ECLI:NL:RBDHA:2026:1347

Instantie	Rechtbank Den Haag
Datum uitspraak	28-01-2026
Datum publicatie	28-01-2026
Zaaknummer	C/09/659832 / HA ZA 24-53 (ENG)
Rechtsgebieden	Verbintenissenrecht
Bijzondere kenmerken	Eerste aanleg - meervoudig
Inhoudsindicatie	Climate case Bonaire. Public interest litigation. Human rights; Articles 2, 8, 14 ECHR. UN Climate Change Convention and Paris Agreement. Overall assessment according to ECtHR in KlimaSeniorinnen judgment; review of mitigation and adaptation measures and procedural safeguards. Declaratory judgment that the positive obligations of Article 8 of the ECHR have been violated. Unequal treatment. Declaratory judgment that there has been a violation of Article 14 of the ECHR and Article 1 of the 12th Protocol to the ECHR. Order to the State to take measures in accordance with the UN agreements, including the preparation and implementation of an adaptation plan. Disclaimer: The translation of this judgment is solely intended to provide information. The Dutch text of the advisory opinion is the only authentic and formal text (ECLI:NL:RBDHA:2026:1344). ECLI:NL:RBDHA:2026:1348 - Papiamento translation
Vindplaatsen	Rechtspraak.nl

Verrijkte uitspraak

Uitspraak

The Hague District Court

Commerce Team

Case number: C/09/659832 / HA ZA 24-53

Judgment of 28 January 2026

in the case of

GREENPEACE NETHERLANDS in Amsterdam,

claimant,

hereinafter: Greenpeace,

attorneys-at-law: M.R.S. Bacon and E.W. Jurjens,

versus

THE STATE OF THE NETHERLANDS (Ministry of Climate Policy and Green Growth, Ministry of Infrastructure and Water Management and Ministry of the Interior and Kingdom Relations),

in The Hague,

defendant,

hereinafter: the State,

attorneys-at-law: E.H.P. Brans and K. Winterink.

1 What is this case about?

1.1. This action initiated under the Settling of Large-scale Losses or Damage (Class Actions) Act concerns the questions of whether:

a. the State has taken sufficient timely and appropriate measures to protect the inhabitants of Bonaire from the effects of climate change (*adaptation*), and

b. whether the State's climate policy complies with the equitable contribution it must make under the United Nations Climate Convention and the ensuing Paris Agreement. These stipulate that countries worldwide must take measures to limit global warming to less than 1.5 °C compared to pre-industrial levels by the end of this century (*mitigation*).

1.2. Greenpeace is acting for the inhabitants of Bonaire in this case and believes that the State is not taking sufficient mitigation and adaptation measures to protect the inhabitants of Bonaire. According to Greenpeace, the State is therefore failing to fulfil its obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). Furthermore, the State offers the inhabitants of Bonaire less protection against climate change than the inhabitants of the European Netherlands and, according to Greenpeace, does not take sufficient account of the right of the inhabitants of Bonaire to experience and practise their own culture. According to Greenpeace, all this is unlawful towards the inhabitants of Bonaire.

1.3. The State believes that it is doing enough for the inhabitants of Bonaire in the areas of adaptation and mitigation. The State argues that it is not taking fewer measures for the inhabitants of Bonaire, but rather different measures that are specifically tailored to the situation in the Caribbean, which differs from that in the European Netherlands. In terms of mitigation, the State points out that it has considerable policy-making discretion and that the court cannot frame policy on its behalf; the State also points out that the Netherlands is already doing more than many other countries and cannot be held solely responsible for the global problem of climate change.

1.4. The court finds that the State has failed to fulfil its positive obligations under Article 8 of the ECHR towards the inhabitants of Bonaire, because the mitigation and adaptation measures as a whole taken by the competent authorities in relation to the inhabitants of Bonaire do not meet the obligations that the State has assumed in a UN context.

The parties to the UN Climate Convention have deliberately designed a system in such a way that countries can be held individually responsible for a part of the global problem of climate change. The argument that the Netherlands and/or the EU is doing proportionally more than other countries is not decisive in this system,

simply because countries are expected to contribute according to their ability and taking into account their historical emissions. The Netherlands and the EU both have considerable financial capacity and a significant share of historical emissions.

1.5. In addition, the State took mitigation and adaptation measures for the inhabitants of Bonaire much later and less systematically than for the inhabitants of the European Netherlands, even though it had been known since at least the early 1990s that:

a. a) Bonaire would experience serious negative consequences of climate change earlier than the European Netherlands, and

b) the local authorities on Bonaire did not have sufficient personnel, resources and specialist knowledge to counter those serious negative consequences.

The State has failed to offer sufficient explanation why measures for the inhabitants of Bonaire were taken later and less systematically than for the inhabitants of the European Netherlands. It is clear that the circumstances on Bonaire are different from those in the European Netherlands and therefore require a customised approach; however, those circumstances point precisely to the need to take more mitigation and adaptation measures earlier.

The court therefore finds that the State has also violated the prohibition of discrimination in Article 14 of the ECHR and Article 1 of the Twelfth Protocol to the ECHR. This too is unlawful towards the inhabitants of Bonaire.

1.6. Contrary to how Greenpeace has constructed its claims, the mitigation and adaptation measures cannot be assessed separately from each other; the assessment framework set out in the *KlimaSeniorinnen* judgment consists of an overall assessment of all measures taken within a member state. Not every viewpoint that can be challenged in that overall assessment constitutes an individual violation of the ECHR and/or an unlawful act. The declaratory decisions that Greenpeace has sought are therefore only partially admissible.

1.7. The State has considerable policy-making discretion in choosing the measures it will take to fulfil the obligations it has assumed in the UN context. The court therefore orders the State to take effective measures to fulfil its UN obligations in a timely manner, but does not issue any orders as to how exactly the State should do so. That choice is reserved for the other powers within the *trias politica.*

1.8. Finally, the court notes that the parties to the ECHR have considerable freedom in making choices about their own constitutional structure. The downside of this freedom is that the parties cannot use difficulties arising from their chosen constitutional structure as a defence against citizens who complain about violations of their human rights. The court therefore assessed whether all the whole range of climate measures taken by the competent authorities vis-à-vis the inhabitants of Bonaire comply with the ECHR requirements; the State bears ultimate responsibility for this 'overall picture'. This does not mean that *only* the State has failed in the internal relations between (the authorities of) Bonaire and the State – which are governed by the Charter for the Kingdom of the Netherlands, the Dutch Constitution and the Public Bodies (Bonaire, Sint Eustatius and Saba) Act. Whether other levels of government have also failed to fulfil their obligations was not under consideration in these proceedings.

2 How is this judgment structured?

1. What is this case about? 1
2. How is this judgment structured? 3
3. The proceedings following the interim judgment on admissibility 4
4. Facts and background 5
a. Bonaire as a 'small island' 5
b. Consequences of climate change for Bonaire 8
c. Global developments in the field of climate 14
5. Relevant treaty law 17

a. UN treaty law 17
b. European legislation on climate change 27
c. Applicability of relevant treaty law on Bonaire 28
6. Relevant national climate law and policy 29
a. Climate law 30
b. Climate adaptation; European Netherlands 31
c. Climate adaptation; Bonaire 32
7. Political relations within the Kingdom 39
a. The run-up to 10-10-10 39
b. Kingdom affairs and national affairs 41
c. The BES islands in the political structure of the Netherlands 42
8. The claim and the defence 44
9. The assessment: general remarks about this case 47
10. The assessment: the assessment framework of Articles 2 and 8 ECHR 48
a. Articles 2 and 8 ECHR; general 49
b. Specifically in climate cases 50
11. The assessment: Greenpeace's claims 58
a. Assessing mitigation and adaptation measures as a coherent whole 58
b. Assessment against Article 8 of the ECHR, not Article 2 of the ECHR 59
c. Overall assessment of all measures taken by the competent authorities 60
d. Mitigation measures 60
e. Adaptation measures 69
f. Procedural safeguards 76
g. Unequal treatment 78
h. Conclusion: violation of Articles 8 and 14 ECHR and Article 1 P12 81
i. Unlawful act 81
j. Allowability of claimed declaratory decisions 81
k. Allowability of claimed orders 82
l. Provisional enforceability 84
m. Costs of the proceedings 85
12. The decision 85

3 The proceedings following the interim judgment on admissibility

3.1. The following documents were added to the case file after the interim judgment of 25 September 2024:

- the statement of defence of 9 October 2024 with exhibits 1 to 45,
- the parties' procedural proposal of 23 October 2024,
- the court's notice regarding the procedure of 24 October 2024,
- the statement of reply and amendment of claim of 12 February 2025 with exhibits 80 to 110,
- the rejoinder of 18 June 2025 with exhibits 46 to 70,
- the deed of submission of exhibits 111 to 141, also deed of amendment of claim, received on 12 September 2025,
- the notice on behalf of the State received on 17 September 2025,
- the document containing exhibits 71 to 85 of the State, received on 19 September 2025,

- the document containing exhibits 142 to 147 of Greenpeace, received on 29 September 2025,

- the request from Greenpeace to deliver the judgment during a hearing and via livestream, received on 28 November 2025.

3.2. A hearing schedule was drawn up for the oral proceedings on both hearing days in consultation with the parties. The court also asked the parties a number of questions in advance, with the request that they answer these in their pleadings during the oral proceedings.

3.3. The oral proceedings took place on 7 and 8 October 2025 and were broadcast via livestream. The parties appeared, accompanied by their attorneys-at-law. The attorneys-at-law presented their arguments on the basis of written pleadings, which were added to the case file. Three residents of Bonaire made statements, which were also added to the case file. The parties answered questions from the court and were able to respond to each other.

3.4. The court drew up a report of what was discussed during the hearing. Due to the special nature of this case, the report will be sent to the parties at the same time as the judgment.

3.5. Finally, the date of delivery of this judgment was set.

4 Facts and background

4.1. From 1954 until 10 October 2010, Bonaire was part of the Netherlands Antilles. The Netherlands Antilles was a separate country within the Kingdom of the Netherlands (hereinafter: the Kingdom).**1** Since 10 October 2010, Bonaire has been part of the country of the Netherlands. Bonaire is governed locally by the Public Body of Bonaire (hereinafter: the OLB). The OLB has an administrative structure similar to that of a municipality (see Chapter 7 for more details).

a. ***Bonaire as a 'small island'***

4.2. Bonaire is the largest and southernmost island of the Caribbean Netherlands. The island is located on the leeward side of the Caribbean at some 90 kilometres from the coast of Venezuela. Bonaire has a surface area of 288 km² and approximately 26,000 inhabitants.

4.3. The island is relatively flat and consists mainly of coral limestone. In the northwest, the island boasts a hillside landscape with the 'Brandaris' as its highest point (241 metres). The south of Bonaire is considerably lower. Here you will find the *saliñas* (salt lakes) in the southwest and the mangrove forests (Lac Bay) in the southeast. The capital, Kralendijk, is located on the west coast of the island. Two kilometres off the coast of Kralendijk lies the uninhabited coral island of Klein Bonaire.

4.4. Important pillars of Bonairean culture are fishing and agriculture on *kunukus* (farms); many cultural festivals are closely linked to these activities. Much of the important material cultural heritage is located in the low-lying areas. This includes the slave huts – the only tangible monuments from the slavery period – which are located near the coast.

4.5. Many inhabitants of Bonaire live in poverty due to low incomes and the high cost of living on the island. Bonaire's economy is largely driven by tourism. Approximately 75% of tourists come to dive around the coral reefs.

i. *Vulnerability of small islands*

4.6. The *Intergovernmental Panel on Climate Change* (IPCC) is a United Nations (UN) organisation established in 1988 to provide governments with scientific information that can be used in developing climate policy. To this end, the IPCC periodically publishes *Assessment Reports* (AR).**2** These reports, which are the result of collaboration between thousands of scientists from various disciplines around the world, reflect all the knowledge on climate that is currently available. The reports are produced after an extensive process involving

multiple review rounds in which external experts and national governments can check everything and provide comments.

4.7. As early as 1990, in AR1, the IPCC mentioned in several places that and why 'small islands' are particularly vulnerable to the negative effects of climate change.**3** This is mainly due to their location, small size, and their high economic dependence on tourism and imports. Since 1995, starting with AR2, the IPCC has devoted a separate chapter in its *Assessment Reports* to small islands and their particular vulnerability to the effects of climate change.**4** This vulnerability has also been noted by other bodies, specifically with regard to islands in the Caribbean.**5** In 2022, the Secretary-General of the United Nations designated the Caribbean islands as the 'ground zero' of the global climate crisis.**6**

4.8. In its latest report (AR6), the IPCC identified eight '*key risks*' that negatively affect the liveability of small islands:**7**

1. loss of biodiversity and ecosystems in the sea and on the coast;
2. flooding of coral islands;
3. loss of biodiversity and ecosystems on land;
4. uncertain access to water;
5. destruction of homes and infrastructure;
6. degradation of public health and well-being;
7. economic decline and loss of livelihoods;
8. loss of culture and heritage.

4.9. The IPCC studies also show that the negative effects of climate change and poverty reinforce each other.**8**

ii. *Research for Bonaire*

4.10. Scientific research into the effects of climate change on Bonaire specifically began several years ago, primarily with research by the Royal Netherlands Meteorological Institute (hereinafter: KNMI), which concluded in 2017**9** that Bonaire, Sint Eustatius and Saba (hereinafter collectively referred to as the BES islands) are highly vulnerable to climate change and that the coral reefs on Bonaire are threatened by sea level rise in combination with ocean acidification and warming.

4.11. In the same year, scientists from Wageningen University & Research (hereinafter: WUR) observed that the effects of climate change on nature and biodiversity on the BES islands will be highly unfavourable. They specifically mention the loss of coastal habitats and coral bleaching.**10** The research was commissioned by the Ministry of Economic Affairs as part of the policy support research theme 'Caribbean Netherlands'.

4.12. The Institute for Environmental Studies at VU Amsterdam (hereinafter: IVM) conducted research on behalf of Greenpeace into the consequences of climate change for Bonaire. The findings of this research were published in September 2022 in the report *'The impacts of Climate Change on Bonaire'*.

4.13. The KNMI draws up annual climate scenarios for the European Netherlands. In the 2023 scenario, the KNMI also focused on the BES islands.

b. ***Consequences of climate change for Bonaire***

4.14. The KNMI developed four climate scenarios for Bonaire in KNMI'23: high emissions, dry (Hd), high emissions, wet (Hn), low emissions, dry (Ld) and low emissions, wet (Ln). In all these scenarios, the temperature and wind speed on Bonaire increase, while the annual amount of precipitation on Bonaire decreases to a greater or lesser extent or remains the same, depending on the scenario. The KNMI notes that sea level rise poses a particular threat to low-lying Bonaire. An overview of the findings is shown in the figure below:

Seizoen	Variabele	Indicator	Klimaat 1991-2020 = referentie-periode	2050 (2036-2065)				2100 (2086-2115)			
				Ld	Ln	Hd	Hn	Ld	Ln	Hd	Hn
Jaar	Zeespiegel	gemiddelde niveau	0 cm [1]	+23 (14 tot 34) cm	+23 (14 tot 34) cm	+25 (16 tot 37) cm	+25 (16 tot 37) cm	+48 (31 tot 78) cm	+48 (31 tot 78) cm	+81 (55 tot 127) cm	+81 (55 tot 127) cm
	Zeespiegel	tempo van de verandering	4 mm/jaar [1]	+2 (1 tot 6) mm/jaar	+2 (1 tot 6) mm/jaar	+4 (2 tot 8) mm/jaar	+4 (2 tot 8) mm/jaar	-1 (-1 tot 4) mm/jaar	-1 (-1 tot 4) mm/jaar	+11 (5 tot 24) mm/jaar	+11 (5 tot 24) mm/jaar
	Temperatuur	gemiddelde	28,5°C	+0,8°C	+0,8°C	+1,2°C	+1,3°C	+0,7°C	+0,7°C	+3,0°C	+3,3°C
	Neerslag	hoeveelheid	514 mm	-8%	0%	-15%	-2%	-7%	0%	-48%	-11%
	Wind	gemiddelde windsnelheid [2]	7,8 m/s	+2%	+1%	+3%	+1%	+2%	0%	+11%	+4%
Natte seizoen	Temperatuur	gemiddelde	28,9°C	+0,8°C	+0,8°C	+1,3°C	+1,3°C	+0,7°C	+0,7°C	+3,1°C	+3,4°C
	Neerslag	hoeveelheid	346 mm	-6%	2%	-13%	0%	-5%	+2%	-48%	-12%
	Wind	gemiddelde windsnelheid [2]	7,6 m/s	+3%	+1%	+5%	+1%	+2%	+1%	+14%	+5%
Droge seizoen	Temperatuur	gemiddelde	27,8°C	+0,8°C	+0,8°C	+1,2°C	+1,3°C	+0,7°C	+0,7°C	+2,9°C	+3,2°C
	Neerslag	hoeveelheid	169 mm	-12%	-3%	-20%	-5%	-11%	-3%	-48%	-7%
	Wind	gemiddelde windsnelheid [2]	8,0 m/s	+1%	0%	+2%	+1%	+1%	0%	+7%	+3%

Figure 1: Climate change figures regarding sea level, temperature, precipitation and wind on Bonaire**11**

4.15. Scientific research into the consequences of climate change for Bonaire has not yet yielded a complete picture of the impacts that climate change will have on the inhabitants. However, the parties do not dispute that Bonaire is already experiencing negative consequences of climate change and that these negative consequences will increase in the future. The sea level around Bonaire is rising, temperatures are increasing and there is a greater chance of longer, dry periods. The following sections identify several of the negative effects of climate change on Bonaire that are already occurring or are highly likely to occur in the near future.

i. *Temperature rise*

4.16. In all four climate scenarios developed by the KNMI, the annual average temperature on Bonaire will increase in the coming century. In 2050, the annual average temperature is expected to be between 29.3 °C (low emissions scenario) and 29.8 °C (high emissions scenario). In 2100, the annual average temperature is expected to be between 29.2 °C (low emissions scenario) and 31.8 °C (high emissions scenario).

ii. *Sea level rise*

4.17. In March 2022, the KNMI published a report on sea level rise around the BES islands.**12** The report shows that the average sea level rise around the BES islands over the last three decades is comparable to the average global sea level rise during that period. The KNMI considers it likely that the sea level around the BES islands will rise slightly faster than the global average in the future.

4.18. KNMI'23 shows that sea levels around Bonaire are expected to rise by 14-34 cm (in the low emissions scenario) or 16-37 cm (in the high emissions scenario) by 2050. By 2100, sea levels will have risen by 31-78 cm (in the low emissions scenario) to 55-127 cm (in the high emissions scenario). That upper limit could rise to 3.4 metres if uncertain processes, such as the destabilisation of the Antarctic ice sheet, materialise before 2100.**13**

4.19. The KNMI**14** and the IVM**15** mapped out the expected future sea level rise around Bonaire in 2022/2023 based on the *Shared Socio-economic Pathways* (SSPs) developed by the IPCC. These SSPs can be divided into a low emissions scenario (SSP1-2.6), a moderate emissions scenario (SSP2-4.5) and a high emissions scenario (SSP5-8.5). The range of the potential sea level rise (in centimetres) around Bonaire is shown in the figure below:

	KNMI (mediaan, 5de en 95ste percentiel)		IVM (gemiddelde)	
Zeespiegelstijging in cm	**2050**	**2100**	**2050**	**2100**
Lage uitstoot (SSP1-2.6)	23 (14 – 34)	48 (31 – 78)	24	51
Matige uitstoot (SSP2-4.5)	24 (16 – 36)	59 (39 – 98)	-	-
Hoge uitstoot (SSP5-8.5)	25 (16 – 37)	81 (55 – 127)	27	85

Figure 2: Estimated sea level rise relative to the period 1991-2020 (KNMI) and 1995-2014 (IVM)**16**

4.20. The effect of the expected sea level rise is related to the altitude of Bonaire. Both the IVM**17** and HKV Lijn in Water B.V., a company which was commissioned by the Ministry of Infrastructure and Water Management in 2024 to further map flood risks due to climate change for the BES islands, (hereinafter: HKV)**18** conclude that coastal flooding will occur in the southern part of Bonaire as a result of the expected average sea level rise. If no adaptation measures are taken, the *saliñas* in the south-west of the island and the mangroves in the south-east will become increasingly flooded, and parts of the southern and western coastline of Klein Bonaire in particular will shift further inland. HKV has mapped out the sea level rise on Bonaire in 2050 and 2100, for both the low and high emissions scenarios:

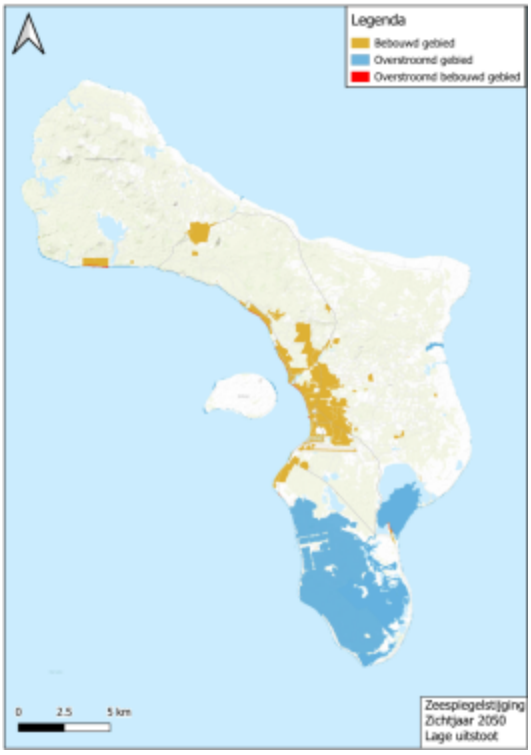
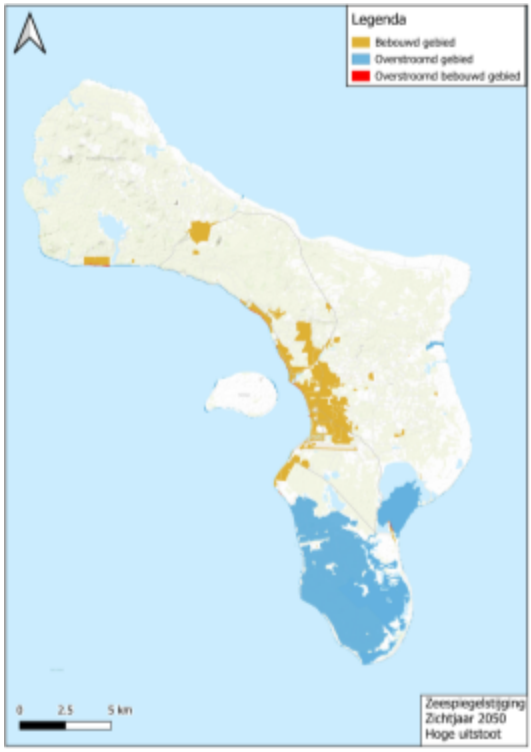
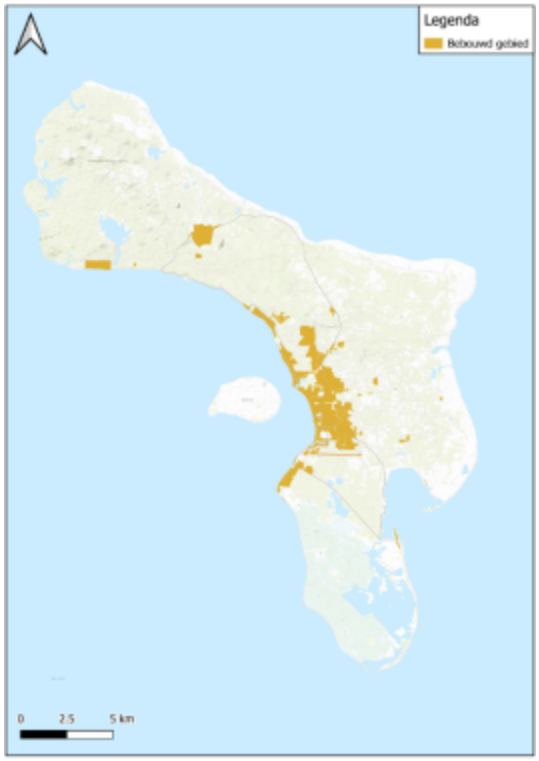


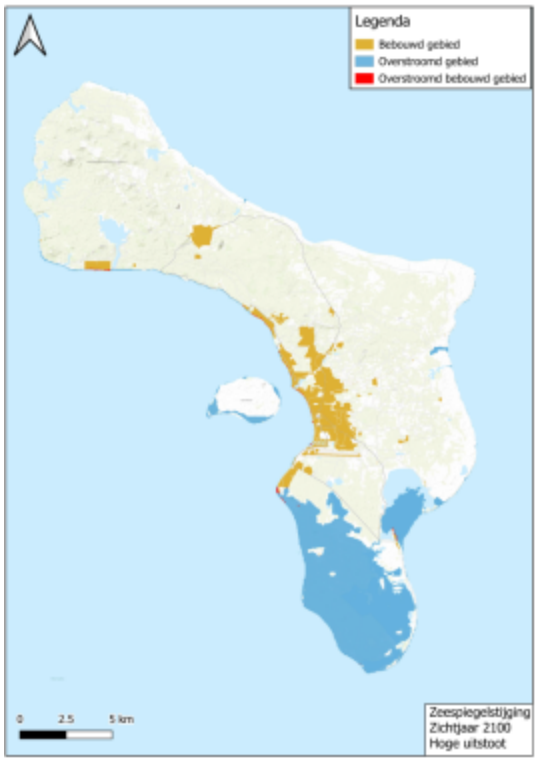
Figure 3: Four flood maps of Bonaire for forecast years 2050 and 2100 (exclusively as a result of sea level rise)**19**

According to HKV, there is no sea level rise in the regional risk profile for the current climate. According to the KNMI'23 scenarios, sea level rise will amount to 27 cm in 2050 and 85 cm in 2100. The resulting flooding will fall into the 'limited' impact category (< 5% affected) in 2050 and the 'significant' category (5-10% affected) in the forecast year 2100.

The IVM has mapped out the southern coastline of Bonaire in 2150 in the various emission scenarios:


Legenda
Bebouwd gebied
Overstroomd gebied
Overstroomd bebouwd gebied
0
2.5
5 km
Zeespiegelstijging
Zichtjaar 2050
Hoge uitstoot


Legenda
Bebouwd gebied
0
2.5
5 km



4.21 22.

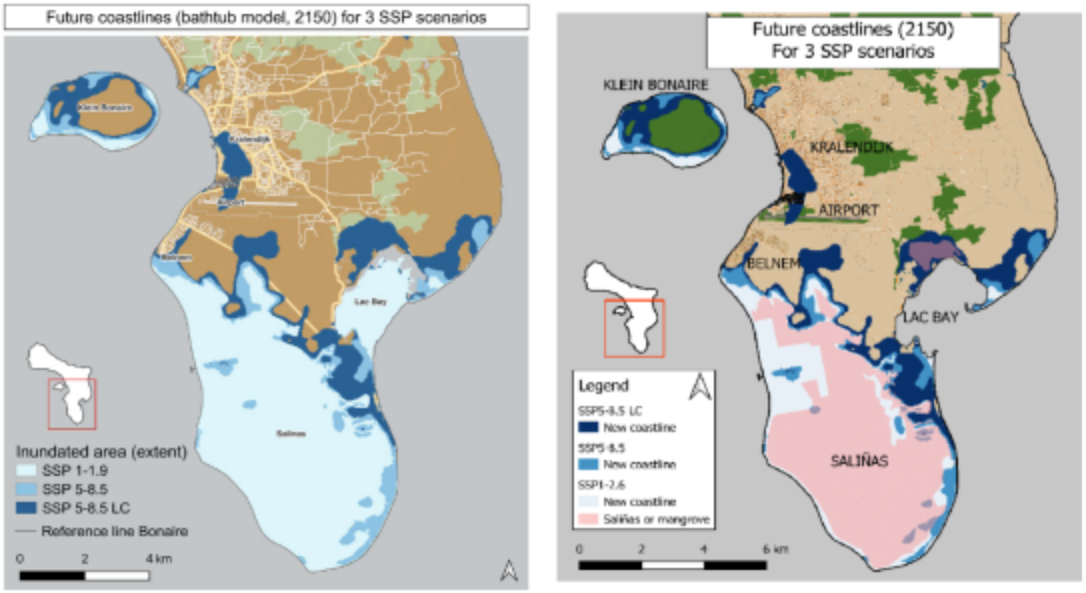


Figure 4: Future coastline of Bonaire in 2150 for three IPCC climate scenarios**20**

iii. *Flooding due to tropical storms/hurricanes and extreme precipitation*

4.23. The risk of flooding due to heavier storms and extreme precipitation on Bonaire is also increasing, partly due to climate change.**21** In 2013, the OLB, in collaboration with the Haaglanden Safety Region, drew up a risk profile for Bonaire, which identifies flooding due to heavy rainfall and flooding due to tropical storms as risks. The report emphasises that such flooding could have a very serious impact on the island**22**

4.24. In 2016, HKV conducted a *quick scan* to assess the water safety situation on the BES islands**23**, looking at the risks and consequences of flooding from the sea and flooding as a result of extreme rainfall. HKV updated this quick scan in 2024**24** based on new knowledge and models, including the expected effects of climate change under various emissions scenarios. Regardless of the emissions scenario, HKV estimates the impact of flooding from the sea caused by a hurricane or tropical storm in the current climate and in the forecast year 2050 as 'severe' (10-25% affected) and in the forecast year 2100 as 'very severe' (25-50% affected).

Flooding as a result of extreme precipitation that is 'probable' (a probability of 1/2-1/20 per year) or 'highly probable' (a probability of 1/1-1/2 per year (probability category) fall into the 'severe' impact class in both the current climate and in the 2050 and 2100 forecast years. The impact of both flooding due to extreme precipitation that is 'possible' (a probability of 1/20-1/200 per year) and extreme precipitation that is 'improbable' (a probability of 1/200-1/2000 per year) is 'very severe'.**25**

iv. *Consequences for public health*

4.25. The parties agree that climate change has negative consequences for public health on Bonaire and that rising temperatures increase the risk of heat-related illnesses. The exact extent of the impact of climate change on health is difficult to predict. For Bonaire, little information is available about the possible development of climate-related health and disease risks on the island. However, the IVM has conducted research into the effects of climate change on public health on Bonaire.**26** The IVM has concluded that climate change on Bonaire will highly probably elevate the risk of physical and mental disorders due to heat-related stress and food insecurity, and will lead to an increase in diseases transmitted by vectors (such as mosquitoes). Damage to infrastructure will also have a negative impact on the accessibility of healthcare.**27**

4.26. Research conducted by the international research project *Global Commons Alliance***28** shows that people thrive best at temperatures between 13 and 27 °C and that exposure to temperatures outside this so-called *human climate niche* has adverse effects on human health and well-being. The annual average temperature on Bonaire is currently 28.5 °C (see Figure 1 above), which is higher than the upper limit of the *human climate niche.*

v. *Consequences for nature*

4.27. Recently, the WUR**29** determined that nature on the BES islands is in moderate to very poor condition. In addition to invasive species and stray livestock, climate change is one of the most significant threats to the mangrove forests, the *saliñas*, the coral reef and other natural habitats on and around Bonaire. It is therefore also one of the most significant threats to biodiversity in the Caribbean Netherlands.**30**

vi. *Consequences for culture*

4.28. The IVM has conducted research into the consequences of climate change for cultural heritage on Bonaire.**31** Much of Bonaire's tangible heritage – including the slave and fisherman's huts, the lighthouse and the salt pans – is located in the low-lying coastal areas in the south of Bonaire and is vulnerable to permanent inundation due to sea level rise, storms and extreme weather. The IVM has found that climate change also poses a threat to Bonaire's intangible heritage, including traditional fishing and agriculture.

4.29. Until about 50 years ago, Bonaire was a virtually self-sufficient island where the inhabitants obtained their food from traditional fishing and small-scale, local agriculture and livestock farming. Currently, Bonaire is 99% dependent on imported food. Another factor is that the population of Bonaire has grown significantly over the past fifteen years.**32** In addition, agriculture is becoming increasingly challenging due to the increasing drought on the island; there are also fewer fish, partly due to the warming and acidification of the seawater and the resulting damage to the coral.**33**

vii. *Consequences for tourism and the economy*

4.30. Many people on Bonaire live in poverty. People living in poverty are particularly vulnerable to the effects of climate change because they lack the resources to protect themselves against heat, extreme weather and flooding. In addition, climate change can lead to more poverty. The economy on Bonaire is heavily dependent on tourism; many tourists come to Bonaire to dive and see the coral reefs, and the mangrove forests are also popular among tourists. The preservation of the coral reefs and mangroves is therefore of great importance to the Bonairean economy. Climate change is one of the threats to the coral reef and mangroves, in addition to the process of siltation due to sediment deposits and the pressure of increased tourism.

viii. *Consequences for infrastructure*

4.31. In addition, material damage is also expected to materialise due to climate change. Much of the key infrastructure and buildings are located on the coast and in the low-lying areas of Bonaire. Research by the IVM shows that Bonaire

will be vulnerable to flooding due to sea level rise and storms in the future. The IVM has conducted research into the expected damage to infrastructure and buildings on Bonaire.**34** This shows that even in the most positive climate scenarios, the expected damage to buildings on Bonaire in the future (2050 and 2150) will amount to millions of dollars.

c. ***Global developments in the field of climate***

4.32. In this case, it is not in dispute that man-made climate change poses real risks to humans worldwide and that the risks associated with climate change are already materialising in more and more places around the world.

4.33. In 2022, the global average temperature was already approximately 1.2 °C higher than in the pre-industrial era.**35** This temperature increase is largely due to human-caused greenhouse gas emissions.**36**

4.34. A large part of these emissions is the result of the combustion of fossil fuels, which releases the greenhouse gas carbon dioxide (CO2). Approximately half of these CO2 emissions will still**37** be absorbed by forests, wetlands and oceans (known as '*carbon sinks*') in the next thirty years. The rest of the CO_2 will remain in the atmosphere for hundreds to thousands of years, acting as a type of heat-trapping blanket around the Earth.

There are also other greenhouse gases, such as methane, nitrous oxide and fluorinated gases. These gases have a (much) stronger warming effect than CO_2 and are not absorbed by the *carbon sinks*. The amount of these other greenhouse gases in the atmosphere is also increasing and contributing to further global warming, although the warming effect of these gases lasts for a shorter period than that of CO_2.

4.35. A further rise in the average global temperature could have extremely harmful consequences worldwide. These include extreme heat, extreme drought, extreme precipitation, rising sea levels due to melting polar ice sheets and glaciers, warming oceans, floods and hurricanes. These harmful consequences are occurring with increasing frequency worldwide. The rise in the average global temperature poses a serious threat to ecosystems, food production systems and the people who depend on them.**38** It is also clear that a sustained rise in temperature can lead to climate tipping points, which suddenly accelerate the process of climate change. When a tipping point is reached, the climate will change abruptly and dramatically in parts of the world. This may threaten the lives, health, well-being and living environment of many people – worldwide, and also in the Netherlands.**39**

4.36. In recent years, scientists and politicians worldwide have jointly concluded that the negative consequences of climate change are even more extreme than previously thought. The adverse consequences for humans are shown in the figure below:**40**

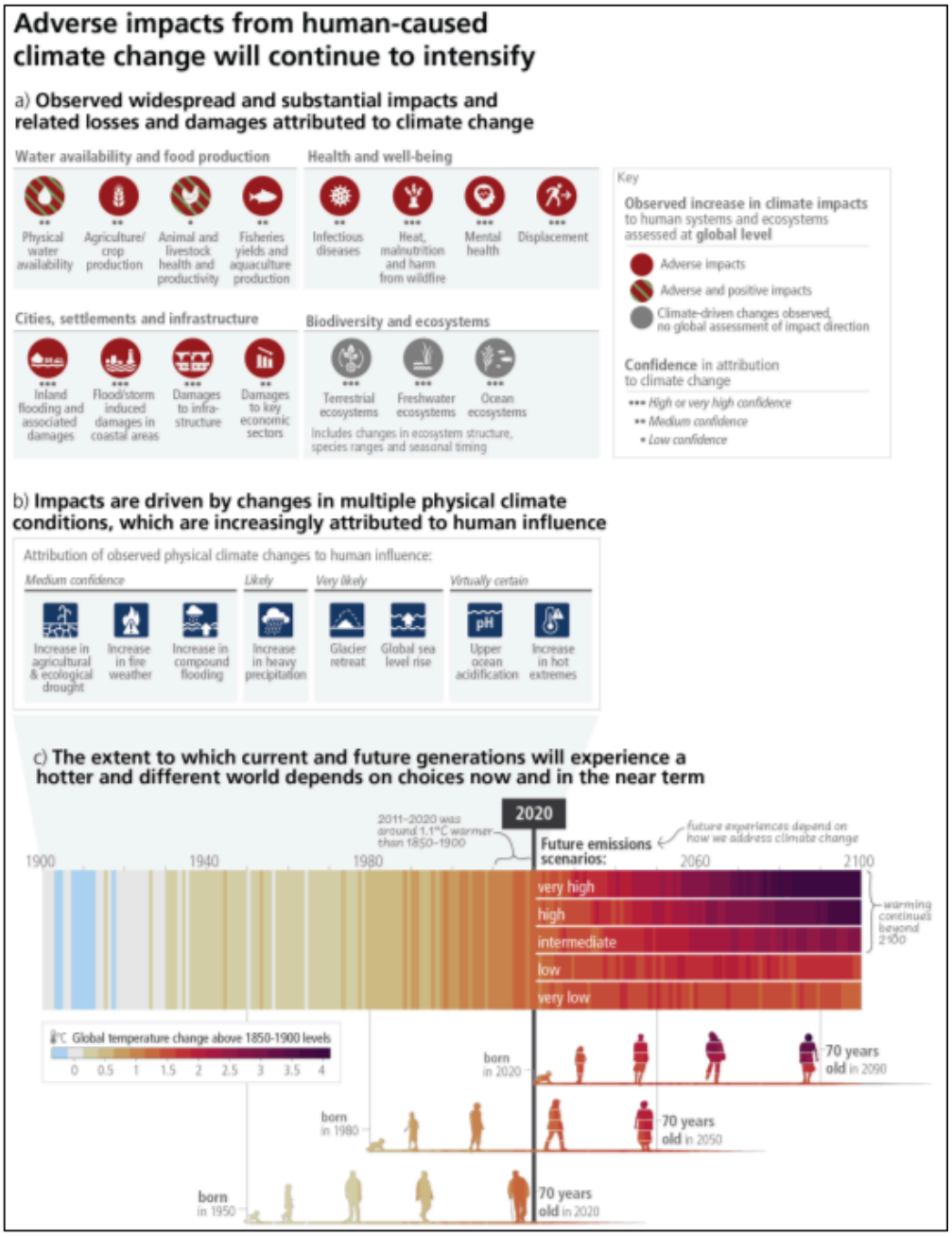


Figure 5: The adverse impacts of human-caused climate change will continue to intensify

4.37. Originally, the UN member states (including the Netherlands) formulated the joint goal of limiting global temperature rise to 'well below 2 °C and preferably to 1.5 °C'. Due to the increasing number of disasters caused by extreme weather conditions and based on further research results, the UN member states have decided that global warming must be limited to a maximum of 1.5 °C.**41** It then became clear that the global average temperature had already risen by more than 1.2 °C of that 1.5 °C and that the temperature was rising at an ever-faster rate.**42** Moreover, it has become apparent that countries have so far taken fewer measures than they previously promised, resulting in a backlog in reducing emissions (in other words, more needs to be done now in less time).

4.38. For all these reasons, the member states of the UN have agreed that greenhouse gas emissions must be reduced more significantly. In the following chapters, the court discusses the agreements to reduce greenhouse gas emissions to which the Netherlands has committed itself, both internationally (Chapter 5) and nationally (Chapter 6).

5 Relevant treaty law

a. ***UN treaty law***

i. *UN Climate Convention 1992*

5.1. The *United Nations Framework Convention on Climate Change* (UNFCCC) (hereinafter: the UN Climate Convention) of 1992**43** forms the basis for the UN agreements on reducing greenhouse gas emissions referred to below. The vast majority of the international community – 198 countries, including the Netherlands – has ratified this convention.

5.2. The aim of the UN Climate Convention is to stabilise greenhouse gas concentrations in the atmosphere at a level that prevents dangerous human interference with the climate system. This level must also be achieved in time, i.e. within a timeframe that allows ecosystems to adapt naturally to climate change. This will safeguard food production and ensure that economic development remains sustainable.**44**

5.3. All member states of the UN Climate Convention are committed to protecting the climate system for the benefit of current and future generations. It has been agreed that rich, developed countries will take the lead in combating climate change and its adverse effects, because they contributed more to greenhouse gas emissions in the past and, partly as a result, now have more resources at their disposal than less developed countries.**45** These rich countries, including the Netherlands, are listed in Annex I to the UN Climate Convention; the court refers to this group of countries as 'Annex I countries' below.

5.4. The member states have agreed to take precautionary measures to anticipate, prevent or mitigate the causes of climate change and to limit the adverse effects of climate change. Climate policy and measures must take into account the various socio-economic contexts, be comprehensive and cover all economic sectors and (the adaptation of) all relevant sources, sinks and reservoirs of greenhouse gases.**46**

5.5. Furthermore, member states should cooperate in preparing for adaptation to the effects of climate change. They must draw up and implement appropriate and integrated plans for the management of coastal areas, water resources and agriculture, and for the protection and restoration of areas affected by drought, desertification or flooding.**47** They must also take climate change into account in their policies and actions in the social, economic and environmental fields. Annex I countries must assist developing country member states, as they are particularly vulnerable to the adverse impacts of climate change, by supporting their adaptation costs.**48**

5.6. When formulating all their climate policies and taking climate measures, member states must use appropriate methods, for example by carrying out environmental impact assessments at national level. Member states are expected to promote scientific, technological, technical, socio-economic and other research to remove the remaining uncertainties about the causes, consequences, extent and progression of climate change.**49**

5.7. Although there is much uncertainty in climate change predictions – particularly regarding its progression, extent and regional patterns – the member states have agreed in the UN Climate Change Convention that they may not use these uncertainties as an argument for postponing action.**50**

5.8. The '*Conference of the Parties*' (hereinafter: COP) is the highest decision-making body within the UN Climate Convention.**51** Almost every year, the COP organises a climate conference where member states take joint decisions and formulate new policies

5.9. The member states of the UN Climate Convention must draw up national inventories of anthropogenic greenhouse gas emissions by source and removals by type of *carbon sink*. They must also use comparable calculation and administration methods agreed by the COP to ensure that the data are comparable. The inventories must be updated periodically, made public and made available to the COP. Member states must also draw up national programmes with measures to mitigate climate change, focusing on emissions by source and removals by type of carbon sink for all greenhouse gases, and must periodically review and update their own policies and practices.**52**

5.10. Finally, member states have recognised the importance of involving citizens and civil society organisations in efforts to mitigate the negative effects of climate change. The member states have therefore agreed to ensure

that the wider public has access to information on climate change and its effects, in order to enable broad participation in combating climate change and its impacts.**53**

ii. *Kyoto Protocol 1997*

5.11. During the third COP climate conference (COP3) in Kyoto, Japan, the member states of the UN Climate Convention reached agreement on the Kyoto Protocol.**54** This protocol entered into force on 16 February 2005.**55** Among other things, the protocol set new, more specific reduction targets for the period 2008-2012. For Annex I countries such as the Netherlands, the following requirements were established:

"Article 3 Kyoto Protocol

1. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5% below 1990 levels in the commitment period 2008 to 2012.

(…)"

Cancún Adaptation Framework 2010

5.12. During COP16 in Cancún, Mexico, the member states noted that the effects of climate change were already becoming tangible worldwide in the form of changes in average temperature, shifts in seasons, an increasing frequency of extreme weather events and the start of *'slow onset events'***56**. They concluded that the faster the climate changes and the longer adaptation efforts are delayed, the more difficult and expensive it will be to tackle climate change. The member states therefore decided to establish the *Adaptation Committee*. This committee oversees the implementation of the *Cancún Adaptation Framework***57** and provides knowledge and technical support to the member states.

5.13. In the *Cancún Adaptation Framework*, the member states paid particular attention to developing countries and *'the particularly vulnerable people in the world'*, as they were already experiencing the negative effects of climate change at that time.

iv. *Paris Agreement 2016*

5.14. On 22 April 2016, the twenty-first conference of the COP (COP21) led to the Paris Agreement.**58** With this Agreement, the member states wanted to improve the goals and implementation of the UN Climate Convention, including by:

a. keeping the rise in global average temperature well below 2 °C relative to pre-industrial levels and continuing to strive to limit the increase to 1.5 °C, as this would significantly reduce the risks and consequences of climate change;

b. enhancing the ability to adapt to the adverse impacts of climate change and promoting resilience to climate change and low-carbon development in a manner that does not jeopardise food production; and

c. aligning financial flows with a pathway towards low greenhouse gas emissions and climate-resilient development.

These agreements must be implemented on the basis of equity and the principle of common but differentiated responsibilities and capabilities, taking into account different national circumstances.**59**

5.15. All member states must in any case strive to ensure that the global greenhouse gas emissions is reached as soon as possible and that emissions are subsequently rapidly reduced in accordance with the best available scientific knowledge. In concrete terms, a balance between greenhouse gas emissions and capture/storage must be achieved in the second half of this century, i.e. from 2050 onwards. The guiding principles in all of this are equity, sustainable development and efforts to eradicate poverty.**60**

5.16. In order to achieve the goal of the Paris Agreement, all member states must make ambitious efforts and also publicly report on these efforts. The Agreement describes how efforts should be reported.

5.16.1. The Agreement gives member states considerable freedom in determining exactly what measures they want to take as part of their national efforts; however, these national efforts must show progress over time.**61** Annex I countries must set absolute emission reduction targets for their entire economy.**62**

5.16.2. In order to monitor progress on the national contributions, each member state must report every five years on the nationally determined contributions it intends to achieve. Member states must take national mitigation measures to achieve the targets of their national contributions. They must also keep track of these contributions, taking into account subsequent decisions of the COP and the results of interim reviews ('*Global Stocktakes*').**63**

5.16.3. Each subsequent nationally determined contribution by a member state must reflect the highest possible level of ambition and go beyond the previous nationally determined contribution it has reported.**64**

5.16.4. All member states must formulate long-term strategies for low greenhouse gas emission-based development; they must also communicate these long-term strategies to the Secretariat of the *United Nations Framework Convention on Climate Change* (UNFCCC).**65**

5.16.5. Annex I countries must take the lead by setting absolute emission reduction targets for their entire economies.**66**

5.16.6. Member states must also report on their nationally determined contributions. They must do so in a transparent, accurate, complete, comparable and consistent manner; double counting must be avoided.**67** However, add-on mitigation benefits – for example, as a result of adaptation measures or economic diversification plans – may contribute to the mitigation results that the member states must track and report.**68**

5.16.7. Furthermore, msmber States must provide the following information every five years**69**:

a. national inventory report on anthropogenic emissions by sources and removals by sinks of greenhouse gases, prepared using methodologies accepted as good practice by the Intergovernmental Panel on Climate Change and agreed by the COP; and

b. the information necessary to monitor progress in the implementation and achievement of the member state's nationally determined contribution.**70**

The information provided should be as clear and transparent as possible in order to facilitate its understanding. Member states agreed that this meant that communications should, where applicable, include quantifiable information on the reference point (including, where applicable, a base year), timeframes and/or periods for implementation, scope and coverage, planning processes, assumptions and methodological approaches, including those for estimating and accounting for anthropogenic greenhouse gas emissions and, where applicable, removals, and how the member state considers its nationally determined contribution to be equitable and ambitious, in light of its national circumstances, and how it contributes to achieving the agreed temperature goal.**71**

5.17. In the Paris Agreement, the member states also made further commitments on adaptation, based on the importance of preventing, minimising or addressing damage and loss caused by climate change. They recognised that adaptation has local and sub-national dimensions and that it is an essential component of the global long-term approach to climate change in order to protect people, livelihoods and ecosystems. The member states committed to working together and taking into account the urgent and immediate needs of countries that are particularly vulnerable to the adverse effects of climate change.**72**

5.18. When taking adaptation measures, member states should follow a country-driven, participatory and fully transparent approach, taking into account vulnerable groups, communities and ecosystems. Adaptation measures should be based on the best available scientific knowledge, indigenous peoples' knowledge and local knowledge systems to ensure that adaptation is properly integrated into relevant socio-economic and environmental policies and measures.**73**

5.19. Member states may cooperate in implementing the Paris Agreement. They may do so by concluding an agreement and notifying the COP Secretariat of the provisions of that agreement. The agreement must specify

the emission level allocated to each participating member state within the relevant period. Member states that are parties to such a cooperation agreement remain responsible for their own emission levels.**74**

5.20. The member states of the European Union (EU) are parties to the Paris Agreement and have concluded a cooperation agreement. The EU is also an independent party to the Paris Agreement.

v. *Glasgow Climate Pact*

5.21. In the climate conferences held since the Paris Agreement, the climate targets set out in the Paris Agreement have been repeatedly confirmed and even tightened. For example, at COP26 in Glasgow, United Kingdom, in 2020, the parties to the agreement confirmed in the Glasgow Climate Pact that the COP:**75**

"**I. Science and urgency**

1. *Recognizes* the importance of the best available science for effective climate action and policymaking;

(…)

3. *Expresses alarm and utmost concern* that human activities have caused around 1.1 °C of warming to date,**76** that impacts are already being felt in every region and that carbon budgets consistent with achieving the Paris Agreement temperature goal are now small and being rapidly depleted;

4. *Recalls* Article 2, paragraph 2, of the Paris Agreement, which provides that the Paris Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities in the light of different national circumstances;

5. *Stresses* the urgency of enhancing ambition and action in relation to mitigation, adaptation and finance in this critical decade to address the gaps in the implementation of the goals of the Paris Agreement;

II. Adaptation

6. *Notes with serious concern* the findings from the contribution of Working Group I to the Intergovernmental Panel on Climate Change Sixth Assessment Report, including that climate and weather extremes and their adverse impacts on people and nature will continue to increase with every additional increment of rising temperatures;

7. *Emphasizes* the urgency of scaling up action and support, including finance, capacity building and technology transfer, to enhance adaptive capacity, strengthen resilience and reduce vulnerability to climate change in line with the best available science, taking into account the priorities and needs of developing country Parties;

(…)

IV. Mitigation

20. *Reaffirms* the Paris Agreement temperature goal of holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels;

21. *Recognizes* that the impacts of climate change will be much lower at the temperature increase of 1.5 °C compared with 2 °C and resolves to pursue efforts to limit the temperature increase to 1.5 °C;

22. *Recognizes* that limiting global warming to 1.5 °C requires rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid century as well as deep reductions in other greenhouse gases;

23. *Also recognizes* that this requires accelerated action in this critical decade, on the basis of the best available scientific knowledge and equity, reflecting common but differentiated responsibilities and respective capabilities in the light of different national circumstances and in the context of sustainable development and efforts to eradicate poverty;

24. *Welcomes* efforts by Parties to communicate new or updated nationally determined contributions, long-term low greenhouse gas emission development strategies and other actions that demonstrate progress towards achievement of the Paris Agreement temperature goal;

25. *Notes with serious concern* the findings of the synthesis report on nationally determined contributions under the Paris Agreement, according to which the aggregate greenhouse gas emission level, taking into account implementation of all submitted nationally determined contributions, is estimated to be 13.7 per cent above the 2010 level in 2030;

26. *Emphasizes* the urgent need for Parties to increase their efforts to collectively reduce emissions through accelerated action and implementation of domestic mitigation measures in accordance with Article 4, paragraph 2, of the Paris Agreement;"

Sharm el-Sheikh Implementation Plan

5.22. In late 2022, the COP confirmed the above in the *Sharm el-Sheikh Implementation Plan* (COP27)**77**. Among other things, the member states noted the following:

"**I. Science and urgency**

(…)

6. *Takes note* of the 2022 adaptation gap and emissions gap reports of the United Nations Environment Programme, and recent global and regional reports of the World Meteorological Organization on the state of the climate;

7. *Reiterates* that the impacts of climate change will be much lower at the temperature increase of 1.5 °C compared with 2 °C and resolves to pursue further efforts to limit the temperature increase to 1.5 °C;

(…)

IV. Mitigation

14. *Recognizes* that limiting global warming to 1.5 °C requires rapid, deep and sustained reductions in global greenhouse gas emissions of 43 per cent by 2030 relative to the 2019 level;

15. *Also recognizes* that this requires accelerated action in this critical decade, on the basis of equity and the best available scientific knowledge, reflecting common but differentiated responsibilities and respective capabilities, in the light of different national circumstances and in the context of sustainable development and efforts to eradicate poverty;

(…)

17. *Reiterates* its invitation to Parties to consider further actions to reduce by 2030 non-carbon dioxide greenhouse gas emissions, including methane;"

5.23. The *Sharm el-Sheikh Implementation Plan* states the following on adaptation:**78**

"12. *Also notes* that the best available science, as well as traditional, indigenous and local knowledge, as appropriate, should be taken into account in addressing the priority gaps and needs referred to in paragraph 7 above and in enhancing the process to formulate and implement national adaptation plans for developing countries;

13. *Notes with serious concern* the findings on adaptation gaps in the contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change;

14. *Recognizes* that long-term planning and accelerated implementation of adaptation actions, particularly in the next decade, is important for closing adaptation gaps;

15. *Also recognizes* that maladaptation can be avoided through flexible, multisectoral, inclusive and long-term planning and implementation of adaptation actions that benefit many sectors and systems;

16. *Takes note* of the support available to developing country Parties for formulating and implementing national adaptation plans and *recognizes* the importance of scaling up this support;

17. *Encourages* relevant organizations to continue coordinating support related to the process to formulate, update and implement national adaptation plans and to continue sharing lessons learned;

18. *Notes* that the process to formulate and implement national adaptation plans is crucial to informing the assessment of progress towards achieving the global goal on adaptation, including through the Glasgow–Sharm el-Sheikh work programme on the global goal on adaptation and the global stocktake."

United Arab Emirates Framework for Global Climate Resilience

5.24. Following the outcomes of the *Glasgow–Sharm el-Sheikh work programme on the global goal on adaptation*, the member states (united in the COP) formulated global adaptation goals in 2023:**79**

10. *Decides* that the United Arab Emirates Framework for Global Climate Resilience includes the following targets in relation to the dimensions of the iterative adaptation cycle, recognizing the need to enhance adaptation action and support:

(a) Impact, vulnerability and risk assessment: by 2030 all Parties have conducted up-to-date assessments of climate hazards, climate change impacts and exposure to risks and vulnerabilities and have used the outcomes of these assessments to inform their formulation of national adaptation plans, policy instruments, and planning processes and/or strategies, and by 2027 all Parties have established multi-hazard early warning systems, climate information services for risk reduction and systematic observation to support improved climate-related data, information and services;

(b) Planning: by 2030 all Parties have in place country-driven, gender-responsive, participatory and fully transparent national adaptation plans, policy instruments, and planning processes and/or strategies, covering, as appropriate, ecosystems, sectors, people and vulnerable communities, and have mainstreamed adaptation in all relevant strategies and plans;

(c) Implementation: by 2030 all Parties have progressed in implementing their national adaptation plans, policies and strategies and, as a result, have reduced the social and economic impacts of the key climate hazards identified in the assessments referred to in paragraph 10(a) above;

(d) Monitoring, evaluation and learning: by 2030 all Parties have designed, established and operationalized a system for monitoring, evaluation and learning for their national adaptation efforts and have built the required institutional capacity to fully implement the system;

First Global Stocktake

5.25. The first interim evaluation (*First Global Stocktake*) was prepared for COP28 in Dubai, United Arab Emirates. To this end, the state of affairs in 2023 in the field of climate change and the effectiveness of the measures announced to combat it were examined.**80** Key findings included that actual global emissions were not on track to meet the Paris Agreement targets and that not all of the plans submitted by member states had been implemented. As a result, more needs to be done than was anticipated to limit global warming to the agreed

1.5 °C, while there is less time to achieve this.**81** The conclusion was that it is not only necessary to take ambitious (or more ambitious) measures, but also to actually implement the intended measures

"13. **Key finding 5: much more ambition in action and support is needed in implementing domestic mitigation measures and setting more ambitious targets in NDCs to realize existing and emerging opportunities across contexts, in order to reduce global GHG emissions by 43 per cent by 2030 and further by 60 per cent by 2035 compared with 2019 levels and reach net zero CO2 emissions by 2050 globally.**"**82**

viii. *'Advisory Opinion' of the International Court of Justice*

5.26. On 29 March 2023, the UN General Assembly requested the highest UN court – the International Court of Justice (ICJ) – for an advisory opinion on the obligations of states with regard to climate change.**83**

On 23 July 2025, the ICJ published an advisory opinion**84** setting out the mitigation and adaptation obligations on UN member states. In its advisory opinion, the ICJ explained a number of provisions of UN law that are also relevant to these proceedings and provided further context. The court takes this advisory opinion into account in its assessment of the claims in Chapter 8 below, where it concerns findings on specific rules and principles. However, the considerations cited below are relevant to the interpretation of all the rules mentioned above:

"175. (…) the Court notes that not all provisions of a treaty readily lend themselves to classification as containing obligations of result or conduct, and each provision must be examined on its own terms in light of specific circumstances. The Court recalls that obligations of conduct in international environmental law entail an obligation to act with due diligence, requiring States parties "to use all the means at [their] disposal" with a view to fulfilling their international obligations".

(…)

208. It must be stressed that both types of obligations [*obligations of conduct and*

obligations of result, added by the court] may result in the responsibility of a State for breach of the relevant obligation. While the issue of responsibility is addressed further under question (b) (see Part V below), the Court finds it useful here to note that, in the case of an obligation of conduct, a State acts wrongfully if it fails to use all means at its disposal to bring about the objective

envisaged under the obligation, but will not act wrongfully if it takes all measures at its disposal with a view to fulfilling the obligation even if the desired objective is ultimately not achieved. In the case of an obligation of result, a State acts wrongfully if it fails to bring about the result required under the obligation. At the same time, it cannot be said that an obligation of result, such as an obligation to "adopt national policies and take corresponding measures on the mitigation of climate change", will be met merely by the adoption of any policies and the taking of corresponding measures. To comply with this obligation of result, the policies so adopted and the measures so taken must be such that they are able to achieve the required goal. In other words, the adoption of a policy, and the taking of related measures, as a mere formality is not sufficient to discharge the obligation of result."**85**

b. ***European legislation on climate change***

5.27. On 22 April 2016, the European Union signed the Paris Agreement and thus became an independent party to this UN treaty, alongside its member states.**86**

i. *European Green Deal 2019*

5.28. The EU has integrated its climate plans into *The European Green Deal***87**, which the European Commission published on 11 December 2019. The aim of this policy programme is to transform the EU into 'a fair and prosperous society, with a modern, resource-efficient and competitive economy, where there are no net greenhouse gas emissions in 2050 and where economic growth is decoupled from resource use'. The Commission announced that it would submit a proposal for a European climate law in March 2020, containing two binding targets for reducing greenhouse gas emissions: climate neutrality by 2050 and a 50-55% reduction in emissions by 2030 relative to 1990 levels.

5.29. European climate legislation has its own governance structure,**88** including administrative obligations that EU member states must comply with in order to track joint efforts and report to the UNFCCC.

Among other things, member states must submit 'integrated national energy and climate plans' and long-term strategies, and update these every ten years.**89** Member states must also submit progress reports every two years, including on the status of implementation of their own integrated national energy and climate plans and on forecasts. Estimated greenhouse gas inventories must be reported annually.**90**

The aim is that this coordinated system will lead to greater coherence and effectiveness of the measures taken within the EU. It would also significantly reduce complexity and administrative burdens for member states, EU institutions and other stakeholders.**91**

ii. *European Climate Law 2021*

5.30. The European Climate Law**92** came into force on 30 June 2021, in the form of Regulation (EU) 2021/1119. This regulation contains two binding targets: one for climate neutrality in the EU by 2050**93** and one for a net reduction in greenhouse gas emissions from the Union of at least 55% in 2030 relative to 1990.**94** In doing so, the EU aims to meet the UN target of limiting global warming to 1.5 °C and to make progress towards achieving the UN climate adaptation goals.**95**

iii. *Fit for 55 package*

5.31. In 2023, the EU adopted a series of legislative proposals revising all EU policy instruments necessary to achieve the 2030 climate target. With this so-called 'Fit for 55' package**96**, the EU has reaffirmed that greenhouse gas emissions in the EU must be reduced by at least 55% by 2030 relative to 1990 levels, and that the EU must be climate neutral by 2050. The EU has set up a *Just Transition Fund* to support regions and sectors that are economically dependent on fossil fuels and that need to make major adjustments in the transition to a green economy.

5.32. Since the aforementioned *First Global Stocktake*, negotiations have been underway within the EU to set a new intermediate climate target for the EU for the year 2040. At the time of this judgment, no new target has yet been laid down in legislation.**97** The proposal on which political agreement seems to have been reached is that CO2 emissions must be reduced by 90% in 2040 relative to 1990, with at most 5% of the reduction in emissions being achieved by purchasing international *carbon credits*.**98**

c. ***Applicability of relevant treaty law on Bonaire***

5.33. Article 28 of the Charter stipulates that Aruba, Curaçao and Sint Maarten may, if they so desire, become members of international organisations on the basis of international agreements entered into by the Kingdom.

5.34. The ECHR, the Twelfth Protocol to the ECHR and the ICCPR apply to the entire Kingdom, including Bonaire.**99**

5.35. The Netherlands is a member of the UN Climate Convention and the Paris Agreement, but only in respect of the European part of the Netherlands. The explanatory memorandum to the Approval of the Paris Agreement**100** of 31 October 2016 states the following in this regard

"4.2 The Caribbean part of the Netherlands

The extension of the application of the Paris Agreement to the Caribbean part of the Netherlands (Bonaire, Sint Eustatius and Saba) requires the extension of the application of the Framework Agreement to the Caribbean part of the Netherlands; this is not yet the case.
In the context of a possible acceptance of the Paris Agreement for the Caribbean part, consultations will be held with Bonaire, Sint Eustatius and Saba on how they can make an (additional) contribution to achieving the general objective and long-term temperature goal of the Agreement. This could include increasing the islands' adaptive capacity, strengthening their resilience to (the effects of) climate change, their mitigation plans, the necessary legislation and regulations, and the financing of the entire package. Once the preparation of the necessary implementing legislation has been completed, the Agreement can then apply to Bonaire, Sint Eustatius and Saba. In this context, the necessary extension of the Framework Agreement to Bonaire, Sint Eustatius and Saba will be included."

5.36. The European Climate Law does not apply to Bonaire.

5.36.1. Under EU law, overseas territories of EU member states have a special status as either 'overseas countries and territories' (OCTs) or 'outermost regions' (ORs).

5.36.2. In principle, EU legislation does apply to the ORs; however, due to their great distance from Europe, exceptions to this main rule are possible.

In principle, European Union law does not apply to the OCTs, with the exception of Parts II and IV of the Treaty on the Functioning of the European Union (TFEU). Part II concerns non-discrimination and citizenship of the Union; Part IV concerns the association of the OCTs. The purpose of associating the OCTs with the EU is 'to promote the economic and social development of the countries and territories' (Article 198 TFEU).

5.36.3. The Netherlands Antilles and Aruba had OCT status prior to 2010. During the constitutional reforms in 2010, it was agreed that the OCT status of the BES islands would be maintained 'for the time being'. This means that, in principle, European Union law does not apply to the BES islands.

6 Relevant national climate law and policy

a. ***Climate law***

6.1. The first Dutch Climate Act (hereinafter: the Climate Act) entered into force on 1 September 2019. The objectives of this act were formulated as follows:

Article 2 Climate Act 2019

1. This Act provides a framework for the development of policy aimed at irreversibly and gradually reducing greenhouse gas emissions in the Netherlands to a level that is 95% lower in 2050 relative to 1990, in order to limit global warming and climate change.

2. In order to achieve this target for 2050, the relevant Ministers shall strive to achieve a 49% reduction in greenhouse gas emissions by 2030 and completely CO2-neutral electricity production by 2050.

3. For the purposes of this Act, greenhouse gas emissions shall be deemed to be the emissions within the Netherlands of greenhouse gases as referred to in Article 2(b) of the Monitoring Mechanism Regulation.

6.2. On 14 February 2023, the House of Representatives approved an (amended) proposal to amend the Climate Act, thereby implementing the European Climate Law. The amendments to the Climate Act came into force on 22 July 2023.

6.3. Article 2 of the Climate Act now reads as follows:

1. This Act provides a framework for the development of policy aimed at irreversibly and gradually reducing greenhouse gas emissions in the Netherlands in order to limit global warming and climate change, whereby the Netherlands, in accordance with Article 2, first paragraph, of the European Climate Law:

a. reducing net greenhouse gas emissions to zero by 2050 at the latest,

and

b. strives for negative greenhouse gas emissions after 2050.

2. In order to achieve this target for 2050, the relevant Ministers shall strive to achieve a 55% reduction in greenhouse gas emissions relative to 1990 by 2030 and completely CO2-neutral electricity production by 2050. They will also take appropriate measures to ensure that the Netherlands complies with the reduction obligations under Article 4(1) of the European Climate Law and the binding EU legal acts adopted to implement it.

3. For the purposes of this Act, greenhouse gas emissions shall be deemed to be the emissions within the Netherlands of greenhouse gases from sectors and sources and the removal per sink included in the national greenhouse gas inventories in accordance with Article 4, first paragraph, under a, of the United Nations Framework Convention on Climate Change (Treaty Series 1992, 189).

6.4. Under the Climate Act, a climate plan must be drawn up once every five years. The first climate plan covered the period 2021-2030 and the current climate plan covers the period 2025-2030.**101**

6.5. The accountability mechanism of the Climate Act is included in Chapter 3 of the Climate Act. Article 6 stipulates that the Netherlands Environmental Assessment Agency (PBL) must publish an annual Climate and Energy Report (KEV). The KEV is a scientific report on the consequences of the climate policy pursued in the previous calendar year. It is a policy-neutral, factual representation of the state of climate policy, showing whether the climate targets can be achieved with the established and proposed climate policy. The KEV makes it clear whether additional measures are necessary to achieve the climate targets. The KEV is presented to parliament annually, at the same time as the Policy Document on Climate Change. Before the policy document is presented to parliament, the Advisory Division of the Council of State issues its advice. If the KEV and the policy document show that additional measures are needed to achieve the climate targets, a process is set in motion to prepare decision-making on additional measures.

6.6. In the KEV 2025**102**, the PBL has concluded that it is "*highly unlikely*", with a probability of less than 5%, that the Netherlands will achieve the statutory climate target of a 55% reduction in emissions by 2030.

6.7. In its advice on the draft Climate and Energy Report 2025, the Advisory Division of the Council of State noted the following:**103**

"Based on the draft report and the KEV 2025, also viewed in relation to the estimates of previous years, the Division notes that, in broad terms, the Netherlands is making little progress towards achieving the 2030 targets when it comes to meeting its climate targets.

This stagnation effectively means that there has been a regression, because greater steps will have to be taken in the future to still be able to achieve the climate targets."

b. ***Climate adaptation; European Netherlands***

6.8. Since 1992 (the year in which the UN Climate Convention was concluded), the State has been engaged in implementing climate adaptation measures for the European Netherlands. Since then, the State has reported to the UNFCCC every four years on its mitigation and adaptation measures in a '*National Communication*'.

6.9. In its eighth *National Communication* to the UNFCCC**104**, the State outlined the steps it took between 2006 and 2022 in the field of climate adaptation in the European Netherlands. These include the following actions:

2006 KNMI climate scenarios 2006

2006-2011 Spatial Adaptation to Climate Change Programme (ARK)

2007 National Adaptation Strategy Make Room for Climate

2008-2014 Research Programme Knowledge for Climate

2010-2014 Start of the Delta Programme (preparatory phase)

from 2010 Presentation of annual update of the Delta Programme

2014 Start of implementation phase of the Delta Programme

2014 KNMI climate scenarios 2014

2016 National Climate Adaptation Strategy (NAS 2016)

2018 NAS Implementation programme 2018-2019

2021 KNMI Climate Alert

2022 Final report on evaluation of NAS

6.10. In 2012, the Netherlands Court of Audit determined that the climate adaptation policy for the European Netherlands at that time did not meet the requirements of the UN Climate Convention.**105** For example, there

was insufficient insight into the risks of climate change and the interrelationship between those risks, there was no integrated and effective adaptation policy, and the existing adaptation policy was not coordinated, monitored or evaluated. As a result, the European Netherlands would not be sufficiently prepared for the consequences of climate change. In response to this advice, the adaptation policy for the European Netherlands was further developed, implemented, evaluated and, following the evaluation, intensified.

6.11. Following the evaluation in 2022, the Cabinet adopted the National Climate Adaptation Implementation Programme (NUPKA) in 2023. Furthermore, in 2023, the KNMI adopted the climate scenarios discussed above.

c. ***Climate adaptation; Bonaire***

6.12. In this action, the State has divided the measures it is taking or supporting on Bonaire into four categories:

1. strengthening basic facilities;
2. preserving and strengthening the natural environment;
3. security and crisis management;
4. further steps towards an integrated climate adaptation strategy.

i. *Strengthening basic facilities*

6.13. In 2012, due to the uncertain drinking water supply and its affordability, it was decided to introduce new legislation in the field of water and energy supply.**106** The legislative process culminated in 2016 in the BES Electricity and Drinking Water Act (Weed BES).**107** The 2023 evaluation showed that the sustainability of drinking water and electricity supply on the BES islands had improved significantly since this Act came into force.**108** The State provided structural and incidental subsidies in order to keep these facilities affordable.

6.14. Due to the lack of a (proper) wastewater system on Bonaire, a central sewage system with a treatment plant was built in 2014 with subsidies from the European Commission and the State.**109**

ii. *Preserving and strengthening the natural environment*

6.15. Pursuant to Article 2 of the BES Nature Conservation and Protection (Principles) Act (Wgnb BES), the Minister of Agriculture, Fisheries, Food Security and Nature must, in close consultation with the executive councils of the islands, adopt a nature policy plan every five years. For the period from 2013 onwards, this was the Nature Policy Plan for the Caribbean Netherlands 2013-2017 (NBP). The State provided indirect and financial support to the BES islands for the implementation of the islands' nature plans. In addition, Bonaire received USD 5,238,400 in nature funds from the State for the implementation of nature projects. The objectives of the NBP were implemented in ten projects in the period 2013-2017, including reforestation, coral restoration and the reduction of invasive alien species.

6.16. In April 2020, pursuant to Article 2 of the Wgnb BES and Article 1.4 of the Housing, Spatial Planning and the Environment (BES Islands) Act, the Nature and Environmental Policy Plan for the Caribbean Netherlands 2020-2030 (NMBP) was drawn up by the then Ministers of Infrastructure and Water Management, the Interior and Kingdom Relations, and Agriculture, Nature and Food Quality, in close consultation with the executive councils of the BES islands. In terms of nature, the NMBP builds on the NBP and also includes environmental policy. Four strategic objectives have been formulated in the NMBP: 1) reducing the decline of coral, 2) restoring and preserving unique habitats and species, 3) sustainable use of land and water for the development of the local economy, and 4) creating conditions to ensure sustainable results from nature policy. The NMBP covers both umbrella projects for the BES islands and projects specifically focused on a single island.

6.17. The BES islands are responsible for local implementation plans and receive financial support from the State in drawing these up. In addition, the State also provides financial support to the BES islands for the implementation of the plans. For example, €35 million has been made available for the implementation of the first phase of the NMBP and an additional €7.2 million for coral restoration measures. The distribution of the available funds from the NMBP among the individual BES islands depends on the applications submitted by each island. The State is not making any budget available for the implementation of the second phase of the NMBP and the period after 2030.**110**

6.18. Within the framework of the NMBP, two larger programmes have been launched on each island: the nature restoration programme and the water programme.**111** In the context of nature restoration, a coral restoration plan and a mangrove restoration plan have been drawn up on Bonaire, and plans are being developed for the removal of stray livestock. The water programme focuses on water management, water retention and water purification. The measures to be taken will be funded by the State.**112**

6.19. The Directorate-General for Public Works and Water Management and the OLB have drawn up the Seawater Quality Monitoring Programme. The Monitoring Programme started in 2023 and aims to establish a basic monitoring network on Bonaire for monitoring sea and groundwater quality. Improving water quality is important for the growth conditions of the coral reefs on Bonaire. The State has financed the construction of the monitoring system.

6.20. In early 2024, a new Spatial Development Programme for the Caribbean Netherlands (ROCN) was adopted within the framework of the NMBP, pursuant to Article 4 of the BES Spatial Development Planning (Principles) Act (Wgro Bes). The ROCN was drawn up in consultation with the executive councils of the public bodies and the Ministry of Housing and Spatial Planning. The ROCN provides the OLB with frameworks for drawing up an island-specific spatial development plan focused on housing, climate change**113** and the preservation of cultural and natural values. The State fulfils the role of partner to the OLB and takes responsibility for the realisation of good spatial developments.

6.21. The State is working on a system for licensing, supervision and enforcement (VTH system) to safeguard interests that aim to protect the laws on Bonaire in the field of nature and the environment. Improvement processes were initiated in response to a 2023 report by the Human Environment and Transport Inspectorate,**114** which found that it was unclear which companies were subject to licensing under the regulations in force at the time (the Nuisance Ordinance) and that there was no consistent system for supervision and enforcement. On 1 April 2024, the Establishments and Activities Decree (IAB BES) and underlying regulations came into force. This clarified the environmental rules for companies in the Caribbean Netherlands, improved the environmental impact assessment requirement and imposed an accountability obligation on the State Secretary for Infrastructure and Water Management for implementing VTH policy and VTH tasks.

6.22. Since 2017, the State has commissioned various studies relevant to climate change and climate adaptation on Bonaire, including studies on water safety,**115** nature and the environment**116** and climate.**117**

6.23. On 27 September 2022, the Ministry of Education, Culture and Science concluded a cultural covenant with the public bodies to promote cultural infrastructure in the Caribbean Netherlands.**118** The cultural covenant focuses, among other things, on cultural education, the preservation and protection of tangible and intangible heritage, and (underwater) archaeology. A joint cultural agenda is drawn up for each island by the OLB and the Ministry; for Bonaire, this was done on 9 July 2024. The Ministry of Education, Culture and Science plays a supporting role in this.**119**

iii. *Security and crisis management*

6.24. In 2023, the Ministry of Justice and Security drew up a Security Strategy for the Kingdom. This document identifies climate change as a threat with consequences that are "*increasingly serious and difficult to manage*",**120** including for the Caribbean Netherlands. The Security Strategy states, among other things, the following for the Caribbean Netherlands:

"The ANV has methodically translated security interests into impact criteria, thereby providing insight into the extent to which these interests could be harmed. Together with domain-specific analyses,11 these analyses form an important input for the strategy and thus contribute to a strategic course on national security that not only

focuses on short-term threats but also on (possible) developments in the threat in the longer term.

[*endnote 11:* Examples include the *National Terrorist Threat Assessment,*

the State Actors Threat Assessment and the Cyber Security Assessment Netherlands, but also scientific studies on, for example, the impact of climate change on Bonaire. Where applicable, these analyses are referred to in

the strategy.]**121**

(…)

In the longer term, rising sea levels pose a significant threat: millions of people in cities in and around the Kingdom are becoming increasingly vulnerable to sea level rise. By 2050, two-thirds of the world's population is expected to live in cities, with 800 million people in cities that are vulnerable to sea level rise. For Bonaire in particular, the effects of climate change mean that the island

will be partially submerged by 2050.39

[*endnote 39:* IVM Institute for Environmental Studies, *The Impacts of Climate Change on Bonaire*, 2022, p. 71.]**122**

(…)

Climate and natural disasters and infrastructure crucial to the Caribbean part of the Kingdom64

The impact of climate and natural disasters on our national security can be far-reaching, especially when important processes such as food and energy supplies are disrupted or even completely fail. For the Caribbean part of the Kingdom, the failure of such crucial processes could have an even greater impact, given its geographical location.

The islands depend on sea and air transport for the supply of food and goods. Inaccessible or unusable ports and airports will have major consequences because there is often no alternative infrastructure to fall back on. (…)

The Kingdom is becoming increasingly vulnerable to climate and natural disasters such as extreme weather, including heat/drought and hurricanes. Hurricane Irma illustrates that a natural disaster can have a major impact on the Caribbean part of the Kingdom, especially if multiple infrastructures are affected at the same time. (…)

For Bonaire, Aruba and Curaçao, the chance of a tropical storm or severe hurricane, such as Hurricane Irma, is smaller. Nevertheless, climate change also has an impact on national security interests there, such as the risk of flooding. Water levels in the Caribbean Sea are rising. By 2050, even the lower-lying parts of Bonaire are at risk of being permanently inundated due to sea level rise. In addition, their vital infrastructure is vulnerable, as it is mainly located in the south and on the coast of Bonaire.

[*Endnote 64:* Vliet van, P.j. & Mennen, M.G., *Technology Exploration National Security: An exploration of opportunities and threats of technological developments for national security*, 2014] **123**

(…)

A long-term approach for the Caribbean part of the Kingdom against the effects of climate change. Key priorities are switching to solar and wind energy, climate-proof spatial planning and increasing redundancy in the event of vital systems failing."**124**

6.25. Due to the risk of extreme weather conditions, the KNMI has been monitoring the weather on the BES islands since 2016.

iv. *Further steps towards an integrated climate adaptation strategy*

6.26. In 2016, the then cabinet adopted the National Climate Adaptation Strategy 'Adapting with Ambition' (NAS 2016). This strategy states that the climate issues in the Caribbean parts of the Kingdom are significantly different and require a separate plan.**125**

6.27. The NAS 2016 has been elaborated in the NAS Implementation Programme 2018-2019. The aim of this is to 'raise awareness and bring the relevant parties to the table'. Following an evaluation in 2022, the National Climate Adaptation Implementation Programme (NUPKA) was adopted by the Cabinet in 2023. The NUPKA mainly concerns the European Netherlands, but where possible it also indicates the tasks and measures envisaged for the Caribbean Netherlands.**126** The NUPKA also identifies five priorities to which the State is drawing attention at the Bonaire Climate Table,**127** namely:

- formulating concrete adaptation goals;
- making knowledge accessible and applicable and focusing on knowledge development;
- inviting a broad group of stakeholders;

- exploring opportunities to make climate resilience a standard part of all policy (clear responsibilities and clear organisation);
- exploring opportunities to broaden the financing of climate adaptation.

6.28. On 24 May 2022, the Executive Council of Bonaire asked the Minister of Climate and Energy to set up a climate table on Bonaire and to make a coordinator available to further develop this concept. On 8 May 2023, coordinator Nijpels published his advisory report 'It is never too late'.**128**

6.29. In response to this advisory report, the State has taken the following steps:

- the Ministry of Infrastructure and Water Management has allocated a fixed annual budget to the KNMI to map out the consequences of climate change for the BES islands in relation to the climate scenarios;
- the KNMI'23 climate scenarios also focus on the Caribbean Netherlands;
- in 2023, the Ministry of Infrastructure and Water Management commissioned *Climate Adaptation Services* to create the Climate Impact Atlas for the BES Islands**129** with the aim of bringing together up-to-date knowledge about climate change in one place, enabling governments, residents and communities to view the effects of climate change in their specific region. This climate impact atlas has been available in three languages (Dutch, English and Papiamento) since 7 December 2023;

- on 19 and 20 October 2023, workshops and public lectures were held on Bonaire to share developments in the field of climate information, discuss the KNMI'23 climate scenarios and introduce the Climate Impact Atlas for the BES Islands on Bonaire. The results of the workshops are included in the report *'Climate Impacts for Bonaire'*;**130**

- websites have been set up to inform the inhabitants of Bonaire about climate change, the importance of nature, and taking and preparing adaptation measures;**131**

- in December 2023, satellite images of the BES islands were made available in the Dutch government's satellite data portal. The images can be used for climate research and to analyse changes on Bonaire;
- in January 2024, flights were conducted around Bonaire to take aerial photographs and altitude measurements for inclusion in the Elevation Model of the Netherlands. The OLB and the Ministry of the Interior and Kingdom Relations took the initiative for this project, and the Ministry also financed it. The new elevation model is now available;
- a virtual *'vision tool'* has been launched**132** that shows what Bonaire could look like in 2050 if a nature-inclusive vision is followed.

6.30. In 2023, a so-called Climate Table was set up on Bonaire with representatives from various sectors and governments, led by an independent chair. The Climate Table aims to develop a climate plan for Bonaire. The State commissioned consultancy firm Witteveen+Bos to draw up an overview of current and planned climate adaptation and mitigation efforts on the BES islands to support the drafting of the climate plan. The Witteveen+Bos report**133** has been provided to the Climate Table project group. The State expects the climate plan to be ready in the first quarter of 2026. The structure of the Climate Table is shown in the figure below:



Figure 6: Structure of Climate Table**134**

6.31. The State is also committed to cooperation within the Kingdom and to international cooperation as follows:

- strengthening Bonaire's implementation capacity is a key priority within the Bonaire and Kingdom Administrative Agreement;**135**
- the Ministry of Infrastructure and Water Management, together with *Dutch Water Authorities*, is developing structural support for the Caribbean Netherlands in addressing challenges in the physical living environment;
- as of 1 July 2024, the VNG-Caribendesk has been established as part of a pilot project, co-financed by the Ministry of the Interior and Kingdom Relations. The VNG-Caribendesk supports the BES islands with knowledge and expertise in strengthening policy, legislation and implementation. It is still unclear whether and, if so, how the VNG-Caribendesk will continue after the pilot project has ended;
- knowledge exchange within the Kingdom through conferences;**136**

- the BES islands are affiliated with the *International Panel for Deltas and Coastal Areas* (IPDC). On 21 May 2024, the IPDC published a report on how islands are dealing with climate change and how they can work together to be better prepared for the consequences of climate change;**137**

- in order to exploit more opportunities for financial support for the Caribbean Netherlands from international funds (including EU funds, UN funds and regional funds), the State has appointed a special envoy for the Caribbean Netherlands.**138**

6.32. With regard to climate adaptation-related policy, the State has undertaken the following, among other things:

- the State has made €33.6 million available for an accelerated transition to sustainable electricity. As a result of these efforts, the BES islands have been selected to participate in the EU's *'30 for 2030'* project. Through this project, the EU is providing support for the further realisation of the energy transition;
- a stable socio-economic situation is important for the success of climate adaptation measures. That is why, in response to the recommendations in the report 'A dignified existence'**139**, the State has set aside €32

million per year on a structural basis to improve purchasing power and combat poverty in the Caribbean Netherlands. Furthermore, the State has structurally increased the minimum wage, minimum benefits and child benefit and brought them into line with the amounts applicable in the European Netherlands;

- the topic of climate change and health is on the Health Council's work programme for 2025. The advice that the Health Council intends to issue on the risks of climate change to health in the Netherlands also takes the Caribbean Netherlands into account;
- the Bonaire Local Health Policy Memorandum 2024-2027 includes a chapter on climate, which also contains recommendations on heat-related health problems.

7 Political relations within the Kingdom

7.1. From 1954 to 10 October 2010, Bonaire was part of the Netherlands Antilles, a separate country within the Kingdom.

a. ***The run-up to 10-10-10***

7.2. During a referendum on 10 September 2004, the population of Bonaire opted for direct ties with the Netherlands.

7.3. On 17 September 2005, administrative consultations took place, which resulted in an outline agreement between the Netherlands Antilles, the Netherlands, Sint Maarten, Bonaire, Sint Eustatius and Saba on 22 October 2005.**140** The intended long-term perspective for the BES islands was a new status of a special nature within the Kingdom, with direct ties with the European Netherlands. This new status was intended to lead to sustainable socio-economic development – in close cooperation with the European Netherlands – with an "acceptable level of facilities"**141** for the inhabitants of the BES islands.

7.4. When major differences of opinion emerged about the new constitutional position of the BES islands, the Council of State of the Kingdom was asked for advice. In an opinion issued on 18 September 2006**142**, this Council rejected the two proposed basic models – the BES islands as Kingdom islands or as Dutch municipalities.

The Council recommended a model in which each of the BES islands would be organised as a public body within the meaning of Article 134 of the Constitution. The Council also emphasised the following:

"A special feature of these public bodies is that they will not belong to a province. The supervisory relationships will therefore run directly to the government. In many cases, this will concern the field of activity of the Minister of the Interior. However, policy in the field of spatial planning and the environment (e.g. regional plans and waste disposal plans) is also relevant here. This is a task for the Minister of Housing, Spatial Planning and the Environment. Although these are not extensive tasks, their specialist nature requires an explicit provision."**143**

7.5. In the final declaration**144** of the Mini-Conference of 10 and 11 October 2006 on the future constitutional position of the BES islands, the delegations from the BES islands and the Netherlands agreed, among other things, on the following:

- the three islands will be given the constitutional status of a public body;
- Dutch Antillean legislation will remain in force initially, but will be gradually replaced by Dutch legislation, with the possibility of deviating provisions;
- the legal provisions for Dutch municipalities will apply mutatis mutandis, with due observance of any special provisions to be included by or pursuant to law.

7.6. On 10 October 2010, the country of the Netherlands Antilles was dissolved and since then the Kingdom has consisted of four separate countries: Aruba, Curaçao, the Netherlands and Sint Maarten. Since that date, the BES islands have been part of the country of the Netherlands, as public bodies within the meaning of Article 134 of the Constitution. Since then, the political relations within the Kingdom have been as follows, as depicted in the figure below:**145**

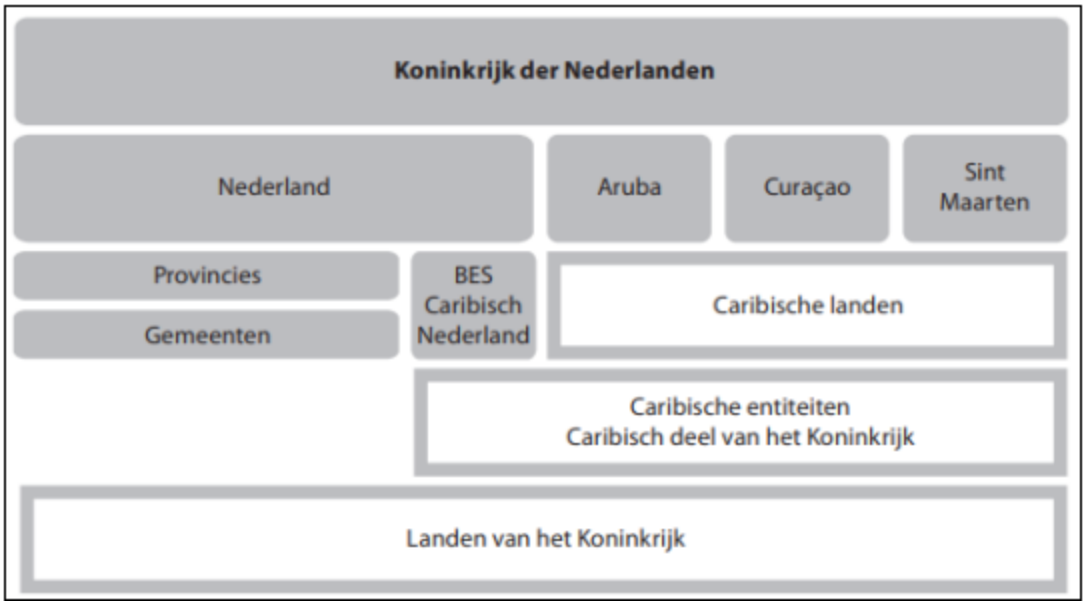


Figure 7: Political relations within the Kingdom of the Netherlands**146**

b. ***Kingdom affairs and national affairs***

7.7. Since 1954, the political relationship between the countries of the Kingdom has been governed by the Charter for the Kingdom of the Netherlands (hereinafter: the Charter). On 10 October 2010, the Charter was amended to reflect the new political relationships.

7.8. The Charter distinguishes between matters of legislation and administration that are handled by the Kingdom (Kingdom affairs) and matters that are handled by the countries themselves (national affairs). Article 3(1)(a) to (h) of the Charter lists a number of Kingdom affairs. Taking measures in relation to climate change is not included there. However, the second paragraph of this article stipulates – with reference to Article 55 of the Charter – that the countries may, by mutual agreement and by means of a Kingdom Act, declare other matters to be Kingdom affairs.

7.9. To date, the countries have not declared climate change (or measures relating to it) to be a Kingdom affair. This applies both to the period from 1954 to 10 October 2010 (when Bonaire was still part of the Netherlands Antilles) and to the period thereafter. Climate policy has therefore always been a national affair within the Kingdom.

7.10. The case file contains no information about policy or concrete measures relating to climate change that were taken on Bonaire in the period prior to 10 October 2010.

7.11. Article 43(1) of the Charter stipulates that each country shall ensure the realisation of fundamental human rights and freedoms, legal certainty and good governance. The second paragraph stipulates that guaranteeing these rights, freedoms, legal certainty and good governance is a Kingdom affair.

The BES islands in the political structure of the Netherlands

i. *Constitutional arrangement for public bodies*

7.12. Article 42 of the Charter stipulates that the constitutional structure of the Kingdom of the Netherlands is regulated by the Constitution. Caribbean public bodies are regulated in Chapter 7 of the Constitution.

7.13. The OLB was established by Article 2 of the Public Bodies (Bonaire, Sint Eustatius and Saba) Act**147** (hereinafter: WolBES). Chapter II of the WolBES regulates the structure and composition of the organs of the public body.

7.14. Public bodies have an administrative structure similar to that of a municipality. Pursuant to Article 5 WolBES, each public body has an island council (the equivalent of a municipal council), an executive council (the

equivalent of a municipal executive) and a governor (the equivalent of a mayor). There is also an electoral college for the Senate.

7.15. The island of Bonaire thus has two levels of government: the OLB and the State. The State and the OLB have agreed that as many tasks as possible should be carried out at island level (the so-called 'subsidiarity principle'). This agreement is in line with the principles of the European Charter of Local Self-Government**148** and is laid down in Chapter V of the WolBES, which regulates the relationship between the OLB and the Kingdom:

Article 212 WolBES

1. Our Minister promotes decentralisation for the benefit of the public bodies.
2. Proposals for measures whereby certain affairs are considered to be national policy shall only be made if the subject of concern cannot be dealt with effectively and efficiently by the island administrations.

7.16. There is also a Kingdom Representative for the public bodies of Bonaire, Sint Eustatius and Saba (Article 187 WolBES). This Kingdom Representative is the linking pin between the BES islands and the State. The tasks of the Kingdom Representative include reporting to the relevant minister on matters or special findings concerning the public bodies and promoting good governance in the public bodies (Article 204(1)(a) and (j) WolBES).

7.17. The tasks of the OLB are divided into joint government tasks and autonomous tasks. Tasks in areas relevant to climate adaptation are largely joint government tasks. Tasks and powers have been assigned to the OLB through legislation (such as the Wgro BES, Wgnb BES, Wet VROM BES and Wmb BES), and the State creates frameworks through plans and programmes within which the OLB must or may develop and implement policy or plans.

ii. *Applicability of Dutch law on the BES islands*

7.18. The political reforms in 2010 were based on the principle of exercising legislative restraint for a period of five years after the BES islands joined the Netherlands. This meant that the Dutch Antillean legislation in force at the start of the new constitutional position would remain in force on the BES islands and that Dutch legislation would in principle only be introduced if there was a clear need to do so. The reason for this legislative restraint was the limited administrative and executive power of the BES islands.

7.19. Article 57a of the Charter stipulates that the Kingdom acts, laws, national ordinances, general orders in council for the Kingdom, orders in council and other regulations and decrees existing on 10 October 2010 that are contrary to a change in the Charter shall remain in force until a provision has been made in accordance with the Charter.

7.20. The delegations have made a few exceptions to the principle of Article 57a of the Charter, which are laid down in a Roadmap.**149** The exceptions concerned areas to which the three islands and the Netherlands attached such high priority at the time that Dutch legislation and regulations in these areas came into force from the moment of transition to the new status, such as public health, social security, education and youth, security and police, and finance. Climate change was not one of these priorities.

7.21. It was also stipulated that provisions deviating from Dutch legislation could be made on the BES islands due to the differences between the BES islands and the European Netherlands (the so-called 'differentiation provision').**150**

7.22. Partly in response to the 2015 evaluation report by the Spies Commission**151** and the advisory opinion of the Advisory Division of the Council of State of 17 July 2019**152**, the principle of legislative restraint in 2019**153** was replaced by the principle of 'comply or explain'.

The main principle of *comply or explain* is that all European-Dutch policy intensifications and the resulting new legislation and/or financial consequences (will) apply to the BES islands, unless there are reasons for the contrary.**154** This could include arguments such as limited implementation capacity, insularity, the geographical distance between the European Netherlands and the Caribbean Netherlands, the small-scale nature, climatic conditions, geographical conditions and financial capacity. It is important to note that these factors may be reasons for customisation, but should not detract from the ultimate goal of achieving a more equal level of services in the Caribbean Netherlands.**155**

If strengthening a policy or law is deemed not to apply to the BES islands, the relevant ministry will have to explain why it considers it appropriate to exempt the BES islands from specific legislation or regulations. However, differentiation remains possible; in the case of new legislation, consideration must be given to whether the BES islands can be included if a distinction is made between the European Netherlands and the Caribbean Netherlands. If it is decided that differentiation is not possible or desirable, the decision not to apply legislation or regulations to the BES islands must be justified.**156**

8 The claim and the defence

8.1. Greenpeace claims – in summary and after amendments to the claim – that the court should enter a judgment, provisionally enforceable as far as possible:

In the context of adaptation measures:

I. ruling that the State has acted and continues to act in violation of the fundamental rights of the inhabitants of Bonaire under Articles 2, 8 and 14**157** of the ECHR and Article 27 of the International Covenant on Civil and Political Rights (ICCPR), and has thereby also acted and continues to act unlawfully by:

a. failing to take (or at least insufficient) timely and appropriate measures to protect the inhabitants of Bonaire against the effects of climate change (*adaptation*); and/or
b. exempting Bonaire, without legitimate purpose and without objective justification, from all (or at least virtually all) legislation, regulations and actual measures taken by the State in the context of protecting its inhabitants against the consequences of climate change (*adaptation*);
c. failing to inform the inhabitants of Bonaire (or at least insufficiently) about the expected consequences of climate change and failing to involve them (or at least insufficiently) in the formulation of policy and the implementation of actual measures in the context of protecting the inhabitants of Bonaire against the consequences of climate change (*adaptation*);

II. ordering the State to take all necessary measures in a timely manner to adequately protect Bonaire and its inhabitants against the consequences of climate change, including but not limited to:

a. basing all its adaptation policy on Bonaire on, and testing it against, the applicable international human rights treaties ratified by the Netherlands, and providing clear reasons for doing so;
b. establishing, as soon as reasonably possible and no later than 1 April 2027, or at least within a term determined by the court in the proper administration of justice, an adequate adaptation plan for Bonaire (or at least ensuring that such an adaptation plan is drawn up) in which all relevant scientific research, knowledge of the inhabitants of Bonaire and the wishes and needs of the inhabitants of Bonaire are clearly taken into account, and which clearly takes into account the structural challenges on Bonaire, such as poverty and the resilience of the inhabitants of Bonaire, and that has been assessed, at least in a transparent and reasoned manner, against the requirements that apply to timely and appropriate measures under Articles 2, 8 and 14 of the ECHR and Article 27 of the ICCPR;
c. ensuring that the measures laid down in the adaptation plan will be implemented in a timely manner, including but not limited to making and continuing to make sufficient financial resources available for the implementation of the adaptation plan, and periodically evaluating the implementation of these measures and remedying any shortcomings in their implementation as soon as possible;
d. immediately after the judgment in this case is delivered, initiating, or causing to be initiated, and maintaining the dissemination of information among the inhabitants of Bonaire about climate change and the consequences of climate change;
e. immediately after the judgment in this case is delivered, initiating, or causing to be initiated, adequate scientific research into the historical, current and future consequences of climate change on Bonaire, and making sufficient resources available for this purpose, and continuing to enable such research;

or at least to make such provisions deemed appropriate by the court.

In the context of mitigation measures:

III. ruling that the State has acted and continues to act in violation of the fundamental rights of the inhabitants of Bonaire under Articles 2, 8 and 14 ECHR and is therefore also acting unlawfully by to this day continuing to pursue a climate policy that does not meet what is clearly the minimum requirement for the State's equitable contribution to the measures that must be taken worldwide to limit global warming at the end of this century to below 1.5°C relative to pre-industrial levels.

Principally:

IV. ordering the State to take all necessary measures to ensure that the total volume of annual Dutch emissions – national emissions minus the emission reductions achieved abroad through Dutch international climate financing that can be attributed to the Netherlands –

principally: of all greenhouse gases (CO2-eq) is reduced to net zero by 2030 at the latest, *or* by 95% relative to Dutch emissions in 1990,

and remains reduced;

alternatively: of CO2 , *either* is reduced to net zero by 31 December 2031

and remains reduced, *or* is reduced to net zero within a carbon budget of 448 Mton CO2 as of 1 January 2024, and remains reduced;

V. ordering the State to take all measures necessary to ensure that the total volume of annual national emissions of all greenhouse gases (CO2-eq) – the emission of greenhouse gases from Dutch territory, minus the negative emissions from Dutch territory –

principally: is reduced to net zero by 2040 at the latest and remains reduced;

alternatively: is reduced by 95% relative to 1990 emissions by 2040 at the latest and remains reduced;

further in the alternative: is reduced by 90% relative to 1990 emissions by 2040 at the latest

and remains reduced;

Alternatively:

VI. ordering the State to establish, as soon as possible, but no later than six months after the judgment in this case is delivered, or at least within a term determined by the court in the proper administration of justice, a national carbon budget that reflects an equitable share of the remaining global carbon budget for 1.5°C, based on a transparent procedure in which the principles and choices relating to the final result are explicitly identified and in which the result may not lead to a lower carbon budget than that resulting from the application of an *equal per capita* calculation for the Dutch situation.

VII. ordering the State to set concrete intermediate targets for the reduction of greenhouse gas emissions, based on the carbon budget claimed under VI,

for:

principally:

(i) Emission reduction within the Dutch territory,

(ii) Negative emissions, and

(iii) Emission reduction outside the Dutch territory;

alternatively:

The reduction of Dutch emissions – national emissions minus the

emission reductions achieved abroad through Dutch international climate financing that can be attributed to the Netherlands.

Further in the alternative:

VIII. ordering the State ordered to comply with the climate policy laid down in the Climate Act by taking all measures necessary to ensure:
- that the total volume of annual national emissions is reduced by 55% in 2030 relative to 1990 levels;
- that net greenhouse gas emissions are reduced to zero by 2050 at the latest.

IX. ordering the State to set a binding intermediate target for 2040 in the Climate Act that is at least in line with the intermediate target for 2040 to be set by the European Commission at Union level and to take all measures necessary to achieve that intermediate target.

With regard to both adaptation measures and mitigation measures:

X. ordering the State to pay the costs of the proceedings, plus any additional costs, and all costs plus statutory interest from fourteen days after the date of the judgment to be rendered in this case until the date of full payment.

8.2. The State has put forward a defence. It requests the court to dismiss Greenpeace's claims, with Greenpeace being ordered to pay the costs of these proceedings, to be declared provisionally enforceable. If the court nevertheless decides to render a judgment, the State requests the court not to declare the judgment provisionally enforceable with regard to claims II.a, II.b, II.c, IV, V and VIII.

8.3. The arguments of the parties will be discussed in more detail below, insofar as necessary.

9 The assessment: general remarks about this case

9.1. In 2015, the district court was asked whether the Dutch State is obliged to reduce greenhouse gas emissions from Dutch soil by at least 25% by the end of 2020 relative to 1990, and whether the court can order the State to do so. The Urgenda Foundation submitted a claim for the State be ordered to limit greenhouse gas emissions in such a way that they would be reduced by 40% by the end of 2020 relative to 1990, and in any case by at least 25%. The district court awarded the claim in the sense that the State was ordered to reduce emissions by at least 25% by the end of 2020 relative to 1990. The court of appeal upheld the court's ruling in 2018, and in 2019 the Supreme Court upheld the order. The Supreme Court considered that it had been rightly ruled that the State was obliged under Articles 2 and 8 of the ECHR to achieve the 25% reduction target, due to the risk of dangerous climate change that could also seriously affect the right to life and well-being of the inhabitants of the Netherlands.

9.2. This case will also examine whether the State is fulfilling its obligation to protect its inhabitants – in this case specifically the inhabitants of Bonaire. Not only will the reduction targets for 2030, 2040 and 2050 be discussed, but also the measures taken by the State to protect them from the consequences of climate change. As in the case of Urgenda v. the State, an important question is whether the court can and is allowed to determine what the State must do. There is no dispute that measures (must) be taken; the question is whether the State is taking sufficient measures. The court can – and must, if so requested – give a ruling on this within the frameworks described below, whereby the court must exercise restraint and may not taken on the tasks of the legislator and the government.**158**If there is a serious (imminent) violation of human rights, if it is sufficiently clear what needs to be done to avert that threat as much as possible and what can at least be expected of the State in that context, an order to that effect may be issued.

9.3. The State rightly argues that the Netherlands is not a major contributor to global greenhouse gas emissions and that the Netherlands and the European Union have, in fact, been taking the necessary steps to reduce emissions since the 1990s. Nor is it the case that if (only) the Netherlands achieves the reduction targets proposed in this case, this will make an immediate difference to further global warming and the situation of the inhabitants of Bonaire. In most cases, this defence would lead to a ruling that it is not sufficiently clear that the State can be blamed and/or is obliged to take measures. In this case, that would mean that the claims are dismissed.

9.4. However, climate cases are different because of the complexity of the climate problem and the undisputed seriousness of its consequences, which can affect everyone, including future generations. The Supreme Court already considered in 2019**159** that states have a shared responsibility in this regard and that, partly in view of the serious consequences of dangerous climate change, the defence that a state does not need to take responsibility because other countries are not fulfilling their shared responsibility cannot be accepted. Nor can the defence be accepted that a country's own share of global greenhouse gas emissions is minor and that a reduction in emissions from its own territory makes little difference on a global scale. Acceptance of these defences would mean that a country could simply shirk its shared responsibility by pointing to other countries or to its small share in global emissions.

9.5. The ECHR confirmed this in 2024**160**: every state bears its own responsibility to take measures against climate change. That responsibility does not depend on what other states do or not do. Under treaty law, States are obliged to take measures against climate change and its consequences, even if the exact effect of those measures is not yet clear. The court therefore rejects the State's arguments in this case, which boil down to the fact that it is not sufficiently clear what impact the further reduction of greenhouse gas emissions by the Netherlands will have on climate change and its consequences for Bonaire. The State's actions or omissions are assessed against the requirements that may be imposed on its actions in climate cases, because from a human rights perspective, the State can be expected to do everything in its power and in accordance with international agreements to prevent further damage caused by climate change.

9.6. The relevant research findings and international agreements on climate change have been described in detail in the previous chapters. None of this is in dispute in this case. Against this background, the court will assess Greenpeace's claims. To this end, the assessment framework of the ECHR will first be examined in detail, followed by an assessment of the claims. The decision follows from this assessment.

10 The assessment: the assessment framework of Articles 2 and 8 ECHR

10.1. Greenpeace argues that the State has failed to fulfil its positive obligations under Articles 2, 8 and 14 of the ECHR and Article 1 of the Twelfth Protocol to the ECHR. According to Greenpeace, this failure constitutes a violation of those articles, is a breach of the standard of care and is therefore unlawful within the meaning of Article 6:162 of the Dutch Civil Code (BW). If the State has an obligation under the aforementioned provisions of the ECHR, it can be compelled to fulfil that obligation (Article 3:296 BW). This has already been confirmed by the Supreme Court in the *Urgenda* ruling.

10.2. The State argues that the ECHR provisions cited by Greenpeace are not suitable for review at group level, so that, according to the State, these provisions cannot be applied in an action initiated under the Settling of Large-scale Losses or Damage (Class Actions) Act such as this one. Furthermore, the State argues that Greenpeace has insufficiently substantiated that any failure on its part is so serious that it constitutes a violation of human rights and/or an unlawful act against the inhabitants of Bonaire.

10.3. The court will first assess whether – and if so, how – Articles 2 and 8 of the ECHR can be applied to climate-related claims in actions initiated under the Settling of Large-scale Losses or Damage (Class Actions) Act.

a. ***Articles 2 and 8 ECHR; general***

10.4. The ECHR obliges member states to guarantee their residents the rights and freedoms laid down in the convention. Article 2 of the ECHR protects the right to life; Article 8 of the ECHR protects the right to respect for private and family life.

10.5. According to case law of the European Court of Human Rights (ECtHR), a member state is obliged to take appropriate measures if there are specific risks to the life and well-being of its residents and the state is aware of those risks.**161** This is referred to as a 'positive obligation', as opposed to the (negative) obligation for member states to refrain from actions that violate the rights of citizens. Depending on the seriousness and urgency of the imminent danger, this obligation arises from Article 2 or Article 8 of the ECHR.**162**

10.5.1. In applying both provisions, it is taken into account whether the threat complained of arose from the conduct of the member state itself or from the conduct of others. As mentioned above, the positive obligation of member states to protect their citizens against dangers arising from the conduct of third parties only arises if the member state was aware (or should have been aware) of the danger to the complainants.**163**

10.5.2. If a member state is aware or should have been aware of a danger to the lives of its residents caused by third parties, its positive obligations under both Articles 2 and 8 of the ECHR essentially consist of two elements:

(a) the duty to provide a regulatory framework, and

(b) the obligation to take preventive operational measures.**164**

Both elements must be tailored to the specific characteristics of the third party's activity, in particular with regard to the potential level of risk. Member states must regulate the licensing, establishment, operation, security and supervision of that activity and require all parties involved to take practical measures to ensure the effective protection of citizens whose lives or well-being could be endangered by the risks inherent in that activity.**165**

10.6. The right to live and practise one's own culture as referred to in Article 27 of the ICCPR is also protected by Article 8 of the ECHR. The court will therefore not assess Greenpeace's claims separately against Article 27 of the ICCPR.

b. ***Specifically in climate cases***

10.7. In the *KlimaSeniorinnen* judgment of 9 April 2024**166**, the Grand Chamber of the ECHR listed its own case law and focused on the problem of climate change. The ECHR had also taken account of the most recent developments at that time; this concerned not only the situation in the world and the state of the art of scientific knowledge on climate change, but also the state of international law.

The judgment focuses on Articles 2 and 8 of the ECHR and clarifies – for the first time – how Articles 2 and 8 of the ECHR should be applied in climate cases from now on. As the Grand Chamber of the ECHR is the highest court for interpreting the ECHR, this court takes the legal framework set out in the *KlimaSeniorinnen* judgment as its starting point.

10.8. In the *KlimaSeniorinnen* judgment, the ECHR arrives at a special framework for climate cases because the assessment of complaints about violations of the ECHR related to climate change is so much more complex than the assessment in more traditional environmental cases. The ECHR explains this complexity in detail.**167**

10.8.1. The ECHR had previously ruled on environmental cases, but those cases concerned situations involving specific sources of environmental damage. In such cases, it is possible to determine with a reasonable degree of certainty who is exposed to that specific damage and where. The existence of a causal link between an identifiable source of damage and the actual harmful effects on groups of people can generally also be clearly established in such 'classic' environmental cases. The same applies to the measures that have been taken – or not taken – to reduce the damage from that particular source. In short, in the classic environmental cases in which the ECHR had ruled up to that point, it was possible to establish a link between the alleged damage, the source of that damage and those who suffered damage, and it was clear what measures could have been taken to limit the damage from that source.

10.8.2. The situation is different in climate cases. There is no single clear source causing the damage; damage caused by climate change occurs because greenhouse gases from many different sources accumulate in the environment, where they then cause changes as an accumulated whole. Many of these sources do not, when viewed separately, emit quantities of greenhouse gases that are directly harmful to humans; the harmful effects arise from the accumulation of greenhouse gases in the environment and the complex chain of reactions that then takes place. The complexity of this chain of reactions makes it impossible to predict exactly where and when these reactions will take place, how intense they will be, and therefore who will be affected by them.**168**

10.8.3. The accumulated total volume of greenhouse gases emitted worldwide causes global warming and climate change. This warming and climate change in turn lead to incidents or periods of extreme weather such as extreme heat waves, droughts, extreme rainfall, strong winds and storms, which in turn cause disasters such as forest fires, floods, landslides and avalanches. These consequences threaten human life and well-being and, in the longer term, even threaten to destroy the basis of food supplies and other livelihoods for people in the most severely affected areas. Entire populations around the world are already being affected, and even more people will be affected in the future; the way in which people will be affected and how serious the threats will be will vary from region to region. But it has long been known that many people around the world are and will be affected.**169**

10.8.4. Another special aspect of climate cases is that greenhouse gases are not only emitted during activities that are inherently dangerous or unnecessary. Agriculture, livestock farming, transport, construction, energy supply, housing and industry are basic elements of societies worldwide, but they do release greenhouse gases. The necessity of many of the activities that release greenhouse gases and the diverse nature of those activities make it difficult to take measures to limit emissions.

In order to limit the amount of greenhouse gases in the atmosphere, economies and lifestyles must be adapted. This can only be achieved through a comprehensive and profound transformation of various sectors in societies worldwide. A transformation of this magnitude requires highly complex and comprehensive sets of coordinated actions, policy measures and investments – in both the public and private sectors. Businesses and citizens will also have to bear some of the responsibilities and burdens themselves. Measures to combat climate change therefore inevitably raise issues of burden sharing – not only between different generations of people living today, but also between current and future generations.

In classic environmental issues, questions of this nature hardly ever arise, if at all.

10.8.5. Greenhouse gas emissions are therefore a problem with many causes, some of which are transboundary. Measures to limit greenhouse gas emissions cannot therefore usually be localised or limited to specific installations where harmful effects originate: climate change requires the commitment of governments worldwide. Here too, the fact that there are major differences between societies is a complicating factor; this applies not only to the social importance of the various sources of emissions and the measures needed to achieve effective mitigation, but also to (socio-)economic financial capacity.

While climate change poses existential risks to humanity as a whole *in the longer term*, the need to combat climate change *in the short term* leads to conflicts between the interests of citizens. In Europe, the weighing up of these conflicting interests must primarily take place in the democratic decision-making processes within the member states, supplemented by judicial review by national courts and the ECtHR.

10.9. Due to the fundamental differences between classic environmental cases and climate cases mentioned above, the ECtHR does not consider it appropriate to apply case law tailored to classic environmental cases directly to complaints related to climate change. In the *KlimaSeniorinnen* judgment, the Grand Chamber therefore focuses its own case law on the specific context of climate change. This leads – insofar as relevant to this case – to the following adjustments to the traditional approach, which the court will discuss separately below:

i. the starting point is that climate change poses a serious threat to human rights;

ii. adjusted requirements apply in climate cases to assess or cause to assess human rights violations;

iii. states have limited policy-making discretion with regard to the necessity and objectives of climate measures;

iv. but they have considerable policy-making discretion in choosing from effective climate measures;

v. each member state is responsible for its own share of the necessary measures.

i. *Starting point: climate change exists and can threaten human rights*

10.10. Like the Supreme Court**170**, the ECtHR**171**, after extensive consideration of the evidence, has concluded that since 1992 there has been sufficient reliable evidence that climate change caused by human activity exists, and that this climate change poses a serious threat to the enjoyment of human rights guaranteed under the ECHR (given the consequences mentioned in 10.8.3 and the damage that may result and has already resulted from it).

10.11. The ECtHR notes that the member states of the ECHR have also been aware of this serious threat for years and know that the risks will decrease if the global temperature rise is limited to 1.5 °C above pre-industrial levels. The ECtHR further notes that there is broad consensus among scientists and politicians internationally that insufficient mitigation efforts are currently being made worldwide to achieve the goal of a maximum global temperature increase of 1.5 °C. This lack of action is causing greenhouse gas concentrations to rise, and with them the risks to humans. The need to take effective mitigation measures is therefore becoming increasingly urgent.**172**

10.12. In recent years, the member states of the United Nations have repeatedly examined and confirmed the need for action, with an ever-increasing sense of urgency. The member states of the European Union have also done so at the EU level.**173**

10.13. The member states of the ECHR have also repeatedly acknowledged in various forums that there is convincing scientific evidence that climate change has been contributing to an increase in morbidity and mortality rates for some time, especially among certain vulnerable groups, and that this increase has the potential to become irreversible and catastrophic due to a lack of effective action.**174**

10.14. For all these reasons, the ECtHR takes as its starting point that there is a causal link relevant to the application of the ECHR between the causing or failure to tackle climate change by a member state and the consequences mentioned in Figure 5 (see 4.36) that individuals may experience as a result of climate change, and also that member states are aware of this.

ii. *Adjusted requirements apply in climate cases to assess or cause to assess human rights violations*

10.15. It is established in the case law of the ECtHR in classic environmental cases that the positive obligations of a member state only come into play when a risk to the complainant exceeds a certain threshold. There must also be a causal link between that risk and the alleged failure of the member state to fulfil its positive obligations.**175** In short, the complainant must demonstrate that and how his rights have been affected by specific actions or omissions on the part of a member state.

10.16. The ECtHR cites this classic case law in the *KlimaSeniorinnen* judgment and then considers that in climate cases, that threshold for (the victimisation of) a complainant and the content of a member state's positive obligation cannot be determined on the basis of a strict causal (conditio sine qua non) link.**176** If the classic causality requirements were to be upheld in climate cases, the complexity of the problem described above would mean that the rights of citizens enshrined in the ECHR could not be effectively guaranteed, despite the causes and severity of the dangers associated with climate change being recognised by the member states.

10.17. The ECtHR has found a solution in the way in which climate complaints can be submitted to the ECtHR: the threshold for individual victim status in climate cases is high ('*especially high*')**177**, but in the context of climate cases, it allows collective complaints, which is not permitted in other cases.**178** The logic behind this solution lies, among other things, in the fact that the consequences of climate change have already been studied internationally at the group level and are largely known.

10.18. This approach is in line with previous case law in which the ECtHR considered that where citizens in modern societies are confronted with particularly complex administrative decisions, the involvement of collective bodies is one of the most accessible means – and sometimes even the only means – available to them to effectively defend their interests.**179** This is all the more true for climate change, as it is a global and complex phenomenon with multiple causes. Its adverse effects are not the concern of one specific individual or group of individuals, but constitute "*a common concern of humankind*",**180** in which intergenerational burden sharing and the representation of vulnerable citizens are of particular importance.

10.19. From this decision by the Grand Chamber of the ECtHR in the *KlimaSeniorinnen* judgment, the court concludes that in climate cases, collective actions – and therefore at the collective level – it can also be assessed whether a member state has complied with Articles 2 and 8 of the ECHR.

Limited policy-making discretion with regard to the necessity and objectives of climate measures, and Considerable policy-making discretion in choosing from effective climate measures

10.20. The special nature of the climate change problem and the broad international consensus on the measures that governments worldwide must take also have consequences for the policy-making discretion available to member states when taking measures to combat climate change.

10.21. In short, the ECtHR considers that member states have only *a reduced margin of appreciation* in two key areas when it comes to measures to combat climate change, namely: 1) the need to take measures to reduce greenhouse gas emissions from their territory and 2) the targets to be pursued. Therefore, member states cannot decide that it is not necessary to take measures or to pursue less stringent targets. When it comes to choosing from possible measures, member states have *a wide margin of appreciation*.**181**

10.22. This wide margin of appreciation is, however, limited by the requirements that the measures chosen must a) be suitable for achieving the targets and b) actually be implemented.**182** The court will examine these requirements in more detail when assessing Greenpeace's claims against the requirements of Article 8 of the ECHR.

v. *Each member state is responsible for its own share of the necessary measures*

10.23. In the *KlimaSeniorinnen* case, the Swiss government drew attention to the fact that Swiss greenhouse gas emissions account for only a small proportion of total international emissions. The Swiss government argued that Switzerland could therefore not be held responsible for the global phenomenon of climate change.

The ECtHR ruled that Switzerland indeed cannot be held responsible for the international phenomenon of climate change, but that it is responsible for its share in taking measures to combat climate change. The measures expected of a state are determined by the agreements made by states in this regard within the UN context.**183**

In the context of climate change, the content of the assessment of the seriousness of the risk complained of and the question of whether the state concerned has taken sufficiently effective measures against that risk is also determined in part by the standards agreed by member states within the UN context.**184**

vi. *Overall assessment in climate cases*

10.24. On the basis of the above, the ECtHR has arrived at the following *overall* assessment to assess whether a member state has fulfilled its positive obligations under Article 8 of the ECHR when taking climate measures.

10.24.1. The primary duty of the member states in this context is to adopt legislation and take substantial, progressive measures that can mitigate the existing and future effects of climate change. Legislation must include binding intermediate targets for the period up to net zero emissions, and said legislation and other measures must also be effectively implemented in practice.**185**

10.24.2. The ECtHR distinguishes between three types of measures: mitigation measures, adaptation measures and procedural safeguards.

10.24.3. With regard to ***mitigation measures***, it is relevant whether the competent national authorities – the legislative, executive and/or judicial powers – have taken sufficient account of the need to:**186**

a. adopt general measures specifying a target timeline for achieving carbon neutrality in line with the overarching goal for national and/or global climate-change mitigation commitments;

b. set out intermediate GHG emissions reduction targets and pathways that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames;**187**

c. provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant targets;

d. keep those targets updated with due diligence, and based on the best available evidence; and

e. act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures.

The international mitigation obligations to which the ECtHR refers here are those laid down in the UN Climate Convention and the resulting further agreements between the member states.**188** When assessing whether there has been a violation of Article 8 of the ECHR due to non-compliance with requirements a. to e., all requirements must be assessed in conjunction with each other. This assessment is of an *overall* nature; a failure on one specific point does not necessarily lead to a finding of a violation of Article 8 of the ECHR.**189**

10.24.4. Where necessary, member states must supplement mitigation measures with ***adaptation measures*** aimed at alleviating the most serious or threatening consequences of climate change. Adaptation measures must be put in place and effectively applied in accordance with the best available evidence and consistent with the general rules for positive obligations of Member States referred to above under 10.5.2.**190**

10.24.5. Due to the interconnection between adaptation and mitigation policies and the fact that some measures serve both mitigation and adaptation targets, the court will in fact have to make an *overall* assessment of all mitigation and adaptation measures as a whole taken by the member state.**191**

10.24.6. Finally, when assessing whether the member state has remained within its margin of appreciation, it is also relevant that member states must observe two types of ***procedural safeguards*** when taking mitigation and adaptation measures:**192**

a. the relevant information, and in particular the conclusions of the relevant studies held by public authorities, must be made available to the public, and in particular to those persons who may be affected by the regulations and measures in question or the absence thereof; and

b. procedures must be available through which the views of the public can be taken into account in the decision-making process.

Obligation to furnish facts: the existence of a life-threatening danger/(a risk of) harm

10.25. As discussed above in 10.10 to 10.14, for the application of the ECHR, the courts assume in climate cases that there is a causal link between a member state causing or failing to tackle climate change and certain types of consequences that individuals are known to experience as a result of climate change. This means that complainants in climate cases do not have to argue or prove these elements in order to meet the threshold for the applicability of Articles 2 and 8 of the ECHR. Nor do complainants have to prove that remedying the alleged violation offers a real prospect of limiting the alleged damage.**193**

10.26. In the context of climate change, it is therefore up to the member state to argue (and, if necessary, prove) that there is *no* causal link between the conduct specifically complained of and the consequences known to affect individuals as a result of climate change.

viii. *High threshold for the application of Article 2 of the ECHR in collective climate cases*

10.27. What this means exactly for assessing whether there has been a violation of Article 2 or 8 of the ECHR in a specific case is not clear from the *KlimaSeniorinnen* judgment. The ECtHR only explicitly assessed the complaints in that case against the requirements of Article 8 of the ECHR, adding a few pointers for the assessment against Article 2 of the ECHR. The assessment under Article 2 of the ECHR is "to a large extent similar to"**194** (but not identical to) the assessment under Article 8 of the ECHR.

10.28. In addition, it is not clear from the ECtHR's considerations whether Article 2 of the ECHR can also be applied in collective actions. All things considered, the court understands the *KlimaSeniorinnen* judgment to mean that this is in principle possible in climate cases, but that the threshold for the applicability of Article 2 of the ECHR is high. This opinion is based on the following considerations.

10.28.1. Specifically with regard to the complaints of the interest group *Verein KlimaSeniorinnen Schweiz*, the ECtHR considers that Article 8 of the ECHR "*undoubtedly applies*", but that "*the applicability of Article 2 of the ECHR is more questionable*".**195** The ECtHR then found that the individual complainants did not meet the high threshold for victim status under Article 2 of the ECHR, but left this open in the case of the interest group.

10.28.2. Meanwhile, the detailed reasoning in §513 and the fairly concrete wording of §487 and §488 do provide guidance for predicting the circumstances that could lead the ECtHR to find a violation of Article 2 of the ECHR in future cases. In order to meet the threshold for the applicability of Article 2 of the ECHR, §487 and §488 stipulate that there must in any case be:

a. a high intensity of exposure of complainants to the adverse effects of climate change that threaten the lives of complainants; and

b. a pressing need to ensure the complainant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm.

These requirements are consistent with the established case law of the ECtHR on natural disasters such as mudslides and earthquakes, which has held that the obligation to protect life also applies when the right to life is threatened by a natural disaster, if the danger is acute and clearly identifiable.**196** If these requirements are met, it is possible, according to the ECtHR, to assume that a serious risk of a significant reduction in a person's life expectancy as a result of climate change – as argued by the plaintiffs in the *KlimaSeniorinnen* case – ought also trigger the applicability of Article 2 of the ECHR.**197**

10.28.3. In view of the international studies on climate risks for population groups cited by the ECtHR, the requirements set out in §487 and §488 can be better assessed at the collective level than at the individual level. Allowing collective complaints about a lack of commitment to mitigate these risks is consistent with the system set out by the ECtHR in §489 to §503 of its judgment.

10.28.4. The ECtHR ultimately assesses the complaint by *Verein KlimaSeniorinnen Schweiz* about the absence of action against the risks associated with climate change for the life expectancy of those affected not against Article 2 of the ECHR, but against Article 8 of the ECHR.

ix. *Obligation to furnish facts: damage (risk) to the represented group*

10.29. In collective actions, an interest group represents the interests of a group of people. Complaints may then be substantiated at group level; the interest group does not have to state and substantiate the risks run and/or the damage suffered by each individual stakeholder.

10.30. Within the framework of Article 8 of the ECHR, the ECtHR allows collective complaints because, based on the available scientific information – which is widely accepted as accurate internationally – it is clear that the entire world population is at least at some risk from climate change or has already suffered some form of damage that falls within the scope of Article 8 of the ECHR.**198** For types of risk and damage that are known to affect the group represented by the interest group, the obligation to furnish facts on interest groups is therefore limited.**199**

10.31. As mentioned above, the ECtHR provides little guidance on the application of Article 2 of the ECHR in collective actions. From the considerations set out above under 10.28 to 10.28.4, the court concludes that the ECtHR also applies different thresholds for the concept of victim status under Articles 2 and 8 of the ECHR in the context of climate change. One of these differences is the weight of the obligation to furnish facts and the burden of proof in relation to the seriousness and urgency of the risks to the life expectancy of the group of people represented by an interest group. For Article 2 of the ECHR to apply, the interest group will have to prove that there is an acute life-threatening situation, whereas for Article 8 of the ECHR to apply, it is sufficient that the life and well-being (or the enjoyment of other rights protected by Article 8 of the ECHR)**200** of that group are at risk in the long term.

11 The assessment: Greenpeace's claims

a. ***Assessing mitigation and adaptation measures as a coherent whole***

11.1. Greenpeace is seeking separate declaratory decisions with regard to the mitigation and adaptation measures taken by the State. However, it follows from the assessment framework for climate cases set out above that, in

answering the question of whether the State has fulfilled its positive obligations, the court must assess the climate measures taken *as a whole*. Mitigation and adaptation measures cannot therefore be viewed separately in this context.

b. ***Assessment against Article 8 of the ECHR, not Article 2 of the ECHR***

11.2. The court will assess the mitigation and adaptation measures taken by the State and the associated procedural safeguards in the manner described above under 10.24 to 10.24.6.

11.3. The court will assess these measures against Article 8 of the ECHR and not against Article 2 of the ECHR. The court is of the opinion that Greenpeace has not sufficiently argued that the State's failure to fulfil its positive obligations *at the collective level* could lead to the conclusion that there is an *acute* threat to the right to life of the inhabitants of Bonaire**201** as referred to in Article 2 of the ECHR. This opinion is based on the following considerations.

11.3.1. The court considers it sufficiently plausible that climate change already poses an increased risk of illness and mortality for certain groups in the Caribbean region;**202** the State has not disputed this either.

11.3.2. Both Article 2 and Article 8 of the ECHR offer citizens protection against dangers that threaten their lives. The difference between the provisions is that the protection afforded by Article 2 of the ECHR relates to *acute threats* to the lives of citizens, while *other threats* to their lives, life expectancy and/or health fall under the protection of Article 8 of the ECHR (see 10.28.2, 10.30 and 10.31).

11.3.3. Greenpeace argues that the inhabitants of Bonaire have been experiencing the increasing impact of climate change on their lives, well-being and living environment in various ways for many years. It also argues that the population of Bonaire is less able to protect itself than the population of the European Netherlands due to socio-economic circumstances.

However, Greenpeace has not explained that and how the inhabitants of Bonaire are so intensely exposed to the harmful effects of climate change *at a collective level* that *acute life-threatening situations* arise.**203**

Although it is very serious that in twenty-five years' time, significant parts of the island will most likely be inundated, this is not an acute life-threatening situation for 'the inhabitants of Bonaire' in general. The consequences for citizens will vary depending on where they live on the island, whether they are young or old, poor or rich, and whether they are healthy or have underlying medical conditions. The consequences (their nature, severity and extent) will also depend on the adaptation measures that will be taken in the coming years.

The same applies in this collective action with regard to the rapidly rising annual average temperature, which at 28.5 °C is indeed already very high.

11.3.4. Greenpeace's assertions – including those concerning the flooding of large parts of the island and the rapid rise in the average annual temperature – are sufficient to assume a possible violation of Article 8 of the ECHR. These arguments have not been contested by the State and the situations described pose – to varying degrees – a threat to the life, health, well-being and/or quality of life of the inhabitants of Bonaire. The court will therefore assess Greenpeace's claims against Article 8 of the ECHR.

c. ***Overall assessment of all measures taken by the competent authorities***

11.4. When assessing whether a member state has fulfilled its positive obligations under the ECHR towards a citizen, the court must take into account all the measures taken by the competent authorities.**204** It is irrelevant how a member state has divided its powers and responsibilities internally in order to fulfil its obligations: this is not dictated by the ECHR**205** nor is it regulated by the Paris Agreement.**206**

The downside of this wide margin of appreciation is that member states cannot invoke (the limitations of) their internal state structure to defend themselves against complaints of violations of the ECHR.

Mitigation measures

i. *Positions of the parties*

11.5. Greenpeace believes that the targets set by the State clearly do not meet the requirements of the UN Climate Convention and the additional agreements subsequently made by the member states.

11.5.1. Firstly, according to Greenpeace, Dutch climate policy does not meet several ambition requirements, namely because (i) it is based on *grandfathering*; (ii) the mitigation policy does not take historical emissions into account; and (iii) it does not meet the lower limit of the Dutch *fair share*, which, according to the widely supported consensus, is determined by a so-called *equal per capita* distribution of the remaining global 1.5 °C carbon budget.**207**

11.5.2. Secondly, according to Greenpeace, Dutch climate policy does not meet several requirements that are necessary to ensure that climate targets are actually achieved. These relate to the obligations to (iv) quantify emission allowances by establishing a national carbon budget; (v) to lay down mitigation measures in binding national legislation and to set intermediate targets, and (vi) to provide sufficient substantiation on how the climate policy contributes to a *fair share* of the 1.5 °C target.**208**

11.6. The State is of the opinion that it does meet the positive obligations incumbent upon it under Articles 2 and 8 of the ECHR, also in view of the *KlimaSeniorinnen* judgment.

11.6.1. Firstly, according to the State, the Paris Agreement does not contain emissions reduction targets for individual parties to the agreement: countries determine their own mitigation targets and set a '*Nationally Determined Contribution*' (NDC) for this purpose. Furthermore, the EU and its member states have opted for a joint approach to climate mitigation, so that, according to the State, the Netherlands no longer needs to set its own NDC.**209**

11.6.2. The EU's NDC includes an emission reduction target of at least 55% by 2030 relative to 1990, and a net zero emissions target for 2050. These targets are also laid down in a regulation: the European Climate Law. These targets will be achieved through both EU-wide and national measures.

11.6.3. In addition, the Dutch Climate Act sets a target of reducing national greenhouse gas emissions by 55% by 2030 relative to 1990 levels. For 2050, the Dutch Climate Act includes a target of net zero greenhouse gas emissions.

11.6.4. Both Dutch and European climate legislation include monitoring and adjustment mechanisms that ensure that progress is tracked and, if necessary, policy adjustments are made to achieve the legally established targets.

11.6.5. The State further takes the position that it has quantified its emission allowance, although not by means of a national carbon budget, which is also not necessary according to the State. For the period up to 2030, the emission allowance has been quantified by means of (a combination of) the EU ETS1 and EU ETS2**210**, the ESR Regulation**211** and the LULUCF Regulation**212**; these are the instruments aimed at meeting the climate targets at EU level. Based on the Governance Regulation**213**, the State is required to provide insight into the extent of these emissions; reports are made on the emissions of companies that fall under the ETS. It is important to note that the ETS system will be expanded to ETS2**214** in 2028. At that point, 80% of emissions will be covered by this system.

The EU ETS1, EU ETS2, the ESR Regulation and the LULUCF Regulation quantify the emission allowance for the EU until 2030;**215** for the quantification of the emission allowance up to and including 2050, the State refers to the indicative greenhouse gas budget drawn up by the European Commission on the basis of Article 4 of the EU Climate Law, which was published at the same time as the opinion of the European Scientific Advisory Board on Climate Change in February 2024.**216**

ii. *Summary of the legal framework for mitigation*

11.7. In summary (see also 10.24.3), in order to fulfil its positive obligation under Article 8 of the ECHR, the State must:

a. adopt general measures specifying a target timeline for achieving carbon neutrality in line with the overarching goal for national and/or global climate-change mitigation commitments (namely the UN Climate

Convention and the further agreements between Member States based on the Convention);

b. set out binding intermediate GHG emissions reduction targets and pathways that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames, for the entire period up to net zero emissions;

c. provide evidence showing whether it has duly complied, or is in the process of complying, with the relevant targets;

d. keep those targets updated with due diligence, and based on the best available evidence; and

e. act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures.

11.8. Although the UN Climate Convention and the agreements based on it do not directly apply to the BES islands, these regulations do reflect the international consensus on the obligations that states have towards their citizens in the context of climate change.**217** That is why the court is also assessing Greenpeace's claims against these regulations.

11.9. The UN Climate Convention and the agreements based on it contain the following obligations relevant to these proceedings for Annex I countries such as the Netherlands:**218**

11.9.1. Member states must be climate neutral by the second half of this century.**219**

11.9.2. Member states should aim to limit global temperature rise to a maximum of 1.5 °C.**220** In 2022, member states believed that this would require a 45% reduction in global CO_2 emissions by 2030 relative to 2010 levels and net zero emissions by the middle of the century, as well as 'deep reductions in other greenhouse gases'.**221** In 2023, the interim target for 2030 was revised to a 43% reduction in emissions of *all* greenhouse gases relative to *2019* levels.**222**

11.9.3. The IPCC's '*First Global Stocktake*' showed that member states were lagging behind in implementing their commitments to date, meaning that they would have to make additional efforts to catch up. This means that all member states must adjust their nationally determined contributions to the further agreements arising from the Glasgow Climate Pact and the *Sharm el-Sheikh Implementation Plan*, and the results of interim evaluations.**223** Annex I countries such as the Netherlands must also take the lead in reducing greenhouse gas emissions, given their past and their socio-economic advantage (partly acquired due to their past).**224**

11.9.4. The current state of affairs is therefore that Annex I countries must reduce their greenhouse gas emissions by at least 43% by 2030 relative to 2019 levels and to net zero by around 2050. These targets represent the *lower limit* of the commitments for Annex I countries, as they had to step up their efforts when it became clear from the *First Global Stocktake* that their efforts at that time were insufficient to keep the target of limiting global warming to 1.5 °C within reach.**225**

11.10. Furthermore, the UN Climate Convention and the further agreements based on it contain a number of specific administrative, communication and publication obligations.

11.10.1. Particularly relevant to this case is the obligation to compile a national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases and to submit it to the COP Secretariat,**226** and the obligation to compile a list of national and regional programmes of climate measures, focusing on anthropogenic emissions by sources and removals by sinks of all greenhouse gases.**227**

11.10.2. Annex I countries must update these inventories annually, make them public and submit them to the COP Secretariat.**228** The inventories must – like all other publications and communications under the UN Climate Convention – meet the requirements of transparency, accuracy, completeness, comparability and consistency.**229**

11.10.3. Member states must also have a national system for estimating anthropogenic emissions by sources and removals by sinks.**230**

11.10.4. The treaty provisions referred to here are binding obligations to achieve specific results.**231** The information provided by member states (and its quality and comparability) is essential for the functioning of the UN Climate Convention, among other things to keep track of global developments and adjust joint efforts where necessary, and to check whether member states are fulfilling their obligations (sufficiently).**232**

11.11. The State's compliance with the aforementioned obligations must be assessed on the basis of whether it has exercised due care and made every effort to the best of its ability, using all means at its disposal to fulfil those obligations.**233**

iii. *Assessment of mitigation*

11.12. Against this background, the court finds that the State's climate policy in the area of mitigation has a number of shortcomings and raises questions on several points.

11.13. Firstly, this concerns the reduction targets in the Dutch Climate Act.

11.13.1. In 2019, the State laid down the national climate targets in the (first) Dutch Climate Act. At that time, the Paris Agreement had already been concluded, whereas the *Glasgow Climate Pact* and the *Sharm-el-Sheikh Implementation Plan* were not yet concluded. At the time of the entry into force of the Dutch Climate Act 2019, there were therefore no treaty rules yet that obliged the State to set specific emissions reduction targets. However, Annex I countries were already required to include absolute emissions reduction targets for the entire economy in national legislation and to strive to achieve climate neutrality by the second half of this century. The Dutch Climate Act 2019 (see Article 2(1) of that Act, cited in 6.1) complied with the requirement in Article 4(1) of the Paris Agreement to strive for climate neutrality. However, the Act only contained 'a framework for the development of policy aimed at the irreversible and gradual reduction of greenhouse gas emissions in the Netherlands' (Article 2(1)) and required the ministers concerned to *strive* for a 49% reduction in emissions by 2030 and completely CO2 neutral electricity production by 2050 (Article 2(2)). The Act therefore does not contain any absolute emissions reduction targets and therefore did not comply with Article 4(4) of the Paris Agreement.

11.13.2. In 2023, the State tightened Article 2 of the Dutch Climate Act. At that time, the *Glasgow Climate Pact* and the *Sharm-el-Sheikh Implementation Plan* were also part of the UN climate regime. Annex I countries were therefore also obliged to reduce their emissions of all greenhouse gases by at least 43% compared to 2019 levels by 2030, and to net zero by 2050.

Article 2(1) of the Dutch Climate Act 2023 explicitly and unconditionally states that the Netherlands must be carbon neutral by 2050 at the latest; this provision therefore meets the requirements of an absolute emission reduction target and climate neutrality in 2050.**234**

Article 2(2) of the Dutch Climate Act 2023 does not meet these requirements. This is firstly because this provision designates 2030 as a target date.**235** The Dutch Climate Act 2023 therefore does not provide for the intermediate 'absolute emission reduction target for the entire economy' as referred to in Article 4(4) of the Paris Agreement.**236** The provision also deviates from the European Climate Law, which does prescribe a binding intermediate reduction target for 2030.**237** Secondly, the target for 2030 in the Dutch Climate Act does not correspond to the target set out in the *Glasgow Climate Pact* and the *Sharm-El-Sheikh Implementation Plan*. The Dutch Climate Act – like the European Climate Law**238** – is based on a 55% reduction in emissions in 2030 relative to ***1990*** levels, rather than compared to ***2019*** levels as required by current UN standards.

11.13.3. Although the Dutch and European targets appear similar to the UN standard at first glance, they are actually based on different parameters, including different reference years and different emission sources included in the calculations.**239**

For example, the UN standard also includes emissions from aviation and shipping. Although it is known that emissions from these sources are significant in the Netherlands due to the presence of internationally important hubs such as Schiphol Airport and the Port of Rotterdam,**240** emissions from these sources are not included, or not fully included, in the Dutch targets.**241** The European targets only partially include emissions from these sources.**242** This is at odds with Article 3(3) of the UN Climate

Convention, which stipulates that climate policy and measures must cover *all* economic sectors and (the adaptation of) all relevant sources, sinks and reservoirs of greenhouse gases. Such differences also complicate monitoring by civil society organisations and the courts, which is at odds with the obligation to ensure maximum transparency in all reports submitted to the COP**243** and the obligation to inform the citizens concerned about the climate policy pursued.**244**

The foregoing is a strong indication that both the Dutch and European reduction standards are indeed – as Greenpeace claims – lower than the UN minimum standards for Annex I countries. On the basis of what the State has argued in this case, it cannot be established that this is not the case.

11.13.4. Contrary to what the structure of Greenpeace's claims seems to assume, not every shortcoming in a national climate policy constitutes a violation of the positive obligations on the State under Article 8 of the ECHR.**245**

Greenpeace rightly points out that Annex I countries such as the Netherlands have committed themselves to making greater efforts overall than the minimum required of average and less developed member states. However, Greenpeace fails to recognise that the State can also make these additional efforts in ways other than by reducing its own greenhouse gas emissions more quickly or by more than the agreed minimum percentage. For example, the State may choose to provide additional support to other countries in reducing their emissions or in taking adaptation measures. In any case, UN member states have a considerable margin of appreciation in choosing the additional efforts they must make.**246** This choice is influenced not only by past emissions, but also by the resources available to a member state and the other circumstances in which the member state finds itself at that time.**247** The court will exercise restraint in this regard.

The fact that the State does not reduce its own greenhouse gas emissions more quickly and/or by more than the percentage agreed within the UN context does not in itself constitute a breach of its positive obligations.

11.13.5. However, contrary to what the State appears to take as a starting point in its defence, it may well carry weight in the *overall* assessment in the context of Article 8 of the ECHR if, in exercising its margin of appreciation, it opts to a significant extent and/or on important points for principles or methods that, although not prohibited, are nevertheless controversial internationally.

An example of this is *grandfathering*: developed countries taking too little account of their own past emissions, for example by appropriating a disproportionately large share of the remaining global emissions budget.**248** This point is relevant in this case because the State acknowledges**249** that *grandfathering* is a controversial method and because the Ministry of Finance warned in September 2023 that the Netherlands' remaining carbon budget would be exceeded within two years.**250** Against this background, the State has not sufficiently contested that the current Dutch climate policy is based on emissions per capita that are significantly higher than the global average carbon budget per capita.**251** Why this is equitable within the meaning of Article 3(1) of the UN Climate Convention and Article 4(1) of the Paris Agreement, and how this fits in with both the leading role that Annex I countries must play and the principle of intergenerational justice, requires explanation. However, the State has not provided this explanation. The court also considers this to be a negative factor.

11.14. Secondly, this concerns the implementation of climate measures.

11.14.1. The parties agree that it is "*highly unlikely*" that the Netherlands will achieve its own targets. There is a "*less than 5% chance*" of achieving its own target for 2030, which is probably already too low, and if the (implementation) policy is not tightened up, the target for 2050 will also be out of reach.**252** Given the current state of policy, the State will not achieve its own mitigation targets for 2030 and 2050.

11.14.2. However, for the period from 2030 to 2050, there are still no concrete, coherent instruments aimed at achieving the reduction targets agreed within the UN context. The Netherlands therefore does not meet the requirement referred to in 11.7 that there must be a binding regulatory framework with intermediate targets and pathways for the agreed reduction of carbon emissions for the *entire* period until climate neutrality is achieved.

11.15. Thirdly, the State has not clearly quantified how much emission allowance the Netherlands still has as part of the global emission budget that remains to limit global warming to 1.5 °C. The State should have done this in some way.

11.15.1. Greenpeace argues that the State is obliged to quantify the remaining emission allowance for the Netherlands by drawing up a national carbon budget that is linked to the global carbon budget that remains to limit global warming to 1.5 °C. It is true that the UN Climate Convention and the further agreements based on the Convention oblige member states to quantify in a transparent manner how their regulations and policy measures (and their implementation) relate to the agreed minimum standards and their own climate targets (see 11.10-11.10.4). Member states will therefore have to provide insight into the total net greenhouse gases emitted from their territory during the accounting period and also how this total relates to the remaining global carbon budget. However, UN law does not oblige member states to do this specifically by means of a national carbon budget.

11.15.2. In its *KlimaSeniorinnen* judgment, the ECtHR also deduces from the UN conventions that member states must quantify the limits to their emissions over a certain period in the future, but leaves it up to member states to decide whether they want to do this '*through a carbon budget or otherwise*'.**253**

11.15.3. Contrary to Article 12(8) of the UN Climate Convention, the EU has not submitted a breakdown of emission budgets per member state to the UNFCCC for the current administrative period;**254** and it is not clear from the previous NDC**255** what carbon budget the EU is assuming. In view of Article 4(16) of the Paris Agreement**256**, in this regard the Netherlands cannot refer to EU communication for the fulfilment of its own obligations.

11.15.4. The State has mentioned policy instruments that limit Dutch emissions, but these instruments do not cover total national greenhouse gas emissions; from 2027 onwards, they will cover 80% of Dutch emissions. Furthermore, these instruments are aimed at achieving the objectives of the European Climate Law; in view of the considerations set out above under 11.13.3 and 11.15.3, it is not clear that the climate objectives at EU level meet the UN minimum standards.

11.15.5. The policy instruments mentioned by the State do not provide for reduction plans and measures for the period after 2030; nor do they quantify Dutch emissions for the period between 2030 and 2050. This is at odds with the State's obligations under Article 4 of the Paris Agreement (including paragraphs 4, 8 and 19). During the oral proceedings, the State stated that political agreement on such policy instruments had been reached very recently, but no information on this was presented to the court. The court therefore also considers this point to be negative, on the understanding that its judgment does not relate to any new policy instruments.

11.15.6. In this context, it is also relevant that in September 2023, the Ministry of Finance concluded that the Netherlands' remaining carbon budget would already be exceeded in the next two years. This fact casts a negative light on the lack of a clear quantification of the Netherlands' remaining emissions budget.

11.16. As an aside, the court notes that if the EU's contribution does not meet UN standards – which appears to be the case on at least two important points**257** – the Netherlands must submit its own NDC in accordance with Article 4(16) to (18) of the Paris Agreement.

iv. *Interim conclusion on mitigation measures*

11.17. The court finds that, in the past, Dutch legislation in the field of mitigation failed to meet the minimum standards agreed within the UN context on important points, and that current legislation also fails to meet these standards on important points.

Adaptation measures

i. *Arguments of the parties*

11.18. According to Greenpeace, vis-à-vis the inhabitants of Bonaire the State is not complying with the standard of due care that states must observe when taking adaptation measures. In summary, Greenpeace substantiates this as follows.

11.18.1. Greenpeace refers to the research studies mentioned in Chapter 4, which show that the inhabitants of Bonaire have been suffering increasing damage from climate change for many years, ranging from an

increased risk of mortality, heat stress and other health problems; damage to agriculture due to persistent drought; damage to infrastructure due to drought, flooding and other forms of extreme weather.

11.18.2. The research also shows that a large part of Bonaire will be inundated in twenty-five years' time, and studies by UNICEF and others show that this prospect is causing great concern among the island's inhabitants. Greenpeace calls for special attention to the younger generation of Bonaireans, who have to live with the uncertainty of whether – and if so, how – they will be able to shape their future on the island.

11.18.3. According to Greenpeace, it follows from Article 4 of the UN Climate Convention, Article 7(9) of the Paris Agreement, the *KlimaSeniorinnen* judgment of the ECtHR, the Advisory Opinion of the ICJ and the case law of the Inter-American Court of Human Rights (IAHRM) that there is international consensus that the State has an obligation to take timely action to:

a. conduct thorough research into climate risks, or have such research conducted, and this research must form the basis for the national adaptation plan; the research must pay particular attention to '*vulnerable people, places and ecosystems*';

b. draw up a national adaptation plan with a clear adaptation objective;

c. ensure the effective implementation of that adaptation plan, including by providing sufficient technical and financial resources;

d. pursue an integrated adaptation policy that effectively takes into account all the risks associated with climate change and effectively helps to build resilience;

e. provide a system for monitoring and evaluating the adaptation policy;

f. always integrate a human rights perspective, including the principle of non-discrimination, into (the implementation of) climate policy.

According to Greenpeace, the State has failed to meet these requirements for Bonaire.

11.18.4. According to Greenpeace, the State has failed to do all this for the inhabitants of Bonaire, or has not done so in a timely manner, while it has been developing, implementing, monitoring and tightening up an integrated adaptation policy for the European Netherlands since around 2010 and has structurally been making resources available.

11.18.5. The State should have done this for the inhabitants of Bonaire all the more because the island falls under the categories of vulnerable areas that are '*particularly affected*' by climate change and therefore have '*specific needs and concerns*'. According to Article 4(8) and (9) of the UN Climate Convention, member states must give special attention ('*full consideration*') to these areas.

11.19. The State takes the position that it does indeed pursue an adequate and timely adaptation policy to protect the inhabitants of Bonaire from the effects of climate change. In summary, the State makes the following points in this regard.

11.19.1. The State points out that Bonaire was part of the Netherlands Antilles until 2010. Climate (adaptation) policy was a matter that was handled independently by the Netherlands Antilles, but was not a priority for the Netherlands Antilles. The State is not aware of any specific climate adaptation measures taken by the Netherlands Antilles on Bonaire before 2010. Since Bonaire became part of the country of the Netherlands as a public body, the tasks in the field of climate adaptation have largely been joint government tasks and powers. This means that the State creates frameworks with laws, plans and programmes within which the OLB must or can make and implement policy or plans. In the absence of national regulations obliging the OLB to draw up a local climate (adaptation) plan, the drafting of such a plan is an autonomous power of the OLB.

11.19.2. However, climate change is not an isolated issue; it is part of issues such as spatial planning, water management, nature conservation and protection, the environment and health. The State has tasks in these areas that are also relevant to climate adaptation, for example in the field of spatial planning (Wgro BES, Wet VRO BES), nature conservation (Wgnb BES) and maritime management (Wmb BES).

11.19.3. In the initial period following the political changes of 2010, the State was reluctant to introduce new legislation. On the one hand, this was to allow people to get used to the changes and to create a sense of calm, and on the other hand, it was because the local authorities and civil service lacked the people and resources to cope with too many changes at once. This was also agreed with the BES islands. From 2019 onwards, the principle of *comply or explain* applies, which means that all policy intensifications for the European Netherlands and the resulting legislation and/or financial consequences apply to the BES islands, unless there are reasons not to do so.

11.19.4. With the spatial development programme for the Caribbean Netherlands of July 2024, the State has provided frameworks for its own island development plan to Bonaire. The spatial development plan pays extensive attention to climate adaptation, such as good water management and protecting crucial and sensitive facilities from the effects of climate change by means of spatial choices. Furthermore, the State supports the OLB with crisis management and invests in (international) cooperation and in climate adaptation-related policies, such as energy transition and socio-economic policy.

11.19.5. Pursuant to Articles 211 and 212 of the WolBES, the State must promote the discretionary power of the island administration and decentralisation for the benefit of the public bodies. The State may supervise the tasks assigned to the OLB and may intervene, but it must exercise restraint in view of the constitutional relationship. The State may only intervene in the event of neglect of joint government tasks or gross neglect of autonomous tasks by the OLB. The fact that climate adaptation measures have been adopted and implemented less quickly on Bonaire does not in itself constitute a neglect of duties or gross neglect of duties. Greenpeace has not claimed this either. At present, there is no legislation or regulation in the European Netherlands that makes climate adaptation policy mandatory for local authorities.

11.19.6. The State is aware that it has a duty to ensure the fundamental human rights of the inhabitants of Bonaire are realised, including protection against the effects of climate change. The State points out that it is doing so. At the national level, it is working on a national climate adaptation strategy (the NAS 2026), which includes the Caribbean Netherlands. At the local level, a climate plan for Bonaire is being developed. Although this is an autonomous task of the OLB, the State supports the OLB with financial resources (including by funding climate research and the Bonaire Climate Table project group), knowledge exchange and implementation capacity. The Bonaire Climate Table project group is also already working on preparing an integrated climate plan for Bonaire.

11.19.7. The State recognises that Bonaire's culture is expected to be affected by climate change, but according to the State, those effects are not yet apparent. The alleged effects on agriculture, fishing and cultural festivals on Bonaire are difficult to measure, according to the State. According to the State, Greenpeace has not proven that there is already an actual impact on the right to culture on Bonaire. Moreover, numerous measures are being taken to protect Bonaire's cultural heritage. The State refers to the Cultural Covenant, which has been elaborated in a cultural agenda and the BES Monuments Act, and various measures to preserve the traditional nature and marine environment. The IVM report submitted by Greenpeace also concludes that there is currently no real impact on '*tangible cultural heritage*' and that '*impact of climate change on* [intangible cultural heritage, added by the court] *is uncertain and difficult to predict*'.

11.19.8. According to the State, it is inappropriate to compare the climate (adaptation) measures taken on Bonaire with those taken in the European Netherlands. The European Netherlands has a longer history of flood control measures because a significant part of the European Netherlands lies below sea level. This is not the case for Bonaire. The Delta Act, the Delta Programme and the Water Act therefore do not apply to Bonaire. Geological differences also mean that climate adaptation on Bonaire requires a completely different approach than climate adaptation in the European Netherlands. The State therefore endorses the *key risks* identified by the IPCC for small islands and is taking adaptation measures to mitigate these risks, including ensuring the preconditions that are important for climate adaptation to succeed: sufficient financial resources, availability of data and knowledge, and community involvement in adaptation.

11.19.9. With regard to scientific research into climate change on Bonaire, the State notes that data collection within the Netherlands Antilles was inadequate. This continues to have an impact on the availability of

data on Bonaire. The State is working hard to improve this situation; since 2016, the KNMI has been conducting research into weather and climate on the BES islands. Although the research conducted by the KNMI since then shows that Bonaire is already experiencing the effects of climate change and will experience even more in the future, the State emphasises that the speed and extent to which these effects will occur on Bonaire are uncertain. This information is relevant in order to assess which adaptation measures are needed and when. The State is therefore funding several studies, including those by HKV (Risk profiles for flooding on the BES Islands)**258** and by Witteveen+Bos (Climate change and adaptation efforts BES islands).**259**

11.19.10. Finally, the State points out that it has a wide margin of appreciation when choosing adaptation measures.**260**

ii. *Legal framework for adaptation*

11.20. Since 1992, the UN Framework Convention on Climate Change has required member states to draw up national programmes for "*measures to facilitate adequate adaptation to climate change*". Member states must then implement, publish and regularly update these programmes.**261** When drawing up and implementing these programmes, member states must use appropriate methods; the UN Climate Convention cites the preparation of national environmental impact assessments as an example of such an appropriate method.**262**

Member States must also take into account the specific needs and interests of areas that are particularly vulnerable to the adverse effects of climate change, such as small island states, countries with low-lying coastal areas and areas susceptible to forest degradation.**263** Annex I countries have an obligation to assist these vulnerable areas; while this obligation is binding, it allows member states a wide margin of appreciation as to how that assistance is provided.**264**

UN member states have subsequently emphasised and reinforced these obligations on several occasions, including in the 2004 *Buenos Aires programme of work on adaptation and response measures* van 2004**265** and the 2010 *Cancún Adaptation Framework*.

11.21. The agreements on taking adaptation measures were further tightened in 2016 in the Paris Agreement. In this agreement, the member states not only emphasised the necessity and urgency of taking adaptation measures, but also the need to report transparently on the efforts they have made and the effects their efforts have had. Article 7(9) of the Paris Agreement therefore contains binding obligations for member states to draw up a planning for adaptation measures.**266** Article 7(10) of the Paris Agreement contains a binding obligation to submit an updated adaptation communication in which member states report on the planning and implementation of their national adaptation measures, and to update that communication regularly.

11.22. In the 2023 *United Arab Emirates Framework for Global Climate Resilience* these adaptation goals have been specified by formulating the following'*targets'* **267**:

11.22.1. By **2027**, all member states must have established '***multi-hazard early warning systems***' and climate information services for systematic observation in order to gather better climate-related information

11.22.2. By **2030**, all member states must have carried out up-to-date ***impact and risk assessments*** of climate risks, the consequences of climate change and the vulnerabilities relevant to their territory, and must have used the results to formulate national adaptation plans, policy instruments and planning processes and/or strategies.

11.22.3. By **2030**, all member states must have a ***national adaptation plan***, an integrated adaptation policy and related planning processes that cover all ecosystems, sectors, people and vulnerable communities within their territory. These plans, policies and related instruments must be transparent and developed with the participation of the citizens and organisations concerned.

11.22.4. By **2030**, all member states must also have made progress in **implementing** their national adaptation plans, policies and strategies and must have reduced the social and economic impacts of the main climate risks identified in the aforementioned *impact and risk assessments*.

11.22.5. Finally, by **2030**, all member states must have established a ***system*** to ***monitor, evaluate and learn from the outcomes*** of their national adaptation efforts, including the institutional capacity to fully

implement this system.

iii. *Assessment of adaptation*

11.23. The court finds that the State's climate policy in the area of adaptation with regard to Bonaire had significant shortcomings in the past, but that the actions recently taken by the State appear to still make it possible to achieve the adaptation targets referred to in 11.22-11.22.5.

11.24. Firstly, the court considers it a negative factor that there is still no climate adaptation plan or integrated climate adaptation policy for Bonaire, even though it has been known for three decades that the island is particularly vulnerable to the negative effects of climate change.

11.24.1. Although the UN Climate Convention and the further UN agreements based on it do not yet apply directly to the BES islands (despite the government's intention, expressed in 2016, to arrange for this to happen**268**), but as an Annex I country, the State has repeatedly and explicitly committed itself since 1992 to assisting small islands and other vulnerable areas in protecting themselves against the negative effects of climate change. This too**269** influences the content of the duty of care that the State has towards its own citizens living on small islands.

11.24.2. Although parties differ in their views on the extent to which this is the case, it is clear that the inhabitants of Bonaire have been experiencing the negative effects of climate change for many years and to an increasing degree (see 4.14-4.31).

Furthermore, it is not disputed that by 2050, a significant part of the low-lying areas of Bonaire will most likely be inundated and that a large part of the buildings and Bonairean cultural heritage are located in precisely those parts of the island.**270** During COP28, the State, also on behalf of the Caribbean Netherlands, drew attention to the particular vulnerabilities of *Small Island Developing States* (SIDS).**271**

Nevertheless, there is still no climate adaptation plan in place for Bonaire, nor is there an integrated climate adaptation policy.

11.24.3. A project group has been set up to develop a climate adaptation plan (the Bonaire Climate Table project group), but the outcome of this project group will not be a climate adaptation plan. The Climate Table's task is to identify the views and interests in the field of climate mitigation and adaptation and, based on these, to propose measures to the Executive Council of the OLB. The project group's proposals must then be laid down in the Bonaire Climate Intention and further specified in the Climate Plan.**272** This is a meaningful process in which the obligation referred to in 10.24.6 to offer opportunities for participation of citizens who may be affected by the proposed measures (or the lack thereof) can be fulfilled. However, it is still unclear how long it will take before a concrete climate adaptation plan is in place.

11.24.4. The fact that nothing concrete can yet be said about the timeline is difficult to reconcile with the urgency of implementing a coherent and comprehensive adaptation policy for Bonaire. Since the early 1990s, it has been clear that the inhabitants of small islands worldwide are at above-average risk of experiencing serious negative consequences of climate change in the relatively short term. For more than a decade, it has been clear that climate change no longer only poses future risks for small islands in the Caribbean, but that their inhabitants are already suffering actual damage to their health, material damage and immaterial damage as a result of climate change (see paragraphs 4.1 and 4.2 of this judgment). It was also clear well before 10-10-10 – and in any case since the Round Table Conference**273** and the 2005 Outline Agreement**274** – that Caribbean government institutions did not have sufficient knowledge and resources to tackle complex and far-reaching problems such as climate change.**275**

11.24.5. Nevertheless, it took until the Nijpels advisory report in 2023 ('It is never too late') for the State to take concrete steps towards a coherent and integrated climate policy for the Caribbean Netherlands.**276** Although the steps now being taken appear appropriate to the court, it cannot be said that they were taken in a *timely* manner.

This assessment takes into account the fact that the European Netherlands has been working on a climate adaptation plan and an integrated adaptation policy since around 2006. Since 2016, the European

Netherlands has had a National Adaptation Strategy, which has been implemented and is continuously monitored and refined. This shows that the State has been aware of its obligations regarding climate adaptation for almost two decades, but that it has not paid the same attention to the inhabitants of the BES islands as it has to the inhabitants of the European Netherlands. The court will discuss this difference in attention in more detail below in 11.37-11.47.

11.24.6. The State has four years left to achieve the 2030 *targets* from *Decision 2/CMA.5 (Global goal on adaptation)* referred to in 11.22.2-11.22.5. The process initiated with the Bonaire Climate Table project group could ultimately lead to a climate adaptation plan and integrated climate adaptation policy for Bonaire. For the time being, therefore, the *targets* referred to have not been breached.

11.25. Secondly, the court considers it a negative factor that there is insufficient scientific research available on the course of climate change on and around Bonaire and on the precise consequences this has and will have for the inhabitants of the island. Such research on Bonaire has only been conducted since around 2017, so the quality and completeness of the available information still lags behind that available for the European Netherlands.

However, the BES islands have now been included in ongoing programmes run by the KNMI (Climate Scenarios) and the PBL (the KEVs). The State has already commissioned the IVM to draw up updated elevation maps of the island, which are necessary to accurately assess climate risks and to be able to make adequate adaptation plans. From the discussion during the oral proceedings, the court understands that the research is ongoing.

The future therefore promises to hold structural progress in the quality of climate data available for the BES islands and in the monitoring and evaluation of (the implementation of) climate-related policy. The *target* for 2027 referred to in 11.22.1 therefore also appears to be achievable. The court considers this to be a positive factor for the future.

11.26. Thirdly, the court considers it a negative factor that no financial resources have been made available for the implementation of the second phase of the adaptation-related nature policy that has been in place for the Caribbean since 2020 (the NMBP 2020-2030), so that it is unclear how this part of the policy can be effectively implemented. No funding has yet been arranged for the implementation of the policy covered by the NMBP after 2030;**277** the court also considers this to be a negative factor.

11.27. The State has defended itself by arguing that the drafting and implementation of adaptation policy is a power that belongs to the OLB. However, this does not detract from the fact that the State is ultimately responsible**278** for guaranteeing the fundamental rights of the inhabitants of Bonaire (see 11.4).

iv. *Interim conclusion on adaptation*

11.28. In view of the above, the court finds that, with regard to the past, the State failed to sufficiently (and timely) fulfil its duty of care to take appropriate adaptation measures in a timely manner to reduce the vulnerability of Bonaire and its inhabitants to climate change.

11.29. With regard to the future, it is still possible that the *targets* of *Decision 2/CMA.5 (Global goal on adaptation)* referred to under 11.22.1-11.22.5 will be achieved and that the requirements of Article 7 of the Paris Agreement will still be met.

f. ***Procedural safeguards***

11.30. When assessing whether the State has remained within its margin of appreciation when taking climate measures, it is relevant – as already considered in 10.24.6 – to what extent:

a. the State has made available to the public the relevant information, and in particular the conclusions of the relevant studies held by public authorities, and in particular to those persons who may be affected by the regulations and measures in question or the absence thereof;

b. procedures are in place through which the views of the public who are affected by the measures can be taken into account in the decision-making process.**279**

11.31. In the UN Climate Convention, the member states have agreed the following with regard to informing their citizens:

Article 6. Education, training and public awareness

In carrying out their commitments under Article 4, paragraph 1(i), the Parties shall:

a. promote and facilitate at the national and, as appropriate, subregional and regional levels, and in accordance with national laws and regulations, and within their respective capacities:

i. the development and implementation of educational and public awareness programmes on climate change and its effects;

ii. public access to information on climate change and its effects;

iii. public participation in addressing climate change and its effects and developing adequate responses; and

iv. training of scientific, technical and managerial personnel;

(…)

11.32. Greenpeace argues that the State is not fulfilling any of these obligations, or at least not to a sufficient extent. The State believes that it is fulfilling these obligations; it refers in particular to the KNMI climate scenarios, the Climate Impact Atlas for the BES Islands,**280** the efforts made within the framework of (or since) the Climate Table**281** and the efforts mentioned in the letter to House of Representatives of 7 November 2023.**282**

i. *Assessment of procedural safeguards*

11.33. The court finds that virtually all of the efforts mentioned by the State were initiated after 2022. With regard to the period up to 2023, it cannot therefore be said that the State has adequately fulfilled the obligations referred to in 11.30.

11.34. For the period from 2023 onwards, the documents show that the State is catching up, with many necessary overdue measures still being taken and room being made for participation by and knowledge of residents and local organisations.**283**

11.35. However, for the period from 2023 onwards, the lack of binding national standards and concrete policy instruments (see 11.13.3 and 11.24.3) will make it more difficult for citizens to participate in combating climate change and its consequences, and to help devise and implement appropriate measures. In addition, the lack of a clear standards and policy framework for adaptation makes it more difficult for citizens and civil society organisations to identify any shortcomings on the part of the government and to hold it accountable.

ii. *Interim conclusion on procedural safeguards*

11.36. In the period up to 2023, the State did not fulfil its obligations towards the inhabitants of Bonaire as referred to in 11.30 under a and b. With the projects launched since 2023, the State appears to be well on its way to fulfilling the obligations referred to under b.

Unequal treatment

i. *Arguments of the parties*

11.37. Greenpeace's claims are also based on Article 14 of the ECHR and Article 1 of the Twelfth Protocol to the ECHR (hereinafter: P12).

11.38. According to the State, the situation on Bonaire is different from that in the European Netherlands in terms of climate adaptation. Because the situations are not comparable when it comes to climate adaptation, the State argues that Bonaire and the European Netherlands do not need to be treated equally in that context.

11.38.1. The State acknowledges that the approach in the European Netherlands is different from that in the Caribbean Netherlands, but points to the geographical, climatic and geological differences between the two parts of the Kingdom. The State also points to the fact that Bonaire has only been part of the Netherlands since 2010. Because of these differences, a different climate (adaptation) approach is needed on Bonaire than in the European Netherlands.

11.38.2. The differences in approach are not based on the personal characteristics of the inhabitants. Bonaire and its inhabitants are protected against the adverse effects of climate change on the same basis as the inhabitants of the European Netherlands. Both groups are warned in the event of heat waves, both parts of the Netherlands have a legal and administrative framework for adaptation measures in the context of spatial development, and the nature and environmental policy objectives set for the Caribbean Netherlands are comparable to those for the European Netherlands. Therefore, according to the State, there is no violation of Article 14 of the ECHR or Article 1 P12.

11.38.3. While there is no comprehensive climate plan, according to the State, this does not constitute unequal treatment.

ii. *Assessment framework: the prohibition of direct and indirect discrimination*

11.39. The court will first briefly explain the assessment framework below, followed by an assessment of the claims on that basis.

11.40. Article 14 of the ECHR reads as follows:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

This provision enshrines the right not to be discriminated against in the form of a *dependent right*, in the sense that it guarantees that member states do not discriminate when safeguarding the other fundamental rights guaranteed by the ECHR.**284**

11.41. Article 1 P12 reads as follows:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

This provision codifies a general prohibition of discrimination that constitutes an *independent right*.**285** The scope of the provision overlaps with that of Article 14 of the ECHR.**286**

11.42. In drafting Article 1 P12, four categories of cases were specifically considered, namely:**287**

1. discrimination in the enjoyment of a right specifically granted to an individual under national law;
2. discrimination in the enjoyment of a right which may be inferred from a clear obligation of a public authority under national law, that is, where a public authority is under an obligation under national law to behave in a particular manner;
3. discrimination by a public authority in the exercise of a discretionary power (for example, granting of certain subsidies);
4. discrimination by any other act or omission by a public authority.

11.43. ' Discrimination' means that persons in situations that are comparable in relevant respects are treated differently without objective and reasonable justification. The ECHR does not prohibit a member state from treating groups differently in order to correct factual inequalities between them; indeed, in certain circumstances, failure to attempt to correct inequality by means of different treatment may constitute a violation of Article 14 of the ECHR.**288** Member states have a certain margin of discretion in assessing whether and to what extent different treatment is justified.**289**

11.44. General policies and measures that are seemingly neutral but have disproportionately harmful effects on persons or groups of persons who can only be identified on the basis of an ethnic criterion may also be considered discriminatory, even if they are not specifically aimed at that group. This may not be the case if

those policies and/or measures are objectively justified by a legitimate aim and the means of achieving that aim are appropriate, necessary and proportional.**290**

Furthermore, discrimination may arise from a factual situation. In such cases, there may be no intention to discriminate against people, but a lack of adequate action by the government against the disproportionately harmful effects of a situation on a particular population group may be discriminatory.**291**

11.45. If a complainant has demonstrated that there is a difference in treatment – or that there is an unjustified lack of difference in treatment – it is up to the State to demonstrate that the difference (or the unjustified lack of difference) is objectively and reasonably justified. The burden of proof on the complainant is limited: according to the ECtHR, they must demonstrate *'prima facie'* that there is a difference in treatment.**292**

iii. *Assessment*

11.46. In the opinion of the court, the reasons put forward by the State do not justify the conclusion that the different treatment of Bonaire and its inhabitants in terms of (the speed of) climate adaptation measures is appropriate, necessary and proportionate.

The circumstances on Bonaire and in the Netherlands are different in the sense that Bonaire is at greater risk from climate change more quickly than the European Netherlands**293** and that the inhabitants of Bonaire have already been suffering actual damage from the negative effects of climate change for some time, while it has also been known for a long time that the local authorities lack the resources and executive power to adequately protect the inhabitants from the negative effects of climate change. The differences that have emerged in these proceedings therefore indicate an *even* greater urgency in drawing up and implementing a coherent and integrated climate adaptation policy for Bonaire than existed for the European Netherlands.

Why a coherent and integrated climate adaptation policy was already implemented in the European Netherlands in 2016, but now a decade later there is still no climate adaptation plan available for the island of Bonaire, and it is also unclear when this will be available, therefore requires further explanation.

However, the arguments presented by the State to the court do not constitute adequate justification for the (acknowledged) difference in treatment (see also legal ground 11.23 to 11.27), so that it has not been proven that the difference in treatment serves a legitimate purpose and that the difference in (speed of) adaptation measures is reasonable and proportional.**294**

iv. *Interim conclusion: violation of Articles 14 and 1 P12*

11.47. In view of the above, the court finds that there has been a violation of Article 1 P12 and Article 14 in conjunction with Article 8 of the ECHR.

h. ***Conclusion: violation of Articles 8 and 14 ECHR and Article 1 P12***

11.48. In particular, in view of the considerations set out above in legal grounds 11.12 to 11.17; 11.24 to 11.28; 11.36 to 11.46, the court finds that, *overall*, the State has failed to fulfil its positive obligations under Articles 8 and 14 of the ECHR and Article 1 P12 towards the inhabitants of Bonaire.

i. ***Unlawful act***

11.49. The aforementioned violation of Articles 8 and 14 of the ECHR and Article 1 P12 also constitutes a violation of the law as referred to in Article 6:162 of the Dutch Civil Code, which can be attributed to the State.**295**

j. ***Allowability of claimed declaratory decisions***

11.50. It follows from the considerations set out above in this chapter that, on the basis of Article 8 of the ECHR, the State has a legal obligation to protect the right of Bonaire's inhabitants to life, health, well-being and the enjoyment of their own culture against the negative effects of climate change. It also follows that the State has failed to adequately fulfil this legal obligation, in violation of the prohibition of discrimination laid down in Article 14 of the ECHR and Article 1 P12. To that extent, the declaratory decisions sought by Greenpeace are allowable;**296** in all other respects, they are dismissed.

Allowability of claimed orders

i. *No exception to Article 3:296 Dutch Civil Code*

11.51. The court has found that, on the basis of Article 8 of the ECHR, the State has a legal obligation to protect the right to life, health, well-being and the right to experience their own culture of the inhabitants of Bonaire against the negative consequences of climate change. In order to fulfil this obligation, the State can be ordered by the court to do so on the basis of Article 3:296 of the Dutch Civil Code, unless there are grounds for an exception.

11.52. Under Article 3:296 of the Dutch Civil Code, an exception applies if the law so provides or if this follows from the nature of the obligation or the legal act. The case law of the Supreme Court on orders to legislate is an application of this exception.**297**

11.53. The Supreme Court's case law on exceptions to the principle that the State can be ordered by the court to comply with a legal obligation incumbent upon it is based on two considerations.

The first consideration is that the court may not interfere in the political decision-making process that is involved in the enactment of legislation. The second consideration is that a legislative order must create a regulation that also applies to parties other than those involved in the proceedings.**298**

In the opinion of the court, these considerations do not preclude the orders formulated in the operative part of the judgment, for the following reasons.

11.53.1. The consideration that the court may not interfere in the political decision-making process involved in the creation of legislation does not mean that the court may not enter the field of political decision-making at all. After all, the court must, on the basis of Article 94 of the Constitution, not apply legislation if so required by provisions of treaties that are binding on everyone. However, the court may not, by issuing a legislative order, interfere in political decision-making on the appropriateness of enacting legislation with a specific, concretely defined content. In view of the constitutional relationship between the branches of government, this is exclusively a matter for the legislator. This means that the court cannot order the legislator to enact legislation with a specific content.

11.53.2. The consideration that a legislative order entails the creation of a regulation that also applies to parties other than those involved in the proceedings is related to the fact that the civil court only issues binding judgments between the parties to the proceedings (cf. Article 236 of the Dutch Code of Civil Procedure). The court does not have the power to decide in a manner that is binding on everyone how a legal regulation should be worded. A legislative order therefore has the disadvantage that third parties who are not involved in the proceedings and who are therefore not bound by the judgment are nevertheless (indirectly) bound by that order because the legislation will also apply to them. The same applies to a general order to take measures.

11.53.3. The foregoing means that the court is not permitted to issue an order to enact legislation with a specific content. As in such a case would the objections mentioned in 11.53.1 and 11.53.2 arise. The court may therefore order the State to take measures to achieve a specific objective, as long as that order does not amount to an order to enact legislation with a specific content.**299**

11.53.4. The orders formulated in the operative part are an application of the main rule of Article 3:296 of the Dutch Civil Code. They are not orders to take specific legislative measures, as they leave the State free to choose the measures to be taken.**300**

ii. *Scientific research now underway*

11.54. The court dismisses the claim to, immediately after the judgment in this case is delivered, initiating, or causing to be initiated, adequate scientific research into the historical, current and future consequences of climate change on Bonaire, and making sufficient resources available for this purpose, and continuing to enable such research, in view of the considerations set out above in 11.25.

The updated elevation maps of the island, which are urgently needed, are currently being prepared. The State has recently commissioned scientific studies into various aspects of climate change on the BES islands,**301** platforms for knowledge exchange have been set up**302**, and the BES islands have now been included in the regular research and reporting cycles of the KNMI and the PBL. The studies referred to here have been financed

and, in some cases, already carried out. In view of this, Greenpeace has not sufficiently substantiated the interest that still exists in the claimed (and very broadly formulated) declaratory decision on this point.

No order where the State has discretionary power

11.55. The court dismisses the orders sought by Greenpeace in sections IV and V, because they amount to orders to enact legislation with a specific content on points on which the State has discretionary power (see legal grounds 11.13.4 and 11.15.1).

11.56. The court dismissed the claim for an order, under II.a, for the State, to base all its adaptation policy on Bonaire on, and test it against, the applicable international human rights treaties ratified by the Netherlands, and providing clear reasons for doing so, on the grounds of lack of interest.

The order claimed amounts to a confirmation of a rule that already applies without a court order – in general, i.e. not only in the legal relationship between the State and the inhabitants of Bonaire.

In other words, there is no question of a declaration regarding the legal relationship between the claimant and the defendant within the meaning of Article 3:302 of the Dutch Civil Code, nor is there a sufficiently concrete interest within the meaning of Article 3:303 of the Dutch Civil Code.

11.57. The court partially allows the orders claimed under II.b and II.c for the State to adopt an adequate adaptation plan for Bonaire as soon as reasonably possible and no later than 1 April 2027 and to ensure that it is implemented.

Although the State does not dispute that an adaptation plan for Bonaire must be drawn up as soon as possible, and although the intention to draw up this plan has existed since 2022, it is still unclear when it will be ready. In view of this, Greenpeace has a sufficient interest in an order.

The court will order the State to ensure that the *targets***303**set out in the *United Arab Emirates Framework for Global Climate Resilience* for the drafting and implementation of a national adaptation plan that also covers Bonaire are achieved on time, i.e. by 2030 (see 11.22.3).

It is still too early for a more far-reaching order to the State to ensure that the adaptation plan is also implemented in a timely manner; at this stage, it is not even clear what the plan will entail exactly.

11.58. The order claimed under VI. to establish a national carbon budget within six months cannot be allowed for the reasons stated in 11.15.1 and 11.15.2. The court will grant the alternative claim by ordering the State to provide insight into the (remaining) emission allowance for the Netherlands on which the State bases its decision-making and implementation of climate measures. The State is free to choose how it wishes to comply with this order, on the understanding that the method chosen must comply with the rules on transparent information provision included in the UN Climate Convention and the more detailed UN agreements based on it (see 5.16.6 and 5.16.7).

The court considers the claimed period of six months after this judgment to be reasonable, as the underlying information is already available according to the State. The State believes that this information already provides sufficient insight into the (remaining) emission allowance on which the current policy is based, but the court does not agree with the State.

l. ***Provisional enforceability***

11.59. The State requests the court to declare that the claims II.a, II.b, II.c, IV, V and VIII are not provisionally enforceable.**304** The State argues that allowing these claims would have far-reaching consequences in that the ministers concerned would then have to take additional decisions as soon as possible and enact legislation and regulations aimed at satisfying these claims.

11.60. The claims under IV and V are dismissed.

11.61. In view of the urgency of the climate problem as recognised by the UN and the EU, Greenpeace has a sufficient interest in its claim to declare the order provisionally enforceable. Because the State has put forward a reasoned defence against this, the court must weigh Greenpeace's interest in being able to enforce the judgment, even if an appeal is lodged, against the interest of the State in maintaining the status quo until the appeal has been decided.**305**

11.62. The court is of the opinion that the interest of Greenpeace (and the inhabitants of Bonaire) in the requested provisional enforceability outweighs that of the State in maintaining the existing situation. After all, in this judgment, the State is only ordered to comply with obligations it had already undertaken. Compliance with this order can be achieved in part by (effectively) implementing already applicable rules and policies and by carrying out ongoing or planned projects.

m. ***Costs of the proceedings***

11.63. As the more unsuccessful party, the State must pay the costs of these proceedings, plus any additional costs. Greenpeace's costs in these proceedings are assessed at:

- summons costs	€	112.37	
- court fee	€	688.00	
- attorney-at-law's fee	€	2,763.00	(4.5 points × € 614.00)
- additional costs	€	178.00	(plus increase for service)
Total	€	3,741.37	

11.64. The claimed statutory interest on the legal costs is awarded as stated in the decision.

12 The decision

The court

12.1. rules that the State has acted and continues to act in violation of the fundamental rights of the inhabitants of Bonaire under Article 8 of the ECHR – and is therefore acting unlawfully – by continuing to

a. pursue a climate policy that does not make an equitable contribution to the measures that must be taken worldwide to limit global warming to a maximum of 1.5 °C above pre-industrial levels by the end of this century;

b. fail to take timely and appropriate measures to protect the inhabitants of Bonaire from the effects of climate change and failing to adequately inform them about the consequences and involve them in decision-making on measures;

12.2. orders the State, within eighteen months of this judgment, in any case incorporate absolute emission reduction targets for the entire economy as referred to in Article 4(1) of the Paris Agreement into national legislation, including intermediate targets and pathways for the reduction of carbon emissions for the entire period up to 2050, which comply with the agreements made within the UN context (including the *Glasgow Climate Pact* and the *Sharm-El-Sheikh Implementation Plan*) and to provide insight into the (remaining) emission allowance for the Netherlands;

12.3. rules that the State has acted and continues to act in violation of the fundamental rights of the inhabitants of Bonaire under Article 1 of the Twelfth Protocol to the ECHR and under Article 14 in conjunction with Article 8 of the ECHR,

that the State has thereby also acted unlawfully, and continues to do so,

by treating the inhabitants of Bonaire differently from the inhabitants of the European Netherlands when taking adaptation measures, without that different treatment being appropriate, necessary and proportional;

12.4. orders the State to ensure that the *targets***306**set out in the *United Arab Emirates Framework for Global Climate Resilience* for the drafting and implementation of a national adaptation plan that also covers Bonaire are achieved on time, i.e. by 2030;

12.5. orders the State to pay the legal costs of €3,741.37, payable within fourteen days of notification, plus €92.00 plus the costs of service if the State fails to comply with the orders in time and the judgment is subsequently served;

12.6. orders the State to pay the statutory interest referred to in Article 6:119 of the Dutch Civil Code on the legal costs if these are not paid within fourteen days of notification;

12.7. declares this judgment provisionally enforceable, except for the decisions under 12.1 and 12.3;

12.8. rejects all other claims.

This judgment was rendered by J.L.M. Luiten, P. Dondorp and C.J-A. Seinen and pronounced in open court on 28 January 2026.

2565

---

1 The Kingdom currently consists of four countries: the Netherlands, Aruba, Curaçao and Sint Maarten.

2 Viz. in 1990 (AR1 of FAR), in 1992 (*Climate Change 1992: The Supplementary Report to the IPCC Scientific Assessment*, which formed the basis for the *United Nations Framework Convention on Climate Change* (hereafter: UNFCCC) of 1992, and further in 1995 (AR2), 2001 (AR3), 2007 (AR4), 2014 (AR5) and 2022/2023 (AR6). See for all IPCC-report: ipcc.ch/reports/.

3 See e.g. IPCC, Chapter 6. World Oceans and Coastal Zones in: *Climate Change: the IPCC Impacts Assessments*, Contribution of Working Group II to the First Assessment Report of the Intergovernmental Panel on Climate Change (AR1), p. 6-5: "*The higher base for storm surges would be particularly important in areas where hurricanes or severe storms are frequent, such as the southeastern US, the Indian subcontinent, the western Pacific and islands in the Caribbean Sea.*" and p. 6-4: Table 6.1 Survey of 1 m sea-level rise and protection costs. (Countries and territories ranked by estimated costs as per cent of GNP*).

4 IPCC, Chapter 9. Coastal Zones and Small Islands, in: *Climate change 1995: Impacts, Adaptations and Mitigation of Climate Change: Scientific-Technical analyses,* Contribution of Working Group II to the Second Assessment Report of the Intergovernmental Panel on Climate Change (AR2); IPCC, Chapter 17. Small Island States, in: *Climate Change 2001: Impacts, Adaptation and Vulnerability*, Contribution of Working Group II to the Third Assessment Report (AR3); IPCC, Chapter 16. Small Islands, in: *Climate Change 2007: Impacts, Adaptation and Vulnerability*, Contribution of Working Group II to the Fourth Assessment Report (AR4); IPCC, Chapter 29. Small Islands, in: *Climate Change 2014: Impacts, Adaptation and Vulnerability*, Contribution of Working Group II to the Fifth Assessment Report (AR5).

5 Inter-American Court of Human Rights (IACHR), Advisory Opinion AO-32/25 of 29 May 2025 (hereafter: Advisory Opinon IACHR), under B.3.2, with further references; Resolution 47/24 of the Human Rights Council of 14 July 2021, *Human rights and climate change*, p. 3; Response from of Minister Jetten (Climate and Energy), also on behalf of the Minister of Infrastructure and Water Management and the State Secretary for the Interior and Kingdom Relations (received 3 June 2022), *Aanhangsel Handelingen II* 2021/22, no. 2975, p. 1 and Letter from the Ministers of Foreign Affairs and of Foreign Trade and Thevelopment Cooperation of 15 July 2022, BZDOC-1464875700-38, on the efforts of the Kingdom of the Netherlands for the 77th session of the United Nations General Assembly, p. 4-5.

6 UN News, *The Caribbean is 'Ground Zero' for the global climate emergency: Guterres*, 3 July 2022.

7 IPCC, Chapter 15. Small Islands, in: IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (hereafter: IPCC AR6 Impacts, Adaptation and Vulnerability).

8 IPCC, Chapter 8. Poverty, Livelihoods and Sustainable Thevelopment, §2.2, in: IPCC AR6 Impacts, Adaptation and Vulnerability.

9 KNMI, *Klimaatverandering op de Caribische eilanden* (*Climate change in the Caribbean islands*), 1 September 2017.

10 Wageningen University & Research, *Staat van de Natuur van Caribisch Nederland 2017: Een eerste beoordeling van de staat (van instandhouding), bedreigingen and managementimplicaties van habitats and soorten in Caribisch Nederland* (*State of Nature of the Caribbean Netherlands 2017: An initial assessment of the status (of conservation), threats and management implications of habitats and species in the Caribbean Netherlands*), Research report C086/17, §4.4 Klimaat and klimaatverandering (Climate and climate change), p. 193.

11 KNMI, *KNMI'23-klimaatscenario's voor Nederland* (*KNMI'23-climate scenarios for the Netherlands*) The Bilt: KNMI, KNMI-Publication 23-03, p. 37 (hereafter: KNMI 2023).

12 D. Le Bars, *Past and future sea level around the BES islands* (Technical report; TR-397), The Bilt: KNMI 2022.

13 KNMI 2023, p. 39.

14 KNMI 2023.

15 IVM Institute for Environmental Studies, *An Assessment of the Impacts of Climate Change on Coastal Inundation on Bonaire An Assessment of the Impacts of Climate Change on Coastal Inundation on Bonaire*, Report R-22/05, 28 September 2022 (hereafter: IVM 2022/5).

16 Reply, para. 7.9.

17 IVM 2022/5, p. 24-26.

18 HKV Lijn in Water, *Risicoprofielen overstromingen BES eilanden* (*Flood risk profiles BES islands*), final report July 2024 (hereafter: HKV 2024).

19 The State exhibit 77. The figures are made by HKV on the basis of the risk profiles from HKV 2024, in which, apart from the inundation maps from IVM 2022/5 also the inundation maps from KNMI 2023 have been processed. These figures do not take into account storm surge, extreme rainfall and tsunamis. See IVM 2022/5 and HKV 2024.

20 IVM 2022/5, p. 24. These figures do not take into account storm surge, extreme rainfall and tsunamis. For this, see elsewhere in the report.

21 Written pleading of the State (adaptatie; adaptation), para. 3.20.

22 OLB, *Risicoprofiel Bonaire* (*Bonaire Risk Profile*), established by the Executive Council of the OLB on 8 March 2013 (the State exhibit 2).

23 HKV Lijn in water, *Quickscan waterveiligheidssituatie Caribisch Nederland* (*Quick scan of the water safety situation in the Caribbean Netherlands*), 2016, PR3239.10 (hereafter: HKV 2016) (open.overheid.nl/documenten/ronl-archief-1466267f-e3cc-4bb0-b25a-278e88d176c1/pdf).

24 HKV 2024.

25 HKV 2024, §6.1.1.

26 IVM Institute for Environmental Studies, *Impacts of Climate Change on Public Health on Bonaire*, Report R-22/03, 28 September 2022 (hereafter: IVM 2022/3) (assets-us-01.kc-usercontent.com/d8b6f1f5-816c-005b-1dc1-e363dd7ce9a5/a8e0efda-6ef6-4082-a1a7-d1ff7295b883/IVM_R22-03_Public%20Health.pdf), p. 28.

27 IVM 2022/3, p. 28.

28 Lenton, T.M., Xu, C., Abrams, J.F. *et al*., *'Quantifying the human cost of global warming'*. Nature Sustainability 6, p. 1237-1247 (2023).

29 Wageningen University & Research, *State of Nature Report fort he Caribbean Netherlands 2024, A second 6-year assessment of the Conservation State, threats and management implication for habitats and species in the Caribbean Netherlands*, Wageningen Marine Research report C001/25, June 2025 (hereafter: WUR 2024).

30 WUR 2024: Chapter 28 The Climate Change Threat to Biodiversity in the Caribbean Netherlands, p. 352 cont.

31 IVM Institute for Environmental Studies, *Impacts of Climate Change on Cultural Heritage on Bonaire*, Report R-22/04, 28 September 2022 (hereafter: IVM 2022/4).

32 In 2011 Bonaire had 15.679 inhabitants; in 2025 26.552 (cbs.nl/nl-nl/cijfers/detail/83698NED).

33 IVM Institute for Environmental Studies, *The Impacts of Climate Change on Bonaire*, Report R-22/06, 28 September 2022 (hereafter: IVM 2022/6), Chapter 9. Impacts on cultural heritage: §9.3.1 Fisheries and §9.3.2 Agriculture and IVM 2022/4, Chapter 5. Results: the impacts of climate change on culture, §5.2. Intangible cultural heritage.

34 IVM Institute for Environmental Studies, *The Vulnerable Future of Bonaire, A direct climate damage assessment of the built environment of Bonaire*, Report R-22/08, 28 September 2022 (assets-us-01.kc-usercontent.com/d8b6f1f5-816c-005b-1dc1-e363dd7ce9a5/5d7c0d51-a435-4bc9-8b77-a64e618be502/IVM_R22-08_Infrastructure.pdf).

35 This refers to the period 1850-1900.

36 World Meteorological Organization, *State of the Global Climate 2022*, WMO-No. 1316, p. 3. Cf. IPCC, *Climate Change 2023: Synthesis Report*, Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (hereafter: IPCC AR6 Synthesis Report), Summary for Policymakers: §A1.

37 However, the global absorption capacity of carbon sinks is becoming increasingly limited, partly due to large-scale deforestation. As CO2 emissions rise and CO2 accumulation increases, carbon sinks also become less effective. This is expected to result in a larger share of emitted CO2 remaining in the atmosphere (*high confidence*). See also the *Urgenda*-judgment, para. 2.1; IPCC AR6 Synthesis Report*,* Summary for Policymakers: p. 20-21; IPCC, *Climate Change 2021: The Physical Science Basis*, Working Group I Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (AR6)(hereafter: IPCC AR6 The Physical Science Basis).

38 See, inter alia, the UNFCCC; the preamble of the Kyoto Protocol 1997, *Trb.* 1999, 110; the Paris Agreement, *Trb*. 2016, 94; IPCC, *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, Working Group I Technical Support Unit, October 2018 (hereafter: IPCC, Global Warming of 1,5°C); Thecision 1/CMA.3 *Glasgow Climate Pact* (COP26)(hereafter: Glasgow Climate Pact) in: UN-document FCCC/PA/CMA/2021/10/Add.1 (unfccc.int/sites/default/files/resource/cma2021_10_add1_adv.pdf); Thecision 1/CP.27 *Sharm el-Sheikh Implementation Plan* (COP27)(hereafter: Sharm el-Sheikh Implementation Plan) in: UN-document FCCC/CP/2022/10/Add.1 (unfccc.int/sites/default/files/resource/cp2022_10a01_E.pdf#page=2); IPCC AR6 Impacts, Adaptation and Vulnerability; IPCC AR6 Synthesis Report, §A.1-A.2; UN General Assembly Resolution *The human right to a clean, healthy and sustainable environment*, A/RES/76/300, 28 July 2022 (hereafter: UN Resolution 76/300); ECtHR (GC) 9 April 2024, no. 53600/20, ECLI:CE:ECHR:2024:0409JUD005360020 *(Verein KlimaSeniorinnen/Switzerland*) (hereafter: the *KlimaSeniorinnen*-judgment), §103-120 with more references.

39 See also the *Urgenda*-judgment, para. 4.1-4.8.

40 IPCC, 2023: *Summary for Policymakers,* in: IPCC AR6 Synthesis Report.

41 Glasgow Climate Pact; Sharm el-Sheikh Implementation Plan, in particular under 3 and V.14-19; ICJ, *Obligations of States in respect of climate change*, Advisory Opinion 2025/187, 23 July 2025 (hereafter: Advisory Opinion ICJ), §242-245; more about all three in chapter 5 of this judgment.

42 World Meteorological Organization, *State of the Global Climate 2022*, WMO-No. 1316, p. 3. Cf. the *High Ambition Coalition Ministerial Statement on the Global Stocktake* of 31 October 2023, which was also signed by the Netherlands.

43 United Nations Framework Convention on Climate Change with annexes, New York, 9 May 1992, *Trb*. 1992/189.

44 Article 2 UNFCCC.

45 Article 3 lid 1 and 4 lid 2 under a UNFCCC; see also the 18th para. of the Preamble to the UNFCCC.

46 Article 3(3) UNFCCC.

47 Article 4(1)(e) UNFCCC.

48 Article 4(4) UNFCCC.

49 Article 4(1)(f) and (g) UNFCCC.

50 Article 3(3) UNFCCC.

51 Article 7 UNFCCC.

52 Article 4 and 12 UNFCCC.

53 Article 6 UNFCCC.

54 *Trb*. 1998/170.

55 Kyoto Protocol bij the VN-Klimaatverdrag (met Bijlagen), Kyoto, 11 Thecember 1997, *Trb.* 1999, 110.

56 '*Slow onset events*' are according to the definition of the IPCC (unfccc.int/files/adaptation/application/pdf/soe_synopsis.pdf) inter alia sea level rise, increasing temperatures, ocean acidification, glacial retreat and related impacts, salinization, land and forest degradation, loss of biodiversity and desertification.

57 unfccc.int/tools/cancun/adaptation/index.html; unfccc.int/process/conferences/the-big-picture/milestones/the-cancun-agreements.

58 *Trb*. 2016/94; *Trb*. 2017/141.

59 Article 2(1) Paris Agreement.

60 Article 4 Paris Agreement.

61 Article 3 Paris Agreement.

62 Article 4(4) Paris Agreement.

63 Article 4(2) and (9) and Article 14(3) Paris Agreement.

64 Article 4(3) Paris Agreement.

65 Article 4(8), (9) and (19) Paris Agreement; Thecision 1/CP.21 *Adoption of the Paris Agreement* (COP21) (hereafter: Thecision 1/CP.21)*,* in: UN-document FCCC/CP/2015/10/Add.1.

66 Article 4(4) Paris Agreement.

67 Article 4(8), (13) and (14) Paris Agreement and Thecision 1/CP.21.

68 Article 4(7) Paris Agreement.

69 Article 4(9) Paris Agreement.

70 Article 13(7) Paris Agreement.

71 Thecision 1/CP.21.

72 Article 7(2), (6) and (7) Paris Agreement.

73 Article 7(5) Paris Agreement.

74 Article 4(16-18) Paris Agreement. Cf. article 12(8) UNFCCC, the Preamble (in particular under 27, 30 and 36) and article 26 of Regulation (EU) 2018/1999.

75 Glasgow Climate Pact. Cf. Resolution 47/24 of the Human Rights Council of 26 July 2021, *Human rights and climate change*.

76 See also Thecision 2/CMA.5 *Global goal on adaptation* (hereafter: Thecision 2/CMA.5), in: UN-document FCCC/PA/CMA/2023/16/Add.1, §15 under a, (p. 5): *"15.* Notes with alarm and serious concern *the following findings of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change: (a) That human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming of about 1.1 °C;"*.

77 Sharm el-Sheikh Implementation Plan, in particular under 3 and 14-19.

78 Thecision 9/CP.27 *National adaptation plans* in: UN-document FCCC/CP/2022/10/Add.1 (unfccc.int/sites/default/files/resource/cp2022_10a01_E.pdf), p. 28.

79 Thecision 2/CMA.5, p. 24 under 10.

80 UN, *Technical dialogue of the first global stocktake*, FCCC/SB/2023/9, 28 September 2023 (hereafter: *Technical dialogue of the first global stocktake*).

81 B. Mitigation, including response measures, Key finding 4, in: *Technical dialogue of the first global stocktake*, p. 5 under 9.

82 B. Mitigation, including response measures, Key finding 5, in: *Technical dialogue of the first global stocktake*, p. 5, under 13.

83 Resolution 77/276 *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*, 4 April 2023.

84 Advisory Opinion ICJ.

85 Advisory Opinion ICJ, §175 and 208.

86 Council Thecision (EU) 2016/590 of 11 April 2016 on the signing, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 103), p. 1; Council Thecision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282/1).

87 EC, *The European Green Theal,* Brussels, 11.12.2019 COM(2019) 640 final.

88 Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 Thecember 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No

715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328/1; hereafter: Regulation (EU) 2018/1999).

89 See in particular article 3 and articles 13-15 Regulation (EU) 2018/1999.

90 Chapter 4 (Reporting), Regulation (EU) 2018/1999.

91 Thus also the Preamble under 23, 46 and 49 of Regulation (EU) 2018/1999.

92 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L243/1; hereafter: Regulation (EU) 2021/1119).

93 Article 1 and article 2(1) Regulation (EU) 2021/1119.

94 Article 4(1) Regulation (EU) 2021/1119.

95 Article 1 Regulation (EU) 2021/1119.

96 EC, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'fit for 55': delivering the EU's 2030 climate target on the way to climate neutrality*, Brussels, 14.7.2021, COM/2021/550 final.

97 On 4 and 5 November 2025 the EU-ministers for environment and climate have reached a compromise on the Commission proposal (COM(2025) 524 final) amending the European Climate Law for the environment and climate. The proposal amending the European Climate Law will now enter the ordinary legislative procedure under Article 192(1) TFEU. This means that the Council and the European Parliament must jointly agree on a final text.

98 Council of the EU, 2040 climate target: Council agrees its position on a 90% emissions reduction, press release, 5 November 2025.

99 The ratifications of the ECHR for the then Netherlands Antilles: *Trb*. 1956, 5, p. 2, under H; and for the entire Kingdom: *Trb*. 1978, 177; the *Theclaration contained in the instrument of acceptance deposited on 28 July 2004* (coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=177&cotheNature=0); the Kingdom Act of 20 May 2015 approving Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms, concluded in Strasbourg on 24 June 2013 (*Trb*. 2013, 130 and 233), *Stb*. 2015, 228.

100 *Kamerstukken II* 2016/17, 34589 (R2077), no. 3 (Explanatory memorandum; explanatory memorandum), p. 8.

101 Ministry of Climate and Green Growth, *Klimaatplan 2025-2035, Op weg naar een klimaatneutraal Nederland* (*Climate Plan 2025-2035, Towards a climate-neutral Netherlands*), March 2025, Publication-no. 25400800.

102 PBL, *Klimaat- en Energieverkenning 2025* (*Climate and Energy Exploration*), The Hague 2025, PBL-publication-no.: 5692, p. 6.

103 Advisory Thepartment of the Council of State, *Advice no. W19.25.00208/IV*, 10 September 2025 about the Climate- and Energy memorandum 2025, p. 8.

104 Ministry of van Economic Affairs and Climate, *Eighth Netherland National Communication Under The United Nations Framework Convention On Climate Change*, p. 183-185.

105 Netherlands Court of Audit, *Aanpassing aan klimaatverandering: strategie and beleid* (*Adapting to climate change: strategy and policy*), Report 5 November 2012.

106 *Kamerstukken II* 2012/13, 31568, no. 125 (Letter from the Minister of Economic Affairs).

107 Act of 23 March 2016 containing rules regarding the production and distribution of electricity and drinking water on Bonaire, Sint Eustatius and Saba (Electricity and Drinking Water Act BES, *Stb*. 2016, 142).

108 Annex 1101814 (Electricity and drinking water supplies on Bonaire, Sint Eustatius and Saba: reliable, sustainable and affordable?, An evaluation of the BES Electricity and Drinking Water Act) to *Kamerstukken II* 2022/23, 34089, no. 19 (Letter from the Minister for Climate and Energy).

109 *Kamerstukken II* 2015/16, 31710, no. 44 (Letter from the Minister of Infrastructure and Environment).

110 The decision memo (open.overheid.nl/documenten/16625d8f-6ba2-4905-8f22-29648b2d81d0/file) states about that: "*No additional resources are available for the implementation of the NMBP in the coming years. Achieving the established goals and commitment depends on a claim for resources yet to be developed.*", p. 2.

111 *Kamerstukken II* 2022/23, 33576, no. 355 (Letter from the Minister for Nature and Nitrogen), p. 2.

112 *Kamerstukken II* 2022/2023, 27625, no. 590 (Letter from the Minister of Infrastructure and Water Management), p. 17.

113 Ministry of the Interior and Kingdom Relations, *Ruimtelijk ontwikkelingsprogramma Caribisch Netherland* (*Spatial Thevelopment Programme Caribbean Netherlands*), July 2024, §3.4 Protecting crucial and sensitive functions from the consequences of climate change, July 2024, p. 17.

114 Inspectorate for the Environment and Transport, *Vergunningverlening, toezicht and handhaving (VTH) door the Openbaar Lichaam Bonaire* (*Licensing, Supervision and Enforcement (VTH) by the Public Entity Bonaire*), 1 June 2023.

115 HKV 2016 and HKV 2024.

116 Wageningen University & Research (WUR), *Staat van de natuur van Caribisch Nederland 2017* (*State of the nature for the Caribbean Netherlands 2017*), and *Staat van de natuur van Caribisch Nederland 2024* (*State of the nature for the Caribbean Netherlands 2024*) and *A Nature Inclusive Vision for Bonaire in 2050*, 2020.

117 Witteveen+Bos, *Climate change and adaptation efforts BES islands*, Final report, 21 October 2024 (hereafter: Witteveen+Bos 2024); KNMI, *The staat van ons klimaat 2024* (*The state of our climate 2024*), The Bilt: KNMI, KNMI-Publication 25-012024.

118 *Administrative agreement between Bonaire and the Kingdom 2024-2027*, p. 10 (the State exhibit 19).

119 *Bonaire Cultural Agenda, priorities 2024-2028*, p. 8 and 9.

120 *Security Strategy for the Kingdom of the Netherlands*, p. 15, §3.

121 Security Strategy for the Kingdom of the Netherlands, p. 11, endnote 11: p. 42.

122 Security Strategy for the Kingdom of the Netherlands, p. 15, endnote 39: p. 43.

123 Security Strategy for the Kingdom of the Netherlands, box text on p. 18, endnote 64: p. 43.

124 Security Strategy for the Kingdom of the Netherlands, p. 29 and 30, highlight 'Priorities 2023-2029:', priority G.

125 Ministry of Infrastructure and Environment, *Aanpassen met ambitie Nationale klimaatadaptatie strategie 2016 (NAS)* (*Adapting with ambition National Climate Adaptation Strategy 2016 (NAS)*), Thecember 2016, p. 38.

126 Ministry of Infrastructure and Water Management, *Nationaal uitvoeringsprogramma Klimaatadaptatie, Slimmer, intensiever voor en door iedereen* (*National Climate Adaptation Implementation Programme, Smarter, more intensive for and by everyone*), November 2023 (hereafter: MIW 2023), p. 37, 42, 48, 61, 84.

127 MIW 2023, p. 15, 16 and 17.

128 Ed Nijpels, Advice Climate table Bonaire*, Het is nooit te laat* (*It is never too late*), 8 May 2023 (hereafter: Nijpels 2023).

129 Climate Impact Atlas for Bonaire, Sint Eustatius and Saba - Climate Impact Atlas BES.

130 Terramar workshop 20-10-2023 output, *Climate Impacts for Bonaire*, 2 April 2024.

131 See e.g. Caribbean part of the Kingdom of the Netherlands - Climate Adaptation Knowledge Portal (rijksoverheid.nl/onderwerpen/caribische-deel-van-de-koninkrijk), Dutch Caribbean Biodiversity Database (dcbd.nl/) and National Office for the Caribbean Netherlands (rijksdienstcn.com/).

132 Wageningen University & Research, 2020, *A nature inclusive vision for Bonaire in 2050*, July 2020, Report 3023.

133 Witteveen+Bos 2024.

134 Nijpels 2023, p.22.

135 *Draf - Administrative Agreement Bonaire and the National Government 2024-2027,* p. 5 and 6.

136 See, inter alia, the Letter to Parliament from the Minister of Economic Affairs and Climate regarding the feedback from the Aruba climate conference of 7 July 2023 with annexes (rijksoverheid.nl/documenten/publicaties/2023/07/07/caribbean-climate-and-energy-conference-2023-agendatie | Rijksoverheid.nl).

137 IPDC, *Climate Adaptation in Theltas, Coasts and Islands: Introducing the IPDC Guidance Framework and the Climate Adaptation Contexts of the IPDC Members*, May 2024. https://www.cabinetspecialenvoy.com/.

138 https://www.cabinetspecialenvoy.com/.

139 Social Minimum Commission Caribbean Netherlands, *A decent existence, A social minimum that provides an increasing perspective on self-reliance*, October 2023.

140 *Kamerstukken II* 2005/06, 30300 IV, no. 18 (Letter from the Minister for Administrative Renewal and Kingdom Relations) and 18 b1 (Hoofdlijnenakkoord met als bijlage een Intentieverklaring). *Kamerstukken II* 2005/06, 30300 IV, no. 18 (Letter from the Minister for Administrative Renewal and Kingdom Relations) and 18 b1 (Hoofdlijnenakkoord met als bijlage een Intentieverklaring).

141 *Kamerstukken II* 2005/06, 30300 IV, no. 18 b1 (Hoofdlijnenakkoord met als bijlage een Intentieverklaring), zie de Intentieverklaring.

142 Annex (Information in accordance with Article 18, paragraph 2, of the Council of State Act concerning the reform of the constitutional relations of the Antillean islands within the Kingdom) to *Kamerstukken II* 2006/07, 30800 IV, no. 3 (Letter from the Minister for Administrative Renewal and Kingdom Relations) and 4 (Letter from the Minister for Administrative Renewal and Kingdom Relations)(hereafter: Annex to *Kamerstukken II* 2006/07, 30800 IV, no. 3 and 4).

143 Annex to *Kamerstukken II* 2006/07, 30800 IV, no. 3 and 4, §3.4 (end).

144 *Kamerstukken II* 2006/07, 30800 IV, no. 5 b1 (Final Theclaration of the Mini-Conference on the Future Political Position of Bonaire, Sint Eustatius and Saba).

145 Kingdom Act of 7 September 2010 amending the Charter for the Kingdom of the Netherlands in connection with the change in the constitutional status of the island territories of the Netherlands Antilles (Kingdom Act amending the Charter in connection with the dissolution of the Netherlands Antilles), *Stb*. 2010, 333; *Kamerstukken II* 2019/20, 32213 (R 1903) *(*Letter from the State Secretary for the Interior and Kingdom Relations).

146 Statement of defense, para. 6.1, originating from: A. van Rijn, Handboek Caribisch Staatsrecht (Handbook of Caribbean Constitutional Law), The Hague: Boom juridisch 2019, p. 21.

147 *Stb*. 2010,345.

148 *Trb.* 1987, 63; entry into force *Trb.* 1991, 61.

149 *Kamerstukken II* 2006/07, 30800 IV, no. 22 b2 (Explanation of the step-by-step plan for Bonaire, Sint Eustatius, Saba, Netherlands Antilles and the Netherlands).

150 Initially in Article 1, paragraph 2, of the Statute (old) and later in Article 132a, paragraph 4, of the Constitution.

151 Commission for the evaluation of the implementation of the new constitutional structure of the Caribbean Netherlands ("Spies Commission"), *Vijf jaar verbonden: Bonaire, Sint Eustatius, Saba en Europees Nederland* (Five years of association: Bonaire, Sint Eustatius, Saba and the European Netherlands), 12 October 2015, The Hague, p. 10, 27 and 99.

152 *Kamerstukken II*, 2019/20, 35300-IV, no. 11 (Information from the Advisory Division of the Council of State on the existing structure between the Caribbean and European Netherlands and the coordinating role of the Ministry of the Interior and Kingdom Relations), p. 42, under D, first bullet.

153 *Kamerstukken II*, 2019/20, 35300-IV, no. 11 (Letter from the State Secretary for the Interior and Kingdom Relations).

154 *Kamerstukken II,* 2022/23, 36200-IV, no. 85 (Letter from the State Secretary for the Interior and Kingdom Relations).

155 See e.g. Security Strategy for the Kingdom of the Netherlands, p. 35.

156 Statement of defense, pars. 6.30 and 6.31.

157 Writ of summons, para. 36.4: by 'Article 14 ECHR' Greenpeace means the prohibition of discrimination in all legal and factual actions of the government pursuant to Article 14 ECHR and Article 1 P12.

158 The *KlimaSeniorinnen*-judgment, §412: *"Judicial intervention, including by this Court, cannot replace or provide any substitute for the action which must be taken by the legislative and executive branches of government. However, democracy cannot be reduced to the will of the majority of the electorate and elected representatives, in disregard of the requirements of the rule of law. The remit of domestic courts and the Court is therefore complementary to those democratic processes. The task of the judiciary is to ensure the necessary oversight of compliance with legal requirements."*

159 The *Urgenda*-judgment , para.5.7.6 and 5.7.7.

160 The *KlimaSeniorinnen*-judgment, §442: *"It follows, therefore, that each State has its own share of responsibilities to take measures to tackle climate change and that the taking of those measures is determined by the State's own capabilities rather than by any specific action (or omission) of any other State (see* Duarte

Agostinho and Others*, cited above, §§ 202-03). The Court considers that a respondent State should not evade its responsibility by pointing to the responsibility of other States, whether Contracting Parties to the Convention or not."*

161 The *KlimaSeniorinnen*-judgment, §538.

162 ECtHR 18 November 2025, no. 40054/23, ECLI:CE:ECHR:2025:1118DEC004005423 (*Fliegenschnee/Austria*) (hereafter: the *Fliegenschnee*-judgment), §26.

163 ECtHR, *Guide on Article 2 of the European Convention on Human Rights*, version of 28 February 2025 (hereafter: Guide on Article 2) (ks.echr.coe.int/documents/d/echr-ks/guide_art_2_eng) §21; ECtHR, *Guide on Article 8 of the European Convention on Human Rights*, version of 28 February 2025 (hereafter: Guide on Article 8), ks.echr.coe.int/documents/d/echr-ks/guide_art_8_eng, §192.

164 The *Fliegenschnee*-judgment, §27-29.

165 The *KlimaSeniorinnen*-judgment, §538; Guide on Article 2, §11; Guide on Article 8, §9-16 and §192.

166 The *KlimaSeniorinnen*-judgment.

167 The *KlimaSeniorinnen*-judgment, §410-520 and §538 under (a).

168 The *KlimaSeniorinnen*-judgment, §413-421.

169 The *KlimaSeniorinnen*-judgment, §431-434.

170 The *Urgenda*-judgment, para. 4.1-4.8 with further references.

171 The *KlimaSeniorinnen*-judgment, §410-422; IPCC AR6 The Physical Science Basis IPCC.

172 The *KlimaSeniorinnen*-judgment, §413, §431-434 and §456.

173 The 1992 UNFCCC; the 1997 Kyoto Protocol, *Trb*. 2005, 1; IPCC, *Global Warming of 1,5°C*; Glasgow Climate Pact; Sharm el-Sheikh Implementation Plan; Regulation (EU) 2021/1119 establishing a framework for the achievement of climate neutrality; IPCC, IPCC AR6 Impacts, Adaptation and Vulnerability; IPCC AR6 Synthesis Report, §A.1-A.2; UN Resolution 76/300; Advisory Opinion ICJ, Chapter II; United Nations Environment Programme, *Emissions Gap Report 2024: No more hot air … please!*, Executive summary, p. XII et seq.

174 The *KlimaSeniorinnen*-judgment, §104-120, §429 and §478, with further references.

175 The *KlimaSeniorinnen*-judgment, §438.

176 The *KlimaSeniorinnen*-judgment, §439-440.

177 The *KlimaSeniorinnen*-judgment, §478-488.

178 The *KlimaSeniorinnen*-judgment, §498-503 and §614.

179 ECtHR 27 April 2004, no. 62543/00, ECLI:CE:ECHR:2004:0427JUD006254300 (*Gorraiz Lizarraga et al./Spain*), §38.

180 The *KlimaSeniorinnen*-judgment, §420, §489-490, with reference to inter alia the Preamble of the UNFCCC and the de Aarhus Convention.

181 The *KlimaSeniorinnen*-judgment, §543.

182 The *KlimaSeniorinnen*-judgment, §545.

183 The *KlimaSeniorinnen*-judgment, §446, 546 and 551. Cf. Advisory Opinion ICJ, §430.

184 The *KlimaSeniorinnen*-judgment, §444, 446 and 551.

185 The *KlimaSeniorinnen*-judgment, §545, 549 and 552.

186 The *KlimaSeniorinnen*-judgment, §550 and the *Fliegenschnee*-judgment, §29.

187 The *KlimaSeniorinnen*-judgment, §549.

188 The *KlimaSeniorinnen*-judgment, §546.

189 The *KlimaSeniorinnen*-judgment, §551, with reference to §543; cf. established case law mentioned in §428.

190 The *KlimaSeniorinnen*-judgment, §552, with reference to the general rules for positive obligations in §538 under (a).

191 Cf. the *KlimaSeniorinnen*-judgment, §549-558; Guide on Article 8, §15. Cf. on the coherence between mitigation and adaptation measures: Advisory Opinion ICJ, §259.

192 The *KlimaSeniorinnen*-judgment, §554; Guide on Article 8, §15.

193 This may be different with regard to specific claims, such as orders to take specific measures; see further on the admissibility of the orders sought in 11.51-11.58 of this judgment.

194 The *KlimaSeniorinnen*-judgment, §537.

195 The *KlimaSeniorinnen*-judgment, §536.

196 ECtHR, *Guide to the case-law of the European Court of Human Rights – Environment*, version 17 September 2025, article 2 (Right to life), I.A.6.

197 The *KlimaSeniorinnen*-judgment, §536.

198 See above in 10.8.3, 10.8.5, 10.13, 10.17 and 10.18 of this judgment.

199 Cf. The *KlimaSeniorinnen*-judgment, §509-511.

200 The *KlimaSeniorinnen*-judgment, §437.

201 Strictly speaking, Greenpeace represents in this WAMCA procedure *"the population of Bonaire and every person in the Netherlands who has a personal connection with the island for historical or cultural reasons."* (para. 3.13 writ of summons); with regard to this even more diverse group, it has not been substantiated at all that the alleged shortcomings or the State pose an acute threat to the right to life.

202 G.M. Gordon-Strachan et al., *'The 2024 small island developing states report of the Lancet Countdown on health and climate change'*, in: The Lancet Global Health 2025, vol. 13(1), E146-E166.

203 Cf. The *KlimaSeniorinnen*-judgment, §511.

204 The *KlimaSeniorinnen*-judgment, §550.

205 The *KlimaSeniorinnen*-judgment, §538 under a and b, §547-550.

206 Cf. Preamble Paris Agreement, penultimate paragraph.

207 Statement of reply, para. 8.10 and pleading notes Greenpeace (mitigatie; mitigation), Chapter 3.

208 Statement of reply, chapters 6 and 7 and pleading notes Greenpeace (mitigatie; mitigation), pars. 3.3 and 3.4.

209 Statement of defense, pars. 2.11-2.18.

210 ETS stands for Emission Trade System and is the trading system in Europa for the CO2 emissions of the industry.

211 Regulation (EU) 2013/549 of 21 May 2013 on the European system of national and regional accounts in the European Union. This regulation introduces the ESA: the internationally compatible system of EU accounting rules that can be used to provide a systematic and detailed description of an economy.

212 Regulation (EU) 2018/841 of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land-use change and forestry into the 2030 climate and energy framework. Under the LULUCF Regulation, each Member State must ensure that all emissions in the land use, land-use change and forestry (LULUCF) sector are offset by at least an equivalent number of removals in the period 2021-2030 (*the no-debit rule*).

213 Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action.

214 Originally, the EU ETS2 was scheduled to enter into force in 2027, but in early November 2025, climate ministers postponed its entry into force by one year.

215 Statement of rejoinder, para. 5.78.

216 See Greenpeace exhibit 87.

217 See 10.23 of this judgment. Cf. the *KlimaSeniorinnen*-judgment, §446, §546 and §551; Advisory Opinion ICJ, §430; the *Urgenda*-judgment, para. 7.2.11.

218 See chapter 5. Cf. Advisory Opinion ICJ, Chapter IV.B.5, in particular §224, §230, §243 and §245.

219 Article 4(1) Paris Agreement.

220 Article IV.21 Glasgow Climate Pact; Article I.7 Sharm el-Sheikh Implementation Plan.

221 Article IV.22 Glasgow Climate Pact.

222 Article IV.14 Sharm el-Sheikh Implementation Plan.

223 Article 4(9) Paris Agreement.

224 Article 3(1) and 4(2) under a UNFCCC; Article 4(4) Paris Agreement; Dictum Advisory Opinion ICJ, §547 under A.b.

225 Article 4(9) and article 14(3) Paris Agreement; Advisory Opinion ICJ, §243.

226 Article 4(1)(a) and Article 12(1)(a) UNFCCC; Article 13(7) Paris Agreement.

227 Article 4(1)(b) and Article 12(1)(b) UNFCCC; Advisory Opinion ICJ, §201-203.

228 Article 4 and article 12 UNFCCC; article 7 Kyoto Protocol; article 4(2) Paris Agreement; Glasgow Climate Pact, IV.28-30.

229 Articles 4 and 12 UNFCCC; articles 3(4) and 7 Kyoto Protocol; Decision 24/CP.19 *Revision of the UNFCCC reporting guidelines on annual inventories for Parties included in Annex I to the Convention* in: UN-document FCCC/CP/2013/10/Add.3 (hereafter: Decision 24/CP.19) (unfccc.int/resource/docs/2013/cop19/eng/10a03.pdf#page=2), p. 2-3; Article 3(a) of Decision 15/CMP.1 *Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol* in: UN-document FCCC/KP/CMP/2005/8/Add.2 (hereafter: Decision 15/CMP.1) (unfccc.int/resource/docs/2005/cmp1/eng/08a02.pdf#page=54).

230 Article 5(1) Kyoto Protocol.

231 Cf. Advisory Opinion ICJ, §202-207 and §236.

232 Articles 13 and 14 Paris Agreement; Decision 24/CP.19, p. 4-22 (Annex 1); Decision 15/CMP.1. Cf. the *KlimaSeniorinnen*-judgment, §570-573; Advisory Opinion ICJ, §289.

233 Advisory Opinion ICJ, §208 and 229.

234 Cf. *Kamerstukken II* 2021/22, 36169, no. 3 (Explanatory memorandum), p. 6.

235 Article 2(2) Climate law; *Kamerstukken II* 2021/22, 36169, no. 4 (Advice from the Advisory Division of the Council of State and further report), p. 3-4.

236 Cf. the advice of the Council of State on the bill to amend the Climate Act: *Kamerstukken II* 2021/22, 36169, no. 4 (Advice from the Advisory Division of the Council of State and further report).

237 The Dutch legislator was aware of this: *Kamerstukken II* 2021/22, 36169, no. 3 (Explanatory memorandum), p. 6-7.

238 By the way, the EU's NDC of 16 October 2023, *The update of the nationally determined contribution of the European Union and its Member States* (hereafter: NDC van the EU 2023) states the following objective on p. 15 (court emphasis): *"Regulation (EU) 2023/857* sets *an EU-level greenhouse gas emission reduction target of 40% by 2030, compared to 2005, for the sectors that it covers. **Each EU Member State will reduce its emissions from 2005 levels by 2030 in accordance with the following percentage:** (…) **Netherlands 48%** (…)"*.

239 See, for example, the overview of the areas of application, objectives and reference years for the various instruments submitted by the State as exhibit 63.

240 europarl.europa.eu/topics/nl/article/20191129STO67756/uitstoot-van-vliegtuigen-en-schepen-feiten-en-cijfers-infografiek; rijksoverheid.nl/onderwerpen/luchtvaart/co2-uitstoot-luchtvaart.

241 Pleading notes of de State (mitigatie; mitigation), p. 38 (not included in interim targets; partly included by meeting European standards); cbs.nl/nl-nl/dossier/dossier-broeikasgassen/hoe-groot-is-onze-broeikasgasuitstoot-wat-is-het-doel-; clo.nl/indicatoren/nl052127-emissies-door-de-zeescheepvaart-1990-2022.

242 EU NDC 2023, p. 4 and p. 12 under b.

243 Articles 4 and 12 UNFCCC; article 4 Paris Agreement; Decision 1/CP.21; Advisory Opinion ICJ, §244.

244 Article 6 UNFCCC; The *KlimaSeniorinnen*-judgment, §554.

245 The *KlimaSeniorinnen*-judgment, §551, with reference to §543; cf. the established case law referred to in §428.

246 The *KlimaSeniorinnen*-judgment, §543; cf. the established case law referred to in in §538.

247 Cf. the *KlimaSeniorinnen*-judgment, §538 under (d); Advisory Opinion ICJ, §226-229; Advisory Opinion IACHR, §327.

248 Cf. the *KlimaSeniorinnen*-judgment, §569; Advisory Opinion ICJ, §151; Advisory Opinion IACHR, §327. See also the Preamble of the UNFCCC, third and eighteenth paragraph.

249 Statement of rejoinder, para. 6.35.

250 Directorate General Financial and Economic Policy, *Blauwe Boekje 2023-2024* (*Blue Book 2023-2024*), September 2023, §1.8.

251 Statement of reply, pars. 8.10-8.12; pleading notes Greenpeace (mitigatie; mitigation), pars. 1.17, 1.18 and 3.9-3.13.

252 Statement of rejoinder, para. 2.2; See inter alia Netherlands Environmental Assessment Agency, *Klimaat and Energieverkenning 2024* (*Climate and Energy Outlook 2024*) (Greenpeace exhibit 103), p. 4; Netherlands Environmental Assessment Agency, *Klimaat and Energieverkenning 2025* (*Climate and Energy Outlook 2025*) (the State exhibit 71), p. 6.

253 The *KlimaSeniorinnen*-judgment, §550, 570 and 573.

254 NDC from the EU of 5 November 2025, *Submission by the Danish presidency of the council of the European Union and the European Commission on behalf of the European Union and its member states*.

255 EU NDC 2023.

256 Article 4(16) Paris Agreement (court emphasis): "*Parties, including regional economic integration organizations and their member States, that have reached an agreement to act jointly under paragraph 2 of this Article shall notify the secretariat of the terms of that agreement, including the emission level allocated to each Party within the relevant time period, when they communicate their nationally determined contributions* (…)".

257 Namely the emission reduction target for 2030 (paras. 11.13.2 and 11.13.3 of this judgment) and the communication to the UNFCCC on the implementation of the emission reduction targets for the coming administrative period (para. 11.15.3 of this judgment).

258 HKV 2024.

259 Witteveen+Bos 2024.

260 Statement of reply, para. 2.8.

261 Article 4(1)(b) UNFCCC.

262 Article 4(1)(f) UNFCCC.

263 Article 4(8) UNFCCC. See also articles 7(2) and (6) Paris Agreement.

264 Advisory Opinion ICJ, §211.

265 Decision 1/CP.10, *Buenos Aires programme of work on adaptation and response measures*, in: UN-document FCCC/CP/2004/10/Add.1, (unfccc.int/sites/default/files/resource/docs/cop10/10a01.pdf#page=2), p. 2.

266 Advisory Opinion ICJ, §256.

267 Decision 2/CMA.5, p. 25 under 10.

268 *Kamerstukken II* 2016/17, 34589 (R2077), no. 3 (Explanatory memorandum), p. 8. See also *Kamerstukken II* 2015/16, 34534, no. 3 (Explanatory memorandum), p. 22.

269 Besides the general fact that IPCC regulations shape the international consensus on the duties of care that states owe to their citizens regarding climate adaptation, see 10.23 of this judgment.

270 IVM 2022/6, Chapter 9. Impacts on cultural heritage, paragraph 9.2. Tangible cultural heritage; IVM 2022/4, paragraph 5.1 Tangible cultural heritage; statement of rejoinder, pars. 3.7, 3.8, 8.61 and 8.69; pleading notes of the State (adaptatie; adaptation), para. 3.30.

271 *Kamerstukken II* 2023/24, 32813, no. 1312 (Letter from the State Secretary for the Interior and Kingdom Relations), p. 6.

272 Statement of rejoinder, para. 3.47; see also 6.30 of this judgment.

273 See the stenographic report of the conference, zoek.officielebekendmakingen.nl/kst-30300-IV-37-b1.pdf, p. 4-8.

274 Outline agreement between the Netherlands Antilles, the Netherlands, Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba, *Kamerstukken II* 2005/06, 30300 IV, no. 18 b1.

275 This was also frequently observed afterward, see, for example, the PowerPoint presentation from the Ministry of Infrastructure and Water Management (hereafter: IandW), *IandW's commitment to the Caribbean Netherlands for the upcoming cabinet term* of April 14, 2022 (Greenpeace exhibit 54): "*IandW is currently active in at least 20 policy areas. In many of these policy areas, matters are not in order. This is primarily due to a lack of resources. The BES fund (municipal fund for these islands), which is supposed to be managed by the Ministry of the Interior (DG Kingdom Relations), has been inadequate for years. For this reason, the islands have been turning to the ministries for (financial) support since 2010. In recent years (secondly), we have primarily experienced a lack of implementation and administrative capacity of the islands' public bodies, which is therefore partly responsible for the malfunctioning of the systems.*" (sheet 2), and "*The climate scenarios -necessary for adequate stress testing are less detailed for the Caribbean Netherlands than for EUR NL, meaning the islands are insufficiently able to identify, design, and implement the most effective measures. In virtually all environmental policy areas, the*

minimum desired progress is lacking." (sheet 4), and "*For IandW, the work surrounding the BES islands often involves tasks that do not fit within the current organizational structure. Firstly, because the tasks are often delegated, and secondly, because the state of infrastructure on the islands lags behind or deviates significantly from what is currently available in EurNL.*" (sheet 5), and "*Climate adaptation. In the Netherlands, municipalities have their own responsibility for climate adaptation. However, the islands lack the expertise to deal with this issue, resulting in insufficient insight into climate risks and insufficient or no measures being taken to mitigate these risks. IandW could consider providing the necessary technical assistance. To prevent a report from being compiled that disappears into a drawer, we recommend imposing a co-financing requirement.*" (sheet 7).

276 From the Memorandum for information dated 12 April 2019 (*Climate adaptation BES islands, St Maarten, Aruba and Curaçao*, Greenpeace exhibit 43) submitted with the summons and the internal memo from the Ministry of Infrastructure and Water Management early January 2022 (*Elaboration of the coalition agreement for drinking water, wastewater and marine environment in the Caribbean Netherlands*, Greenpeace exhibit 49) it follows that at that time it was known within IandW that there was no adaptation policy for the Caribbean Netherlands, that it was urgently needed, but that there were no concrete plans or budgets to create it.

277 See 6.17 of this judgment and footnote 110.

278 This is also called 'system responsibility' or 'system responsibility'; see, for example, the PowerPoint presentation *"IandW's efforts in the Caribbean Netherlands for the next cabinet period"* of 14 April 2022 (Greenpeace exhibit 54), sheet 3 entitled *"System Responsibility" ("The fact is that the state of the vital infrastructure and the environmental policy are structurally not in order and the minister can decide to intervene because he is standing for the IandW objectives of safety, accessibility and livability"*).

279 The *KlimaSeniorinnen*-judgment, §553-554; article 6 UNFCCC; Advisory Opinion ICJ, §280. See also Compliance Committee Aarhus Convention 1 July 2020, *Recommendations with regard to request for advice ACCC/A12020/2 by Kazakhstan*, ECE//MP.PP/C.1/2021/6, under A.

280 Statement of defense, pars. 8.116-8.145 and 15.25-15.31; statement of rejoinder, para. 8.31.

281 Statement of rejoinder, pars. 3.49-3.53 and 8.31.

282 *Kamerstukken II* 2023/24, 32813, no. 1312 (Letter from the State Secretary for the Interior and Kingdom Relations), §1.

283 Statement of defense, pars. 8.127-8.145; statement of rejoinder, pars. 3.49-3.53 and 8.31.

284 Guide on Article 14 of the Convention (prohibition of discrimination) and on Article 1 of Protocol No. 12 (general prohibition of discrimination), ks.echr.coe.int/documents/d/echr-ks/guide_art_14_art_1_protocol_12_eng, versie 28 februari 2025 (hierna: Guide on Article 14), §3.

285 Guide on Article 14, §20-24.

286 Council of Europe, *Explanatory Report to the Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, (hereafter: Explanatory Report to Protocol No. 12), §33; ECtHR 20 December 2022, no. 53282/18 and 31428/20, ECLI:CE:ECHR:2022:1220JUD005328218 (*Moraru and Marin/Romania*), §99-100.

287 Explanatory Report to the Protocol No. 12, §22.

288 ECRM (Plenary) 28 October 1987, no. 8695/79, ECLI:CE:ECHR:1987:1028JUD000869579 (*Inze/Austria*), §41; ECtHR (GC) 6 April 2000, no. 34369/97, ECLI:CE:ECHR:2000:0406JUD003436997 (*Thlimmenos/Greece*), §44; ECtHR (GC) 12 April 2006, no. 65731/01 and 65900/01, ECLI:CE:ECHR:2006:0412JUD006573101 (*Stec et al./United Kingdom*), §51; ECtHR (GC) 16 March 2010, no. 15766/03, ECLI:CE:ECHR:2010:0316JUD001576603 (*Oršuš et al./Croatia*), §149.

289 ECtHR (GC) 16 March 2010, no. 15766/03, ECLI:CE:ECHR:2010:0316JUD001576603 (*Oršuš et al./Croatia*), §149.

290 ECtHR (GC) 6 April 2000, no. 34369/97 ECLI:CE:ECHR:2000:0406JUD003436997 (*Thlimmenos/Greece*), §44; ECtHR 6 January 2005, no. 58641/00, ECLI:CE:ECHR:2005:0106DEC005864100 (*Hoogendijk/the Netherlands*), assessment under 2.

291 ECtHR 20 June 2006, no. 17209/02, ECLI:CE:ECHR:2006:0620JUD001720902 (*Zarb Adami/Malta*), §76 and §80-82; ECtHR (GC) 16 March 2010, no. 15766/03, ECLI:CE:ECHR:2010:0316JUD001576603 (*Oršuš et al./Croatia*), §150.

292 ECtHR 13 December 2005, no. 55762/00 and 55974/00, ECLI:CE:ECHR:2005:1213JUD005576200 (*Timtshev/Russia*), §57; ECtHR (GC) 16 March 2010, no. 15766/03, ECLI:CE:ECHR:2010:0316JUD001576603 (*Oršuš et al./Croatia*), §150.

293 IPCC, *Regional fact sheet – Small Islands*, which is completely traceable to IPCC AR6 The Physical Science Basis; IPCC, *Fact sheet – Small Islands*, which is completely traceable to IPCC AR6 Impacts, Adaptation and Vulnerability.

294 Cf. ECtHR 20 June 2006, no. 17209/02, ECLI:CE:ECHR:2006:0620JUD001720902 (*Zarb Adami/Malta*), §82.

295 Cf. Advisory Opinion ICJ, §427.

296 Cf. HR 7 March 2014, ECLI:NL:HR:2014:523 (*State/Norma et al.*), para. 4.6.2; the *Urgenda*-judgment, para. 8.2.4.

297 Cf. the *Urgenda*-judgment, para. 8.2.2.

298 Cf. the *Urgenda*-judgment, para. 8.2.3-8.2.7.

299 Cf. the *Urgenda*-judgment, para. 8.2.6; HR 9 April 2010, ECLI:NL:HR:2010:BK4549 (*SGP*), para. 4.6.2.

300 The *Urgenda*-judgment, para. 8.2.5.

301 See the investigations mentioned in 4.10-4.13 and 6.29 of this judgment.

302 Statement of defense, pars. 8.128-8.136.

303 Decision 2/CMA.5, p. 24 under 10 (b) and (c).

304 Statement of defense, pars. 16.5-16.9.

305 Established case law, see, inter alia, HR 29 November 1996, ECLI:NL:HR:1996:ZC2215, para. 3.4; HR 20 December 2019, ECLI:NL:HR:2019:2026, para. 3.2.3.

306 Decision 2/CMA.5, p. 24 under 10 (b) and (c). See also 5.24 of this judgment.