sector Scan”, 14 October 2022, <https://www.rvo.nl/files/file/2022-10/Guangdong%20LSH%20Sector%20Scan.pdf>

²⁷⁸ RVO, MVO in China, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/china/mvo>, (accessed on 8 October 2022)

²⁷⁹ Ministry of Foreign Affairs, “IMVO China factsheet”, February 2022, <https://www.rvo.nl/sites/default/files/2022/02/Factsheet-MVO-China-2022.pdf>

²⁸⁰ MVO Nederland, MVO Risico Checker, <https://www.mvorisicochecker.nl/en/start-check> (accessed on 9 October 2022)

²⁸¹ NLinBusiness, E-Learning IMVO bij zakendoen in China, <https://academy.nlinbusiness.com/product/rvo-e-learning-imvo-bij-zakendoen-in-china/> (accessed on 17 February 2022)

²⁸² The RVO webpages generally do not talk about specific human rights concerns. The CSR Risk Checker contains the most extensive human rights description, but is by no means complete. The E-learning briefly discusses a selection of issues, including LGBTQI rights and women rights. And the ICSR Factsheet China lists concerns but does not provide additional information, simply stating “There is a lot of information available about the human rights challenges in China.” Ministry of Foreign Affairs, “IMVO China factsheet” (previously cited), p. 2.

²⁸³ The CSR Risk Checker is most extensive in the advice towards businesses. Yet it contains for the most part only general (not China-specific) advice on how businesses can deal with human rights issues mentioned.

come to light through regular due diligence.”²⁸⁴ The factsheet specifies that this is especially true for Xinjiang, where the necessary transparency cannot be guaranteed. It adds: “Given the gravity of the human rights situation, especially in relation to Xinjiang, application of the OECD guidelines and principles may therefore mean that it is appropriate for companies to terminate business relationships. Companies that do operate in a context with risks such as forced labour, must be prepared to be open about their decision to continue operating in that context and must be able to motivate that decision towards their stakeholders.”²⁸⁵ The government does not provide any deliberations on responsible disengagement.

In this and other statements on human rights due diligence in China, the government obfuscates. It highlights some but not all of the obstacles for businesses to engage in effective human rights due diligence, emphasizing the “complex” and “different” situation in China and thereby sometimes seeming to facilitate a certain China exceptionalism. A key message is that Dutch businesses need to not only act in accordance with the UN Guiding Principles and OECD Guidelines, but also obey the Chinese regulatory framework that sees CSR differently and sometimes clashes with international standards. This creates obvious problems, yet these are not addressed head-on by the government.

Amnesty International asked the RVO what advice they gave to Dutch companies wanting to know how to handle the contradiction between international standards and Chinese law.²⁸⁶ The RVO did not answer this question. Instead, the government alludes to these questions with an awkward ambivalence, refusing to give prominence to the international standards it claims to champion. In the CSR in China materials, the government indicates that it addresses the Chinese government on these challenges, including by citing the need for transparency in the context of corporate due diligence. It furthermore indicates that Dutch companies can always contact the Dutch authorities for advice on how to best deal with encountered challenges. The government takes on no further responsibility. Instead, Dutch companies are told that the existing difficulties in China do not absolve them from their responsibilities under the OECD Guidelines. The a fortiori statement is that the challenging situation in China might mean that it is appropriate for companies to terminate business relationships - when expressed, this a fortiori statement always relates to Xinjiang.

SAUDI ARABIA

For Saudi Arabia, the RVO has a special page on “Business Opportunities in Saudi Arabia”. This shares information on economic developments in Saudi Arabia arising from the country’s Vision 2030 and the opportunities these create for Dutch entrepreneurs.²⁸⁷ It stresses that companies settling in the new megacity NEOM will fall outside of the “normal legislation in the field of taxes, import requirements, labour law and other business related legislation”. What this exactly means is unclear. It further notes that the Dutch embassy is mapping out what the opportunities are for Dutch businesses in these megaprojects.²⁸⁸ The RVO also published the factsheet “Doing Business in Saudi Arabia”,²⁸⁹ which has a special segment on the megaprojects. Specifically on construction and infrastructure, the factsheet notes, “A plethora of opportunities is expected for work on a significant number of projects, ranging from mundane to significant flagship schemes.”²⁹⁰

While the Dutch government shares ample information on trade opportunities for Dutch companies in Saudi Arabia, information on the human rights risks for businesses with activities in Saudi Arabia is limited, incomplete and scattered.²⁹¹ No clear, strong warnings on human rights risks are given anywhere on pages with information on business opportunities in Saudi Arabia and no due diligence standards (let alone heightened standards) are communicated anywhere. While opportunities around NEOM are promoted on several pages, no warnings are given on reports of forced evictions and no reference is made to recent death sentences given to people protesting against forced evictions in the NEOM area. Additionally, no information

²⁸⁴ Ministry of Foreign Affairs, “IMVO China factsheet” (previously cited), p. 2.

²⁸⁵ Ministry of Foreign Affairs, “IMVO China factsheet” (previously cited), p. 2.

²⁸⁶ Email dated 19 October 2021, on file with Amnesty International.

²⁸⁷ RVO, Zakelijke kansen in Saoedi-Arabië, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/saoedi-arabie/zakelijke-kansen>, (accessed on 14 December 2022).

²⁸⁸ RVO, Zakelijke kansen in Saoedi-Arabië, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/saoedi-arabie/zakelijke-kansen>, (accessed on 14 December 2022).

²⁸⁹ RVO, “Doing Business in Saudi Arabia”, May 2020, <https://www.rvo.nl/sites/default/files/2020/05/Doing-Business-Factsheet-KSA-2020.pdf>

²⁹⁰ RVO, “Doing Business in Saudi Arabia” (previously cited)

²⁹¹ RVO, Zakendoen in Saoedi-Arabië, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/saoedi-arabie> (accessed on 14 December 2022); RVO, Zakelijke kansen in Saoedi-Arabië, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/saoedi-arabie/zakelijke-kansen>, (accessed on 14 December 2022); RVO, Verantwoord ondernemen in Saoedi-Arabië, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/saoedi-arabie/verantwoord-ondernemen> (accessed on 14 December 2022); RVO, Maatschappelijk verantwoord ondernemen in de Golfstaten, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/golfstaten/mvo> (accessed on 14 December 2022); MVO Risico Checker, <https://www.mvorisicochecker.nl/nl/wereldkaart> (accessed on 14 December 2022).

is shared on the repressive context and the way that the repression of the rights to freedom of expression, association and assembly might impact on companies' ability to conduct human rights due diligence, for instance when it comes to identifying human rights risks or stakeholder engagement. No warnings are given that business operations could contribute to sustaining an abusive regime or be linked to repression. The main RVO page on Saudi Arabia does not include any link to human rights risks or due diligence responsibilities.²⁹²

The RVO page on business opportunities in Saudi Arabia includes a very brief section mentioning that "responsible entrepreneurship" is important.²⁹³ A page on "Responsible Entrepreneurship in Saudi Arabia" includes a section on corruption and a section on "tips for responsible entrepreneurship". Among the tips are recommendations to companies to "thoroughly look into the appropriate Saudi partners before signing an agreement" and to "incorporate ethics, sustainability and human rights into your business operations and core strategy".²⁹⁴ No information is given on salient human rights risks, including risks to migrant workers' rights, forced evictions and the repression in Saudi Arabia.

The information on a page on the broader topic of "Responsible Entrepreneurship in the Gulf states"²⁹⁵ is not country-specific but mentions Gulf-wide risks around the situation of migrant workers and advises to "closely pay attention to this when selecting local partners and sub-contractors". However, no specific information is shared on Saudi Arabia and no reference is made to the general repressive environment. The page refers readers to the "CSR Risk Checker", with country specific information on human rights and environmental risks.²⁹⁶ This risk checker includes some information on risks related to labour rights, human rights and ethics, environment and corruption, but the information is incomplete, with no reference to forced evictions and no warnings on the potential impact that the repression of freedoms might have on companies' ability to conduct human rights due diligence. Similarly, no warnings are given that business operations could contribute to sustaining an abusive regime or repression or be linked to repression.

RUSSIA

Since Russia's full-scale invasion of Ukraine in February 2022, several Dutch businesses have announced an end to their activities in Russia. According to the Yale CELI List of Companies Leaving and Staying in Russia, at the beginning of March 2023, of the 50 Dutch companies with a presence in Russia, 17 had withdrawn completely, 15 had suspended their activities, 8 were scaling back, 10 were still "buying time."²⁹⁷

The information shared on the RVO website on doing business with or in Russia significantly changed after the invasion. The webpages about CSR, starting a business in Russia and business opportunities were removed. With the help of online internet archive Wayback Machine, Amnesty International has been able to make a fragmented reconstruction of the information that RVO shared between 2011 and 2022.²⁹⁸ In that period, the RVO website offered Dutch businesses ample information about how to access the Russian market, legislation and trade regulations in Russia, sectoral information, Dutch-Russian trade statistics, and links to subsidy tools and other instruments aimed at supporting companies.²⁹⁹ However, barely any mention is made of human rights risks.

Based on the Wayback Machine snapshots saved over the years, Amnesty International concludes that at least until 2017, the RVO's information about CSR on Russia was limited to general links to the OECD Guidelines and International Labour Organization (ILO) standards, and (in the MVO toolkit) topics including

²⁹² RVO, Zakendoen in Saoedi-Arabië, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/saoedi-arabie> (accessed on 14 December 2022)

²⁹³ RVO, Zakelijke kansen in Saoedi-Arabië, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/saoedi-arabie/zakelijke-kansen>, (accessed on 14 December 2022).

²⁹⁴ RVO, Verantwoord ondernemen in Saoedi-Arabië, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/saoedi-arabie/verantwoord-ondernemen> (accessed on 14 December 2022).

²⁹⁵ RVO, Maatschappelijk verantwoord ondernemen in de Golfstaten, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/golfstaten/mvo> (accessed on 14 December 2022).

²⁹⁶ MVO Risico Checker, <https://www.mvorisicochecker.nl/nl/wereldkaart> (accessed on 14 December 2022).

²⁹⁷ Yale School of Management Chief Executive Leadership Institute, Yale CELI List of Companies Leaving and Staying in Russia, selected on country 'Netherlands', <https://www.yalerussianbusinessretreat.com/> (accessed on 7 March 2023)

²⁹⁸ The webpages that could be retrieved via the Wayback Machine (<https://archive.org/web/>) offer too little evidence to draw conclusions about the human rights information offered in the period 2017-2019 on the Russia-pages of RVO.

²⁹⁹ One example is the Dutch Trade and Investment Board (DTIB). The DTIB created a Russia working group, aimed at "strengthen[ing] the competitiveness of the Dutch business sector in Russia [...]." The working group offers Dutch businesses active or with an interest to become active in Russia the opportunity to share "opportunities, obstacles and specific messages" with the Dutch government and ministers so that this can be included in trade policy or during trade missions. See: [via Wayback Machine] Internationaal Ondernemen, snapshot 10 May 2018, <https://web.archive.org/web/20180510093209/http://www.internationaalondernemen.nl/nl/focus/rusland>

corruption, labour conditions, chain responsibility and the environment.³⁰⁰ However, human rights, human rights due diligence or human rights risks beyond labour conditions or general remarks about chain responsibility in Russia were not mentioned. Even in the specific CSR factsheets on Russia of 2012 and 2016, human rights risks and due diligence are not mentioned.³⁰¹ The factsheets both refer to an online CSR Russia Toolkit.³⁰² In 2013, the CSR Russia Toolkit suggested that the Russian government is putting pressure on Western businesses to take on more social responsibility: “This pressure is sometimes so strong that a good CSR policy becomes a precondition for doing business in Russia at all.”³⁰³ The 2016 factsheet focuses mainly on corruption and the environment, without explicit mention of human rights or of increased repression on civil society, and provides no links to independent civil society organizations that might be consulted. Pages about CSR practice refer to initiatives taken by Russian companies rather than civil society.³⁰⁴

It took months after the annexation of Crimea for the event to be mentioned on the RVO’s Russia-pages. In July 2014, a link to information about the sanctions was added. The page ended with the remark, “No restrictions on doing business with the Russian Federation.”³⁰⁵ The Russia pages in December 2014 do mention the annexation and include a page with information on sanctions. However, the focus of this page is on economic consequences for Dutch companies rather than on the increased human rights risks for companies.³⁰⁶ In June 2014, the RVO still referred to eight subsidy instruments available for investments in Russia.³⁰⁷ In May 2015, this number was five, and by January 2016 this figure had risen again to nine (including four EU measures of support, aimed to compensate business hit by the sanctions).³⁰⁸ A special page was added to the RVO Russia pages focusing on opportunities for investors around football’s 2018 World Cup in Russia, without mentioning any human rights risks.³⁰⁹

In 2018, the RVO Russia page for the first time provided links to the CSR Risk Checker.³¹⁰ However, the information in this Risk Checker is superficial. While acknowledging that Russia is not a “free country” where

³⁰⁰ [via Wayback Machine] RVO, MVO in Rusland, snapshot 27 december 2016, <https://web.archive.org/web/20161227222530/http://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/rusland/mvo-rusland>; [via Wayback Machine] RVO, Mensenrechten en Ethiek, snapshot 18 September 2020, <https://web.archive.org/web/20200918122812/https://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/rusland/mvo-rusland#:~:text=Mensenrechten%20en%20ethiek>. (Due to a lack of snapshots via online internet archive Wayback Machine over the years 2017-2019, Amnesty International cannot establish when exactly human rights appeared for the first time on these pages. The first snapshot containing human rights as a CSR issue dates from 2020.)

³⁰¹ [via Wayback Machine] Agentschap NL, “Maatschappelijk Verantwoord Ondernemen in Rusland”, 2012, snapshot 30 March 2016, <https://web.archive.org/web/20160330151004/https://www.rvo.nl/sites/default/files/Facsheet%20Rusland%20202012.pdf>; [via Wayback Machine] RVO, “Maatschappelijk Verantwoord Ondernemen in Rusland”, March 2016, snapshot 14 October 2017, <https://web.archive.org/web/20171014164425/https://www.rvo.nl/sites/default/files/2016/11/Factsheet%20MVO%20Rusland.pdf>

³⁰² They refer respectively to the (now offline) websites <http://www.agentschapnl.nl/onderwerp/mvo-rusland> (2012 CSR Factsheet, p.2) and <https://www.rvo.nl/onderwerp/mvo-rusland> (2016 CSSR Factsheet, p.2).

³⁰³ [via Wayback Machine] Agentschap NL, MVO Rusland: overheid, snapshot 24 February 2013, <https://web.archive.org/web/20130224105648/http://www.agentschapnl.nl/onderwerp/mvo-rusland-overheid>. See also: [via Wayback Machine] Agentschap NL, MVO in Rusland, snapshot 6 June 2013

<https://web.archive.org/web/20130606103622/www.agentschapnl.nl/onderwerp/mvo-rusland>

³⁰⁴ [via Wayback Machine] RVO, Rusland: MVO-praktijk, snapshot 30 March 2016, <https://web.archive.org/web/20160330063449/http://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/rusland/mvo-rusland/mvo-praktijk>

³⁰⁵ [via Wayback Machine] RVO, Gevolgen sancties Oekraïne/Rusland voor bedrijven, snapshot 27 juli 2014, <https://web.archive.org/web/20140725130842/http://www.rvo.nl/onderwerpen/tools/wet-en-regelgeving/buitenlandse-wetgeving/internationale-sancties/gevolgen-sancties-oekra%C3%AFne/rusland>

³⁰⁶ [via Wayback Machine] RVO, Landenoverzicht Rusland, snapshot 27 December 2014, <https://web.archive.org/web/20141227051246/http://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/rusland>

³⁰⁷ [via Wayback Machine] RVO, Open subsidies & Financiering, snapshot 25 juli 2014, <https://web.archive.org/web/20140725111952/http://www.rvo.nl/subsidies-regelingen?f%5B0%5D=landen%3A3336#:~:text=Show%20search-.8%20resultaten,-Rusland>

³⁰⁸ [via Wayback Machine] RVO, Subsidies & financiering, filter ‘Rusland’, snapshot 5 January 2016, [https://web.archive.org/web/20160105183858/http://www.rvo.nl/subsidies-regelingen?f%5B0%5D=landen%3A3336#:~:text=Filters%20weergeven-.9%20resultaten,-\(in%200%2C19%20seconden](https://web.archive.org/web/20160105183858/http://www.rvo.nl/subsidies-regelingen?f%5B0%5D=landen%3A3336#:~:text=Filters%20weergeven-.9%20resultaten,-(in%200%2C19%20seconden)

³⁰⁹ [via Wayback Machine] RVO, Rusland: WK voetbal 2018 biedt volop kansen, snapshot 6 June 2014, <https://web.archive.org/web/20140606155925/http://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/rusland/sectorinformatie/wk-voetbal-2018>

³¹⁰ [via Wayback Machine] MVO Nederland, MVO Risico Checker, snapshot 1 October 2018, <https://web.archive.org/web/20181001180531/https://www.mvorisicochecker.nl/nl>

political and civil rights are repressed, it merely mentions that Russia is responsible for human rights violations in the North Caucasus and that the press freedom situation is bad, including in Crimea.

Despite warnings about human rights violations in the North-Caucasus in the CSR Risk Checker,³¹¹ several Dutch companies continued to undertake business activities in Chechnya, the most notorious region of Russia when it comes to human rights violations.³¹² In response to parliamentary questions about this, the Ministry of Foreign Affairs responded that it “does not possess information about possible violations of OECD guidelines by Dutch companies in Chechnya”.³¹³

In 2016, the RVO website published information about opportunities in the “top sector High Tech Systems and Materials”. Trade with and investments in Russia in the field of technology were encouraged and links provided to a large Russian federal project promoting so-called Special Economic Zones, aimed to bring in investments and “advanced scientific, manufacturing, and management technologies”.³¹⁴ These zones are recommended to “provide companies with a unique opportunity to use the full range of Russia’s investment opportunities...”³¹⁵ The publication makes no mention of possible human rights-related risks, despite well-known human rights violations in one of the zones, the Chechen capital Grozny in the North Caucasus. In 2020 and 2021, these Special Economic Zones were still found on the Russia pages of the RVO website.³¹⁶

The webpages that could be retrieved via the Wayback Machine offer too little evidence to draw conclusions about the human rights information offered in 2017-2019 on the Russia pages of RVO.

In response to questions from parliament in 2022 on the measures the Dutch government is taking to prevent and mitigate potential negative human right impact of Dutch companies operating in the internet sector in Russia, the Ministry of Foreign Affairs replied that ICSR is an integral part of the economic service provided by the government and that “in countries where CSR risks are estimated to be higher, more intensive efforts will be undertaken to inform and raise awareness with Dutch companies active in (or aspiring to become active in) these markets”.³¹⁷ These remarks seem in stark contrast to the lack of relevant information on the RVO website on the risks relevant for businesses operating in sensitive sectors like the technology and telecom sector, such as the potential negative impact of the “Yarovaya Law” (see Chapter 4).³¹⁸

³¹¹ [via Wayback Machine] MVO Nederland, MVO Risico Checker, snapshot 1 October 2018, <https://web.archive.org/web/20181001180531/https://www.mvorisicochecker.nl/nl>

³¹² Follow the Money, “Honderden gemartelde homo’s in Tsjetsjenie, toch doen PwC, Deloitte en KPMG er zaken”, 13 May 2022, <https://www.ftm.nl/artikelen/pwc-kpmg-deloitte-in-tsjetsjenie>; Follow the Money, 28 May 2022, “Kassa Tsjetsjeense dictator Kadyrov rinkelt dankzij Hollandse kassen”, <https://www.ftm.nl/artikelen/nederlandse-bedrijven-tsjetsjenie-kadyrov>

³¹³ House of Representatives, TK 2022-2023, 36 200 XVII, nr. 10, 22 November 2022 (previously cited), answer to question 230.

³¹⁴ RVO, “Overview HTSM - Global Challenges, Smart Solutions”, April 2016, <https://www.rvo.nl/sites/default/files/2016/04/april%202016%20IA%20Special%20HTSM%20WEBversie.pdf>, pp. 40-41; [via Wayback Machine] RVO, Investeringsregels Rusland, snapshot 14 July 2017, <https://web.archive.org/web/20170714121448/http://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/rusland/investeringsregels>

³¹⁵ [via Wayback Machine] Russian Special Economic Zones, snapshot 12 August 2020, <https://web.archive.org/web/20200812232642/http://eng.russez.ru/investors>,

³¹⁶ [via Wayback Machine] RVO, Landenoverzicht Rusland, snapshot 21 April 2020, <https://web.archive.org/web/20200421055614/https://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/rusland>, link “Zakelijke Kansen”, which leads to: [via Wayback Machine] RVO, Sectorinformatie Rusland, snapshot 2 July 2017, <https://web.archive.org/web/20170702163628/http://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/rusland/sectorinformatie>, link “Investeringsregels”, which leads to the information about the Special Economic Zones: [via Wayback Machine] RVO, Investeringsregels Rusland, snapshot 14 July 2017, <https://web.archive.org/web/20170714121448/http://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/rusland/investeringsregels>.

Another reference to the Special Economic Zones can be found on RVO, Zakelijke Kansen in Rusland, as published on 10 November 2021,

<https://archieff43.sitearchief.nl/archives/sitearchief/20211101202637/https://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/rusland/zakelijke-kansen> (accessed on 7 March 2023)

³¹⁷ House of Representatives, TK 2022-2023, 36 200 V, nr. 13, 22 November 2022, <https://www.tweedekamer.nl/downloads/document?id=2022D44556>, answer to question 55.

³¹⁸ Amnesty International, “Joint Public Statement: Russia: Telegram block leads to widespread assault on freedom of expression online”, 30 April 2018, <https://www.amnesty.org/fr/wp-content/uploads/2021/05/EUR4683222018ENGLISH.pdf>; RSF, “Russia: 52 NGOs urge UN to challenge restrictions to online expression and digital privacy”, 27 June 2018, <https://rsf.org/en/russia-52-ngos-urge-un-challenge-restrictions-online-expression-and-digital-privacy>

Also, sectors highlighted by the RVO as “promising” include the potentially sensitive sector of artificial intelligence: this is evident on its Russia pages³¹⁹ and in the chapter “Russia: startup potential is a hidden AI gem” of the Artificial Intelligence Special published by the RVO in September 2018.³²⁰ There are no warnings about possible human rights risks of using this type of technology, such as the identification, targeting and prosecution of peaceful protesters and political opponents through facial recognition, and the potential misuse of data considering the lack of judicial or public oversight over surveillance methods and technologies.³²¹ The Artificial Intelligence Special publication briefly refers to EU sanctions against Russia in place since 2014 (related to the illegal annexation of Crimea), but there is only a very general warning that “companies should pay attention to the fact that due diligence regarding partners and activities in the Russian Federation remains the responsibility of the company”. No reference is made to specific, technology-related concerns regarding the actions taken since 2012 by Russia to restrict online freedom and digital privacy.³²²

Thus, despite numerous red flags, increasing repression and widespread violations of human rights in Russia since 2012, until the full-scale 2022 invasion of Ukraine business opportunities in Russia continued to be promoted on the RVO page without clear and urgent warnings of the high human rights risks.³²³

5.3 ECONOMIC TRADE MISSIONS

As the consecutive trade policies since 2011 outline, economic trade missions are an important tool for the government to strategically position Dutch companies in prioritized countries. According to the RVO, participating in an economic trade mission can offer a company many advantages, such as meeting potential business partners, developing an international network, gaining a better understanding of the business opportunities, and raising a company’s public profile.³²⁴ Especially when ministers, secretaries or diplomats join such missions, “they can open doors that otherwise remain closed”.³²⁵

LACK OF OVERSIGHT AND OVERVIEW

Amnesty International asked the Ministry of Foreign Affairs for a list of all economic trade missions to China, Saudi Arabia and Russia between 1 January 2011 and 1 June 2022. The ministry shared a list of 64 economic trade missions, but indicated that the list might be incomplete and that it contained only those missions for which the Ministry of Foreign Affairs acted as an organizing party. The list did not include other types of missions, including missions organized by companies, decentralized missions, “top sector” missions or missions organized by sector organizations. The ministry confirmed that it did not have a complete overview of trade missions of Dutch companies in China, Russia and Saudi Arabia.

With regards to **China** the ministry provided a list of 54 economic trade missions. The list did not contain all economic missions accompanied by a minister or a high-level official; at least one mission with a minister was omitted.³²⁶ In addition, some missions were mentioned several times and other missions were wrongly classified as not being accompanied by a minister.³²⁷ The ministry mentioned two initiatives to create a

³¹⁹ RVO, Zakelijke kansen in Rusland, as published on 10 November 2021, <https://archieff43.sitearchief.nl/archives/sitearchief/20211101202637/https://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/rusland/zakelijke-kansen> (accessed on 7 March 2023)

³²⁰ RVO, “Holland Innovation Network Special - Artificial Intelligence”, September 2018, <https://www.hightechnl.nl/wp-content/uploads/2019/07/Artificial-Intelligence-Holland-Innovation-Network-Special.pdf>, pp. 56-59.

³²¹ US State Department, *Russia 2021 Human Rights Report*, undated, https://www.state.gov/wp-content/uploads/2022/04/3136152_RUSSIA-2021-HUMAN-RIGHTS-REPORT.pdf, pp. 14-18, 25-27; Human Rights Watch, “Russia: Broad Facial Recognition Use Undermines Rights”, 15 September 2021, <https://www.hrw.org/news/2021/09/15/russia-broad-facial-recognition-use-undermines-rights>

³²² RVO, “Holland Innovation Network Special - Artificial Intelligence” (previously cited), p. 59; RSF, “Russia: 52 NGOs urge UN to challenge restrictions to online expression and digital privacy” (previously cited).

³²³ RVO, Zakelijke kansen in Rusland, as published on 10 November 2021, <https://archieff43.sitearchief.nl/archives/sitearchief/20211101202637/https://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/rusland/zakelijke-kansen> (accessed on 7 March 2023)

³²⁴ RVO, Uitgaande handelsmissies, <https://www.rvo.nl/onderwerpen/handelsmissie/uitgaande-handelsmissies> (accessed on 14 December 2022).

³²⁵ RVO, Uitgaande handelsmissies, <https://www.rvo.nl/onderwerpen/handelsmissie/uitgaande-handelsmissies> (accessed on 14 December 2022).

³²⁶ The May 2019 mission lead by the Minister of Health, Welfare and Sport was omitted. Information on this mission can be found here: Ministry of Foreign Affairs, “Bijlage rapportage 1e helft 2019”, undated, https://www.eerstekamer.nl/overig/20191129/samenvatting_economische_missies/document, p. 6.

³²⁷ Including a May 2019 mission with the Secretary General of the Ministry of Infrastructure and Water Management and an April 2017 mission with the Secretary of State for Economic Affairs. See: [ZakendoeninChina.org](http://zakendoeninChina.org), 08 Feb Handelsmissie Spoorgoederenvervoer China, <https://zakendoeninChina.org/event/handelsmissie-spoorgoederenvervoer-china/> (accessed on 10 November 2022); Ministry of Foreign Affairs, “Bijlage rapportage eerste helft 2017”, undated, <https://www.tweedekamer.nl/downloads/document?id=2017D27213>, p. 6.

better overview of missions to China,³²⁸ yet it is unclear how and if these aim to create a comprehensive oversight of Dutch economic mission activity in China.

With regards to **Saudi Arabia**, the ministry shared information on eight missions between 2011 and June 2022. These took place without a minister or secretary-level official. Amnesty International found that since 2011, at least five further economic missions have gone to Saudi Arabia, focused on several sectors, including the medical, infrastructure, waste management and energy sectors.³²⁹ These missions took place at the initiative of the Ministry of Foreign Affairs, the Ministry of Economic Affairs and Climate Policy, the embassy in Riyadh, private-public initiatives or private entities. In all these economic missions, the ministries and/or the embassy in Riyadh gave some sort of support.

With regards to **Russia**, the ministry shared information on two missions at a ministerial level – one in 2011 and the other in 2013. Since the annexation of Crimea and the downing of flight MH-17 in 2014, no government-led trade missions to Russia have been organized. In November 2020, the Minister of Foreign Affairs confirmed, in response to a parliamentary resolution urging a trade mission to Russia, that she would look into whether there was sufficient interest in the Dutch business sector and if the Russian counterpart would be willing to receive such a mission.³³⁰ Despite the resolution, there have been no government-led trade missions since then.

WEAK AND INCONSISTENT CORPORATE ACCOUNTABILITY CONDITIONS

As states must protect from human rights abuse by third parties, states that facilitate economic activities must ensure that companies that receive government support to operate in high-risk contexts carry out heightened due diligence. One way to do this is to set due diligence conditions for government support and attach appropriate consequences for businesses that fail to cooperate in these contexts, such as excluding them from receiving support. When it comes to participating in economic missions, the Dutch government does set corporate accountability conditions for participating companies. However, these can easily be a tick-the-box exercise and are insufficient in establishing whether companies carry out effective human rights due diligence. It is therefore possible that the government is providing support to companies that do not take human rights due diligence seriously at all.

'OECD endorsement' both insufficient and not measured

According to the Ministry of Foreign Affairs, companies that want to participate in an economic mission need to “endorse” or “take note of” the OECD Guidelines.³³¹ As part of the registration for a mission, companies need to declare that they have taken note of the OECD Guidelines and that they act accordingly.³³² This declaration is a condition that needs to be fulfilled by companies in order to take part in the mission.

The government has indicated in other contexts what ‘OECD endorsement’ entails. Referring to the government’s goal to increase the proportion of large companies that explicitly endorse the OECD Guidelines, the Minister for Foreign Trade and Development said that companies’ endorsement of the guidelines is

³²⁸ The ministry referred to the following institutions that are working on creating more of an overview when it comes to mission contact with China: the Information and Contact Point for Requests from China, an institution indicating on its website that it focuses on incoming (and not outgoing) Chinese missions; and “Trade and Innovate NL”, a ‘public network organization’ that focuses on helping entrepreneurs and consists of several public and private partners. See: RVO, Informatie- en contactpunt voor verzoeken uit China, <https://www.rvo.nl/onderwerpen/overheden/informatie-contactpunt-china> (accessed on 10 November 2022); Trade and Innovate NL, Trade and Innovate NL, <https://tradeandinnovate.nl/> (accessed on 17 February 2023).

³²⁹ High-level trade mission to Saudi Arabia for building hospitals, medical systems and medical services, 3 - 5 June 2012, <http://www.hgcoc.com/blog/2012/05/01/high-level-handelsmissie-naar-saudi-arabie-voor-ziekenhuisbouw-medische-systemen-en-diensten-3-tm-5-juni-2012/?msclkid=fd91fb51b0c411ec863acfa60567be97>; High-level trade mission to Saudi Arabia infrastructure, mobility and traffic, 11-13 June 2012, <https://www.infrasite.nl/wegen/2012/04/13/high-level-handelsmissie-saudi-arabi-infra-mobiliteit-verkeer/?msclkid=b55a5823b0c411ec9f470bc36cbfaeda&gdpr=accept>; High-level trade mission to Saudi Arabia waste management, 18-21 November 2017, <https://www.nieuwsgrazer.nl/topic/161355/?msclkid=a7be7367b0c511ecaebb642fd26ae79b>; Trade mission to Saudi Arabia Life Sciences & Health, 8-12 September 2012, <https://nlinbusiness.com/evenement/life-sciences-and-health-in-saoedi-arabie-ZXZlbnQ6LUxpRGhwd3JleHRYNEQ2UjB1aHQ=:> Offshore Energy trade mission to Saudi Arabia and Bahrain, 23- 26 February 2020, <https://iro.nl/nl/nieuws-en-pers/company-visit-to-kingdom-of-saudi-arabia-and-kingdom-of-bahrain-23-26-february-2020/?msclkid=e0b2d2bbb0c311ecb9d03e439fc2ee82>.

³³⁰ Letter from the Minister for Foreign Trade and Development Cooperation, TK 2020-2021, 35 373, nr. 26, 24 November 2020, https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2020D47909&did=2020D47909

³³¹ Ministry of Foreign Affairs’ response to Amnesty International survey, 15 July 2022. See also: RVO, Uitgaande handelsmissies, <https://www.rvo.nl/onderwerpen/handelsmissie/uitgaande-handelsmissies> (accessed on 14 December 2022); and RVO, Voorwaarden deelname handelsmissie met bewindspersoon, <https://www.rvo.nl/onderwerpen/handelsmissie/uitgaande-handelsmissies/voorwaarden-deelname-met-bewindspersoon> (accessed on 14 December 2022).

³³² Ministry of Foreign Affairs’ response to Amnesty International draft report, 16 March 2023.

measured by looking at whether companies explicitly “refer to” the guidelines in publicly available sources or “whether they describe how responsibilities in the value chain are anchored in policy and management systems.”³³³ Yet there is no such measurement being done in the context of economic missions. In fact, research conducted by the MVO Platform in 2016 showed that 13 companies that did not commit to the OECD Guidelines according to research commissioned by the Ministry of Foreign Affairs were allowed to participate in economic missions from November 2012 to October 2016, in some cases multiple times.³³⁴

Simply requiring companies to declare that they endorse the OECD Guidelines is not enough. These and other self-declaration requirements made on companies (including the ‘self-scan’, discussed below) do not suffice to measure the commitment, let alone the adherence, of companies to the OECD Guidelines. The government should measure actual adherence to the OECD Guidelines of companies wanting to take part in economic missions, in particular by requiring companies to show credible plans of how they will conduct their human rights due diligence.

No CSR framework for missions without a minister, less transparency

When it comes to corporate accountability conditions, the Dutch government distinguishes between “economic missions with a minister”, which are missions led by an actual minister or a high-level official, and “economic missions without a minister”. There is a CSR mission framework for missions led by a minister. No such framework exists for missions without one. In response to Amnesty International’s questions, the Ministry of Foreign Affairs indicated that it was working with the RVO on developing a “proportional CSR framework” for missions without a minister.

There is also significantly less transparency on missions without a minister. For example, the ministry has repeatedly refused to share information on participating companies to such missions, whereas it does publicly share the booklets of missions with a minister. This lack of transparency makes it hard to monitor whether human rights due diligence is taken seriously by companies participating in the missions without a minister.

Why both types of missions are held to different standards remains unclear,³³⁵ but the effect is problematic. Missions with a minister often receive more media attention and closer parliamentary scrutiny. When the human rights situation in a country is deemed especially problematic, organizing a higher-profile mission with a minister can lead to a parliamentary or public backlash. For instance, a minister-led trade mission to Saudi Arabia planned in November 2018 was cancelled after the murder of Saudi journalist Jamal Khashoggi the month before.³³⁶ Economic missions without a minister can more easily fly below the parliamentary and/or public radar – and are far more numerous. At least eight lower-profile trade missions without a minister to Saudi Arabia took place in the years following Jamal Khashoggi’s murder, and these missions involved hundreds of Dutch companies.³³⁷

³³³ House of Representatives, TK 2022-2023, 36 200 XVII, nr. 10, 22 November 2022 (previously cited), answer to question 175.

³³⁴ MVO Platform, “Brief over MVO in economische missies”, 5 December 2016, <https://www.mvoplatform.nl/wp-content/uploads/sites/5/2017/08/brief-over-mvo-in-economische-missies-pdf.pdf>

³³⁵ The Minister of Foreign Affairs indicated, as a way of explaining the different transparency standards, that companies were not asked to give permission for the disclosure of their company name in missions without minister. Yet, according to the RVO website, when it comes to the potential use and publication of personal and business information by the Dutch government, the conditions for participation in both types of missions are formulated in the exact same way. See: House of Representatives, TK 2022-2023, 36 200 V, nr. 13 (previously cited), answer to question 98; RVO, Missions without minister, <https://www.rvo.nl/onderwerpen/handelsmissie/uitgaande-handelsmissies/voorwaarden-deelname-zonder-bewindspersoon> (accessed 10 November 2022); RVO, Missions with minister, <https://www.rvo.nl/onderwerpen/handelsmissie/uitgaande-handelsmissies/voorwaarden-deelname-met-bewindspersoon> (accessed 10 November 2022).

³³⁶ Nu.nl, “Nederlandse handelsmissie naar Saoedi-Arabië definitief afgeblazen”, 25 October 2018, <https://www.nu.nl/politiek/5534912/nederlandse-handelsmissie-saoedi-arabië-definitief-afgeblazen.html>. A minister-led trade mission to Qatar was also cancelled after the Guardian reported in February 2021 that 6500 migrant workers had died in Qatar, see: NOS, “Kaag stelt handelsmissie Qatar uit vanwege situatie arbeiders WK-stadions”, 2 March 2021, <https://nos.nl/collectie/13781/artikel/2370928-kaag-stelt-handelsmissie-qatar-uit-vanwege-situatie-arbeiders-wk-stadions>

³³⁷ Trade mission Life Sciences & Health in Saudi Arabia, 8-12 September 2019, <https://nlinbusiness.com/evenement/life-sciences-and-health-in-saoedi-arabië-ZXZlbnQ6LUxpRGhwd3JleHRYNEQ2UjB1aHQ=>; Offshore Energy trade mission to Saudi Arabia and Bahrain, 23-26 February 2020, <https://iro.nl/nl/nieuws-en-pers/company-visit-to-kingdom-of-saudi-arabia-and-kingdom-of-bahrain-23-26-february-2020?msclkid=e0b2d2bbb0c311ecb9d03e439fc2ee82>; Horticultural trade mission to Saudi Arabia, 17-22 October 2021, <https://www.dutchgreenhousedelta.com/knowledge/dutch-horticulture-mission-to-the-kingdom-of-saudi-arabia/>; Water management trade mission to Saudi Arabia, 22-27 January 2022, <https://psps-ba.nl/en/handelsmissie-watermanagement-oman-saoedi-arabië/>; E-health trade mission to Saudi Arabia and Qatar, 12-17 March 2022, <https://www.health-holland.com/events/2022/03/handelsmissie-e-health-saoedi->

For these lower-profile missions without a minister, clear corporate accountability conditions are needed. The Ministry of Foreign Affairs said that the logic for having different CSR frameworks for these missions is that since there are more and larger companies participating in missions with a minister, there is a “greater political risk of harm” and therefore a specific CSR framework for the higher-profile missions needed to be developed.³³⁸ The ministry acknowledged that other economic missions should also have a CSR framework, yet indicated that this was less relevant, because it involves “smaller companies with less capacity to do CSR”.³³⁹

However, the UN Guiding Principles request *all* companies to carry out human rights due diligence and are clear that while the responsibility is the same for all, differences may apply with regards to the scale and complexity of the means through which companies meet that responsibility.³⁴⁰ The human rights risks of smaller companies depend on their particular product or service, the sector they are operating in, and their position within the value chain. This means these companies could face particular high risks. Also, if the Dutch government considers that smaller companies have less capacity to engage in corporate accountability, it should prioritize corporate accountability support precisely for them. And when economic missions are operated with fewer checks and balances, the need for a decent CSR framework becomes greater, not less. Yet here, the “endorsement” of the OECD Guidelines, which is not even a hard requirement, is the only corporate accountability-related condition for participating. No conditions are set on presenting credible plans for conducting human rights due diligence.

In February 2023, at a time when research for this report was finished, the Dutch government notes on the RVO website that the existing ICSR framework applies to all missions, including those without a minister.³⁴¹ This would also mean that for all future missions, the RVO will publicly share the names of participating companies.³⁴² While this does not change anything regarding the problematic nature of the existing ICSR framework, and it remains to be seen how this change will be implemented in practice,³⁴³ it does seem to indicate the Dutch government is taking initial steps to hold all types of missions to the same standards. In March 2023, the ministry indicated that the ICSR framework for missions without a minister will be implemented from 1 April 2023 onwards, and that a “version for the public” will be published on the RVO website “later this year [2023].” It did not indicate if and how this framework would differ from the existing framework for missions with a minister.

Unclear purpose and effect of ‘self-scan’

Since 2019, the ICSR framework for missions with a minister features an obligatory “self-scan”, an online list of questions that companies need to answer when they register for an economic mission.³⁴⁴ The list appears to be aimed at assessing the extent to which the company engages in human rights and environmental due

[arabie-en-qatar](#); Waste management trade mission to Saudi Arabia, March, <https://alloptimal.nl/news-en/pib-smart-waste-management-in-ksa/>; Fact finding mission solar energy to Saudi Arabia and the UAE, 24-28 September 2022, <https://solarmagazine.nl/nieuws-zonne-energie/i27598/rvo-organiseert-zonne-energiemissie-naar-saoedi-arabie-en-de-verenigde-arabische-emiraten>; Horticultural trade mission to Saudi Arabia, 17-20 October 2022, <https://www.dutchgreenhousedelta.com/knowledge/dutch-horticulture-mission-to-the-kingdom-of-saudi-arabia-2/>

³³⁸ Online conversation with officials from the Ministry of Foreign Affairs on 1 September 2022.

³³⁹ This same type of differentiation between larger and smaller companies is found elsewhere, as indicated previously in this report. On the English-language website grouping all relevant information for resident and foreign entrepreneurs who want to establish a business or do business with the Netherlands, information provided by the RVO lists that the Dutch government only expects “larger companies” to implement an ICSR policy. Business.gov.nl, International Corporate Social Responsibility (ICSR), <https://business.gov.nl/running-your-business/international-business/doing-business-abroad/international-corporate-social-responsibility-icsr/> (accessed on 8 February 2023)

³⁴⁰ UN Guiding Principles, Principle 14.

³⁴¹ In what appears to be a new version of an existing website, the RVO now indicates: “If you want to participate in a trade mission, you must meet certain conditions. International Corporate Social Responsibility (ICSR) is a fixed component. The Netherlands Enterprise Agency (RVO) has drawn up an ICSR framework for this. This framework applies to both trade missions with and without a minister.” RVO, *Uitgaande handelsmissies*, <https://www.rvo.nl/onderwerpen/handelsmissie/uitgaande-handelsmissies> (accessed on 25 February 2023).

³⁴² Pursuant to the existing ICSR framework, that states: “A week before the mission starts, RVO publishes an overview of participating companies, knowledge institutes and organizations on the RVO website.” See: RVO, *IMVO-kader economische missies*, <https://www.rvo.nl/onderwerpen/handelsmissie/uitgaande-handelsmissies/imvo-kader-economische-missies> (accessed on 25 February 2023).

³⁴³ The change does not seem to be incorporated integrally into RVO documents. For example, the RVO website containing the ICSR framework itself seems to still indicate that it only applies to missions with a minister. See: RVO, *IMVO-kader economische missies*, <https://www.rvo.nl/onderwerpen/handelsmissie/uitgaande-handelsmissies/imvo-kader-economische-missies> (accessed on 25 February 2023).

³⁴⁴ Ministry of Foreign Affairs’ response to Amnesty International survey, 15 July 2022 – referring to: Letter from the Minister of Foreign Trade and Development Cooperation, TK 2018-2019, 26 485, nr. 307, 27 May 2019, https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2019D21798&did=2019D21798.

diligence.³⁴⁵ The ministry indicated that it is not standard procedure to verify the answers provided by the companies.³⁴⁶ Only when there are doubts about the company (e.g. because of their answers or because of the reputation of the company) will there be an additional reputation check (via google / open sources).³⁴⁷ In 2019, the Minister for Foreign Trade and Development Cooperation indicated the RVO does not investigate the self-scans of all companies – it only conducts random sample checks with companies regarding the self-scan.³⁴⁸ The ministry noted that, per economic mission, the RVO on average follows up “zero to one times” with a company based on the results of the “self-scan”.³⁴⁹ When asked, the ministry said that companies are not required to share a human rights due diligence action plan or publicly report on their efforts. It notes that the CSR conditions for these missions are aimed to establish a “process of continual improvement”.³⁵⁰ The ministry emphasized that non-adherence to the OECD Guidelines is not an exclusionary ground when it comes to companies wishing to participate in an economic mission.³⁵¹ A company can however be excluded from participation if it does not implement an “improvement project” proposed by the RVO after seeing negative CSR indications.³⁵²

How this is all measured and operated is unclear. The ministry indicated that there has never been a company that actually implemented an “improvement project” to be able to participate in a trade mission to China, Saudi Arabia or Russia. The ministry also has no record of companies that were excluded from economic missions for not implementing a proposed “improvement project”. It is unclear whether the RVO ever proposed an “improvement project” to any company wishing to engage in a trade mission to the three countries – the ministry kept this vague by saying that there might have been companies that decided not to participate after receiving information about the “improvement project”, but that the government does not keep records of companies withdrawing their interest in and/or registration for economic missions.

In short, the ministry said that there have never been any exclusions from trade missions to China, Saudi Arabia and Russia. At least hundreds, and likely more than a thousand companies have participated in trade missions to the three countries during the past 10 years. Amnesty International’s research for this report illustrates that the human rights due diligence of companies with activities in these countries can be poor and in some cases even likely absent. The fact that non-adherence to the OECD Guidelines is not an exclusionary ground in itself, taken together with the fact that there has never been an “improvement project” implemented by any company wishing to participate in an economic mission to the three countries, casts doubts on the corporate accountability threshold set by the Dutch government for participating in economic missions and on the government’s efforts of vetting and helping companies eligible for governmental support with their human rights due diligence efforts.

Unknown scope of information about human rights risks

Apart from the vague corporate accountability conditions attached to participation in economic missions, there are other concerns related to the CSR framework for missions with a minister. The Dutch government should, in line with international standards, help businesses to identify human rights-related risks of their activities and business relationships at the earliest stage possible. It is unclear whether this happens, and if so, how it happens.

For instance, the framework notes that CSR is mentioned in communications with participants, that there is always a preparatory meeting with “speakers who know the country and its CSR situation well”, and that CSR is part of the embassy’s briefing to mission participants and of “various program components of a mission,

³⁴⁵ Amnesty International accessed the questions in the self-scan by going through the process of registering for a trade mission.

³⁴⁶ Ministry of Foreign Affairs’ response to Amnesty International draft report, 16 March 2023.

³⁴⁷ Ministry of Foreign Affairs’ response to Amnesty International draft report, 16 March 2023.

³⁴⁸ Letter from the Minister of Foreign Trade and Development Cooperation, TK 2018-2019, 26 485, nr. 307 (previously cited), p. 2. In March 2023, the Ministry of Foreign Affairs indicated: “With regard to the CSR self-scan: we are currently looking at all (instead of a random sample of) completed CSR self-scans and are in further contact with companies that have (mostly) completed the self-scan with ‘no’: the approach here is to start a conversation, aimed at advice and improvement. We consider non-completed self-scans as an incomplete registration.” Ministry of Foreign Affairs’ response to Amnesty International draft report, 16 March 2023.

³⁴⁹ Ministry of Foreign Affairs’ response to Amnesty International survey, 15 July 2022.

³⁵⁰ Ministry of Foreign Affairs’ response to Amnesty International survey, 15 July 2022.

³⁵¹ Ministry of Foreign Affairs’ response to Amnesty International draft report, 16 March 2023.

³⁵² Other grounds for exclusion consists of appearing on the ‘World Bank list of ineligible firms and individuals’; falling under the exclusion grounds of the ‘FMO exclusion list’; and receiving a conviction for corruption (up until the company can demonstrate that it has implemented appropriate policy). Furthermore, companies with a 0 score (or who don’t have a score at all) on the Transparency benchmark – an annual survey by the Ministry of Economic Affairs into the content and quality of social reporting – can only participate after approval by the Ministry of Foreign Affairs. Letter from the Minister of Foreign Trade and Development Cooperation, TK 2018-2019, 26 485, nr. 307 (previously cited), p. 2; Ministry of Foreign Affairs’ response to Amnesty International draft report, 16 March 2023.

such as seminars, roundtables and company and/or field visits.”³⁵³ However, the Ministry of Foreign Affairs remains vague on how businesses participating in economic missions to China, Saudi Arabia and Russia were precisely informed of the human rights risks and the repressive context in these countries. Amnesty International is not aware of any independent civil society organization specialized in the relevant human rights risks that was invited for preparatory meetings to these missions. Amnesty International requested to brief participants in preparatory meetings for missions to Saudi Arabia and China, but was never invited.³⁵⁴ The ministry did not answer Amnesty International’s question about whether independent civil society organizations have ever been involved in informing mission participants on the ground on CSR-related issues. What information on human rights risks is shared during the missions and by whom remains unclear. The ministry declined to answer whether before and during the mission participants are specifically warned of the repression of freedom of expression, association and assembly and the impact this has on carrying out effective human rights due diligence.

In July 2022, the Ministry of Foreign Affairs published a new National Action Plan (NAP) for Business and Human Rights in which it commits to setting up the ICSR support service (IMVO Steunpunt) announced in previous policy documents.³⁵⁵ The centre is designed to be a “one-stop shop” to support all businesses in their application of due diligence.³⁵⁶ This is an important initiative that could help companies improve their human rights due diligence.³⁵⁷ Specifically concerning economic missions, the NAP mentions that a company’s “attitude” in a possible notification at the National Contact Point for the OECD Guidelines is considered when deciding whether a company can participate in a trade mission.³⁵⁸ The NAP does not, however, include plans on creating human rights due diligence conditions for companies participating in trade missions.

5.4 FINANCIAL SUPPORT

The Dutch government offers a wide array of financial instruments to Dutch companies with ambitions to expand operations across borders. The Ministry of Foreign Affairs indicated that, for the purpose of promoting trade, Dutch companies can access the following instruments within the Dutch governmental foreign trade and development cooperation framework, the use of which is in principle not geographically limited:³⁵⁹

- Export Credit Insurance (EKV)³⁶⁰
- Dutch Trade and Investment Fund (DTIF)
- Partners for International Business (PIB)
- Demonstration projects, feasibility studies and investment preparation studies (DHI)³⁶¹

³⁵³ RVO, IMVO-kader economische missies, <https://www.rvo.nl/onderwerpen/handelsmissie/uitgaande-handelsmissies/imvo-kader-economische-missies> (accessed on 14 December 2022)

³⁵⁴ Amnesty proposed this several times. After attending a preparatory meeting for the 2019 economic mission “rail freight transport to China” (presumably categorized as a mission with minister - the secretary general of the Ministry of Infrastructure and Water Management participated) and noticing that there was no talk on human rights or ICSR at all, Amnesty offered the RVO several times to organize a talk for participants. The RVO did not respond. Also with regards to missions to Saudi Arabia, Amnesty International offered to brief participants, but was never invited.

³⁵⁵ Ministry of Foreign Affairs, “Van voorlichten tot verplichten: Een nieuwe impuls voor internationaal maatschappelijk verantwoord ondernemerschap” (previously cited), p. 28.

³⁵⁶ Ministry of Foreign Affairs, Nationaal Actieplan Bedrijfsleven & Mensenrechten, July 2022 (previously cited), p. 59.

³⁵⁷ The support service was launched in September 2022. The ministry noted that its English name is “IRBC-helpdesk” and that it is already helping companies. Evaluation of its activities falls outside the research scope of this report. Ministry of Foreign Affairs’ response to Amnesty International draft report, 16 March 2023.

³⁵⁸ This can be a cause for a conversation with the company in question, which can lead to an ‘improvement project’. It is unclear whether this is the case for all trade missions or just for missions led by a minister. Ministry of Foreign Affairs, Nationaal Actieplan Bedrijfsleven & Mensenrechten, July 2022 (previously cited), p. 70; Letter from the Minister of Foreign Trade and Development Cooperation, TK 2018-2019, 26 485, nr. 307 (previously cited), p. 2.

³⁵⁹ Ministry of Foreign Affairs’ response to Amnesty International survey, 15 July 2022. In previous years, other instruments were offered as well, for instance for Russia in 2016 the following subsidy instruments were available as well: Finance for International Business (FIB); Government-to-government (G2G) and Knowledge-to-knowledge (K2K) (a programme for cooperation between Dutch and foreign state organisations and knowledge institutions, aiming to ‘create favorable conditions for entrepreneurs to do business on foreign markets’); the Netherlands Management Training Programme (NMTP), aiming to ‘build international business relations’. See: [via Wayback Machine] RVO, Subsidies & financiering, filter ‘Rusland’, snapshot 5 January 2016, [https://web.archive.org/web/20160105183858/http://www.rvo.nl/subsidies-regelingen?f%5BQ%5D=landen%3A3336#~:text=Filters%20weergeven,-9%20resultaten,-\(in%20%2C19%20seconden](https://web.archive.org/web/20160105183858/http://www.rvo.nl/subsidies-regelingen?f%5BQ%5D=landen%3A3336#~:text=Filters%20weergeven,-9%20resultaten,-(in%20%2C19%20seconden)

³⁶⁰ Export Krediet Verzekering

³⁶¹ Demonstratieprojecten, haalbaarheidsstudies en investeringsvoorbereidingsstudies

- Support International Business (SIB)

The ministry furthermore indicated that in the case of Russia, many trade-promoting activities ceased after 2014 and that since the Russian invasion of Ukraine, no trade promotion activities have taken place.³⁶² The ministry specified that “[s]ince the invasion of Ukraine, at least the EKV, but also DTIF, DHI are closed for Russia,”³⁶³

The listed financial instruments specify human rights conditions in different ways. The different conditions that apply are outlined below.

EXPORT CREDIT INSURANCE AND DUTCH TRADE AND INVESTMENT FUND

The EKV is a public export credit insurance for Dutch companies that cannot get their international activities insured on the market.³⁶⁴ The DTIF provides insurance and financing for investments and export, in cases where banks and other financial institutions do not offer financing.³⁶⁵

The ministry indicated that all issued EKV and DTIF transactions can be found on the website of Atradius Dutch State Business (ADSB), the official export credit agency for the Netherlands.³⁶⁶ In subsequent communication with Amnesty International, the ministry corrected this statement, indicating that DTIF is partly administered by ADSB and partly by Invest International, and that ADSB only lists the transactions they administer themselves.³⁶⁷ The total value of transactions listed on the ADSB site under EKV and DTIF from 1 January 2011 to 1 June 2022 for activities in **China**, including Hong Kong, was over EUR 484 million,³⁶⁸ and for activities in **Saudi Arabia** was over EUR 612 million.³⁶⁹ Companies that received insurance include Strukton, which received insurance worth EUR 231 million for the development and construction of a subway in the Saudi capital Riyadh. The total value of transactions listed for activities in **Russia** between 2011 and January 2022 was nearly EUR 290 million.³⁷⁰ The value of transactions administered by Invest International during the research period could not be readily found on its website and were not included in this report.³⁷¹

With regards to the corporate accountability conditions, the ministry referred to the CSR website of ADSB for both EKV and DTIF.³⁷² It notes that, “experts will assess [...] the environmental and social impacts of the project for which your goods and/or services are destined. The Dutch government wants companies to operate responsibly both in the Netherlands and abroad, we therefore encourage you to observe the OECD Guidelines’ recommendations to the fullest extent possible.”³⁷³ It is unclear whether companies were denied this type of financial support because they did not observe the OECD Guidelines.

The bulk of information on the ADSB website discusses how the organization implements its own due diligence responsibilities. It primarily deals with assessing the potential impact of the transactions and related projects in question. Clients are “expected” to meet their obligations on human rights and to conduct their own due diligence procedure “even if the destination country has a less than perfect record on those [human] rights”.³⁷⁴ The ADSB’s Environmental and Social Policy document is most comprehensive when discussing how its experts go about their environmental and social assessment of transactions and

³⁶² Ministry of Foreign Affairs’ response to Amnesty International survey, 15 July 2022.

³⁶³ Ministry of Foreign Affairs’ response to Amnesty International draft report, 16 March 2023. Referring to (for EKV): Atradius Dutch State Business, “Ekv-landenbeleid Wit-Rusland, Oekraïne en Rusland”, 2 March 2022, <https://atradiusdutchstatebusiness.nl/nl/nieuws/landenbeleid-wit-rusland,-oekra%C3%AFne-en-rusland.html>

³⁶⁴ Ministry of Foreign Affairs’ response to Amnesty International draft report, 16 March 2023.

³⁶⁵ Atradius Dutch State Business, International finance with DTIF, <https://atradiusdutchstatebusiness.nl/en/products/international-finance-with-dtif.html> (accessed on December 14, 2022).

³⁶⁶ Ministry of Foreign Affairs’ response to Amnesty International survey, 15 July 2022. Referring to: Atradius Dutch State Business, Afgegeven polissen, <https://atradiusdutchstatebusiness.nl/nl/artikel/afgegeven-polissen.html> (accessed on December 14, 2022).

³⁶⁷ Ministry of Foreign Affairs’ response to Amnesty International draft report, 16 March 2023.

³⁶⁸ Atradius Dutch State Business, Afgegeven polissen, <https://atradiusdutchstatebusiness.nl/nl/artikel/afgegeven-polissen.html> (accessed on December 14, 2022).

³⁶⁹ Atradius Dutch State Business, Afgegeven polissen (previously cited).

³⁷⁰ Atradius Dutch State Business, Afgegeven polissen (previously cited).

³⁷¹ Amnesty International noted a list of intended DTIF agreements on the Invest International website, but could not locate a list of concluded transactions. Invest International, Disclosures, <https://investinternational.nl/disclosures/> (accessed on 19 March 2023).

³⁷² Atradius Dutch State Business, CSR (Corporate Social Responsibility), <https://atradiusdutchstatebusiness.nl/en/about-us/corporate-social-responsibility-csr.html> (accessed on December 14, 2022).

³⁷³ Atradius Dutch State Business, CSR (Corporate Social Responsibility), <https://atradiusdutchstatebusiness.nl/en/about-us/corporate-social-responsibility-csr.html> (accessed on December 14, 2022).

³⁷⁴ Atradius Dutch State Business, “Policy Statement on Human Rights”, January 2018, <https://atradiusdutchstatebusiness.nl/en/documents/44.419.01.e-dsb-humanrights.pdf>, p. 2.

projects.³⁷⁵ An initial screening by ADSB determines whether “environmental and social due diligence” is required.³⁷⁶ A host of factors, listed as in conformity with the Common Approaches³⁷⁷ and complemented by Dutch national policy, determine when and how such due diligence is required.³⁷⁸ Specific types of transactions are more closely inspected: projects taking place in a “sensitive area” (a non-exhaustive list of examples is given, which includes conflict and post-conflict areas, but not repressive contexts), a “sensitive sector” (a non-exhaustive list of examples is given, which includes major construction projects, but not the hi-tech industry) and/or with “a high likelihood of project-related human rights violations occurring” (a condition further detailed by a non-exhaustive list of examples, including “the rights of the child, for instance if children are put to work in the context of a project”).³⁷⁹

Of the 40 **China** (including Hong Kong)-related transactions receiving EKV or DTIF support through ADSB, only 1 was marked after screening as needing environmental and social due diligence.

Of the 30 **Russia**-related transactions through ADSB, 1 was marked after screening as containing “significant potential negative environmental or social effects”.

Of the 22 **Saudi Arabia**-related transactions through ADSB, 5 were marked after screening as needing environmental and social due diligence. One of these involved the company Strukton, which received EKV export credit insurance for its investments in Saudi Arabia for building and designing the subway system in Riyadh. The ADSB CSR test concluded that this project had “serious potential negative environmental and or social impacts, possibly extending to beyond the location of the project”.³⁸⁰ What steps Strukton took to prevent or mitigate these impacts is unclear. Amnesty International requested the ADSB to share the CSR assessment, but did not receive a response.³⁸¹ However, Amnesty International’s assessment of the quality of Strukton’s due diligence policy and practice is that the company has a very limited view on their human rights due diligence responsibilities. The company claims that “due to the highly limited scope of Strukton in the entire Riyadh metro project” not all human rights due diligence responsibilities apply to the company.³⁸² This is a worrying interpretation of their responsibilities under the OECD Guidelines and casts serious doubt over whether they “adhere” to these standards and actually carried out human rights due diligence for the project. Furthermore, since 2019, Strukton has been under investigation for corruption related to the same project as Strukton’s owner allegedly bribed a Saudi official to secure the work, which would be in clear breach of the OECD Guidelines.³⁸³

³⁷⁵ The document dates from 2018 and replaces the previous “Environment and Social Review” (2012) policy document. The document mentions that the main reason for updating the document was the revision of the agreements made on the OECD level, the so-called Common Approaches, in 2016: “This inter alia resulted in the addition of a new screening criterion prescribing that, when there is a high likelihood of human rights violations occurring, the regular environmental and social due diligence is expanded with additional attention being paid to human rights.” In what follows, we will only discuss information contained in the 2018 document: Atradius Dutch State Business, “Environmental and Social Policy Document - Export Credit Insurance”, undated, <https://atradiusdutchstatebusiness.nl/en/documents/44.104.01.e-environmental-and-social-policy-document.pdf>, p. 4.

³⁷⁶ In its comments on this report dated 16 March 2023, the Ministry of Foreign Affairs indicated that all applications are screened, and indicated this as a form of due diligence. “Screening is the identification of risks that require a comprehensive assessment. Based on this (riskier transaction, sector, country) it is determined whether more extensive DD should take place.” Amnesty International does not deny that this approach takes place, yet uses the terms found in the ADSB policy to describe the process: the policy document speaks of a “screening” (and not of a due diligence process) that determines whether “economic and social due diligence” (and not heightened economic and social due diligence) is needed. See: Ministry of Foreign Affairs’ response to Amnesty International draft report, 16 March 2023; Atradius Dutch State Business, “Environmental and Social Policy Document - Export Credit Insurance”(previously cited), p. 13.

³⁷⁷ Referring to agreements made on the OECD level in 2012 and revised in 2016. See: OECD Council, Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the “Common Approaches”), 6 April 2016, [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/ecg\(2016\)3](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/ecg(2016)3)

³⁷⁸ Atradius Dutch State Business, “Environmental and Social Policy Document - Export Credit Insurance”(previously cited), p. 15.

³⁷⁹ Atradius Dutch State Business, “Environmental and Social Policy Document - Export Credit Insurance” (previously cited), p. 15-16.

³⁸⁰ Atradius Dutch State Business, Afgegeven polissen, <https://atradiusdutchstatebusiness.nl/nl/artikel/afgegeven-polissen.html> (accessed on December 16, 2022).

³⁸¹ Amnesty International email sent to ADSB on 24 November 2022, on file with Amnesty International.

³⁸² Response from Strukton by email to Amnesty International questionnaire, 6 July 2022.

³⁸³ NOS, “Strukton-eigenaar Sanderink verdacht van omkoping bij Saudisch megaproject”, 23 September 2022, <https://nos.nl/artikel/2445749-strukton-eigenaar-sanderink-verdacht-van-omkoping-bij-saudisch-megaproject>

SUPPORT INTERNATIONAL BUSINESS; DEMONSTRATION PROJECTS, FEASIBILITY STUDIES AND INVESTMENT PREPARATION STUDIES; AND PARTNERS FOR INTERNATIONAL BUSINESS

SIB is a subsidy that companies can receive to fund business activities aimed at expanding operations abroad.³⁸⁴ DHI is a subsidy that companies can receive at the earlier stage of expanding operations abroad, for instance to finance company participation at an international trade fair or to conduct market feasibility studies.³⁸⁵ PIB is a programme in which companies work in a public-private partnership, for which the RVO develops multi-annual action plans with clusters of companies (and knowledge institutes) aimed at effectively positioning a specific sector in a foreign market.³⁸⁶

Amnesty International asked the Ministry of Foreign Affairs which companies with ambitions to expand operations in China, Saudi Arabia and Russia had benefited from the PIB, DHI and SIB instruments since 2011, but the ministry indicated they could not share this information for reasons of confidentiality. Documents revealed that between 2017 and 2022, 12 SIB requests had been approved and 2 PIBs had been established related to activities in **Saudi Arabia**.³⁸⁷ For **Russia**, during 2017-2022 over 40 SIB requests were approved. No PIB programmes were established during the same period in Russia.³⁸⁸ Since 1 April 2022, the only financial tool of support left for Dutch businesses in relation to Russia is the SIB for entrepreneurs who suffered financial losses because of the war or related sanctions.³⁸⁹

With regards to the corporate accountability conditions applying to PIB, DHI and SIB, the ministry indicated that these fall under the general RVO policy regarding international programmes.³⁹⁰ This policy lists five generic “assumptions”:

- adherence to the OECD Guidelines and other standards, noting that companies need to “show that they adhere to the OECD-Guidelines”;
- minimalizing negative impact and enlarging positive impact;
- working on improvement, with a focus on providing companies with improvement trajectories when needed;
- impacting organizational behaviour positively; and
- proportionality.³⁹¹

The ministry did not provide any specification regarding how these CSR-related “assumptions” were translated into specific corporate accountability conditions regarding the PIB, DHI and SIB instruments. It is also not clear how companies need to show that they adhere to the OECD Guidelines. No condition is mentioned on providing credible human rights due diligence plans that their activities will not cause, contribute or be linked to human rights abuses.

SUMMARY

The Dutch government has acknowledged that it must put safeguards in place that, while facilitating and encouraging economic operations abroad, must ensure that these activities do not cause, contribute or are otherwise linked to human rights harm. However, it fails to put this into practice. Corporate accountability conditions for receiving financial support seem to be more developed than those for other types of government support. However, most financial instruments do not require companies to present credible human rights due diligence plans. The government should insist that companies requesting government financial support for activities in high-risk countries share credible human rights due diligence plans that show their activities will not cause, contribute or be linked to human rights harm.

³⁸⁴ RVO, Support International Business (SIB), <https://www.rvo.nl/subsidies-financiering/sib> (accessed on 16 December 2022).

³⁸⁵ RVO, DHI-subsidieregeling, <https://www.rvo.nl/subsidies-financiering/dhi> (accessed on 16 December 2022).

³⁸⁶ RVO, Partners for International Business (PIB), <https://www.rvo.nl/subsidies-financiering/pib> (accessed on 16 December 2022).

³⁸⁷ House of Representatives, TK 2022-2023, 36 200 XVII, nr. 10, 22 November 2022 (previously cited), answer to question 249.

³⁸⁸ House of Representatives, TK 2022-2023, 36 200 XVII, nr. 10, 22 November 2022 (previously cited), answer to question 249.

³⁸⁹ RVO, Subsidie SIB Alternatieve markten: <https://www.rvo.nl/subsidies-financiering/sib/alternatieve-markten> (accessed on 30 January 2023)

³⁹⁰ RVO, Uitvoeringsbeleid MVO, <https://www.rvo.nl/onderwerpen/mvo/uitvoeringsbeleid>, (accessed on 17 November 2022).

³⁹¹ RVO, Uitvoeringsbeleid MVO, <https://www.rvo.nl/onderwerpen/mvo/uitvoeringsbeleid>, (accessed on 17 November 2022).

5.5 SUPPORT BY DIPLOMATIC MISSIONS

Since 2011, consecutive Dutch trade policies show an increased focus on economic diplomacy, in which economic departments of embassies and consulates as well as Netherlands Business Support Offices (NBSOs) play an important role in supporting Dutch companies.³⁹² According to the 2018 trade policy, a new “toolbox economic diplomacy” would include a “larger commitment of economic attachés on business development instead of regular trade promotion”.³⁹³

Amnesty International asked the Ministry of Foreign Affairs which types of non-financial support companies with activities in China, Saudi Arabia and Russia received from the Dutch government between 1 January 2011 and 1 June 2022. The ministry indicated that Dutch companies that are doing or intend to do business abroad can make use of support by the RVO and Dutch embassies and consulates general.

With regards to support by embassies and consulates general, the ministry indicated that this support “comes in many forms and can vary from informing Dutch companies about the local market, to alerting companies to tenders, facilitating contact with local partners, to organizing network meetings, opening local offices and facilitating solutions with payment issues.”³⁹⁴

CHINA

In China, support to Dutch companies is provided by the Dutch embassy in Beijing and Dutch consulates general in Chongqing, Guangzhou, Hong Kong, Macau and Shanghai. However, the entire Dutch mission network engaged in commercial activities in China is much larger. Not counting EU or Benelux offices, this mission network includes:³⁹⁵

- Six NBSOs (Chengdu, Dalian, Shenzhen, Nanjing, Qingdao, Wuhan)³⁹⁶
- Three innovation attachés (Beijing, Guangzhou, Shanghai) that form part of the innovation attaché network, to help companies access innovative trends and developments, opportunities for innovation and research and development (R&D) and “innovative contacts”³⁹⁷
- A customs attaché (Beijing) to contribute to cooperation between the Dutch and Chinese customs administrations³⁹⁸
- An agriculture council (Beijing), an agriculture attaché (Beijing) and agriculture team members (Beijing, Chongqing, Guangzhou, Shanghai)³⁹⁹
- An infrastructure and water management council (Beijing) and infrastructure, water management and environment team members (Beijing, Shanghai)⁴⁰⁰
- Other institutions, including the Netherlands Foreign Investment Agency (with representatives in Beijing, Chongqing, Guangzhou and Shanghai), a government unit helping and advising foreign companies with their international activities in the Netherlands.⁴⁰¹

It is unclear how often and intensively the economic mission network in China has supported Dutch companies in the past 10 years, and which companies it supported. In October 2021, the Minister for

³⁹² Letter from the Minister and State Secretary of Economic Affairs, Agriculture and Innovation, “Buitenlandse markten, Nederlandse kansen”, TK 2010-2011, 31 985, nr. 5, 24 June 2011, <https://zoek.officielebekendmakingen.nl/kst-31985-5.pdf>, p. 5.

³⁹³ Letter from the Minister for Foreign Trade and Development Cooperation, TK 2018-2019, 34 952, nr. 30 Herdruk, 5 October 2018 (previously cited), p. 9.

³⁹⁴ Ministry of Foreign Affairs’ response to Amnesty International survey, 15 July 2022.

³⁹⁵ An overview of agencies and organs can be found here: Zakendoeninchina.org, Over ons, <https://zakendoeninchina.org/wie-zijn-wij/> (accessed on 25 November 2022); and here: RVO, China: Bij wie kunt u terecht, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/china/hulp-ambassade/contact> (accessed on 8 October 2020).

³⁹⁶ RVO, Netherlands Business Support Offices (NBSO's), <https://www.rvo.nl/onderwerpen/buitenlandnetwerk/nbso> (accessed on 25 November 2022).

³⁹⁷ RVO, Innovatie Attaché Netwerk (IA-Netwerk), <https://www.rvo.nl/onderwerpen/buitenlandnetwerk/ia-netwerk> (accessed on 25 November 2022)

³⁹⁸ RVO, China: Bij wie kunt u terecht?, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/china/hulp-ambassade/contact> (accessed on 8 October 2022).

³⁹⁹ Ministry of Agriculture, Nature and Food Quality, Over het Landbouwteam, <https://www.agroberichtenbuitenland.nl/landeninformatie/china/landbouwraad> (accessed on 25 November 2022).

⁴⁰⁰ RVO, China: Bij wie kunt u terecht?, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/china/hulp-ambassade/contact> (accessed on 8 October 2022).

⁴⁰¹ Invest in Holland, Contact Us, <https://investinholland.com/contact-us/> (accessed on 25 November 2022). More ‘posts and partners’ of the Dutch economic mission network in China can be found here: RVO, China: Bij wie kunt u terecht?, <https://www.rvo.nl/onderwerpen/landen-en-gebieden/china/hulp-ambassade/contact> (accessed on 8 October 2022).

Foreign Trade and Development Cooperation indicated that CSR-related support is “an integral component of the economic services offered by the Dutch government in foreign countries and is therefore integrated in all activities of the embassy, the consulates general and the NBSOs in China”.⁴⁰² The minister indicated that in 2020, Dutch companies had requested economic services from the economic mission network approximately 1,900 times.⁴⁰³ The Minister for Foreign Trade and Development Cooperation subsequently named some of the China-related ICSR events that took place in 2020, without specifying the role of the economic mission network in the activities. They include two educational sessions for companies (in cooperation with VNO-NCW,⁴⁰⁴ a Dutch employers’ federation); a closed session on CSR in China within the textile sector; the redaction of the China-specific e-learning for the International Business Academy; and mentioning CSR in the China Business Week organized by the RVO.⁴⁰⁵

In 2021, Amnesty International took part in several China Business Week sessions highlighted by the Dutch government as integrating CSR-related information.⁴⁰⁶ Various people, including representatives of the economic mission network in China, spoke in general terms about CSR. They mentioned that it was hard to discuss the CSR support of the economic mission network in more detail as CSR is not “one-size-fits-all” and needs to be tailor-made. Representatives stressed that the economic mission network can provide tailor-made solutions to Dutch companies but cannot talk about this support publicly.

SAUDI ARABIA

In Saudi Arabia, support to Dutch companies is provided by the Dutch embassy in Riyadh and Regional Business Developers based in the United Arab Emirates. It is unclear how often and what kind of support the Dutch embassy in Saudi Arabia has provided to Dutch companies in the past 10 years. In answer to questions from a member of parliament in November 2022 about which Dutch companies receive individual support from the Dutch embassy and consulates general in carrying out their due diligence responsibilities, the Minister of Foreign Affairs said that names of companies could not be shared as they had not been asked for permission, but that on average the embassy spoke to companies with activities in Saudi Arabia “several times a week”.⁴⁰⁷ In an answer to another question from a member of parliament, the ministry reported that in 2020, Dutch companies had requested economic services-related support from the embassy 400 times.⁴⁰⁸ This number makes it likely that in the past 10 years, the embassy received thousands of requests for support from companies.

The Twitter accounts of the Dutch ambassador and Dutch embassy in Riyadh are used extensively to promote Dutch businesses and give some idea of the kind of support provided to Dutch companies in Saudi Arabia.⁴⁰⁹ A quick online search shows that support from the Dutch embassy in Riyadh to Dutch companies included activities such as opening a new local office for Royal HaskoningDHV,⁴¹⁰ organizing webinars for Dutch companies focused on megaprojects,⁴¹¹ organizing an agri network reception,⁴¹² and organizing a

⁴⁰² House of Representatives, TK 2021-2022, 35 925 XVII, nr. 10, 19 November 2021, <https://www.tweedekamer.nl/downloads/document?id=2021D43070>, answer to question 112.

⁴⁰³ House of Representatives, TK 2021-2022, 35 925 XVII, nr. 10 (previously cited), answer to question 112. In a November 2022 answer to a nearly identical question from a member of parliament, the Minister of Foreign Affairs did not state the number of times economic services were requested in 2021 and indicated that names of companies could not be shared as they had not been asked for permission. See: House of Representatives, TK 2022-2023, 36 200 V, nr. 13 (previously cited), answer to question 101.

⁴⁰⁴ VNO-NCW, Wie zijn we en wat doet VNO-NCW, <https://www.vno-ncw.nl/over-vno-ncw/wat-doet-vno-ncw> (accessed on 17 February 2023).

⁴⁰⁵ House of Representatives, TK 2021-2022, 35 925 XVII, nr. 10 (previously cited), answer to question 112.

⁴⁰⁶ The RVO highlighted the three plenary sessions of the China Business Week – see: RVO, “China Business Week 2021 – Agenda”, undated, <https://china-business-week.b2match.io/agenda> (accessed on 28 November 2022).

⁴⁰⁷ House of Representatives, TK 2022-2023, 36 200 V, nr. 13 (previously cited), answer to question 104.

⁴⁰⁸ House of Representatives, TK 2021-2022, 35 925 XVII, nr. 10 (previously cited), answer to question 111.

⁴⁰⁹ Using this form of public diplomacy by the missions, especially through Twitter, Facebook and Instagram, to ‘strengthen the political and economic position of the Netherlands’ became explicit foreign policy in 2022. House of Representatives, Vaststelling van de begrotingsstaat van Buitenlandse Zaken (V) voor het jaar 2023, TK 2022-2023, 36 200 V, nr. 2, <https://open.overheid.nl/documenten/ronl-9a3248f8772399b4e40fc973c6ee3346769cd8a5/pdf>

⁴¹⁰ Dredging Today, “Royal HaskoningDHV Opens New Office in Jeddah”, Saudi Arabia, 3 December 2014, <https://www.dredgingtoday.com/2014/12/03/royal-haskoningdhv-opens-new-office-in-jeddah-saudi-arabia/>

⁴¹¹ Embassy of the Netherlands in Saudi Arabia, Twitter post, 10 June 2021, <https://twitter.com/NLinkSA/status/1402979600183877633>: “Yesterday #Dutch embassy in #Riyadh in cooperation with @NBCDubai held a successful webinar that focused on #megaprojects in #SaudiArabia.”; Netherlands Business Council UAE, “Focus on Saudi Arabia Mega-projects & Legislation- online event”, 9 June 2021, <https://www.nlbusinesscounciluae.com/events/focus-on-saudi-megaprojects-legislation>

⁴¹² Hans van der Beek, Twitter post, 8 September 2014, <https://twitter.com/vanderbeekhans/status/508747528938864640>: “Setting for agri network reception at Dutch Embassy in Riyadh.”

pavilion for Dutch construction companies at the annual Saudi Build & Stone expo.⁴¹³ The Dutch embassy's extensive support to companies was acknowledged in 2019 and 2021 with the Dutch employers' organization VNO-NCW award to the embassy for best support in economic work.⁴¹⁴

Longer term local support was also provided by initiating campaigns such as the Dutch Connection in the Gulf, aimed at setting up partnerships "to facilitate match making, stimulate and strengthen business relationships between the Netherlands and the Gulf countries [...]."⁴¹⁵ In 2016, the Dutch government set up Regional Business Developers in three regions with "significant opportunities for expanding Dutch trade and investments".⁴¹⁶ The regions include the Gulf states,⁴¹⁷ where the team of Regional Business Developers actively looks for business leads, connects business leads to interested Dutch companies and maps out financing possibilities.

RUSSIA

In Russia, support to Dutch companies is provided by the Dutch embassy in Moscow and the Dutch consulate general in St Petersburg. At the time of writing, the capacity of the embassy and the consulate general staff was limited due to the expulsion of 15 Dutch diplomats in April 2022.⁴¹⁸ Before this, the embassy featured an economic cluster dealing with trade and economy, agriculture and innovation. These departments included a trade secretary, an innovation team (working on cooperation on science, technology and innovation) and a counsellor for science and innovation. Through the embassy, at least up to December 2022, Dutch companies operating in Russia could also receive support from the innovation attaché network, which offers help in making "innovative contacts".⁴¹⁹

As with Saudi Arabia and China, it is unclear how often and what kind of support the Dutch embassy in Russia has provided to Dutch companies in the past 10 years. The Minister for Foreign Trade and Development Cooperation indicated that in 2020, Dutch companies had requested economic services from the economic mission network approximately 800 times.⁴²⁰ In answer to questions from a member of parliament in November 2022, the Minister of Foreign Affairs said that names of companies could not be shared as their permission had not been requested, adding that "various Dutch companies have closed their doors since the Russian invasion of Ukraine or scaled down their activities".⁴²¹ Since the full-scale invasion of Ukraine by Russia in February 2022, multiple economic sanctions have been issued, limiting business relations between the EU and Russia.⁴²²

⁴¹³ Kingdom of the Netherlands, The Netherlands and you, "Saudi Build & Stone 2018 event", 22 October 2018, <https://www.netherlandsandyou.nl/latest-news/events/2018/10/22/saudi-build--stone>

⁴¹⁴ Joost Reintjes, Twitter post, 30 January 2019, <https://twitter.com/JoostReintjes/status/1090649586740486145>: "Proud that @NLinkSA our team in #Riyadh just won first prize best embassy for NL companies @VNONCW @evofenedex_io @SigridKaag @MKBN #NLamb2019 #ambassadeprijs"; Embassy of the Netherlands in Saudi Arabia, Twitter post, 10 February 2021, <https://twitter.com/NLinkSA/status/1359515742228652036>: "Grateful and proud, that #Dutch companies awarded our Embassy in #Riyadh with the 2021 VNO-NCW MKB @evofenedex Embassy Award for the best support in economic work".

⁴¹⁵ Emirates News Agency - WAM, "Dutch connection in Gulf campaign launched at WETEX 2018", 24 October 2018, <http://wam.ae/en/details/1395302715828?platform=hootsuite>

⁴¹⁶ RVO, Regional Business Developers, <https://www.rvo.nl/onderwerpen/buitenlandnetwerk/regional-business-developers> (accessed on 19 December 2022).

⁴¹⁷ In addition to the Nordics & Baltics and Latin America.

⁴¹⁸ New York Times, "Russia expels 15 Dutch diplomats", 19 April 2022, <https://nltimes.nl/2022/04/19/russia-expels-15-dutch-diplomats-including-14-moscow>. The Dutch Consulate in St. Petersburg is listed as temporarily closed from 20 February 2023 (end of the working day) onwards. See: Nederland Wereldwijd, Nederlands consulaat-generaal in St. Petersburg, Rusland, <https://www.nederlandwereldwijd.nl/contact/ambassades-consulaten-generaal/rusland/consulaat-generaal-st-petersburg> (accessed on 10 March 2023).

⁴¹⁹ The website of the innovation attaché network specifically mentioned Russia at least until December 8, 2022. [via Wayback Machine] RVO, Innovatie Attaché Netwerk (IA-Netwerk), snapshot 8 December 2022, <https://web.archive.org/web/20221208115354/https://www.rvo.nl/onderwerpen/buitenlandnetwerk/ia-netwerk>. The website mentioned that the Dutch Innovation Network in Russia links 'businesses, research institutes and governments from the Netherlands to relevant innovation, technology and scientific players in Russia' while warning about existing EU sanctions related to 'Current developments Russia and Ukraine'.

⁴²⁰ House of Representatives, TK 2021-2022, 35 925 XVII, nr. 10 (previously cited), answer to question 113.

⁴²¹ House of Representatives, TK 2022-2023, 36 200 V, nr. 13 (previously cited), answer to question 98

⁴²² European Council – Council of the European Union, EU Sanctions against Russia explained, <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/> (last accessed on XX). "As part of the economic sanctions, the EU has imposed a number of import and export restrictions on Russia. This means that European entities cannot sell certain products to Russia (export restrictions) and that Russian entities are not allowed to sell certain products to the EU (import restrictions). The list of banned products is designed to maximise the negative impact of the sanctions for the Russian economy while limiting the consequences for EU businesses and citizens. The export and import restrictions exclude products primarily intended for

The Dutch Ministry of Foreign Affairs stated that, “after 2014 many trade promoting activities have been halted”.⁴²³ Nevertheless, the importance of Dutch-Russian economic relations and support for Dutch companies in Russia, also after 2014, are stressed on the Facebook account of the Dutch embassy in Moscow. For instance, in a video message in 2020 the ambassador thanked Dutch companies in Russia for contributing to the Dutch economy and for their steadfast efforts, saying the embassy would do everything to support them.⁴²⁴ In an interview posted in 2021, the Dutch ambassador focused on the importance of economic relations with Russia, the fact that the Netherlands is the top investor in Russia and that “most foreign investments come from the Netherlands.”⁴²⁵ No mention was made of CSR or salient human rights risks relevant for Dutch companies in Russia.

While trade missions were halted after 2014, other trade-promoting activities continued with the support of the embassy, such as trade fairs on traditional agricultural topics,⁴²⁶ and a June 2016 “Working Group Innovation” visit to Russia.⁴²⁷ Via the strategic trade fair programme, the Topsector Agri & Food was also present at the annual Golden Autumn Fair in Moscow.⁴²⁸

In November 2021, the Dutch ambassador met the regional authorities of the Russian region of Krasnodar. According to Russian media, the ambassador discussed the prospects of cooperation and joint development of science and high tech in the agricultural sector with the vice-governor of Krasnodar, Andrey Korobka,⁴²⁹ who has been accused of corruption and possible responsibility for violence against farmers in the Krasnodar region.⁴³⁰ In 2022, he was included on Aleksei Navalny’s anti-corruption foundation list of “bribe-takers and warmongers”.⁴³¹ The meeting contradicts the Dutch policy that “the government should lead by example in issues around CSR”, adopted in a resolution by parliament in December 2013.⁴³² Such engagement is problematic because ambassadors should avoid discretionary meetings with officials involved in repression.

Despite the war in Ukraine, and judging by the RVO’s website, up to December 2022 Russia continued to be included in the innovation attaché network, stimulating trade and investment in Russia in the area of technology.⁴³³ The RVO encouraged Dutch businesses to get in touch, offering to help make “innovative matches between the Netherlands and Russia”. Among the “sectors with the biggest focus on innovative development in Russia”, the following were mentioned: circular economy, smart mobility, life sciences and

consumption and products related to health, pharma, food and agriculture, in order not to harm the Russian population. [...] The bans are implemented by the EU’s customs authorities. Moreover, the EU, in collaboration with other like-minded partners, has adopted a statement reserving the right to stop treating Russia as a most-favoured-nation within the WTO framework. The EU has decided to act on this not through an increase in import tariffs, but through a set of restrictive measures that include bans on the import or export of certain goods. The EU and its partners have also suspended any work related to the accession of Belarus to the WTO.”

⁴²³ Ministry of Foreign Affairs’ response to Amnesty International survey, 15 July 2022.

⁴²⁴ Embassy of the Netherlands in Russia, Facebook post, 20 November 2020, <https://www.facebook.com/DutchEmbassyRussia/videos/122917826095708/>: “De Nederlandse Ambassade in Moskou feliciteert alle ondernemers vandaag met de “Dag van de Ondernemer”.”

⁴²⁵ Embassy of the Netherlands in Russia, Facebook post, 1 July 2021, [\(1/5\) INTERVIEW with the Dutch ambassador](https://www.facebook.com/profile/100064842064327/search?q=interview:)”

⁴²⁶ For examples: Embassy of the Netherlands in Russia, Facebook post, 11 October 2019, <https://www.facebook.com/DutchEmbassyRussia/posts/pfbid0yr4SXMGuSbLgpPkyFMHToN9QoPEfvNpHyAynVc7GPyAQ6mQSk18zm3m8sTB9Cbiil>; Embassy of the Netherlands in Russia, Facebook post, 8 September 2021, <https://www.facebook.com/profile/100064842064327/search?q=Flowers%20Expo%20Moscow>

⁴²⁷ Information shared with Amnesty International by the Dutch Ministry of Foreign Affairs on 28 October 2022

⁴²⁸ House of Representatives, TK 2022-2023, 36 200 XVII, nr. 10, 22 November 2022 (previously cited), answer to question 249.

⁴²⁹ Kommersant, ‘На Кубани появится российско-голландский сельскохозяйственный научный центр’, 24 November 2021, <https://www.kommersant.ru/doc/5089913>; Tass, Кубань наладит взаимодействие с Нидерландами по развитию органического сельского хозяйства

, 24 November 2012, <https://tass.ru/ekonomika/13008493>; Abinskinvest.ru, “The Krasnodar Region and the Netherlands plan to create the first in Russia joint scientific center in the field of agriculture”, 24 November 2021, <https://www.abinskinvest.ru/en/news/the-krasnodar-region-and-the-netherlands-plan-to-create-the-first-in-russia-joint-scientific-center/>

⁴³⁰ The Russian Reader, “Krasnodar Farmer Kills Himself after Land Seized”, 3 October 2016, <https://therussianreader.com/2016/10/03/krasnodar-farmer-kills-himself-after-land-seized/>; Anti Corruption Foundation, “Full Sanctions List, Contributors to the War”, undated, https://acf.international/acf-media/Full_sanctions_list_Contributors_to_the_war.pdf

⁴³¹ Anti Corruption Foundation, “List of bribetakers and warmongers”, https://acf.international/acf-media/Full_sanctions_list.pdf, p. 113, last accessed 10 March 2023.

⁴³² House of Representatives, TK 2013-2014, 26 485, nr. 171, 17 December 2013, <https://www.parlementairemonitor.nl/9353000/1/j9vwij5epmj1ey0/vjfnpv893dx6>

⁴³³ [via Wayback Machine] RVO, Innovatie Attaché Netwerk (IA-Netwerk), snapshot 8 December 2022, <https://web.archive.org/web/20221208115354/https://www.rvo.nl/onderwerpen/buitenlandnetwerk/ia-netwerk>

health, artificial intelligence and energy transition.⁴³⁴ At least a few of these sectors (especially artificial intelligence and smart mobility) involve salient human rights risks for companies. However, the website of the innovation attaché network did not provide any specific warnings about the human rights risks of doing business in Russia, either in general or with respect to the tech sector. A disclaimer mentions that the information “does not address the impact of the war in Ukraine” and provides a link to the “sanction counter”.⁴³⁵ This counter mainly provides information about EU sanctions and they do not provide warnings about human rights risks.⁴³⁶

ABSENCE OF HUMAN RIGHTS DUE DILIGENCE CONDITIONS

The Ministry of Foreign Affairs told Amnesty International in July 2022 that, “for general support from embassies and consulates there are no specific CSR conditions”.⁴³⁷ This is worrying, considering that the diplomatic missions in China, Saudi Arabia and Russia (at least until the invasion of Ukraine in 2022) have played a key role in promoting Dutch trade.

The ministry indicates that embassies and consulates general “point out” CSR responsibilities in their contacts with companies; that they sometimes “enter into discussions with companies about the available CSR information and relevant government support”, which “partly depends on the demand and the scope of the efforts of the companies in question”; and that, when they suspect a CSR risk, they “actively ask companies about the way in which it has covered it [the risk]”.⁴³⁸ What this means in practice is unclear, and only one of the companies Amnesty International researched indicated that it had received any practical support from the government. The minister stressed that, “companies are responsible themselves for doing business in line with the OECD Guidelines”.⁴³⁹

The ministry also mentioned that embassies and consulates general can refer companies to experts who can support them with their due diligence activities. It also mentioned that the economic mission network in China, Saudi Arabia and Russia organized various events or participated in activities “with a CSR character” to bring Dutch and international regulations to the attention of a range of Chinese, Saudi, Russian and Dutch partners such as companies, educational institutions, the Ombudsman, the Chamber of Commerce, sector organizations and NGOs. Examples the ministry gave of such activities included online webinars, round tables and e-learning.⁴⁴⁰

The limited information provided by the Dutch government makes it hard if not impossible to evaluate the human rights due diligence-related support given by the Dutch economic mission network. While there is a certain logic to claims by the government that corporate accountability is integrated in all economic activities and thus hard to discuss separately, and that support to individual businesses is tailor-made and not well-suited for public communication, the overall non-transparency is antithetical to the UN Guiding Principles and the OECD Guidelines.⁴⁴¹ Moreover, it is problematic that the government actively encourages Dutch companies to enter markets with high human rights risks and with repressive contexts in which carrying out adequate human rights due diligence is difficult, while at the same time pushing all CSR-related responsibility to companies.

While it is ultimately the responsibility of companies to carry out human rights due diligence, in high-risk contexts such as those in China, Saudi Arabia and Russia, the government, including diplomatic missions, has an obligation to proactively help businesses identify, prevent and mitigate the human rights-related risks of their activities and business relationships, support companies in navigating the complex context, and set clear human rights due diligence conditions for companies receiving government support for activities in these high-risk countries.

In its communication with Amnesty International in March 2023, the ministry walked back its July 2022 statement that “for general support from embassies and consulates there are no specific CSR conditions”.⁴⁴²

⁴³⁴ [via Wayback Machine] RVO, IA-Netwerk Rusland, snapshot 26 September 2022,

<https://web.archive.org/web/20220926140847/https://www.rvo.nl/onderwerpen/buitenlandnetwerk/ia-netwerk/rusland>

⁴³⁵ [via Wayback Machine] RVO, IA-Netwerk Rusland, snapshot 26 September 2022,

<https://web.archive.org/web/20220926140847/https://www.rvo.nl/onderwerpen/buitenlandnetwerk/ia-netwerk/rusland>

⁴³⁶ [via Wayback Machine] RVO, Sanctieloket Rusland,

<https://web.archive.org/web/20220923135156/https://www.rvo.nl/onderwerpen/sanctieloket-rusland> (accessed on 18 November 2022)

⁴³⁷ Ministry of Foreign Affairs’ response to Amnesty International survey, 15 July 2022.

⁴³⁸ Ministry of Foreign Affairs’ response to Amnesty International survey, 15 July 2022.

⁴³⁹ Ministry of Foreign Affairs’ response to Amnesty International survey, 15 July 2022.

⁴⁴⁰ Ministry of Foreign Affairs’ response to Amnesty International survey, 15 July 2022.

⁴⁴¹ In response to this statement, the Ministry of Foreign Affairs indicated in March 2023: “This is being worked on. This is discussed in the report on economic visits/missions that is sent to the House of Representatives.” Ministry of Foreign Affairs’ response to Amnesty International draft report, 16 March 2023.

⁴⁴² Ministry of Foreign Affairs’ response to Amnesty International draft report, 16 March 2023.

The ministry indicated that there are ICSR guidelines for the Dutch diplomatic network and referred to a 2019 letter from the Minister for Foreign Trade and Development Cooperation announcing a revision of these ICSR guidelines.⁴⁴³ These guidelines, established in 2012 and revised in 2019, do not seem to be publicly available, even though the Dutch government says they are.⁴⁴⁴ As such, Amnesty International was not able to analyse the guidelines in full. However, the factsheet “The ICSR-Guidelines for the Dutch Diplomatic Network”, which is not publicly available either but could be downloaded via an archived website, provides an overview of the 2019 guidelines.⁴⁴⁵ This document does not speak of CSR conditions for accessing general support from embassies and consulates. Instead, it indicates what the diplomatic posts need to do in terms of building up ICSR expertise; what they can do in terms of creating awareness and offering guidance to companies; and what they can do to put Dutch ICSR policy on the agenda with local partners. The only mention of ICSR-related conditions is indirect, and concerns instances where a diplomatic post provides large/long-term financial support to a private sector party, and this is not done via an RVO instrument: in these cases, “[...] the diplomatic mission is asked to take into account the Dutch ICSR policy. In practice, this means that the missions can contact the RVO and/or the Ministry of Foreign Affairs for advice on providing support.”⁴⁴⁶

In this context, as already indicated in Chapter 3 of this report, it is important to recall that several recommendations to strengthen the strategic and proactive ICSR involvement of the diplomatic network were rejected by the Dutch government when the 2019 review of ICSR guidelines took place. A recommendation to make it compulsory for embassies to develop a CSR strategy in countries with high CSR risks and intense trade relations with the Netherlands was “considered” by the Minister for Foreign Trade and Development Cooperation,⁴⁴⁷ but seems not to have made it to the updated guidelines.⁴⁴⁸ Furthermore, the minister explicitly stated that the government would not adopt a formulated recommendation that embassies should be encouraged to proactively contact Dutch companies and investors who do not seek rapprochement themselves, indicating that, “[i]t is the responsibility of companies themselves to have their due diligence in order when they operate in other countries”.⁴⁴⁹ This reluctance to encourage proactive steps from embassies clashes with international standards described in Chapter 2 of this report, particularly in contexts of heightened risks.

5.6 OTHER FORMS OF INTERNATIONAL BUSINESS SUPPORT

The support offered by the RVO is extensive.⁴⁵⁰ The ministry said that there are no CSR conditions related to the information provision by the RVO. Apart from the support directly related to and/or directly mentioned on sites dedicated to business activities in China, Russia and Saudi Arabia, the RVO also offers other types of support including customized business partner support (zakenpartnersupport op maat);⁴⁵¹ the Orange Trade Mission Funds (Oranje Handelsmissiefonds) that help successful Dutch entrepreneurs in “realizing their

⁴⁴³ Letter from the Minister for Foreign Trade and Development Cooperation, TK 2018-2019, 26 485, nr. 308, 11 June 2019, <https://zoek.officielebekendmakingen.nl/kst-26485-308.html>

⁴⁴⁴ See: Ministry of Foreign Affairs, IMVO-richtlijnen voor ambassades nu ook online, <https://www.oesorichtlijnen.nl/actueel/nieuws/2016/03/07/imvo-richtlijnen-voor-ambassades> (accessed on 7 February 2023). At the time of writing, the link to the guidelines (<https://www.rijksoverheid.nl/documenten/publicaties/2016/02/22/internationale-mvo-richtlijnen-voor-nederlandse-ambassades>) did not work.

⁴⁴⁵ [via Wayback Machine] De IMVO-Richtlijnen voor het Nederlandse Postennet, Versie 2.0 - november 2019, snapshot of 18 January 2022, <https://web.archive.org/web/20220118235053/https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/publicaties/2016/02/22/internationale-mvo-richtlijnen-voor-nederlandse-ambassades/Factsheet+Richtlijnen+voor+internationaal+maatschappelijk+verantwoord+ondernemen+voor+het+Nederlandse+Postennet.pdf> (accessed on 7 February 2023)

⁴⁴⁶ [via Wayback Machine] De IMVO-Richtlijnen voor het Nederlandse Postennet, Versie 2.0 - november 2019 (previously cited), p. 2.

⁴⁴⁷ Letter from the Minister for Foreign Trade and Development Cooperation, TK 2019-2020, 26 485, nr. 319, 22 November 2019, <https://www.tweedekamer.nl/downloads/document?id=2019D47762>, p. 6.

⁴⁴⁸ The factsheet “The ICSR-Guidelines for the Dutch Diplomatic Network” makes no mention of this. [via Wayback Machine] De IMVO-Richtlijnen voor het Nederlandse Postennet, Versie 2.0 - november 2019 (previously cited).

⁴⁴⁹ Letter from the Minister for Foreign Trade and Development Cooperation, TK 2019-2020, 26 485, nr. 319, 22 November 2019 (previously cited), p. 6.

⁴⁵⁰ The ministry referred to the following website, where an overview is presented: RVO, Internationaal ondernemen, <https://www.rvo.nl/internationaal-ondernemen> (accessed on 25 November 2022).

⁴⁵¹ RVO, Zakenpartnersupport Op Maat, <https://www.rvo.nl/onderwerpen/persoonlijk-advies-buitenland/zakenpartnersupport-op-maat> (accessed on 8 February 2022).

export dreams”;⁴⁵² and the SME Lounge subsidy programme (“MKB Lounge subsidieprogramma”) that supports sector organizations wishing to present themselves at international fairs.⁴⁵³

PUBLIC-PRIVATE COOPERATION

The support of the Dutch government stretches further than support to individual businesses. There are many ways and structures for businesses to operate collectively, including private partnerships⁴⁵⁴ and public-private partnerships.⁴⁵⁵ In general, the Dutch government encourages the formation of such collaborative structures and provides different types of support to them. It is beyond the scope of this report to attempt an exhaustive discussion of these structures. Here, the “Topsectors” and “Team Netherlands” are highlighted as two high-profile public-private initiatives. For both, it is unclear if and how CSR-related conditions apply to the support they offer.

The Dutch Topsectors provide high-profile examples of government-driven public-private initiatives. Since 2011, the government has helped set up the Topsectors in which entrepreneurs, researchers and governments work together to ensure that Dutch companies remain competitive internationally and find solutions to address social challenges.⁴⁵⁶ The government invests in nine sectors in which Dutch companies are global leaders (the Topsectors), with instruments including tax incentives, guarantees, investments and the “removal of obstacles”.⁴⁵⁷ The Topsectors are active internationally, often in close collaboration with governmental entities.⁴⁵⁸ In response to an Amnesty International question about Topsector policy and support regarding China, Saudi Arabia and Russia, the ministry referred to overall Topsector information and websites.⁴⁵⁹ While the Topsector approach tends to be concerned with finding solutions to social challenges, including climate change, a brief search on a small sample of Topsector websites⁴⁶⁰ did not reveal any CSR-related policy, let alone a policy discussing human rights and/or human rights related due diligence.⁴⁶¹ This is worrying, as the Topsectors are central players within Dutch business internationalization and seem to operate quite independently. In a meeting with Amnesty International, the ministry indicated that they do not keep an overview on all the international activities of the Topsectors.

Another high-profile vehicle for promoting international trade and innovation is a public-private advisory organ Internationaal Strategisch Overleg NL (ISO-NL) (International Strategic Consultation).⁴⁶² It was set up to achieve strategic coordination of international efforts between government, business and knowledge

⁴⁵² RVO, Oranje Handelsmissiefonds (OHMF), <https://www.rvo.nl/subsidies-financiering/ohmf> (accessed on 8 February 2022).

⁴⁵³ RVO, MKB Lounge Subsidieprogramma, <https://www.rvo.nl/subsidies-financiering/mkb-lounge> (accessed on 8 February 2022).

⁴⁵⁴ Examples in the High Tech sector include High Tech NL and Holland Semiconductors. High Tech NL, Succesvol samenwerken en innoveren: met High Tech NL maak je het mogelijk, <https://www.hightechnl.nl/> (accessed on 17 February 2023); Holland Semiconductors, National network of semiconductor companies, <https://hollandsemiconductors.nl/> (accessed on 17 February 2023).

⁴⁵⁵ With regards to these constellations, UN Guiding Principles, Principle 4 and its Commentary is particularly relevant. The principle indicates that states should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies, including by requiring human rights due diligence. The commentary indicates that the closer a business is to the state, or the more it relies on support, the stronger the state’s policy rationale for doing this.

⁴⁵⁶ Topsectoren, Home > Topsectoren, <https://www.topsectoren.nl/innovatie> (accessed on 29 November 2022).

⁴⁵⁷ Topsectoren, Home > Topsectoren, <https://www.topsectoren.nl/innovatie> (accessed on 29 November 2022). The nine topsectors are: agri & food, chemistry, creative industry, energy, life sciences & health, high tech systems & materials, water & maritime industry, horticulture & starting materials and logistics.

⁴⁵⁸ Topsectoren, Home > Topsectoren Internationaal, <https://www.topsectoren.nl/holland-trade> (accessed on 30 November 2022).

⁴⁵⁹ They referred to the general website <https://www.topsectoren.nl/> and indicated that more information could also be found via the [individual] topsectors.

⁴⁶⁰ We searched on 30 November 2022 for the terms “mensenrechten” (human rights), “maatschappelijk verantwoord ondernemen” (corporate social responsibility), “UNGP” and “Oeso” (OECD) on the general topsector site (<https://www.topsectoren.nl/>), the topsector site high tech systems and materials (<https://hollandhightech.nl/>) and the Dutch horticulture in China site (<https://www.dutchhorticulturechina.nl/>).

⁴⁶¹ Only the general topsector site shows a link to some example stories of companies’ engagement with corporate social responsibility (<https://www.topsectoren.nl/voorbeelden>) and a link to a SME action plan mentioning, yet not integrating, CSR. See, respectively: Topsectoren, Home > Voorbeeldverhalen, <https://www.topsectoren.nl/voorbeelden> (accessed on 17 February 2023); Ministry of Economic Affairs and Climate, “MKB-actieplan”, June 2018, <https://www.topsectoren.nl/publicaties/publicaties/publicaties-2018/juli/05-07-18/mkb-actieplan>

⁴⁶² The Dutch 2018 trade policy indicated that this organ was founded in 2018 and discusses its nature and goals. It was first called ‘International Strategic Board Nederland (ISB-NL)’ and later renamed as ‘Internationaal Strategisch Overleg NL (ISO-NL)’. Ministry of Foreign Affairs, “Investeren in Perspectief- Goed voor de wereld, goed voor Nederland” (previously cited), p. 87.

institutions. Three organizations, sometimes referred to as Team Netherlands,⁴⁶³ were announced as the primary implementation organizations.⁴⁶⁴

The first, Trade and Innovate NL, unites an amalgam of public, business-related organs working on different administrative and regional levels in the Netherlands.⁴⁶⁵ Its secretariat is run by the RVO⁴⁶⁶ and it focuses on cooperation regarding the following regions and issues: Germany, the USA, China and “smart cities”.⁴⁶⁷ A succinct search on its website (including its covenant) revealed no precise CSR-related policies, besides some indications that CSR was a topic of interest discussed during particular events.⁴⁶⁸

The second implementing organization, NL in Business, is an initiative of the Dutch employers’ organizations VNO-NCW and MKB Nederland.⁴⁶⁹ It works closely with the Ministry of Foreign Affairs, the Ministry of Economic Affairs and Climate Policy and a variety of sectoral associations, interest groups, top sectors, knowledge institutes and the Dutch business community.⁴⁷⁰ It supports SMEs that wish to do more business internationally and need help figuring out international markets and partners.⁴⁷¹ NL in Business mentions in its terms of delivery that it endorses the “ICSR Guidelines” [sic]⁴⁷² and that parties wishing to make use of its services “[should] know this and also strive to contribute to CSR and the realization of the [Sustainable Development Goals] SDGs”.⁴⁷³

The third organization, NL Works, indicates that it “puts the public-private objective of sustainably increasing the earning capacity of the Netherlands into practice by championing the interests of Dutch businesses and actively working towards the Sustainable Development Goals”.⁴⁷⁴ It provides support to Dutch partnerships in “growth markets” such as China, Kenya and Viet Nam; and helps its public-private sponsors develop long-term action agendas for countries that include Germany and those in the Gulf region.⁴⁷⁵ With its explicit focus on the SDGs, it is remarkable that there seems to be little attention given to CSR on its websites,⁴⁷⁶ including when it comes to overall considerations on whether or not to take up projects in its portfolio⁴⁷⁷ and in its activities linked to selected projects, such as the China Agri & Food project⁴⁷⁸ or the Gulf region’s water/food/energy project.⁴⁷⁹

SUPPORT FROM DECENTRALIZED GOVERNMENT BODIES

Decentralized government bodies in the Netherlands provide important means of support to Dutch businesses that operate or are planning to operate abroad. Amnesty International asked the ministry for a list

⁴⁶³ See for example: Trade and Innovate NL, Over Trade and Innovate NL, <https://tradeandinnovate.nl/cms/view/c5b2a40f-135c-4493-b9dd-1c108e20f846/over-trade-and-innovate-nl> (accessed on 30 November 2022).

⁴⁶⁴ Ministry of Foreign Affairs, “Investeren in Perspectief- Goed voor de wereld, goed voor Nederland” (previously cited), p. 87.

⁴⁶⁵ Trade and Innovate NL, “Jaarverslag 2021”, February 2022, https://tradeandinnovate.nl/file/download/a0857b51-c5ef-4969-928f-dd801b412bf3/tinl_netwerk-jaarverslag_2021.pdf, p. 4, 5.

⁴⁶⁶ Trade and Innovate NL, “Jaarverslag 2021”, February 2022, https://tradeandinnovate.nl/file/download/a0857b51-c5ef-4969-928f-dd801b412bf3/tinl_netwerk-jaarverslag_2021.pdf, p. 4, 5.

⁴⁶⁷ Trade and Innovate NL, Over Trade and Innovate NL, <https://tradeandinnovate.nl/cms/view/c5b2a40f-135c-4493-b9dd-1c108e20f846/over-trade-and-innovate-nl> (accessed on 30 November 2022).

⁴⁶⁸ See for example Trade and Innovate NL, “Jaarverslag 2021”, February 2022, https://tradeandinnovate.nl/file/download/a0857b51-c5ef-4969-928f-dd801b412bf3/tinl_netwerk-jaarverslag_2021.pdf, p. 19; and Trade and Innovate NL, “Internationaliseringsrapportage Trade Relations Programma 2e jaar”, July 2022, https://tradeandinnovate.nl/file/download/273ca6e4-ab66-4439-8f9c-120f58ea5547/trp-rapportage_2021.pdf, p. 72.

⁴⁶⁹ NL In Business, Our story, <https://nlinbusiness.com/en/info/our-story> (accessed on 30 November 2022).

⁴⁷⁰ NL In Business, Our story, <https://nlinbusiness.com/en/info/our-story> (accessed on 30 November 2022).

⁴⁷¹ NL In Business, Our story, <https://nlinbusiness.com/en/info/our-story> (accessed on 30 November 2022).

⁴⁷² It is mentioned in Dutch as: “de Internationaal Maatschappelijk Verantwoord Ondernemen (‘IMVO’) richtlijnen.”

⁴⁷³ NL in Business, “Leveringsvoorwaarden Stichting NL.In.Business”, 10 May 2021, https://nlinbusiness.com/app/uploads/2022/02/ALGEME_1.pdf, p. 3.

⁴⁷⁴ NL Works, Global Partners, <https://nl-works.nl/cms/view/fd03a55d-af37-429f-aa91-bc3912d4bd1c/global-network-partners> (accessed on 30 November 2022).

⁴⁷⁵ NL Works, Vision, Mission & Ambition, <https://nl-works.nl/cms/view/0fcf7466-27b8-47cf-b2f3-aedd846ef680/vision-mission-ambition> (accessed on 30 November 2022).

⁴⁷⁶ At the time of writing (30 November 2022), these two websites were operational: <https://nl-works.com/> and <https://nl-works.nl/cms/view/7a752597-3820-477e-9b7c-60205e628479/our-strategy>

⁴⁷⁷ NL Works, Frequently Asked Questions, <https://nl-works.nl/cms/view/68c4176f-48d2-44fc-90a6-736fc13d9932/faq> (accessed on 30 November 2022).

⁴⁷⁸ Airtable, Overzicht Markt Thema Combinaties, <https://airtable.com/embed/shrQHTIAIzG0bq1wa/tblywouPSveOn95Z0?backgroundColor=cyan&viewControls=on> (accessed on 17 February 2023).

⁴⁷⁹ Airtable, Overzicht Markt Thema Combinaties, <https://airtable.com/embed/shrQHTIAIzG0bq1wa/tblywouPSveOn95Z0?backgroundColor=cyan&viewControls=on> (accessed on 17 February 2023).

of economic missions organized at the decentralized level. The ministry indicated it did not have such a list. It referred to the decentralized authorities for an overview and also for information on the CSR conditions for decentralized economic missions. The ministry indicated that the economic mission network can provide support for decentralized economic missions, with the level of support differing per mission. The 2015 document “Roadmap for provincial and municipal economic missions”, written by the Nanjing NBSO in China, indicates how cooperation with the economic mission network is highly encouraged, and gives an idea of what the network can provide.⁴⁸⁰ There is no mention of CSR-conditions or CSR-related support that can be provided by the economic mission network.

During the research for this report, the importance of decentralized government support for local businesses came to the fore regarding Dutch business with China. The 2019 China policy note explicitly marked local Dutch authorities as important entities in the Dutch relationships with China. It indicated that many Dutch municipalities and provinces maintain their own relationships with local authorities in China, which focus partly on economic cooperation, and that some formalized their relationships in “so-called sister-bonds”.⁴⁸¹ The policy note indicated that local authorities operate autonomously when it comes to their relationships in China, but that there is a growing need for coordination with the Dutch national government on opportunities and challenges in the cooperation with China.⁴⁸²

During the months and years following the publication of the 2019 China policy note, the Dutch national government scaled up mainly information- and knowledge-related support activities for Dutch provinces and municipalities,⁴⁸³ yet did not give any indication that it would provide CSR-related policy guiding the China activities of Dutch local authorities. It is beyond the scope of this research to discuss all decentralized Dutch-Chinese relationships and associated CSR-considerations in further detail. Suffice to say that these relationships continue to be extensive, even when increasing numbers of Dutch municipalities and provinces have severed their sister-bonds with China in the past few years.⁴⁸⁴

⁴⁸⁰ NBSO Nanjing, “Stappenplan voor provinciale en stedelijke handelsmissies”, 21 April 2015, <https://chinainbeeld.nl/public/uploads/e2cc0efa1fbc895e37b612252c62d861.pdf>

⁴⁸¹ Ministry of Foreign Affairs, “Nederland-China: een Nieuwe Balans” (previously cited), p. 86. The following article provides an overview of the decentral ‘sister-bonds’ in the Netherlands, though since the article appeared in January 2021, several of these sister-relationships have ceased to exist: Dorine Booij and Mira Sys, “Stedenbanden met China: van linkse hobby naar rechtse lobby”, Follow the Money, 31 January 2022, <https://www.ftm.nl/artikelen/steden-en-provinciebanden-met-chinese-tegenhangers-2>

⁴⁸² Ministry of Foreign Affairs, “Nederland-China: een Nieuwe Balans” (previously cited), p. 86.

⁴⁸³ These included, among others, the redaction of a needs assessment and the organization of various informational meetings in cooperation with VNG International (the International Cooperation Agency of the Association of Netherlands Municipalities); and the setting up of the RVO institution “Informatie- en contactpunt voor verzoeken uit China” (Information and contact point for requests from China). See, respectively: VNG International, “VNG International versterkt decentrale China-samenwerkingen met twee nieuwe programma’s”, 23 April 2021, <https://www.vng-international.nl/vng-international-versterkt-decentrale-china-samenwerkingen-met-twee-nieuwe-programmas>; RVO, Informatie- en contactpunt voor verzoeken uit China, <https://www.rvo.nl/onderwerpen/overheden/informatie-contactpunt-china> (accessed on 10 November 2022)

⁴⁸⁴ This concerned the province Utrecht for example, that decided to sever its ties with the Chinese province Guangdong in November 2022 due to ‘geopolitical factors’ including human rights and CSR. See: Provinciale Staten van Utrecht, “Besluit op 16-11-2022 tot vaststelling van beëindiging vriendschapsrelatie provincie”, 16 November 2022, <https://www.stateninformatie.provincie-utrecht.nl/Vergaderingen/Provinciale-Staten/2022/16-november/10:30/SV-Beeindigen-vriendschapsrelatie-Guangdong/SV-Beeindigen-vriendschapsrelatie-Guangdong-besluit.pdf>

6. CONCLUSIONS AND RECOMMENDATIONS

In the context of China, Saudi Arabia and Russia, the Dutch government has failed in its duty to protect human rights by incentivizing Dutch businesses to enter high-risk markets while not insisting they carry out adequate human rights due diligence. All three countries are characterized by severe repression of the rights to freedom of expression, association and assembly, a lack of rule of law and high human rights risks for companies.

Since 2011, Dutch trade policies have prioritized these countries (Russia until its full-scale invasion of Ukraine in 2022). Neither the human rights risks connected to business operations nor the general human rights situation has played a role in the Dutch government's selection of priority countries. On the contrary, the well-documented increased repression and grave human rights violations in these countries had no effect on the Netherlands' trade priority selection. Moreover, the government seems not to have assessed how its trade policy and stimulating Dutch business operations with and in these countries could impact on the human rights situation on the ground, thereby failing to conduct its own due diligence.

As part of its trade policies, the Dutch government provided extensive diplomatic and financial support to Dutch companies with planned or ongoing activities in China, Saudi Arabia and Russia. At least 64 national trade missions have been organized to these countries since 2011 and the economic mission networks, including embassies, have been extensively involved in supporting Dutch companies. The Dutch government did this without adequately warning companies of the high risks, and without sufficiently communicating the need for heightened due diligence standards. It also set vague and noncommittal human rights due diligence conditions for companies to receive government support. Indeed, declaring "adherence to the OECD Guidelines" - a simple tick-the-box exercise - is the only corporate accountability-related condition that has been stipulated for all types of national missions. Support from diplomatic missions was provided without human rights due diligence conditions.

This is concerning because human rights risks for companies active in China, Saudi Arabia and Russia are high and widely known. The context in which companies operate in these countries is severely repressive, with the rights to freedom of expression, association and assembly increasingly under attack. Among other things, this impacts the ability of companies to conduct effective human rights due diligence and assess human rights risks related to their activities, and to put in place measures to mitigate them and monitor progress. This context means companies should take special care to ensure they do not exacerbate the situation. Indeed, these risks call for heightened due diligence.

Amnesty International's assessment of the human rights due diligence practice of 14 Dutch companies in the tech sector in China and Russia and the construction sector in Saudi Arabia concludes that most companies appear not to have carried out effective human rights due diligence. This illustrates the urgency for the Dutch government to set strict human rights due diligence conditions for government support, to act proactively to support companies in their due diligence process, and to clearly warn companies of the human rights risks. The government has made some policy commitments that show that it understands what its state duty to protect entails, but it has failed to translate this into meaningful action.

RECOMMENDATIONS TO THE DUTCH GOVERNMENT:

Amnesty International is calling on the Dutch government to:

TRADE AND CORPORATE SOCIAL RESPONSIBILITY POLICY

- Ensure businesses respect human rights by establishing mandatory human rights due diligence standards. The government should ensure that the forthcoming EU directive on due diligence is aligned with international standards and adopt a national law in line with international standards such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines on Multinational Enterprises. The law should include the requirement to conduct human rights due diligence across the whole value chain and a heightened due diligence requirement for companies operating in high-risk and conflict-affected areas.
- Align foreign trade policy with Netherlands' human rights obligations, taking into account the potential impact of the trade policy on the human rights situation in priority countries. This means it should

develop and apply human rights criteria when selecting priority countries for trade promotion, including on the human rights risks for companies in prioritized countries and the general human rights context in which companies operate.

- Develop general principles for state responses and companies' due diligence in heightened human rights risk contexts, as well as provide requirements and recommendations for specific situations such as repressive contexts.

DUTIES RELATED TO COMPANY ACTIVITIES IN HIGH-RISK AREAS

- Develop and communicate clear human rights due diligence conditions for government support to companies with (planned) activities in high-risk areas, including with regards to participation in any type of economic mission, receiving financial support, and receiving support from diplomatic missions. This means companies need to show that they have credible and meaningful human rights due diligence processes in place. Companies that do not publicly report on their human rights due diligence efforts should be excluded from government support.
- Provide clear and explicit warnings and information to businesses of the heightened risks in countries like China, Saudi Arabia and Russia and communicate heightened due diligence standards in high-risk situations.
 - Coherently and prominently feature and regularly update human rights risks on all webpages and other information materials related to business operations with and within these countries. This should include adequate information on the repressive context and the way this might impact carrying out effective human rights due diligence, such as conducting stakeholder consultations.
 - Communicate explicit and urgent warnings to companies with planned or ongoing activities in these countries regarding human rights risks related to operating on these markets.
 - When promoting projects, ensure that businesses can and will put adequate measures in place to address the human rights risks. The higher the risks, the more adapted the government measures need to be. If the government cannot set out respective safeguards with regard to a certain project, it should not promote this project.
 - Communicate clearly to companies with planned or ongoing activities in repressive countries like China, Saudi Arabia and Russia the expectation to carry out heightened due diligence and the need to be transparent about the due diligence process.
 - Organize a meeting on human rights risks and required human rights due diligence steps for participating companies ahead of every economic mission to a high-risk country.
- Take additional steps to help businesses identify, prevent and mitigate the human rights-related risks of their activities and business relationships.
 - Pro-actively contact companies and assess whether the government can play a role in supporting any of the human rights due diligence steps, including when the repressive context creates obstacles to carrying out effective due diligence.
 - Involve independent civil society and human rights organizations in economic missions to high-risk countries in the preparation phase and, where possible, during the mission itself as well.

TRANSPARENCY AND CONSISTENCY

- Ensure all Dutch business promotion activities that involve the national government maintain a consistent and high level of conditions for and information on corporate accountability, including with regards to economic missions with or without a minister, business promotion activities involving support by the mission network, and activities organized in public-private partnerships arrangements.
- Ensure transparency regarding financial, diplomatic and other support given to Dutch businesses.
 - Publicly report on all economic trade missions, including sharing information on participating companies, the preparation programme and the programme during the mission.
 - Improve transparency on financial support given to companies, especially in high-risk countries.

FOREIGN POLICY

- Integrate human rights across all areas of engagement with the authorities of repressive countries like Russia, China and Saudi Arabia. Consistently communicate to the authorities the obstacles Dutch businesses encounter when engaging in their human rights due diligence and insist on an enabling

environment for effective human rights due diligence, including the safe and meaningful participation of civil society.

- Carry out its own due diligence to ensure that (economic) engagement with the Russian, Chinese and Saudi authorities does not directly or indirectly contribute to human rights violations.

RECOMMENDATIONS TO COMPANIES:

Amnesty International is calling on companies, regardless of sector or size, to:

- Respect human rights and carry out robust human rights due diligence addressing human rights risks and harms connected with their products, services and value chain.
- Conduct heightened due diligence on both the upstream and downstream value chains when operating in contexts of high human rights risks in repressive countries such as China, Saudi Arabia and Russia.
- Take extra precautions to ensure they do not exacerbate the human rights situation, including by thoroughly investigating the social and political context in which they operate and more regularly monitoring the implementation and results of their human rights due diligence.
- Involve stakeholders and civil society, in particular human rights defenders, in the process of identifying and assessing the human rights risks. Human rights defenders can help businesses understand the concerns of affected stakeholders, especially when direct consultation with stakeholders is difficult in a context of repression. Businesses must ensure that individuals contacted during the due diligence work are adequately protected.
- Operate under the presumption of caution and not undertake the activity if there is a likelihood of serious human rights abuse and preventative measures are unable to address it. The fact that adequate human rights monitoring has been hampered may itself expose the risks, and can be an indication of the likelihood of a corporate activity being linked to them.

ANNEX 1: COMPANIES RESEARCHED BY AMNESTY INTERNATIONAL

COMPANIES WITH LINKS TO CHINA

ASML is a company supplying semiconductor manufacturing equipment. It specializes in developing and manufacturing photolithography machines, which are used to produce semiconductors. On its website, the company lists that it has a regional headquarters in Hong Kong and that it has 13 offices in China.⁴⁸⁵

BESI is a supplier of semiconductor assembly equipment for the global semiconductor and electronics industries. It develops leading edge assembly processes and equipment for leadframe, substrate and wafer level packaging applications in a wide range of end-user markets including electronics, mobile internet, computing, LED and solar energy. On its website, the company lists 5 offices in China.⁴⁸⁶

Boschman Advanced Packaging Technology is a semiconductor company focusing on advanced packaging solutions. It specializes in the development and supply of advanced transfer molding and sintering systems. On its website, the company lists one office in China.⁴⁸⁷

NXP is a semiconductor designer and manufacturer. On its website, NXP lists that it has offices in 18 cities across the 'Greater China region'.⁴⁸⁸

Qiagen is a biotech company, developing and producing a range of products encompassing sample technologies, assay technologies and bioinformatics. On its website, the company lists offices in Shanghai, Beijing, Shenzhen and Hong Kong.⁴⁸⁹

COMPANIES WITH LINKS TO SAUDI ARABIA

Arcadis is a design, engineering and management consulting company with two offices in Saudi Arabia. The firm worked on several large infrastructure projects, including the Kingdom Tower, the King Abdullah Sports City stadium and the new public transport system in Jeddah. Arcadis is also involved in Diriyah Gate, one of the country's megaprojects, with activities in project management and construction supervision.

Archirodon constructs bridges, roads and railroads as well as water and sewerage systems, ports and harbours, offshore pipelines and generally all types of marine infrastructure. It is involved in developing marine infrastructure as part of the Saudi Arabia Red Sea project, one of the megaprojects.

Fugro is a Geo-data specialist, collecting and analysing information about the earth and the structures built upon it. Fugro serves clients predominantly in the energy and infrastructure industries, both offshore and onshore. The company is a "market leader in the provision of high quality geotechnical, material testing and topographic surveys in Saudi Arabia...".⁴⁹⁰ Fugro has worked in Saudi Arabia since the 1980s and is currently providing aerial drone survey and engineering for the King Salman Bridge, part of the NEOM megaproject.

Royal HaskoningDHV is a private engineering and consultancy company working in the Saudi logistics, transport and infrastructure sectors since the 1960s. The company conducted a detailed market study for the upcoming Haramain High-Speed Railway project. It is also involved in other logistics and railway projects in the country, as well as a marine yard and a logistics zone.

⁴⁸⁵ ASML, Contacts & Locations, <https://www.asml.com/en/contacts> (accessed on 23 February 2023)

⁴⁸⁶ BESI, Manufacturing Locations, Sales & Service Offices, <https://www.besi.com/contact-us/locations/> (accessed on 23 February 2023)

⁴⁸⁷ Boschman Advanced Packaging Technology, Contact us, <https://www.boschman.nl/contact/> (accessed on 23 February 2023)

⁴⁸⁸ NXP, NXP in Greater China, <https://www.nxp.com/company/about-nxp/worldwide-locations/greater-china:CHINA> (accessed on 15 February 2023)

⁴⁸⁹ Qiagen, Our global presence, <https://www.qiagen.com/us/about-us/our-global-presence> (accessed on 23 February 2023)

⁴⁹⁰ Hyphen Consultancy, "GoFatoorah Selected By A Market Leader In KSA", <https://hyphenconsultancy.com/gofatoorah-selected-by-a-market-leader-in-ksa/#:~:text=Fugro%20Suhaimi%20is%20a%20market,employs%209%2C000%20plus%20employees%20globally.> (accessed on February 24 2023).

Strukton is a private engineering company with operations in rail systems and civil infrastructure. Strukton's company based in Saudi Arabia has three shareholders, including the Strukton Civiel Projecten BV, the Somo Al Mamlakah Company and the Abdulrahman Ismaeel Rouzi Company. The company won a contract to construct three of the six lines of the metro system in Riyadh, which claims to be the largest metro project in the world.

COMPANIES WITH LINKS TO RUSSIA

Linxdatacenter. Until April 2021, when the Russian datacentre division was sold, Linxdatacenter was a Dutch datacentre company focusing on Central Europe and Russia. Dutch Prime Minister Mark Rutte opened it in 2011 during a trade mission to the Russian cities of Moscow and St Petersburg.⁴⁹¹ It was an international market leader with offices and datacentres in St Petersburg and Moscow. Until its sale in mid-2021, its Russian datacentre activities were owned and run by a headquarters in the Netherlands, where its CEO was based.

MessageBird, which has its headquarters in Amsterdam, develops software that allows businesses to easily communicate with their customers via WhatsApp and other channels. Its global business reaches over 7 billion devices, serves over 25,000 customers and operates across 10 hubs. Following the invasion of Ukraine, CEO Robert Vis announced that MessageBird would impose its own sanctions on Russian customers by shutting down their API access and blocking all SMS and voice traffic to and from Russia.⁴⁹²

Noldus Information Technology develops software, hardware and integrated systems for measuring and analysing human and animal behaviour. The company is headquartered in Wageningen, the Netherlands, and has offices in 9 countries. In March 2022, in light of the Russian invasion of Ukraine, the company announced that it had decided to suspend all business with Russia, meaning that Noldus Information Technology would not accept new orders from Russia and would not ship any goods to Russia until further notice.⁴⁹³

Prosus is an investment company, headquartered in the Netherlands and with a Dutch CEO. It invests in, acquires, operates and builds internet-based companies, especially those serving local markets. Through its OLX Group, Prosus employed more than 4,000 employees in Russia working for the Russian online marketplace Avito. In March 2022, in light of the Russian invasion of Ukraine, the company announced that it would cease all involvement in its Russian operations with Avito, after it drew criticism on social media for allowing the Russian military to recruit on Avito. In May 2022, it stated that, following the operational separation of OLX Group and Avito, Prosus had started the search for an appropriate buyer for its shares in Avito.⁴⁹⁴ In March 2023, the company's Global Head Sustainability informed Amnesty International via email that Prosus has sold all of its shares in Avito on 25 October 2022.

⁴⁹¹ Computable, 29 October 2011, <https://www.computable.nl/artikel/nieuws/mobility/4234634/250449/mark-rutte-opent-datacentrum-in-st-petersburg.html>

⁴⁹² LinkedIn account Robert Vis, founder and CEO of MessageBird, February 2022, <https://www.linkedin.com/feed/update/urn:li:activity:6902889167206825984/>

⁴⁹³ Noldus.com, 'Noldus suspends all business with Russian Federation', 15 March 2022, <https://www.noldus.com/newsroom/statement-situation-ukraine>

⁴⁹⁴ Prosus.com, 'Prosus to sell its shareholding in Avito', 20 May 2022, <https://www.prosus.com/news/statement-on-avito/>

ANNEX 2: SURVEY SENT TO COMPANIES

Assessing the adequacy and quality of a company's human rights due diligence process and outcome

Human rights due diligence and restrictions on freedom of expression, freedom of assembly and freedom of association

1. How have restrictions on freedom of expression, freedom of assembly and freedom of association in China/Russia/Saudi Arabia affected the company's ability to:
 - a. Identify potential human rights risks and actual harms?
 - b. Engage with rights-holders and other stakeholders?
 - c. Prevent or mitigate negative human rights impact?
 - d. Evaluate the effectiveness of response to adverse impacts?
2. How did the company respond to these obstacles?

Identifying and assessing adverse impacts in operations, supply and value chains and business relationships

3. Please specify the potential risks and actual harms you have identified in your supply and value chain in China/Russia/Saudi Arabia? Please specify in which tiers you identified them.
4. Did you assess the company could be, is or was causing, contributing to, or directly linked to the negative impact?
5. Have you engaged with (potentially affected) rights holders and other stakeholders in China/Russia/KSA? If so, how, at what stages and with which ones?
6. Do you have a grievance mechanism in place that is accessible to all affected persons?
7. Are needs for protection against retaliation taken into account? If so, how?

For companies active in Saudi Arabia:

- Where you provided design or management services to a client, how did you assess your human rights responsibilities, and how did you raise the potential human rights risks of the project with your client?

For companies active in China:

- Outside of legal compliance due diligence checks (e.g. export controls, anti-money laundering), what due diligence did you undertake to assess the human rights risks associated with: the use in the Chinese context of your products/services; selling into the Chinese context; selling to Chinese customers (including state-owned or government end-users)?
- Did you identify whether there are specific types of customers or products/services that are higher risk in the Chinese context? If yes, what are they?

Ceasing, preventing or mitigating adverse impacts

8. Please specify the steps you have taken to prevent or mitigate potential and actual risks or harms in your supply and value chain? What was the impact of these steps?
9. Did prevention prove impossible in the case(s) where you took steps to mitigate impact?
10. If you lack leverage over your suppliers or other business partners, did you seek to increase leverage? If so, how?

For companies active in China:

- Did you restrict or limit any sales of specific products/services or to specific customers due to the human rights risks associated with those products/services/customers?

Tracking the implementation and results of human rights due diligence

11. How, and how often do you assess whether identified adverse impacts have been responded to effectively?
12. If the assessment shows that systems put in place are not effective in addressing negative impacts, how do you respond?

Providing for, or cooperating in remediation when appropriate

13. In instances where harm has taken place in China/Russia/Saudi Arabia, what has the company done to remediate harms?

Support from the Dutch government in conducting human rights due diligence

14. Have you participated in trade missions to China/Russia/Saudi Arabia or other activities to promote business in China/Russia/Saudi Arabia organized/supported by the Dutch government (including local) in the past ten years? If so, what activities? What other types of support have you received from the Dutch government (including the embassy/consulate/NBSO/local authorities) related to your trade with/activities in China/Russia/Saudi Arabia?
15. What did government representatives say about the human rights risks of doing business in these countries before or during these activities? What support or advice (including sources of external advice) does the Dutch government provide in any of the six steps of the human rights due diligence process for your activities in China/Russia/Saudi Arabia?
16. What sort of support would be/have been helpful for you to receive from the Dutch government on conducting human rights due diligence in relation to China/Russia/Saudi Arabia?
17. Have you collaborated with other companies, the Dutch government and/or other partners when preventing or mitigating negative impacts? If so, how, when and with whom? What was/were the result(s) of this collaboration?

ANNEX 3: SURVEY SENT TO THE DUTCH GOVERNMENT

Vragenlijst over de rol van de Nederlandse overheid bij IMVO in China, Saudi Arabië en Rusland

Economische missies

1. Kunt u een lijst geven van alle uitgaande economische missies naar China, Saudi Arabië en Rusland die de afgelopen 10 jaar (1 januari 2011 – 1 juni 2022⁴⁹⁵) werden georganiseerd met Nederlandse centrale en/of decentrale overheidssteun? Graag zowel handelsmissies onder leiding van een bewindspersoon als andere handelsmissies zonder bewindspersoon opnemen in de lijst.
- Kunt u bij elke economische missie aangeven welke Nederlandse bedrijven deelnamen?
 - Kunt u bij elke economische missie aangeven of er Nederlandse maatschappelijke organisaties deelnamen en zo ja, welke maatschappelijke organisaties het betrof?
 - Kunt u bij elke economische missie aangeven welke MVO voorwaarden er golden voor deelnemende bedrijven? Geef voor elke economische missie graag antwoord op de volgende vragen:
 - Werden er bedrijven uitgesloten van deelname aan de economische missie op basis van het niet voldoen aan deze voorwaarden? Om welke bedrijven ging het en op grond waarvan werden ze uitgesloten? Zo niet, waarom niet?
 - Werd er voor, tijdens of na deelname aan de economische missie aan de deelnemende bedrijven gevraagd om een plan van aanpak op te maken aangaande hun proces van *human rights due diligence*?
 - Zo ja, zijn deze plannen publiek beschikbaar en indien niet, kunt u ons deze plannen opsturen?
 - Zo nee, waarom niet?
 - Moesten bedrijven na deelname publiekelijk rapporteren over hun *human rights due diligence* inspanningen?
 - Zo ja, is deze rapportage publiek beschikbaar en indien niet, kunt u ons deze rapportage opsturen?
 - Zo nee, waarom niet?
 - Kunt u bij elke economische missie aangeven of er Nederlandse maatschappelijke organisaties of onafhankelijke experts werden betrokken bij de voorbereiding van de handelsmissie? Zo ja, welke?
 - Kunt u bij elke economische missie aangeven op welke mensenrechtenrisico's bedrijven werden gewezen voorafgaand aan en/of tijdens de handelsmissie? Op welke wijze werden zij op deze risico's gewezen? Door wie? Is hier documentatie van en zo ja kunt u die delen?
 - Kunt u bij elke economische missie aangeven of de deelnemende bedrijven specifiek werd gewezen op de repressie van vrijheid van meningsuiting, vereniging en vergadering in het ontvangend land en de mogelijke invloed hiervan op het *human rights due diligence* proces?
 - Zo ja, op welke manier?
 - Zo nee, waarom niet?
 - Kunt u bij elke economische missie aangeven of er nog andere MVO gerelateerde informatie specifiek relevant voor bedrijfsvoering in het ontvangend land werd meegedeeld aan de deelnemende bedrijven?
 - Kunt u bij elke economische missie aangeven hoe er tijdens de missie aandacht werd gegeven aan MVO? Werden hier lokale maatschappelijke organisaties bij betrokken? Zo ja, welke? Werden hier ook lokale bedrijven bij betrokken? Zo ja, welke?

⁴⁹⁵ Deze einddatum is gekozen omdat zo de aankomende handelsmissie naar China (9-12 mei 2022) nog meegenomen kan worden in dit onderzoek.

Financiële steun

- Welke financiële instrumenten, rijksbreed, staan open voor het Nederlands bedrijfsleven die actief (willen) zijn op China, Saudi Arabië en Rusland? Welke activiteiten binnen het Topsectorenbeleid zijn gericht op China, Saudi Arabië en Rusland?
- Welke Nederlandse bedrijven hebben hier tijdens de periode 1 januari 2011- 1 juni 2022 gebruik van gemaakt?
- Welke MVO voorwaarden zijn er bij welke financieringsinstrumenten, rijksbreed, voor buitenlandse handel?
- Zijn er speciale MVO voorwaarden m.b.t. de bouwsector en de technologiesector (inclusief telecom, AI, biotech en halfgeleiderindustrie) om in aanmerking te komen voor financiële steun? Zo ja, welke?
- Kunt u aangeven of bedrijven die financiële steun krijgen voor activiteiten in of deelnemen aan economische missies naar repressieve landen zoals China, Saudi Arabië en Rusland op een bijzondere manier worden voorbereid? Zo ja, is daarbij aandacht voor de specifieke risico's van een land met repressief regime en/of het begrip "*enhanced*" *human rights due diligence* dat van toepassing is in conflictgebieden? Zijn er andere voorwaarden van toepassing als er sprake is van een repressief land? Graag preciseren welke eventuele extra voorwaarden voor deelname worden gesteld, welke eventuele extra voorlichting of inzet plaatsvindt enz.

Andere vormen van overheidsbeleid ter ondersteuning van buitenlandse handel

- Kunt u een lijst opstellen van alle vormen van niet-financiële steun die Nederlandse bedrijven die actief zijn in China, Saudi Arabië en Rusland kregen van de Nederlandse overheid tijdens de periode 1 januari 2011 – 1 juni 2022? (Denk hierbij graag ruim, inclusief bijvoorbeeld de aanwezigheid van een ambassadeur bij de opening van een fabriek of het lokaal organiseren van een netwerkbijeenkomst.)
- Kunt u bij elke vorm van steun aangeven aan welke MVO-voorwaarden bedrijven moeten voldoen alvorens zij dergelijke steun kunnen krijgen?

Ondersteuning bij *human rights due diligence* door Nederlandse bedrijven

- Op welke manier ondersteunde de overheid Nederlandse bedrijven met activiteiten in de bouw en de technologiesector (inclusief telecom, AI, biotech en halfgeleiderindustrie) bij de uitvoering van *human rights due diligence* in China, Saudi Arabië en Rusland tijdens de periode 1 januari 2011 - 1 juni 2022? Hoeveel en welke assistentie is hiervoor beschikbaar gemaakt op de ambassades, consulaten(-generaal), NBSO's en andere onderdelen van het (economisch) postennetwerk in de doellanden?
- Op welke manier wordt de effectiviteit van deze ondersteuning door de overheid geëvalueerd en hoe worden de resultaten hiervan publiek gemaakt?
- Hielp de overheid Nederlandse bedrijven met activiteiten in de bouw en de technologiesector (inclusief telecom, AI, biotech en halfgeleiderindustrie) bij het aankaarten van de repressie van vrijheid van meningsuiting, vereniging en vergadering in China, Saudi Arabië en Rusland waar deze raakt aan het uitvoeren van effectieve *human rights due diligence*? Zo ja, op welke manier? Zo nee, waarom niet?
- Op welke manieren werkte de overheid aan het algemeen versterken van (het implementeren van) MVO in China, Saudi Arabië en Rusland tijdens de periode 1 januari 2011-1 juni 2022? Met welke relevante partners werkte de overheid hieraan?

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TRADING AT ANY COST

DUTCH GOVERNMENT PUTS ECONOMIC INTERESTS BEFORE PROTECTING HUMAN RIGHTS

In the context of China, Saudi Arabia and Russia, the Dutch government has failed in its duty to protect human rights by incentivizing Dutch businesses to enter high-risk markets while not insisting they carry out adequate human rights due diligence. All three countries are characterized by severe repression of the rights to freedom of expression, association and assembly, a lack of rule of law and high human rights risks for companies. These risks call for heightened due diligence. Despite the well-documented increased repression and grave human rights violations, Dutch trade policies have prioritized these countries since 2011 (Russia until its full-scale invasion of Ukraine in 2022). As part of its trade policies, the government provided extensive diplomatic and financial support to Dutch companies with planned or ongoing activities in China, Saudi Arabia and Russia. The government did this without adequately warning companies of the high risks, and without sufficiently communicating heightened due diligence standards. In addition, the Dutch government set only vague and noncommittal human rights due diligence conditions for receiving government support.