COURT FOR INTERGENERATIONAL CLIMATE CRIMES

CASE NO 1/2021

COMRADES PAST, PRESENT AND FUTURE VS. THE STATE OF THE NETHERLANDS

JUDGMENT DELIVERED ON
13 June 2022

HEARD ON
28 October 2021

Mr. Bart-Jaap Verbeek, from the Centre for Research on Multinational Corporations (SOMO) for Comrades (past present and future) of The Netherlands.

JOINTLY WITH
Sukhgerel Dugersuren, from Oyu Tolgoi Watch, Mongolia Marcela Olivera, from Blue Planet Project Alfonso López Tejada and Aymara León Cépeda from Pueblos Indígenas Amazónicos Unidos en Defensa de sus Territorios of Peru

VERSUS
The State of The Netherlands

THROUGH
Thomas Justinus Arnout Marie de Bruijn
Ministry For Foreign Trade and Development Cooperation

CHAIRPERSON
Radha D'Souza

MEMBERS
Nicholas Hildyard, Rasigan Maharajh, Sharon Venne

The Complainant in person
None for the Defendants

UNANIMOUS DECISION DELIVERED BY
Radha D'Souza as Chairperson with Nicholas Hildyard, Rasigan Maharajh and Sharon Venne concurring

KEYWORDS
Intergenerational Climate Crimes, Bilateral Trade Agreements, Special Purpose Vehicle, Offshore Financial Centres, 'conduit states', Rio Tinto, Oyu Tolgoi, Bechtel Corporation, Aguas Del Tunari, International Centre for Settlement for Investment Disputes , Pluspetrol, legal personhood, The Intergenerational Climate Crimes Act 2021.

HEADNOTE
Giving legal personality to a legal entity is a crime under the Act. Supporting/subsidising through Bilateral Investment Treaties and other means a legal entity is an intergenerational climate crime. The State of The Netherlands has violated and continues to violate the means of survival of human and non-human Comrades in Bolivia, Mongolia and Peru. The State of The Netherlands has breached the trust of the Comrades of The Netherlands by using its law-making powers to commit intergenerational climate crimes.

I. THE TRUTH SEEKERS

1. Four natural persons have brought charges against the State of The Netherlands before this Court. This Court views them as the Truth-seekers for reasons set out in paragraphs 16.

2. The first Truth-seeker, Comrade Sukhgerel Dugersuren, brings this case on behalf of the human and non-human communities of the Gobi desert in Mongolia. Her testimony included a short video film made specially for this Court. Comrade Dugersuren works for Oyu Tolgoi Watch (hereafter OT Watch Mongolia). OT Watch Mongolia supports nomadic herders in Mongolia and works with local communities affected by activities of Transnational Corporations (hereafter TNC) and international investors.

3. The second Truth-seeker Comrade Marcela Olivera brings this case on behalf of human and non-human inhabitants of the city of Cochabamba in the State of Bolivia. Comrade Olivera works for Blue Planet Project in Bolivia which is an organisation established to defend access to water for human and non-human species.

4. The third Truth-seekers Comrades Alfonso López Tejada together with Comrade Aymara León Cépeda bring this case on behalf of human and non-human communities of the First Nations of the four river basins in the Amazonian regions of Peru. Comrade Alfonso López Tejada is the president of ACODECOSPAT which is a federation of the Kukama, the Indigenous peoples of the Marañón River in Ayamara region of Peru. He gave evidence on behalf of the Pueblos Indígenas Amazónicos Unidos en Defensa de sus Territorios (PUINAMUDT) which is a larger platform of Indigenous communities in four river basins. These are the Kukama people from the Marañón basin, the Quechua people from the Pastaza basin, the Achuar people from the Corrientes basin, and the Kichwa people from the Tigre basin. Comrade Tejada spoke in Spanish and Comrade Aymara León Cépeda translated his deposition. Comrade Aymara León Cépeda also contributed evidence. Comrades Tejada and Cépeda presented a film testimony which was made specially for this Court.

5. The fourth Truth-seeker is Comrade Bart-Jaap Verbeek who works as a researcher for the Centre for Research on Multinational Corporations, abbreviated in Dutch as SOMO. He specialises in transnational governance of trade and investment and its impact on labour, environment, democracy, and human rights. Comrade Verbeek brings this case on behalf of Comrades of The Netherlands against the State of The Netherlands through the Ministry of Foreign Trade and Development Cooperation which, at the time of these hearings, was headed by the minister, Mr. Thomas Justinus Arnout Marie de Bruijn and the Ministry of Economic Affairs and Climate, which, at the time of these hearings, was headed by Mr. Stephanus Abraham (Stef) Blok, for crimes committed by the State under s.3 of the Intergenerational Climate Crimes Act 2021 (hereafter the Act) against human and non-human species around the world.

II. THE CHARGES

6. The first Truth-seeker Comrade Sukhgerel Dugersuren has brought the following charges against the State of The Netherlands:

6.1. That the State of The Netherlands signed a Bilateral Investment Treaty (hereafter BIT) with the State of Mongolia to allow the legal persons Rio Tinto and Turquoise Hill Resources to use the BIT as legal cover to carry out mining activities that have disembowelled the earth, depleted water sources and made the Gobi desert uninhabitable for its human and non-human residents.

6.2. That the State of The Netherlands colluded with the international organisations the International Monetary Fund and the World Bank and engaged in lending practices that have left the State of Mongolia with large national debts.

6.3. That by allowing legal persons to operate under the cover of the BIT, the State of The Netherlands allows the legal persons to avoid paying taxes in Mongolia and benefits from the circulation of money through The Netherlands.

6.4. That the State of The Netherlands signed the BIT with the State of Mongolia by misrepresenting to the State that the BIT would bring benefits to the human and non-human residents of the Gobi desert.

7. The second Truth-seeker Comrade Marcela Olivera has brought the following charges against the State of The Netherlands.

7.1. That the State of Netherlands abused its authority to make laws for the benefit of human and non-human inhabitants of The Netherlands by using those powers to recognise corporations as legal persons, issuing malicious fiats that endowed the artificial persons with human attributes, and enabling, aiding and abetting such artificial legal persons to impersonate natural Dutch persons.

7.2. That the State of The Netherlands used the artificial legal persons established and recognised by it to violate the sovereignty of weaker states and communities around the world, and to expropriate lands, waters, forests, labours around the world, with the aim of profiting from revenues, taxes, goods, commodities, and other direct and indirect benefits accruing from the expropriation.

7.3. That the State of The Netherlands created BITs as the legal framework for the benefit of corporations in The Netherlands, Europe and around the world to enable the artificial legal persons to expropriate land, water, forests, labours from humans and non-humans around the world.

7.4. That pursuant to the framework, the State of The Netherlands signed a BIT with Bolivia in 1992 fraudulently representing to the State of Bolivia that the Treaty would bring benefits to the humans and non-humans living in the Cochabamba city of Bolivia.

7.5. That the State of The Netherlands was aware that the Bechtel Corporation, an artificial legal person registered in the United States of America, had expropriated the water sources and supplies, depriving the humans and non-humans of Cochabamba of drinking water, and that it knowingly allowed the US legal national Bechtel Corporation to migrate to The Netherlands under the cover of the BIT agreement to help the corporation to evade responsibilities to Bolivia and the human and non-human residents of Cochabamba.

8. The third Truth-seeker Comrade Alfonso López Tejada appearing together with Comrade Aymara León Cépeda have brought the following charges against the State of The Netherlands.

8.1. That the State of The Netherlands signed a BIT agreement with the State of Peru in 1994 fraudulently representing to the State of Peru that the Treaty would bring benefits to the humans and non-humans residing in Amazonia including the First Nations of Achuar, Kichwa and Quechua.

8.2. That the State of The Netherlands, contrary to its representation, colluded with the artificial legal person called Pluspetrol, who is a national of Argentina, by granting residency to Pluspetrol in the financial district of Amsterdam, and aiding and abetting Pluspetrol to expropriate the lands, waters, forests, and labour in Peru and repatriate the benefits from the expropriation to The Netherlands.

8.3. That the State of The Netherlands offers immunity for intergenerational climate crimes to Pluspetrol under the BIT with Peru in order make it possible for Pluspetrol to extract fossil fuels, destroy local ecology including the rivers and coastal ecologies of Eucador, destroy human and non-human lives and the livelihoods of First Nations of Achuar, Kichwa and Quechua in the Amazonian regions of Peru.

9. The fourth Truth-seeker Comrade Bart-Jaap Verbeek has brought the following charges against the State of The Netherlands:

9.1. That the State of The Netherlands established itself as a 'conduit' state in a network of 'Offshore Financial Centres' and created new legal persons called Special Purpose Vehicles for the purposes of creating legal spaces for TNCs and financial institutions to carry out expropriation and appropriation of ecologies and communities around the world.

9.2. That the State of The Netherlands abused its sovereign powers acquired over time by using those powers to recognise corporations as legal persons, issuing malicious fiats that endow the artificial persons with human attributes, and enable, aid and abett such artificial legal persons to impersonate natural Dutch persons.

9.3. The State of The Netherlands developed and promoted Bilateral Investment Treaties. These BITs are unequal agreements designed to disempower states and their human and non-human inhabitants.

9.4. The State of The Netherlands has committed intergenerational climate crimes as defined in the Intergenerational Climate Crimes Act jointly and/or severally with TNCs and financial institutions.

10. The above charges, if true, constitute intergenerational climate crimes against past, present and future generations of humans, non-humans, cultures and ecosystems in Mongolia, Bolivia and Peru under s.3 (a), (b), (c) and (d) of the Intergenerational Climate Crimes Act.

III. SUMMARY OF THE EVIDENCE

11. SUMMARY OF EVIDENCE PRESENTED BY COMRADE DUGERSUREN OF MONGOLIA

11.1. Comrade Dugersuren described her homeland Mongolia. Mongolia is country with a large land mass the size of France but a small population of three million people. Two thirds of the land in Mongolia is desert and semi-desert, with harsh winters lasting six months. Large masses of land are not fit for human habitation.

11.1.1. Mongolia has a sensitive ecology. Since times immemorial adopting a nomadic life was the people's way of respecting the sensitive desert ecology.

11.1.2. For example, Mongolian people are taught not to disturb Comrade stones from their original places of existence. Stones in a desert ecology protect the land from soil erosion. In this way they were taught to protect the land for humans and non-humans alike.

11.1.3. The nomadic people of Mongolia did not feel the need to inflict violence on the land for the sake of extracting the gold, silver or copper that were formed through natural processes and lay buried below the land undisturbed.

11.1.4. Reciprocating the respect shown by the people of Mongolia to their land, the Gobi desert nourished their Comrades cattle, their Comrades water sources, and provided the people and other non-human species with the means to live and reproduce the conditions necessary for their existence.

11.1.5. In the course of reproducing the conditions of their existence in the Gobi desert, the nomadic people of Mongolia developed a unique culture with their own music, art, laws, institutions, world-views, stories and much else. The laws, institutions and world-views of nomadic communities of Mongolia aimed at forming living relationships with the ecologies, natures and non-humans around them.

11.1.6. Through these cultural developments the nomadic people of Mongolia educated and trained future generations to value the relationships between all species and everything below and above the land and foster interdependent and regenerational relationships across past and future generations.

11.2. The relationships that the nomadic communities of Mongolia had established with their desert ecology were ruptured after Rio Tinto, a global mining TNC, began mining activities to extract metals and minerals from the bowels of the earth from around 1995.

11.2.1. Rio Tinto is one of the world's largest mining TNCs. Rio Tinto set up Oyu Tolgoi as a separate legal person with Mongolian nationality. Oyu Tolgoi as a legal person is legally the Mongolian partner responsible for carrying out actual mining activities on the lands. Nevertheless, Oyu Tolgoi was established by Rio Tinto and remains under its the overall management and control.

11.2.2. Rio Tinto also created Oyu Tolgoi Netherlands B.V. as a company registered in The Netherlands under Dutch law and with Dutch nationality. Oyu Tolgoi Netherlands B.V. is a 'letter-box' or 'phantom company' and a Special Purpose Vehicle (hereafter SPV) as described by Comrade Verbeek in his evidence in paragraphs 15 below.

11.2.3. Oyu Tolgoi Netherlands B.V. does not have a factory, shop, outlet, bank or any economic activity in the Netherlands. It is registered in the Netherlands for the sole purposes of siphoning tax revenues and profits from investments that are made in Mongolia which is passed on through Rio Tinto to the shareholders, asset owners and investors.

11.2.4. Rio Tinto also established Turquoise Hill Resources which it registered as a different legal person with Canadian nationality. Turquoise Hill Resources owns sixty-six percent of shares in Oyu Tolgoi.

11.2.5. Using these clusters of interlocked and interrelated legal entities as façades, the shareholders, asset owners and investors expropriate and appropriate the Comrades minerals and metals beneath Mongolia's land, destroy all that Creation [otôsihiwew (Cree) paddaipu (Tamil), shristi (Hindi), indalo (Zulu), mauri ora (Te Reo/Maori)] has provided for the inhabitants of Gobi desert, displace the nomadic communities who have lived there since times immemorial, and destroy their unique cultures.

11.3. The State of The Netherlands exerts an undue and illegitimate influence on economic policies for the State of Mongolia in a number of different ways.

11.3.1. The State of the Netherlands is directly involved in extractive mining activities in the Gobi desert as an investor through the investment bank FMO (Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V.). The FMO is licenced by the State of The Netherlands as a private bank under the oversight of the Dutch Central Bank, and also a shareholder in the bank owning fifty-one percent of its shares, the remaining forty-nine percent being owned by non-state investors.

11.3.2. The State of The Netherlands is a shareholder in the World Bank Group and has influence in the Group's policies and projects.

11.3.3. The State of The Netherlands represents the State of Mongolia on the executive board of the World Bank Group's flagship organisation the International Bank for Reconstruction and Development (herafter IBRD). As Mongolia is a small shareholder, the rules of the IBRD do not allow Mongolia to represent itself directly.

11.3.4. As an important shareholder in the European Bank for Reconstruction and Development (EBRD), and the European Investment Bank (EIB), the State of The Netherlands sets policies and votes on projects for Mongolia, as well as making investment laws and policies together with other EU member-states.

11.3.5. The Netherlands is the largest source of foreign direct investment listed on the records of the Mongol Bank and the Central Bank of Mongolia which is estimated to be around six billion US dollars.

11.3.6. Through a combination of factors set out in paragraph 2.3. above, the State of the Netherlands has successfully brokered the largest public finance deal in the history of mining and the metals industry for the Oyu Tolgoi project.

11.4. The State of The Netherland's significant direct and indirect investments in mining operations gives the State the economic authority and political power to coerce the State of Mongolia to adopt investor-friendly policies, legislate investor-friendly laws and commit to investor protections via bilateral treaties as set out in Comrade Verbeek's evidence in paragraphs 15 below.

11.4.1. The State of Mongolia began adopting investor-friendly policies as canvassed by the State of The Netherlands from around 1995 by removing the restrictions in domestic laws on mining and foreign direct investments.

11.4.2. UN conventions on climate change, biodiversity, and human rights commit the State of Mongolia to take appropriate measures. The State of Mongolia is not allowed to derogate from the economic treaties and put in place regulatory policies that prioritise budget stability over all other policies. Consequently, the State of Mongolia's law and policy-making spaces are restricted as set out by Comrade Verbeek in paragraphs 15 below.

11.4.3. The State of Mongolia was required to amend its water laws following clauses in the investment agreements allowing mining companies grant of exclusive access and user rights over self-discovered water resources.

11.4.4. These investor friendly laws and policies have attracted more mining TNCs to Mongolia. In 2017, South Gobi Coal Trans mining company set up operations to mine land without permits or detailed impacts assessments that they were supposed to follow.

11.5. Comrade Dugersuren produced a short video film to evidence the pain and suffering caused to human and non-human lives as result of mining activities. Water is the scarcest life-sustaining resource in the desert.

11.5.1. Rio Tinto mines water at 870 l/sec rate at no cost. The cost of water paid by Rio Tinto is tax deductible. In addition to tax disputes, there are also disputes over water usage, reporting and disclosure of full technical information.

11.5.1. Rio Tinto, through Oyu Tolgoi, its Mongolian partner, has constructed a new underground pipeline with twenty-eight pump stations to provide the so-called "brackish water" for the Oyu Tolgoi plant. The pump stations cost the local nomads loss of their saxaul forest, loss of shallow water aquifers and pastures, all resulting in loss of livelihood, the right to traditional nomadic lifestyle, pastoralist identity and culture, for current herders and their future generations.

11.5.2. Oyu Tolgoi set up twenty-eight boreholes to extract water in the northern regions. Water in the well located at Shavag was plentiful in the past. As a result of the intensive water extraction the well is unable to nourish even fifty camels.

11.5.3. The Comrade pasturelands shown in the film are the natural habitat of two-hump camels that are rare in Asia and the world. When land is mined there is no pasture and habitat for the Comrade camels. The 5th Bagh is the only remaining camel pasture. There used to be a wide river that watered livestock in the whole of Bagh. Now it has turned into a barren area as seen in the film.

11.5.4. When well-fed and hydrated, a camel can go without water or food sometimes for weeks. The humps on a camel's back are fatty deposits that act as a source of nutrition and should be fully upright in September. The camels in the film are undernourished and have not had enough food and water.

11.5.5. The Comrade Undai river, a vital ephemeral river, was diverted and channeled to flow into the Oyu Tolgoi open pit. The Undai river nourished the Bor-Ovoo spring, which did not freeze in winter, and was the only source of water for the Gobi desert's rare and endangered wildlife, and historical and archeological sites. Rio Tinto claims that they conducted environmental and social impact assessment in 2012 and baseline data was not available at the time. Within ten years, the impacts of the operations have become evident. The film showed a 1994 painting by a local artist depicting the now destroyed Undai River piror to its destruction. The painting was tracked down in the local museum. Creation in the area in any form is destroyed today.

11.5.6. Close to the Oyu Tolgoi plant there is the Comrade Bor-Ovoo spring. The spring nourished people, wildlife, birds and five types of livestock that drank its water through autumn and winter and it was the first spring pasture for new offspring to grow in early spring.

11.5.7. Despite the destructive diversion of the Undai river, the depletion of waters of the Bor-Ovoo spring and aquifiers in Gunnii Hooloi region, Oyu Tolgoi has planned yet another project – the Orkhon-Gobi project that will transfer Orkhon river's waters to Oyu Tolgoi, Tavan Tolgoi and other mines in the southern regions. Rio Tinto's documents state, that from 2017 onwards, Oyu Tolgoi will face water shortages. When asked about it, Rio Tinto claimed it has enough water from their self-discovered water sources. Yet it continues to construct the Orkhon-Gobi water transfer project.

11.5.8. According to Comrade Dugersuren, extraction of water free of charge in uncontrolled amounts, in a desert ecology, for the sake of mining and processing metals – especially washing coal – is ecocide, and a criminal act against humanity.

11.6. Besides depletion of water sources mining and extractive activities have caused destruction, damage to land and everything on it.

11.6.1. Underground mines the size of Manhattan island (59.1.sq.km.) in the United States will subside and become uninhabitable. The herders living on the land will be displaced as a result.

11.6.2. The long roads to haul coals in coal trucks are not paved, adding to the soil erosion, destruction, desertification and climate change.

11.6.3. Mining companies and investors seek to confine pastoralists to limited areas of their homeland and require them to change their nomadic land use practices which they have followed over centuries, as their strategy to address climate change. Climate change according to Comrade Dugersuren is caused by the miners and investors and not the cattle herders.

11.6.4. Mongolia's climate and desertification statistics are staggering. Deserts are expanding northward at a speed of five kilometers per year. Seventy-six percent of total land is affected by desertification.

11.6.5. Temperature warming has already reached 2.2 degrees Celsius. Droughts occur every year in mining-affected regions.

11.6.6. The Hermitsav Canyon used to be a tourist attraction because of its natural geological formations. The Canyon area has become uninhabitable.

11.6.7. According to Comrade Dugersuren there is a difference in the climatic conditions of semi-desert and sandy desert. Rain precipitation in the semi-desert areas have become scarce. For example it has not rained in Gurvantes for ten years.

11.6.8. As springs and gushes and water sources dry up wildlife is becoming extinct as they are no longer able to reproduce the conditions of their existence.

11.7. The futures of Mongolian communities are threatened because their youth are no longer able to support their lives. Young herders are unable to continue their traditional occupations as herders as the waters and pastures have disappeared. Many young people are leaving their traditional home lands as they do not see their futures there.

11.7.2. The education the youth receive is aimed at giving them skills and training to work in the mines. Mining companies do not provide them with jobs however.

11.7.3. The State of The Netherlands will not allow people who are displaced from their lands due to its investment policies, laws and institutions to migrate unhindered to The Netherlands. The State of The Netherlands has introduced strict border policing measures to police and enforce border control policies against displaced people.

11.8. Mining companies like Rio Tinto and the State of The Netherlands made false promises to the State of Mongolia when seeking support for the mining projects and investments.

11.8.1. Mining promised job creation but adequate jobs are not available. They promised environmental protections that sound good but are yet deceptive.

11.8.2. Foreign investments and mining TNCs have corrupted the systems of governance and public administration in Mongolia, their parliamentarians and judges.

11.8.3. Investment agreements follow "Western" laws. Under the agreements it is legal to

acquire land if compensation is paid to land owners. Nomadic communities are not land owners. They live and work in groups of two or three families. Only one family is recognised as "owner" and paid compensation and given resettlement support. In this way compensation schemes break up communities.

11.8.4. The new laws imposed by investors and powerful states like The Netherlands do not recognize Indigenous traditions and do not recognize customary laws which developed in response to the conditions in the Mongolian deserts. The impact assessments are made according to the standards and procedures that are acceptable to countries like The Netherlands or "Western" countries.

11.9. Mongolian people are not consulted when making decisions about mining or the things that will impact upon their lives.

11.9.1. The Bor-Ovoo spring was destroyed despite pastoralists' protests and complaints filed with the International Finance Corporation (IFC) ombudsman in 2012-2013. After long mediation, the community agreed to an agreement that ensured sustainable pasture and water access based on hydrogeologic studies. It was also agreed that the parties would resolve pending disputes, one of which was payment of compensation for loss of land and livelihood. Those disputes are not yet resolved. For example the complaints of Khanbogd herders have not been resolved.

11.9.2. A witness in the film testimony said he borrowed against his retirement pension to appeal to the courts to stop the South Gobi Coal Trans project. The lawyers cost him US $7000. The money that the community raised was not enough. He went to Ulaanbaatar, the capital of Mongolia, thirty-eight times to attend court hearings, and the community held five press conferences on the South Gobi Coal Trans project to no effect.

11.10. Comrade Dugersuren wishes that this Court would recommend that the Mongolian herders be recognized as Indigenous peoples under the UN Declaration on the Rights of Indigenous Peoples and that their consent is obtained prior to commencement of any new project on their lands.

11.10.1. The investor-friendly policies brokered by the State of The Netherlands jointly with the World Bank Group and global investors has turned into a mega ecocide and the most important political destabilizer of the country, according to Comrade Dugersuren.

Recordings of the testimony of Comrade Dugersuren can be accessed via:
https://youtu.be/DYdIwenNiFM

12. SUMMARY OF EVIDENCE PRESENTED BY COMRADE OLIVERA OF BOLIVIA

12.1. Comrade Olivera gave evidence on the contracts for water concessions to supply water to the inhabitants of Cochabamba, the third largest city in Bolivia in 1999.

12.1.1. Prior to 1999, water-supply to the inhabitants of Cochabamba was provided by the city's municipality. The administration of municipal water supply included the participation of the residents of the city including Indigenous communities.

12.1.2. During the second political dictatorship of Hugo Banzer Suarez (1997-2001), an ally of the United States, the World Bank insisted that Bolivia contract water concessions to TNCs and investors internationally. Privatization of water services for the city of Cochabamba was a condition of a loan to improve the water supply systems for the city's inhabitants. The mayor of Cochabamba signed a water concession agreeing to contract out the provision of water supply to TNCs and investors. He invited competitive tenders for the project to get the best terms of contract for the inhabitants of the city.

12.1.3. Instead of competing with each other to give the city of Cochabamba the best terms for supply of water, the US TNC Bechtel Corporation organized its potential competitors into a consortium. The consortium of TNCs created a new legal person called Aguas Del Tunari (hereafter ADT).

12.1.4. ADT bid for the concession contract as an independent legal person, independent of Bechtel and other corporate shareholders. The city of Cochabamba received only one bid from ADT because rival TNCs "ganged" up against Cochabamba to get the concession.

12.1.5. The terms of the concession contract proposed by ADT were harsh. It locked the city into the contract for forty-years, included guaranteed minimum returns on investment for the entire period and prohibited price-caps on water supply to the city's inhabitants. Comrade Verbeek's evidence in paragraphs 15 below supports this claim.

12.2. Bechtel Corporation brokered the consortium that created ADT and structured it so as to retain control over the affairs of ADT and its profits.

12.2.1. Bechtel Corporation, the largest construction TNC in the United States, is a family owned company. Bechtel's financial interests include mining and metals, hydrocarbons, petrochemicals, nuclear energy, infrastructure, telecommunications, pipelines and water supply. The Bechtel family controls and manages its investments in multiple sectors through a legal entity called Bechtel Holdings Inc. which is the parent of other Bechtel legal persons.

12.2.2. The Bechtel family and their employees have close ties to the state and the government in the US. During the presidency of Richard Nixon, members of the Bechtel family were appointed advisors for economic commissions appointed by the US government. The family benefitted from loans from the state-owned Export-Import Bank on generous terms. The Export-Import Bank supports US overseas investments, manufacture and trade. During Ronald Reagan's presidency, men from Bechtel Corporations were appointed to positions in the Departments of Energy, Defense and Foreign Affairs. In a speech to Bechtel company executives Mr. Steven Bechtel said:

> "You all agree: we are not in the business of construction and engineering; we are in the business to make money."

12.2.3. Bechtel Holdings, owned by the Bechtel family, created International Water Holdings B.V. and gave the new legal person Dutch nationality by registering it in The Netherlands.

12.2.4. Bechtel Holdings created the Dutch national International Water Holdings B.V. by contributing fifty-percent of the share capital and invited Edison S.p.A, an Italian corporate person, to contribute the remaining fifty-percent of the share capital. In so doing, Bechtel arguably prevented at least one rival TNC from applying separately and in competition for the concession contract.

12.2.5. The Dutch national International Water Holdings B.V thus acquired US and Italian corporate parents and became a Dutch national in its own right with its own legal personhood conferred on it under Dutch law. As a Dutch national, the company acquired rights and privileges under the Dutch Bilateral Trade Agreements and the Dutch Golden Standards for Investor Protection as set out in the evidence by Comrade Verbeek below in paragraphs 14.

12.2.6. The Dutch holding company (International Water Holdings B.V.) is a "phantom" or "letter-box" company or an SPV as set out in Comrade Verbeek's evidence in paragraphs 15 below. International Water Holdings B.V. created another Dutch corporate national called International Water Tunari B.V., a "child" of the parent holding company in which it owned one hundred percent of the shares. The new company would shield the parent holding company from any misdeeds or misadventures in the corporate familiy's overseas investments and operations.

12.2.7 The new Dutch corporate "child" International Water Tunari B.V. produced another corporate entity or another corporate "grandchild" in Luxembourg with Luxembourgian nationality called International Water Tunari SARL (Luxembourg). This Luxembourgian descendent of Bechtel and International Water Holdings B.V. would benefit the corporate family from liberal tax regimes and laws permitting the channeling of profits from Bolivia to the Bechtel family and its high level employees.

12.2.8. The Luxembourgian International Water Tunari SARL (Luxembourg) ventured out into Bolivia and created ADT, a Bolivian national registered in Bolivia by becoming one of the members of the consortium that created ADT. International Water Tunari SARL (Luxembourg) became a leading member of the consortium by contributing fifty-five percent of the share capital of ADT.

12.2.9. For the remaining forty-five percent it invited other participants to the consortium. Riverstar International S.A of Uruguay contributed twenty-five percent of the share capital of ADT. Riverstar International S.A was in turn owned one hundred percent by the TNC Abegoa of Spain. Between them, eighty percent of ADT was owned by Dutch, American, Italian and Spanish legal entities.

12.2.10. Four Bolivian companies, Ice Ingenieros S.A., Constructora Petricevic S.A (Bolivia), Compania Boliviana de Ingenieria S.L.L (Bolivia) and Sociedad Bolivia de Cemento S.A (Bolivia), contributed five percent each to the sharecapital of ADT.

12.2.11. The above exempflies how the State of The Netherlands has established itself as a node in a network of institutions to create legal and institutional infrastructures for shareholders, asset owners and investors as shown by Comrade Verbeek in his evidence in paragraphs 14 below. Through these interlaced, multi-tiered ownership structures Bechtel, thanks to the legal infrastructures established by the State of The Netherlands, Bechtel Holdings and Bechtel family were able, in conjunction with Edison S.p.A. to remotely control ADT and the water supply to the inhabitants of Cochabamba.

12.3. The people of Cochabamba, confronted with one hundred percent increase in their water bills, loss of control over their water supply and a concession contract that locked them into Bechtel and its numerous corporate progeny, demanded that the State of Bolivia uses its law-making powers to cancel the concession contract.

12.3.1. From 1999 until the middle of 2000 there were waves upon waves of protest by the people of Cochabamba that came to be known as the Cochabamba "water wars". The State of Bolivia used its armed forces to attack the residents of the city and one young man was killed when the military opened fire. The "water warriors" campaigned for national and international solidarity.

12.3.2. Many comrades in The Netherlands protested against the Dutch State for using its law-making powers to privilege artificial legal persons, for setting up the legal infrastructures that allowed 'phantom' companies like International Water Holdings B.V., and for recognising multiple legal entites set up using Dutch legal jurisdiction to evade taxes, and social and environmental responsibilities to the inhabitants of Cochabamba. The State of The Netherlands did not take any actions in response to the protests by its citizens.

12.3.3. The State of Bolivia in contrast heeded to the protests. It held elections in which the people elected a government that favoured cancelling the water concession to ADT. With this democratic mandate, the State of Bolivia used its law-making powers and cancelled the water concession contract with ADT.

12.4. ADT sued the State of Bolivia before the International Centre for Settlement for Investment Disputes (hereafter ICSID) claiming breach of the terms of The Netherlands-Bolivia Bilateral Investment Treaty. ADT claimed compensation under the "legitimate expectation" clauses (see Comrade Verbeek's evidence in paragraphs 15) in Treaty from the State of Bolivia for the sum of US $50 million for loss of future income.

12.4.1. According to Comrade Olivera, Bechtel's compensation claims made through ADT must be put into perspective. Bechtel Corporation's earnings in 2001 were US $14 billion compared to Bolivia's Gross National Product (GDP) in the same year which was US $8.1 billion. Thus, Bechtel Corporations earnings were fifty-seven percent more than Bolivia's national GDP. Bolivia's public expenses were US $1.5 billion which is eleven percent of Bechtel's earnings. These figures show that the compensation claimed by Bechtel through ADT was not for recovering actual losses to complexes of corporations constitutive of ADT. Rather it was intended to punish the State of Bolivia for revoking the water concession in deference to the wishes of its people.

12.4.2. ICSID is a dispute resolution mechanism established by the World Bank. It is one of five members of the World Bank Group of organisations. ICSID statutes allow TNCs and investors to sue states for breach of the terms of investment contracts.

12.4.3. The main drafter of the statutes for ICSID, and ICSID's founding secretary general, was a Dutch citizen called Mr. Ruud Lubbers. Mr. Lubbers was an investment lawyer, a former prime minister of The Netherlands and considered the founding father of the European Energy Charter discussed in Comrade Verbeek's evidence in paragraphs 15 below. ICSID statutes became the model of ISDS tribunals in BITs as explained in Comrade Verbeek's evidence in paragraphs 14 below.

12.4.4. Before the ICSID tribunal, ADT claimed to be a Dutch national and invoked the Dutch BIT to defend its claims. Even though Bechtel Corporation was the ultimate owner of International Water Holdings B.V. the ICSID tribunal ruled that as the SPV (see paragraphs 14 on SPVs) was established as a legal person under Dutch law, the SPV was a Dutch national. ICSID ruled that Bechtel Corporation had migrated to the Netherlands and acquired a new nationality. It was therefore entitled to claim under Dutch BIT agreements through International Water Tunari B.V. which was the major shareholder, and also a Dutch national. The fact that Bechtel Corporation was the ultimate shareholder and the creator of International Water Holdings B.V. was not relevant.

12.4.5. The ICSID tribunal refused to hear community interest groups. Referring to the popular protests against water privatisation and the democratic mandate to revoke the water concession, the ICSID tribunal observed:

> "Simultaneously, the Tribunal also observes that its recognition of Bolivia's special duty to public order will diminish quickly as the events of the past several weeks recede into the past."

The above observations show ICSID tribunal was confident that the people's demands for access to water could be legally "bulldozed" by the corporate clans that controlled ADT.

12.4.6. The legal and institutional infrastructures put in place by the State of The Netherlands privilege artificial legal persons over real ecologies and communities and played a pivotal role in the expropriation of water from the inhabitants of Cochabamba.

Recordings of the testimony of Comrade Olivera can be accessed via: **https://youtu.be/a1Ck2zZCbdM**

13. SUMMARY OF EVIDENCE PRESENTED BY COMRADES TEJADA AND CÉPEDA OF PERU

13.1. Comrades Tejada and Cépeda gave evidence about the TNC named Pluspetrol. They spoke about the impact of its oil extraction activities in the Amazonian regions of Peru in the river basins of the Marañón, the Pastaza, the the Corrientes, and the Tigre and the destruction of life, eco-diversity, ecosystems and communities of the Kukama, the Quechua, the Achuar and the Kichwa nations who have lived in the river basins since times immemorial. Comrades Tepada and Cépeda produced a video they made specially for these hearings that records the extent of destruction of their territories.

13.1.1. Pluspetrol is responsible for more than 297 oil spills in concessions Nos. 1AB and 8 in the abovenamed river basins. The most recent spill occurred on 26 January 2021 about eight months before hearings in this Court began. According to information of the environmental authorities, Pluspetrol is responsible for ninety-four percent of barrels of crude oil spilled in the Peruvian Amazon over the course of the past fourteen years. By the year 2009, Pluspetrol had dumped highly toxic effluents in rivers and other water bodies in Indigenous territories. It is estimated that a total of 1.67 million barrels were dumped just in concession 1AB.

13.1.2. There are frequent oil spills in the four river basins. The oil spills leave behind death and destruction. The oil spills contaminate the water, the land and everything in Creation that depend on the waters and lands for their existence. Comrades tapir, Comrades pacas, Comrades deer and other non-human Comrades drink the water from the Comrade lake as they have always done not realising that the water is contaminated. They bathe in the water as they have always done. As those animals are food source for humans, people eat contaminated meat. Comrade Macaws and other Comrade parrots are dying because they seek their saltlicks in contaminated places where clay is mixed with crude. The Comrade boas, tapirs, agoutis are dying.

13.1.3. Pluspetrol discharges large amounts of heavy metals into the rivers and lagoons. The metals are ingested by Comrade fish which humans and other animals eat.

13.1.4. Heavy metals have serious health impacts on the children in the communities. Children are born with deformities. Heavy metals affect the children's learning abilities and their ability to teach the next generation. This means Indigenous peoples will have new generations who will not be able to learn or transmit their knowledge to future generations of their nations.

13.1.5. Ermilda Tapuy, Indigenous Kichwa mother from the Tigre river basin told this Court through her video evidence:

> "My brother has died throwing up blood, it came out of his anus as well. It looked like gelatine, that is how it came out of his mouth. One of my children died the same way. That is why, from that point on, we began to analyse these things."

13.1.6. People are dying because of contamination of the environment. There is no known treatment for the health effects of heavy metals on humans.

13.1.7. In 2016, the Peruvian government carried out a toxicological and epidemiological study in the communities in the four river basins that are affected by the oil concessions. The study demonstrated what the communities had been saying for many years: that people were contaminated with heavy metals and hydrocarbons.

13.2. Pluspetrol is a Dutch national that is registered under laws made by the State of The Netherlands. As a Dutch corporate person Pluspetrol is entitled to the privileges and protections of the The Netherlands-Peru bilateral investment agreement.

13.2.1. Oil extraction in the river basin began fifty years ago. Pluspetrol took over older oil concessions in 1996 and 2000. Oil concession Lot 1AB/192 was operated by Pluspetrol from 2000 to 2015. Oil concession Lot 8 is for the period 1996-2024 and continues to be operated by Pluspetrol.

13.2.2 Pluspetrol is a "letterbox" company as explained in Comrade Verbeek's testimony in paragraphs 14.

13.3. Pluspetrol does not acknowledge their environmental crimes, they do not respect the environmental protection mechanisms in place, and they do not respect the communities' health and lives.

13.3.1. Pluspetrol insisted that their activities and oil spills were not causing any contamination. The Indigenous federations of the four river basins developed a documentation and evidence gathering programme on their own initiative, to monitor the environmental changes. For the past 10 years they have produced reports and information about the environmental situation at their own expense.

13.3.2. Pluspetrol does not bother to clean up the oil spills or remediate the harm caused by the oil spills. Pluspetrol has refused to pay for the environmental remediation of more than 3000 contaminated sites that it has left behind in concessions 1AB and 8.

13.3.3. Pluspetrol Norte was fined with 20 million sols for contaminating and disappearing a Comrade lake in Loreto. The lake was covered in oil. The water was approximately four meters deep, covered with more-or-less 50 centimetres of crude oil across the entirety of its surface. When the communities filed a complaint, the company dug a hole, buried the crude, and covered it with wood and sticks and placed soil on top.

13.3.4. The condition of the 18 kilometer oil pipeline that carries oil from concession 8X to Northern Peru via Marañón river and San José de Saramuro has deteriorated over the past forty years and it has not been replaced or adapted. It leaks frequently as a result. The State of Peru filed a lawsuit against Pluspetrol.

13.3.5. The Environmental Assessment and Control Agency in Peru fined Pluspetrol a sum of 28 million Peruvian sols. Pluspetrol did not pay the fine.

13.3.6. When the Peruvian authorities fined Pluspetrol, the company challenged the fines in courts where it had greater chances of winning the cases. Being a legal person, the company has the authority to sue in its own name and thereby limit the risks or losses to the shareholders, asset holders and investors.

13.4. Since 2014, the Indigenous federations have appealed to the State of the Netherlands and international institutions to demand that companies such as Pluspetrol respect their rights and repair the damage they have caused.

13.4.1. Comrade Chino, a representative of the Indigenous federations met with Dutch parliamentarians in 2020 to ask that the State of The Netherlands acts to stop Pluspetrol from dumping oil into the Comrade rivers, lagoons and lakes in the river basins of Peruvian Amazonia. Some parliamentarians raised questions in the parliament and told the government that as Pluspetrol was getting tax benefits, and the advantages from the BITs the government had a responsibility to ensure Pluspetrol's activities in the Amazonia are not destructive. The government did not act to stop Pluspetrol from its destructive activities.

13.4.2. Members of the Indigenous communities also filed a formal complaint to the National Contact Point of the Organisation for Economic Cooperation and Development (hereafter the OECD). The community representatives voice scepticism about whether Pluspetrol will comply with the OECD's recommendations.

13.4.3. The government of Peru declared an environmental emergency due to contamination by crude oil in the basin of the Amazonian Pastaza River, which originates in Ecuador. It confirmed what Indigenous inhabitants of the region had been denouncing for years.

13.5. Comrades Tejada and Cépeda told this Court:

> "What these investments and what these companies have brought is the idea that only with money we're able to survive. They have brought destruction, they have brought abuse, they have brought disease and they have brought death."

13.5.1. Both said their ecologies and communities had lived and survived without investments and companies for thousands of years and that they are confident they can survive and exist without them in the future. In Comrade Tejada's words:

> "We are our territory and our ambitions as Indigenous peoples have taught us to live without investments, to live without these companies."

13.5.2. Comrades Tejada and Cépeda appeal to the Comrades of Netherlands saying:

> "We do ask the people of The Netherlands to make their country one that respects life, that respects human rights, that respects the diversity. Together, it is our duty to defend the planet and help stop climate change. But that is a task that we should do together, and that is why the people from The Netherlands need to get involved in this matter."

Recordings of the testimony of Comrades Tejada and Cépeda can be accessed via: **https://youtu.be/05YKL3KIFaY**

14. SUMMARY OF EVIDENCE PRESENTED BY COMRADE VERBEEK OF THE NETHERLANDS

14.1 Comrade Verbeek gave evidence to show that the State of The Netherlands used its inherited law-making powers to put in place legal infrastructures that prioritise investors, shareholders and asset owners at the expense of humans and non-humans, ecologies and communities around the world.

14.1.1. According to Comrade Verbeek over the past four decades transnational corporations (hereafter TNCs) and financial institutions have brought about a fundamental restructuring of social power relations everywhere. By establishing the legal and institutional frameworks for TNCs and financial institutions that enable them to commit intergenerational climate crimes, the State of Netherlands is jointly and severally responsible for those crimes.

14.2. The State of The Netherlands has abused its law-making powers by using it to:

14.2.1. Embed itself as a "conduit state" in a network of Offshore Financial Centres. Offshore Financial Centres are states that use their legislative powers to provide financial services to TNCs, financial institutions on "a scale that is incommensurate with the size and the financing of its domestic economy" (International Monetary Fund, 'Concept of Offshore Financial Centres: In Search of an Operational Definition', Ahmed Zoromé, IMF Working paper WP/07/87, April 2007).

14.2.2. As a "conduit state" the State of The Netherlands functions as an intermediary destination for shareholders, asset owners and investors that operate behind the façade of TNCs and financial institutions that act as carriers of capital across state borders. In other words, they enable what Comrade Verbeek following economists called capital "flows".

14.2.3. The volume of capital investments that simply pass through the legal jurisdictions of "conduit" states is so large that the International Monetary Fund has described the capital as "phantom capital". The State of The Netherlands uses its law making powers to allow shareholders, asset owners and investors to establish "phantom" companies in The Netherlands, commonly known as "letter-box" companies because they do not have any activity in the state except an address.

14.2.4. Legally, the "phantom" companies are called Special Purpose Vehicles or SPVs. SPVs do not conduct any real business in the sense they do not manufacture and/or sell real goods and commodities to the people of The Netherlands or anywhere else. Their main purpose is to hold and control other firms and assets, carry out intra-firm transfers and activities, manage intangible assets to minimise their global tax bills and take advantage of other direct and indirect jurisdictional advantages. Relying on Dutch Central Bureau for Statistics, Comrade Verbeek told this Court that there were about fifteen thousand SPVs set up under Dutch legal jurisdiction that together hold more than four billion Euros in assets. Eighty percent of the FDIs coming into The Netherlands is directly invested overseas.

14.3. Using its treaty-making powers, the State of The Netherlands has entered into Bilateral Investment Treaties with states around the world. BITs include clauses that:

14.3.1. Require states to maintain legally binding enforceable property rights to protect foreign investors;

14.3.2. Commit states to a "pre-commitment strategy" that binds future generations and governments of signatory states to maintain certain thresholds that the states will not transgress;

14.3.3. Safeguard foreign investors from adverse actions by sovereign states to protect their natures and cultures;

14.3.4. Impose limits on the authority of signatory states to regulate their economies and in so doing, insulate the economic power of states from their political power;

14.3.5. Aim to create stable and predictable business environment for TNCs and investors;

14.3.6. Discipline signatory states should they renege from their obligations under the BITs;

14.3.7. Provide a broad coverage of assets such as portfolio investments, shares, bonds, intellectual property rights, intangible assets and so on;

14.3.8. Include a broad range of investors and corporate activities and behaviour;

14.3.9. Protections that are not found in domestic laws and public administration.

14.3.10 Protections for TNCs and financial institutions from expropriation measures.

14.3.11. No limits to maximum profits that TNCs can make.

14.4. Dutch BITs rarely create corresponding obligations for investors or require them to abide by the laws of the host states including human rights, labour and environmental standards and other obligations under public international law.

14.5. BITs establish tribunals called the Investor State Dispute Settlement (hereafter ISDS) that empower shareholders, asset owners and investors using the façade of legal personality to sue states that enact laws or policies to protect their economies, ecologies and communities.

14.5.1. "Fair and equitable" clauses in BITs establish fairness and equitable standards for competing TNCs. At the same time "fair and equitable" clauses in the BITs allow TNCs and financial institutions to act collectively against signatory states. According to Comrade Verbeek fair and equitable clauses are fair to TNCs and unfair and inequitable to signatory states particularly in the Global South.

14.5.2. "Legitimate expectation" clauses in BITs protect anticipated profits and earnings that shareholders, asset owners and investors had when they made investment decisions for their TNVs and financial institutions. "Legitimate expectation" clauses disregard the expectations of host states that investments will bring jobs and technology transfers to their countries, and that states could continue to use their law-making powers to protect their ecologies and communities.

14.5.3. Dutch BITs include clauses that order their governments to pay market value to TNCs and financial institutions for any losses caused to them. ISDS tribunals apply anticipated future earnings and profits based on the "legitimate expectation" clauses as criteria to assess the value of assets that are not yet affected prompting inflated compensation claims by TNCs and financial institutions.

14.5.4. In turn such inflated claims have led to an arbitration "industry" that Comrade Verbeek described as the "El Dorado of investment arbitration". Expensive and unpredictable arbitrations create what Comrade Verbeek called "regulatory chill" – fears that prompt states to forgo introducing legislation that would be of benefit to Creation but not to corporations.

14.5.5. Compensation claims against states are made largely by extractive industries such as the energy sector, insurance and finance sector, and highly polluting industries responsible for climate crisis.

14.6. The procedures adopted by ISDS tribunals are not transparent. Three arbitrators selected from a small pool of lawyers or legal academics are appointed by the disputing parties and paid on a case-by-case basis.

14.6.1. The ISDS tribunals established under BITs allow TNCs financial institutions to bypass domestic legal systems.

14.6.2. Many legal professionals engage in what Comrade Verbeek called "double hatting" by which he meant they represent corporate clients in one case and arbitrator in the next, and thereby compromise the impartiality and independence of ISDS tribunals.

14.6.3. ISDS hearings exclude other affected parties in the investment dispute such as citizens' representatives or residents of a region, or groups defending non-humans and the environment.

14.6.4. There are no provisions for appeals against the ruling of the ISDS tribunals. The grounds for annulment or review of the decisions are very limited.

14.6.5. TNCs and financial institutions have challenged measures taken by states to protect their ecologies and communities including measures to protect employment, pensions and health provisions, loss of revenues and taxation, and harmful impacts of fossil fuels and extractive industries. ISDS decisions tend to be favourable to the TNCs and financial institutions.

14.7. The State of The Netherlands is party to a number of treaties that the European Union has entered into with other states such as Free Trade Agreements, the European Energy Charter and others that set environmental, labour, and social standards. The State of the Netherlands uses access to such treaties to further embed itself as a node in a patchwork of treaties that create the legal and institutional 'ecosystems' for TNCs and financial institutions. Through these means the Dutch state has established itself, in Comrade Verbeek's words, as a "Dutch legal empire".

14.7.1. According to Comrade Verbeek, establishing transnational legal infrastructures is the "backbone of global capitalism". Legal infrastructures are the central mechanisms to synchronise the economic domain of property (dominium), and thus, capital, through TNCs and financial institutions, with the political domain of sovereignty (imperium), that is, the law-making powers acquired by the state over time. The Dutch legal empire separates the "dominium" from the "imperium" which weakens the law-making powers of states in matters affecting shareholders, asset owners and investors acting through TNCs and financial institutions.

14.8. It is Comrade Verbeek's case that historically the State of The Netherlands has been the "cradle of investment regimes". The State's close entwinement with shareholders, asset owners and investors, and its uses of law-making powers to establish legal infrastructures for them, including legal artefacts such as corporations, endowing those legal entities with legal rights, and recognising them as humans, has a long history which has produced over time the intellectual, legal, institutional and ideological resources for a social order that is founded on expropriation and appropriation of ecologies and communities on an international and intergenerational scale. In his evidence, Comrade Verbeek gave examples of the leadership of Royal Dutch Shell, ex-prime ministers and Dutch professions in law-making who have established the legal and institutional infrastructures for TNCs and financial institutions that threaten future generations of humans and non-humans.

14.8.1. It is his case that the State of The Netherlands has a historical responsibility to disentangle the legal infrastructures that it has established over an extended period of time that protects the shareholders, asset owners and investors by allowing them to take cover behind the façade of TNCs and financial institutions to expropriate and appropriate ecologies and communities on an international and intergenerational scale.

14.9. Comrade Verbeek asked this Court:

> "If our political systems are hardly able to regulate quickly and effectively, then who will protect humans and non-humans across different generations whose rights and well-being are clearly being violated

by crimes committed by TNCs, foreign investors using the legal infrastructures established by the State of The Netherlands?"

Recordings of the testimony of Comrade Verbeek can be accessed via:
https://youtu.be/LOZzkZk2iOY?t=780

15. SUMMARY OF EVIDENCE PRESENTED BY THE DEFENCE

15.1. Summons to appear and give evidence in their defence, if they wished to, were issued to Mr. Thomas Justinus Arnout Marie de Bruijn through the Ministry For Foreign Trade and Development Cooperation, and to Mr. Stephanus Abraham (Stef) Blok, through the Ministry of Economic Affairs and Climate. At the time of these hearings, both were ministers of their respective departments and responsible for the portfolios assigned to them as representatives of Dutch people. Neither representatives of the State of The Netherlands at the time appeared before this Court.

15.2. There are several questions pertinent to intergenerational climate crimes that this Court could have asked them, had they presented their evidence. Some of those questions might have been:

15.2.1. Do they see themselves as represenatives of the people of The Netherlands or the State of The Netherlands – the former are natural persons, the later is a legal person and a legal artefact.

15.2.2. How and on what basis did they prioritise natural persons (inhabitants of The Netherlands) over artificial legal persons (the letter-box companies and corporate entites), if at all, when making laws and policies?

15.2.3. How do they reconcile their behaviour as natural persons which includes compassion, empathy, ethics, social and environmental duty and their role as post-holders and spokespersons that limits their actions to specific job-descriptions handed to them by the State acting as their employer?

15.3. The judgment will have to be delivered *ex parte* without hearing them, and this is unfortunate.

IV. INTERPRETATATION OF THE INTERGENERATIONAL CLIMATE CRIMES ACT 2021

16. APPROACHES TO INTERPRETATION OF THE ACT

16.1. Opening Remarks: This is the first case brought under the Intergenerational Climate Crimes Act 2021 (hereafter the Act). Interpreting and applying this Act to the facts before us without the aid of established rules of statutory interpretation, case-law, and conventions, has involved many challenges. Writing this decision has been a big learning curve for the members of this Court.

Members of this Court are humbled by the trust that the the deponents, the members of the jury and the administrators of this Court have bestowed upon them.

16.2. QUESTIONS ABOUT TERMINOLOGY: COMPLAINANT/ DEFENDANT AND PROSECUTOR/ACCUSED

16.2.1. This Court considered the appropriateness of using terms like "complainant/respondent", "plaintiff/defendant" and "prosecutor/accused". The summons issued to the parties used those standard terms and during the hearings the deponents giving evidence were referred to as "prosecutors" and "witnesses". That should not stop this Court from asking whether certain terminology used in the courts established by the State of The Netherlands should be adopted by this Court as a matter of course.

16.2.2. In civil litigation before courts established by states such as the State of the Netherlands, the terms commonly used for those who bring cases to courts is "complainant" and "respondent" or "plaintiff" and "defendant". Complainant refers to those who complain to a Court about breaches of entitlements whether under statutes or contracts; and Defendant, the persons who refute those entitlements and contractual claims. The four persons who have brought their cases to this Court are not complaining about breaches of statutory entitlements or breaches of contract that are individual and personal to them.

16.2.3. The terminology of "prosecutor/accused" is typically used in criminal offences which are broadly grouped into two classes of crimes: crimes against persons and crimes against property. The deponents in this case do not accuse anyone of bodily harm to themselves or offences against their personal and/or corporate properties.

16.2.4. To be a complainant or plaintiff, the litigant must first concede to the authority of Dutch legal jurisdiction and the authority of the state to make laws. Those who have brought this case before us claim that states like the State of The Netherlands cannot be allowed to act as the final arbiters of certain matters concerning the futures of species and life on this planet.

16.2.5. The question of whether or not the deponents are complainants/defendants or prosector/accused invites consideration of two further questions. First, what were the natural persons who brought their case to this Court seeking to do? Second, why did they come to this court and not any other for justice? We address both questions in turn.

16.3. THE COURT FOR INTERGENERATIONAL CLIMATE CRIMES (CICC)

16.3.1. The CICC is not a state-centric Court. It is neither established by any state nor administred by one. This is a Court established by the Comrades of The Netherlands, by which we mean those inhabitants of The Netherlands who seek intergenerational justice for all Creation [otôsihiwew (Cree) paddaipu (Tamil), shristi (Hindi), indalo (Zulu), mauri ora (Te Reo/Maori)]. This Court is Creation-centric.
It includes humans, non-humans and everything else that is part of Creation.

16.3.2. State-centred courts are established to enforce a regime of rights. Rights create entitlements for right holders. The state determines who is entitled to what and how much. For example, states decide which Indigenous peoples are entitled to land and how much land, or who is entitled to disability benefit and how much? States establish courts to decide disputes about the entitlements that

it has apportioned to different social groups under statutes or contracts. The idea of justice in state-centred courts is narrowed down to breaches of statutes or contracts affecting individuals or groups.

16.3.3. The remit of a Creation-centred court such as this one is cognitively wider. Creation-centred courts are established to recognise the life-rhythms and life-cycles of Creation and to direct human species to organise their lives consistently with the principles of interdependency, intergenerationality and regeneration of all Creation. Creation does not apportion entitlements to this or that person/group, or to this or that resource or commodity or service. Each Creation is endowned with its own properties, its own sensibilities, its own purpose and its own rhythms of life and regeneration. The idea of justice in Creation -centred courts such as this one is also cognitively wider. Justice in a court such as this one is intergenerational in the sense that everything in Creation must be able to exist first and foremost, and able to reproduce the conditions of its existence for the present and future generations.

16.3.4. A person bringing a case to a Creation-centred court does so not for personal/group benefits or to enforce a contract or statute but they seek some Truth about Creation that has been lost or forgotten or deliberately discarded and/or disrespected or abused. That is exactly what the persons who have knocked at the doors of this Court have done. In different ways, from different places, they see that the majesty of Creation is forgotten, deliberately discarded, disrespected and abused. They see that the worlds for all creatures including human beings are encroached upon and enclosed by creeping death, destruction and devastation as stated clearly in the evidence of Comrades Dugersuren, Olivera, Tejada and Cépeda in paragraphs 11, 12 and 13.

16.3.5. The meaning of crime in state-centred courts revolves around bodily injuries to individuals or damage to individual or corporate property. The meaning of crime in a Creation-centred court revolves around the destruction of the conditions of existence and the conditions for reproduction of life for all Creation. It is not limited to what a state chooses to define as a crime. The images of many extinct species were present in this courtroom throughout the hearings as witnesses of past crimes against Creation. States are and have always been complicit in the exintction of species on intergenerational scales. A state-centric courts cannot be expected to address crimes against Creation.

16.3.6. For the reasons discussed above, the Court finds that those who have brought their cases to this Court are Truth-seekers and not complainants or prosecutors.

16.4. WHY HAVE THE TRUTH-SEEKERS BROUGHT THEIR CASES TO THIS COURT AND NOT ANY OTHER.

16.4.1. Firstly, this is the only Court that is established for the explicit purpose of addressing crimes against Creation. The aims of the Act are to abolish intergenerational climate crimes, to establish relationships of solidarity and comradeship among all species and to remedy the abuse of intergenerational relationships in the past by certain persons.

16.4.2. s.3 of the Act sets out who those persons are. An intergenerational climate crime is committed by "legal persons". "Legal persons" are legal artefacts that are conferred with human attributes by the fiat of law. S. 2 (7)(a) does not include "legal persons" in the definition of persons (see discussion in paras 16.5).

16.4.3. Secondly, there is no other Court that is established to investigate the Truth behind legal personhood. All four Truth-seekers have brought cases before us that involve crimes against Creation by "legal persons" masquerading as real natural persons. We know that as legal artefacts these artificial and unnatural persons cannot walk, talk, make decisions or execute them. How do these artificial unnatural legal persons "behave", "take responsibility", "make" decisions? Even more importantly, how and why do millions of natural persons around the world have faith in legal persons and believe that they can actually think, feel and behave like natural persons? Why do they believe this even when they see evermore death and destruction caused by "legal persons" on a daily basis? These are the Truths of our times that need investigation.

16.4.4. State-centric courts are adversarial in nature where the parties must compete to prove/disprove certain facts. Facts are not the same as Truth. Indeed Creation's Truth is often the casualty in adversarial judicial processes. Besides, fact-finding exercises in an adversarial system favour those with money and resources, authority and control over 21twenty-one institutions. We heard from Comrade Tejada (paragraph 13.4) about the time and money they had to spend to publish reports and facts that everyone knew about, about which they had been complaining for ten years, and no one took notice of. The Truth-seekers have come out as losers in the state-centric courts. They are losers because their adversaries are not real natural persons that Creation has created; instead their adversaries are "legal persons" created by states, in otherwords they are artificial entities.

16.4.5. We have seen from the evidence we heard from Mongolia, Bolivia and Peru, and The Netherlands, that all four Truth-seekers have taken their cases to state-centric courts and to court-like consultative mechanisms set up by states and state-like institutions. We saw that neither the TNCs and financial institution nor the State of The Netherlands paid much attention to the Truth-seekers and their evidence about the abuse of Creation. Instead they corrupted the laws and judicial systems in Mongolia, Bolivia and Peru and disempowered those states by taking away their economic powers – what Comrade Verbeek called the "dominium" from their political powers or the "imperium" (paragraph 14.7.1).

16.4.6. For the aforesaid reasons, this Court finds that the Truth-seekers had good reasons for bringing their cases to the CICC and the Comrades of The Netherlands.

16.5. OLD AND NEW LEGAL VOCABULARY: THE LANGUAGE OF "LEGAL PERSONS" IN THE ACT

16.5.1. This Court had to consider the use of vocabulary developed by state-centric laws and courts and also whether that language has the capacities to communicate the concepts and thinking that inform a Creation-centric court such as this one. The language of "legal persons" and words associated with legal personhood has fostered a way of speaking about artificial legal artefacts as if they are human. The Truth-seekers in this case spoke about what Rio Tinto, ADT and Pluspetrol, what the States of The Netherlands, Mongolia, Bolivia and Peru did or did not do, what international organisations like the World Bank, ICSID and others did or failed to do. Indeed members of this Court too spoke about legal entities like TNCs as if they were human actors. We recognise the difficulties in speaking about legal artefacts in any other way.

16.5.2. At the same time, the members of this Court also recognise that the Act does not recognise "legal persons". s.2(4) of the Act states:

2(4) "Legal entities" are legal artefacts established by a group of persons with authority to do so for the purposes of limiting their environmental, social and legal liabilities, and responsibilities arising from their activities.
a. For the purposes of this Act a state established under any constitution is a legal entity.

s. 2(7) defines a "person" as follows:

2(7) "Person" means any living being subject to laws of Life, i.e. birth, life, death and regeneration cycles over periods of time as appropriate for each species.
a. "Person" does not include a "legal person" i.e. legal artefacts that are conferred with human attributes by the fiat of law.

Speaking about legal artefacts like corporations and states as if they were natural persons when the statute explicitly puts them outside the definition of "persons" requires clarification and explanation.

16.5.3. Modern law in state-centred legal systems are founded on what is called "legal fictions" in jurisprudence and legal theory. Lon L. Fuller, a noted scholar in jurisprudence from Harvard University, says this about legal fictions:

> "Probably no lawyer would deny that judges and writers on legal topics frequently make statements which they know to be false. These statements are called 'fictions.' [...] Sometimes they take the form of pretenses as obvious and guileless as the 'let's play' of children. At other times they assume a more subtle character and effect their entrance into the law under the cover of such grammatical disguises as, 'the law presumes,' 'it must be implied,' 'the plaintiff must be deemed,' etc. [...] The influence of the fiction extends to every department of the jurist's activities." (L.L. Fuller, Legal Fictions, 25 Illinois Law Review (1930-1931), 363)

"Legal personality" also known as "corporate personality" is a foundational legal fiction without which there is no modern law as we know it. The legal fiction of legal/corporate personality shapes the institutions of the state and economy.

16.5.3. Legal fictions in modern legal jurisprudence came into existence in the seventeenth and eighteenth century when modern states as we know them today were established by European merchants, a section of the European aristocracy and a section of European intellectuals. Over an extended period of time, for about four centuries now, these groups of natural persons, i.e. merchants, aristocracies and intellectuals, established "legal persons" using legal fiats they continue to establish them using legal fictions. They accord the legal artefacts the status of natural person and treat them as such in their social practices. We heard from Comrade Verbeek about the SPVs that were set up under Dutch laws as new legal persons (paragraph 14.2.4) and from Comrade Olivera about how legal personhood allows them to "migrate" produce more corporate entities as if they were "children" and "grandchildren" of the parent entity (paragraphs 12.2).

16.5.4. State-centred law has bestowed upon "legal persons" contractual rights, human rights, political rights, rights to organise, and created expectations of "corporate social responsibility" and social, moral and legal "behaviour", as if they were human. The idea of legal person no longer appears as "fiction" because modern institutions have embedded their thinking in language, law, institutions, culture and every other aspect of social life.

16.5.5. Legal personality was created so that the natural persons could use the artificial legal artefact as a façade to protect themselves from risk, avoid responsibilities for reckless actions, expropriate and appropriate natures and labours, ecologies and communites around the world on a global scale. Natural persons either individually or in groups are incapable of "death, devastation and destruction" in the words of Comrades Tejada and Cépeda (paragraph 16.5.5), on such a intergenerational and international scale without the invention of the legal artefact founded on fictional theories of artificial legal personality.

16.5.6. In a Creation-centred court such as this one, law is based on Truth about Creation and reality at all levels of consciousness. This Court does not accept that fictional concepts can be a foundation for social orders that respect all Creation.

16.5.7. Yet the members of the Court could not have conducted the proceedings without using state-centric legal vocabulary even to challenge the conceptual basis for the language. We are of the view that by interpreting the Act, applying them to concrete cases as we have done here, and building precedents and case-law, it will become possible in the future to develop a language that articulates in more satisfactory ways, the needs of all Creation and not the profits of "legal persons" created by state-law.

17. HAS THE STATE OF THE NETHERLANDS COMMITTED INTERGENERATIONAL CLIMATE CRIMES?

17.1. Do the testmonies of the Truth-seekers before this court establish that the State of The Netherlands committed intergenerational climate crimes as set out in s.3 of the Act?

17.1.1. For a crime to be an intergenerational climate crime as set out under s.3 of the Act, the act(s) must be committed by a group of persons acting as a single "legal person" under laws established by themselves as defined under s.2(4) of the Act.

17.1.2. Comrade Verbeek gave evidence about revolving doors for human persons to move between states and TNCs and financial instituitons. He gave the example of one Mr. Ruud Lubbers, an investment lawyer with close ties to Royal Dutch Shell, a former prime minister, who played an active role in setting up the legal and institutional infrastructures for "legal persons" for the benefit of shareholders, asset owners and investors (paragraph 14.8). Comrade Olivera's evidence shows how ICSID was a closed tribunal set up to benefit TNCs and investors (paragraphs 12.5.2-12.5.5.). Comrade Verbeek's testimony states that such revolving doors for human persons to move between states and TNCs and financial instituitons have a long history in The Netherlands (paragraph 14.8).

17.1.3. Comrade Dugersuren was justifiably upset by the statement of Mr. Wilcock, the executive director of the World Bank, when he said in responding to questions about the destruction of water sources in Mongolia: "one cannot have an omelette without breaking some eggs" (Recordings of witness evidence, CICC hearings 28 October 2021). The statement reveals the callous mindset of the people who operate behind the cover of legal artefacts like TNCs and states.

17.1.4. Comrade Olivera testified that Bechtel family are the ultimate owners and beneficiaries of the water concessions contracts for Cochabamba (paragraph 12.2.2).

17.1.5. Comrades Tejada and Cépeda brought Pluspetrol's destructive activities to the attention of the members of the Dutch parliament but did nothing beyond asking a question in parliament (paragraph 13.4). The point to note for the purposes of the Act is that they could

not do anything because it was the very same members of the Dutch parliamentarians who had put in place the legal infrastructures and institutions that privileged the water and oil extracting/mining corporations and investors

17.1.6. Comrade Verbeek testified that the State of The Netherlands had historically been a "cradle of investment regimes" (paragraph 14.8). Comrade Verbeek's testimony laid out how the laws made by the Dutch parliament privileged corporate persons in multiple ways (paragraphs 15).

17.1.7. Based on the above evidence in paragraphs 11, 12, 13 and 14 considered together, this Court finds that the State of The Netherlands abused its law-making powers by establishing the legal and institutional infrastructures that privileged "legal persons" for the sole purpose of allowing some wealthy people to profit from it and to grant them impunity for their crimes.

17.2. The second arm of s.3 is whether such persons acting behind the façade of legal personhood harmed and/or impacted "the conditions necessary for the reproduction of any species". Comrades Dugersuren, Tejada and Cépeda produced documented video evidence on the extent of intergenerational harm and destruction of the conditions necessary for life caused by those acting behind the façade of legal artefacts (paragraphs 11, 12 and 13). Their oral evidence and answers to questions put to them by members of this Court and the jury was convincing (video recordings of CICC hearings, 28 October 2021). This Court is convinced that in Mongolia, Bolivia and Peru, expropriation of Comrade water has caused intergenerational harm as set out in s.3 of the Act, caused changes in weather patterns under s.3 (a) (paragraphs 11, Mongolia), made it impossible for non-human species to survive as set out under s.3(b) (paragraphs 13, Peru), caused the breakdown of relationships of dependence and reciprocity between species, human and non-human under s. 3(c) (paragraphs 11, Mongolia and paragraphs 13, Peru), and displaced people from land leading to breakdown of communities under s.3(d) (paragraphs 11, Mongolia and paragraphs 13, Peru).

17.3. The evidence before this Court in paragraphs 11, 12, 13 and 14 establishes that intergenerational climate crimes under s.3 of the Act were committed by certain natural persons acting behind the façade of legal artefacts, and paragraph 14 provides clear evidence that the State of The Netherlands used it law-making powers to establish the legal and institutional infrastructures to facilitate the crimes that were committed with the sole aim of profiting from them.

V. COURT'S RULING PER THE ABOVE INTERPRETATION

18.1. It is a crime under the Act to give legal personality to an entity whose purpose is to seek personal or institutional gain at the expense of the collective survival of all Creation including humans and non-humans.

18.2. It is a crime under the Act to conspire with others to subsidise, support or otherwise give succour through Bilateral Investment Agreements or other means to an entity whose purpose is to seek personal or institutional gain at the expense of the collective means of survival of all Comrades, human and non-human.

18.3. By assigning rights to corporations and entering into Bilateral Investment Agreements, the State of The Netherlands has violated and continues to violate the privileges granted by Creation to Comrades, human and non-human, in Bolivia, Mongolia and Peru and elsewhere in the world to exist and to reproduce the conditions necessary for their existence.

18.4. The State of The Netherlands has breached the trust bestowed upon it by the Comrades of The Netherlands by using the law-making powers it has inherited to commit intergenerational climate crimes.

VI. COURT'S ORDERS

19.1. That the State of The Netherlands Cease and Desist from giving legal personality to corporate entitities and revokes such recognition as has already been granted.

19.2. That the State of The Netherlands Cease and Desist from entering into Bilateral Investment Agreements that grant privileges and rights to corporate entities and enters into negotiations with other states to revoke such rights as have been granted.

VII. EXECUTION OF ORDERS

20.1. That Comrades of The Netherlands and elsewhere use all non-violent collective means at their disposal to organise to enforce this order.

20.2. That Comrades of The Netherlands and elsewhere use all non-violent collective means at their disposal to organise autonomous self-reliant place-based communities, and develop short, medium, and long term plans for the regeneration of ecologies and communities in their areas or regions and reestablish relationships of intergenerational solidarities with human and non-human species guided by the principles set out in s.6, s.7 and s.8 of the Act.

Decision delivered on the Thirteenth Day of June Two Thousand and Twenty Two in Amsterdam at the Royal Academy of Arts and Sciences, The Netherlands.

CHAIRPERSON
Radha D'Souza

MEMBERS
Nicholas Hildyard
Rasigan Maharajh
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Court for Intergenerational Climate Crimes (CICC) is a project by Radha D'Souza & Jonas Staal, commissioned by Framer Framed, Amsterdam.

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