The Dredging Problem at the Suape Industrial Port Complex, Pernambuco: Complaint regarding impacts and irregularities

This complaint is based on violations of OECD Guidelines on human rights violations and social and environmental impacts by the Dutch multinational Van Oord (hired by the Suape Industrial Port Complex) while it was dredging the ocean access channel and the turning basin for the Promar S.A. Shipyard. The complaint is also related to violations of OECD Due Diligence Guidelines by the Dutch firm Atradius DSB, which insures Van Oord's activities in Suape. Finally, the complaint pertains to the joint liability of the Suape Industrial Port Complex, given that, as a state-run public/private company, it must implement and engage in transparent, responsible governance mechanisms that are efficient and professional.

Complainants:

Associação Fórum Suape Espaço Socioambiental
Conectas Direitos Humanos
Colônia de Pescadores Z08 - Gaibu
Both ENDS

Submitted to:

National Contact Point (NCP) - Brazil
OECD Guidelines for Multinational Enterprises
NCP Coordinator
Brazilian Ministry of Finance
Secretariat for International Affairs
pen.ocde@fazenda.gov.br
Tel.: + 55 61 3412 1969

National Contact Point – Netherlands
Secretariaat NCP OESO-richtlijnen
Ministerie van Buitenlandse Zaken
Bezuidenhoutseweg 67, Den Haag
NCPOECD@minbuza.nl
Tel: 070-348 4200

Stakeholders:

Associação Fórum Suape Espaço Socioambiental – Fórum Suape
Non-profit non-governmental organisation founded in October 2013 in the city of Cabo de Santo Agostinho, Pernambuco, in defence of human rights and socio-environmental rights.

Rua Petromilo Capristano dos Santos, 97 – bairro: Ponte dos Carvalhos
54580-330, Cabo de Santo Agostinho - Pernambuco
Tel.: 55 81 3274 - 3766
forumsuape@gmail.com
http://www.forumsuape.ning.com

Conectas Direitos Humanos

A non-profit international non-governmental organisation founded in September 2001 in São Paulo, Brazil. Its mission is to promote the enforcement of human rights and the rule of law in the Southern Hemisphere: Africa, Latin America and Asia. Since January 2006, Conectas has had a consulting status at the United Nations (UN), and since May of 2009, it has had observer status in the African Commission on Human and Peoples' Rights.

P.O. Box 62633
01214-970, São Paulo - SP
Tel/Fax +55 11 3884-7440
http://www.conectas.org/

Colônia de Pescadores do Município do Cabo de Santo Agostinho (Z08)
A non-profit civil association, a professional body representing professional and small-scale fishermen.
Avenida Beira Mar, 58 – bairro de Gaibu
54.590-000, Cabo de Santo Agostinho - Pernambuco
Tel.: +55 81 8623-3297

Both ENDS
An independent non-governmental organisation (NGO) that works towards a sustainable future for our planet. It identifies and strengthens civil society organisations (CSOs), mostly in developing countries. These organisations often come up with sustainable solutions for environmental and poverty-related issues.

Nieuwe Keizersgracht 45
1018 VC Amsterdam
Netherlands
Telephone +31 20 5306 600
Fax +31 20 620 8049
Email info@bothends.org
http://www.bothends.org

Accused enterprises

Van Oord Marine Ingenuity
A private Dutch enterprise, working in over 50 countries as a contractor for dredging, marine engineering and offshore energy projects (oil, gas and wind). Hired by Empresa Suape to dredge the port area. Although Van Oord has worked in Suape since 1995, its two most recent projects (dredging work for Promar S.A. and dredging an ocean access channel for the Port of Suape) received export credit insurance in 2011-2012 from the Dutch government, through the export credit agency Atradius Dutch State Business.

Schaardijk 211
3063 NH Rotterdam
PO Box 8574
The Netherlands
http://www.vanoord.com

Address in Brazil:
Van Oord Serviços de Operações Marítimas Ltda.
Rua da Assembleia, 11 - 6 ◦ andar - Centro
20011-001, Rio de Janeiro, Capital
Tel.: +55 21 21720100 Fax: +55 21 21720121
http://www.vanoord.com/contact/america#Brazil

Atradius Dutch State Business (Atradius DSB)
Atradius DSB offers Dutch enterprises credit insurance on behalf and account of the State, involving export transactions for capital goods or international construction projects, with a wide range of insurance and guarantee projects when doing business abroad. Through its insurance and guarantee products, Atradius assists companies in winning export transactions and increasing their financing capacity with their banks.

David Ricardostraat 1, 1066 JS Amsterdam
Postbus 8982, 1006 JD Amsterdam
Tel .: +31 (0) 20 553 2693
Fax: +31 (0) 20 553 2087
htpp://www.atradiusdutchstatebusiness.nl
E-mail: info.mtb@atradius.com.

Complexo Industrial Portuário Eraldo Gueiros – Empresa Suape, Pernambuco
The Stakeholders believe that Empresa Suape, which manages the Suape Industrial Port Complex as a Pernambucan state-run private/public company, is subject to the regulations of the Brazilian government, which is a signatory to the Corporate Social Responsibility Guidelines of the Organisation for Economic Co-operation and Development (OECD). Therefore, they believe that Empresa Suape is jointly liable for the violations described herein.

Engenho Massangana, PE 09 – s/n Rodovia PE, 60 -
55.590-972, Pernambuco
PABX: +55 81 35275000 / Fax:+55 81 35275066
www.suape.pe.gov.br

Introduction

FÓRUM SUAPE ESPAÇO SOCIOAMBIENTAL, CONECTAS, COLÔNIA DE PESCADORES Z8 – GAIBU and BOTH ENDS (the "Complainants") hereby submit this complaint regarding the acts and omissions of Van Oord and the Dutch export credit agency Atradius DSB, in failing to comply with the "OECD Guidelines for Multinational Enterprises" in the two projects described above: 1) Project to open and deepen the access channel to the Port of Suape; and 2) Project to build and open the access channel and turning basin for the Promar Shipyard. The projects involved dredging, rock removal, disposal and filling work, undertaken in the municipality of Cabo de Santo Agostinho, Pernambuco, Brazil.

In this context, we believe that Empresa Suape (the Suape Industrial Port Complex) is jointly liable as the party that hired the services rendered by Van Oord. Therefore, we believe that its liability arises from its failure to perform due diligence to ensure the responsible implementation of the projects and to prevent human rights violations with respect to Brazilian laws and regulations, and in accordance with the OECD Guidelines and other international agreements to which the country is a signatory.

<u>The Projects in question:</u>
Van Oord has been active at the Port of Suape since 1995. On 23 November 2011, Van Oord received a loan through the Dutch government's official export agency – Atradius DSB – for dredging works to form an access channel and a basin for the then-recently built Promar S.A. Shipyard, located on and around Tatuoca Island, an estuary in Suape. Van Oord was hired for this work by the Port Authority at the Suape Industrial Port Complex. The maximum amount insured by Atradius DSB for this project was EUR 41,525,100.00. On 19 January 2012, Van Oord signed a new dredging contract for the Suape Industrial Port Complex that was also insured by Atradius DSB, in the maximum amount of EUR 68,769,653.00. That second contract was for deepening the access channel to a depth of at least 21 metres. The first contract was classified by Atradius DSB as Category A ("a project with major irreversible impacts, potentially affecting areas beyond the works"). The second contract was classified as Category B, also having "high impact", but was more limited to the directly affected area. Atradius DSB's classification of the insured projects' social and environmental impacts is described in that institution's documents and policies[1].

[1] http://www.atradiusdutchstatebusiness.nl/Images/dsben/44.101.01.E%20CRS%20brochure_tcm1009-132870.pdf.

Context of the Complaint

Van Oord failed in its due diligence for the works by not engaging in responsible consultations with all the families affected and by not disclosing accurate information about the severity of the works that would affect both the population and the environment. It failed in terms of information transparency; it failed to effectively plan and implement preventive and mitigating actions sufficient for the impacts that would be caused. Its acts and omissions caused serious adverse damage to the environment and marine and coastal ecosystems[2], and had an impact on the lives of hundreds of humans and their rights[3].

Van Oord violated the Guidelines in both of these projects, given that:

1. It failed to disclose relevant information with respect to the social, economic and environmental impacts of its operations, particularly to civil society and the traditional communities that reside in the region. It did not warn the traditional communities about the risks of the projects during their implementation phases (dredging, excavation, disposal of materials/waste; rock removal and filling), and thus exposed fishermen to situations that jeopardised their lives by using heavy machinery near their homes; using dredgers during fishing season, without proper isolation and distance from the small-scale fishing vessels; and carrying out deep-sea explosions without prior notice. It did not warn them of the resulting soil and water contamination and elimination of vegetation, and failed to provide sufficient conditions for the local population to take preventive action and to demand appropriate measures to ensure their food safety, health and well-being. We believe that the requests for information by the local communities, fishermen and women, the region's residents, NGOs and society in general were not effectively met.
2. In terms of human rights, it failed to avoid violations and did not address the adverse effects with which Van Oord is involved. Van Oord failed to ensure the proper participatory development of mitigating and compensatory measures; it did not assess or review the relevance of the proposals and instruments to be used, and it did not monitor the evolution of existing measures with the communities.
3. The dredging, rock removal, disposal and filling work done by Van Oord had serious adverse impacts on human rights, and it failed to avoid or to mitigate those impacts.
4. Van Oord made significant donations to political parties that have a major influence on the decision-making processes related to projects at the Suape Industrial Port Complex (as demonstrated in the item "Relevant Information" below), which raises questions about its neutrality and the fight against bribery and corruption.

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[2] Several complaints have been made to the State Environmental Agency (CPRH) and the Public Prosecutor's Office over the past few years. The opinion included in Technical Report UGC 28/2013 dated 2 September 2013, prepared by the CPRH (Exhibit I) describes in detail part of the damage caused by the dredging. Other complaints have been filed by Fishing Colony Z8.

[3] Testimony collected in the videos: "*Suape, Um Caminho Sinuoso*" and "*Tatuoca, Uma Ilha Roubada*". Please see: https://www.youtube.com/watch?feature=player_embedded&v=I7X1WbGuSSk (Exhibit II). Testimony obtained during preparation and consultations for this complaint. This testimony can be viewed at www.forumsuape.ning.com.

5. The activities did not contribute to broader sustainable development objectives and did not take into account the need to protect the environment, public health and safety. The assessments and decision-making related to foreseeable impacts on the environment resulting from the dredging, rock removal, disposal and filling work were not performed comprehensively and thoroughly, and did not consider all the environmental aspects and characteristics of the affected ecosystems (mangroves, Atlantic Rainforest, *restinga*, reefs, marine and estuary ecosystems).

In addition to Van Oord's failings, the export credit agency Atradius DSB failed to use its influence over Van Oord to ensure compliance with the OECD Guidelines on the activities for which it was providing cover. Similarly, Atradius DSB failed to ensure that the UN Guiding Principles on Business and Human Rights and the IFC's Performance Standards were effectively applied in both of Van Oord's projects in Suape.

In violation of its own corporate social responsibility policies[4], Atradius DSB failed to ensure effective monitoring of the projects' impacts. This behaviour, among other factors, resulted in a failure to consult with the affected people and communities, a loss of traditional ways of life, as well as severe damage to biodiversity and ecosystems. As an implementing agency that acts on behalf of the Dutch government, Atradius DSB is committed to implementing the OECD Guidelines. In violation of those Guidelines, it failed by not encouraging Van Oord to apply them. By attempting to hold the contracting parties and Brazilian authorities liable for consulting with and guaranteeing the participation of the affected populations, Atradius DSB shirked its responsibility to comply with OECD Guidelines, transferring it instead to the client (cf. communications and letters exchanged between Both ENDS, Atradius DSB and Van Oord).

The Suape Industrial Port Complex, as the client and purchaser of Van Oord's services, failed by not demanding high standards of transparency and conduct in line with Brazilian regulations[5] for performing the work on both projects; by not carefully accompanying and monitoring the dredging, rock removal and filling work; by not demanding clear, effective measures for mitigation and set-off; and by not ensuring that the contractor, Van Oord, implemented consultation mechanisms for adjustments and participatory solutions, getting both the potentially affected communities and society in general involved in an informed manner. The Suape Industrial Port Complex, as a public/private state-run company, is subject to the laws of Brazil, which is a signatory country to the OECD Guidelines.

[4] "The Dutch government wishes to promote Dutch exports, but not at all costs. The government has decided to assume risks on export transactions and foreign investments only if they are not associated in any way with bribery or the violation of core labour standards and have no unacceptable environmental or social impacts. In addition, the Dutch government wishes to stimulate internationally active enterprises to operate in a responsible way." Passage taken from *Corporate Social Responsibility* (CSR) *and Export Credit Insurance*, Atradius, Dutch State Business, http://www.atradiusdutchstatebusiness.nl/Images/dsben/44.101.01.E%20CRS%20brochure_tcm1009-132870.pdf

[5] For example, Decree 5051/2004, which ratifies Convention 169, guaranteeing the right to a free, advance, informed consultation of indigenous and traditional peoples.

What is at stake

The coastal region of the state of Pernambuco is home to a rich diversity of landscapes, with reef ecosystems, mangroves, estuaries, *restingas* and the Atlantic rainforest. The region has been historically occupied by traditional communities, including fishermen, shellfish collectors, and small-scale farmers. The natural beauty of the beaches and the countless leisure opportunities attract tourists from around the world and drive a significant part of the state's economy.

In the midst of this unique environment, a mega port and industrial project was undertaken, roughly 40 kilometres to the south of the city of Recife, the capital of the state of Pernambuco. The location is the Suape Industrial Port Complex, on Suape beach. Referred to by local authorities as the "state's engine", "El Dorado", and the "crown jewel", the Suape Industrial Port Complex covers a vast area 13,500 hectares in size, affecting nearly 25,000 people. Most of the affected families live in traditional communities known as "*engenhos*" in Portuguese, a reference to the period when their grandparents and great-grandparents worked on large sugarcane plantations. Today, they live off of subsistence agriculture, farming lots that are around 10 hectares each, where they have preserved the native forest and sell native fruits and use them for sustenance. The families inhabiting regions closer to the coast make their living mainly from traditional fishing. All these families live in a close relationship with and interdependence on the environment, having developed specific local economic relationships of trade and collaboration. Obviously, these are traditional communities. The dredging and deepening of the access channel have drastically modified their ecosystems, harming these families' existence, contaminating the water and soil, and consequently degrading the social fabric and cultural and traditional habits of these communities. The survival of these families is at stake.

According to the official website of the Suape Industrial Port Complex (www.suape.pe.gov), the Port of Suape is considered one of the country's leading investment centres and a strategic location in relation to the main ocean shipping routes, connected to over 160 ports on every continent, with direct lines to Europe, North America and Africa. The official site emphasises the rapid expansion of the Suape Industrial Port Complex: "…in 2011, cargo activity exceeded 11 million tonnes, and container traffic was over 400,000 TEUs, which translates into 25% and 33% growth, respectively, over the previous year." In 2014, the port transacted over 15 million tonnes of cargo and earned more than R$ 100 million in revenue.[6]

The Suape Industrial Port Complex is home to over 100 companies "including chemical, metal/mechanical, naval and logistics industries, which are going to strengthen the generation centres for energy, bulk liquid and gases, food and wind power, in addition to creating opportunities in other segments such as metal/mechanical, grains and logistics. All told, this exceeds R$ 40 billion in

[6] Official site of the Suape Industrial Port Complex: www.suape.pe.gov.br, visited on 20/05/2015.

investments."[7] Among other mega projects is the petroleum refinery RNEST - Refinaria do Nordeste Abreu e Lima.

Since 1995, the Dutch firm Van Oord has engaged in multiple dredging activities for the Suape Industrial Port Complex. In 2011 and 2012, Van Oord signed two contracts with the Suape Industrial Port Complex, which were insured by the Dutch export credit agency Atradius DSB.

The first contract was for dredging and filling work and a turning basin for the Promar S.A. Shipyard. The "Additional EIA report: Environmental Impact Assessment of Promar S.A. – Suape" (Moraes/Albuquerque, Advogados & Consultores, dated 19 November 2010 – Exhibit IV) indicated that there were 48 families in traditional communities inhabiting the island of Tatuoca, which was affected by the Promar project. On-site interviews with community leaders in August 2013 indicated that this number was likely underestimated, since the census method counted land lots, and these lots were often home to more than one nuclear family. As such, we believe that this figure should be revised to ensure fair and inclusive compensation. Regardless of the number of residents, it is important to point out that all the families were removed after a short negotiation or were violently expelled. Van Oord's works involved cutting down native vegetation, performing earthworks and disposing of dredged sediment on land areas, thereby contaminating the environment and affecting the marine-coastal fauna, depriving residents of their traditional fishing, shellfish/crab collection, native fruit picking, and small farming for subsistence and sale (documents corroborating these allegations are referred to in this complaint, such as: the CPRH UGC Opinion 28/2013; Additional EIA report; Both ENDS Report; and field records, videos and interviews).

The situations experienced were flagrant, and included expropriation in exchange for ridiculous compensation that does not reflect the true value of the traditional and rural farming lands; arbitrary bans on engaging in traditional activities, preventing the communities' free expression and their ways of life and the rights to "come and go" (for instance, the families were prevented from planting/caring for their family farms and/or fishing, and from collecting shellfish in the region and in the areas now set aside for installation and operation of the Suape Industrial Port Complex enterprises and Promar S.A.). These allegations are documented by the Fórum Suape in the form of official complaints sent to the State Prosecutor's Office, complaints to the Brazilian Bar Association (OAB), police reports, among other ways. These documents can be produced by the Fórum Suape Espaço Socioambiental, cf. relevance.

The Suape Port Authority takes extremely arbitrary and violent measures, and has implemented a "security" system for the Suape Industrial Port Complex that acts like an armed militia: it threatens the local population, invading properties in armed groups to coerce residents into leaving their homes; it engages in overt surveillance disproportionate to the risks to the company's property, driving by the residents' homes on motorcycles and destroying crops or their remodelling

[7] Official site of the Suape Industrial Port Complex: www.suape.pe.gov.br/institutional/institutional.php, visited on 20/05/2015.

projects. This cruelty results in harassment, stress and lack of security. Residents and supporting organisations report these events to the local authorities and government agencies. There are multiple police reports at municipal police stations and complaints on the website of Fórum Suape (www.forumsuape.ning.com). Specific cases are recorded in videos, photographs and testimonies, and have been made known to the Suape Industrial Port Complex, Van Oord and Atradius DSB. Nevertheless, no measures have been taken. The aggression and violence, which are occurring in broad daylight, reveal the negligence of these enterprises, which have become accomplices to the violence of this "security system" to speed up their projects and thus "facilitate" settlements with the residents, who, out of fear, are more likely to accept any terms imposed on them. The enterprises continue to allege ignorance of this situation, despite multiple complaints by the communities, local associations, and support entities. When questioned, Van Oord claimed that it was not responsible for the community relocation operations (cf. letters exchanged between Van Oord and Both ENDS).

Van Oord's second contract with the Suape Industrial Port Complex is to dredge the ocean access channel to the Port of Suape. This channel was deepened by 21 metres so that large ships and tankers, including oil tankers, can enter it. To complete this dredging work, the solid rock bottom of the sea was dynamited and destroyed. Van Oord employed equipment that was specially designed for the project (Wavewalker platform) whereby the sea floor is blown up and a large dredger sucks up the detritus. This contract was terminated before Van Oord finished its work; therefore, the job remains incomplete due to a financial dispute: Van Oord is demanding an additional EUR 40 million as outstanding payment. Consequently, this issue has reached Atradius DSB, which is currently engaged with the Dutch government in seeking this payment from the Brazilian authorities.

As a result of these two projects, there has been a high mortality rate among marine-coastal species (including endangered species), in addition to crabs, lobsters, molluscs, etc. There have also been serious/irreversible transformations of the ecosystems, affecting biodiversity and local communities' ways of life (according to complaints from Fishing Colony Z8, local testimonies, and a technical report prepared by the State Environmental Agency - CPRH/UGC 28/2013).

The affected areas are vital to the survival of the traditional peoples who have fished for generations, and this activity has been their only way of making a living.

The work was done with licenses issued by the state environmental agency of Pernambuco, the state environmental agency (CPRH), in violation of current law in Brazil, which requires licensing by the federal environmental agency (for instance, Supplementary Law No. 140, dated 8 December 2011)[8], in order to facilitate implementation of the projects. No proper protection and off-set measures were established for the environmental impacts, leading to the near extinction of traditional fishing activities, shellfish collection, and gathering of native fruits; and the violent, forced displacement of the traditional population.

[8] Supplementary Law 140/2011 - Chapter III Art. 7. The federal government's administrative actions include...XIV – to provide environmental licensing for projects and activities: b)" located or developed within the country's sea, on the continental platform..."

Over the past three years, the Complainants have made numerous requests for consultations and attempts at dialogue with the enterprises involved in the Promar S.A. work.

Relevant information

- Since 1995, the Dutch dredging company Van Oord has been involved in multiple expansion and maintenance projects at the Port of Suape.
- The National Strategic Port Plan (PNE/Portos) was begun in 2008. This Plan provided for dredging and work to expand the ports in Brazil[9].
- Also in 2008, the Suape Industrial Port Complex board of directors ordered a study conducted by a local company, Eiconor, which found that there were 580,000 cubic metres of hardened material at the bottom of the ocean, which would make dredging R$ 240 million more expensive to deepen the ocean access channel to the Port of Suape, from 16 to 21 metres. The amount calculated at that time was R$ 350 million (source: brazilmodal.com.br/2015highlights/high4780/ dated 16/03/2008).
- In October 2009, the federal government's Special Secretariat of the Ports (SEP) held an auction that had 19 qualified participants; however, none of them submitted a bid, claiming that the base price (R$ 108 million) was too low. At the time, studies indicated that the project would cost R$ 300 million, because of the large amount of hardened material (reefs and rocks) on the sea floor that would need to be removed[10].
- In November 2010, Promar S.A. requested the study called "Supplemental EIA report: Environmental Impact Assessment - Promar S.A. Shipyard – Suape" conducted by Moraes/Albuquerque, Advogados & Consultores and presented on 19 November 2010. Then, in 2013, there was talk of a more comprehensive study to be done, but despite official requests[11] for access to that document, it was never presented.
- In June 2011, Van Oord won the auction for the dredging works in the access channel to the Promar S.A. Shipyard, which consisted of furthering the already open channel to the Atlântico Sul Shipyard (EAS)[12].
- On 23 November 2011, Atradius DSB, the Dutch export credit agency, issued an insurance policy for Van Oord to undertake this project, for a maximum amount of EUR 41,525,100.00. The debtor is the Suape Industrial Port Complex. Atradius DSB classified Van Oord's project for the Promar S.A. Shipyard as "Category A": with major potential social, environmental and economic impacts that extended beyond the project's location. Although this category requires an environmental impact assessment, only a complementary study[13] (Exhibit IV) was prepared.

[9] For more information, please visit the Special Secretariat of Ports/Brazil: www.portosdobrasil.gov.br

[10] See: grandesconstrucoes.com.br/índex.php?option=com_conteudo&task=viewmateria&id=663 dated 20/12/2011.

[11] This study was requested from the CPRH in the name of the Fórum Suape-Espaço Socioambiental, by Heitor Scalambrini Costa, on 10/07/2013, cf. Proceeding nº 008912/2013, Administrative Proceeding (Exhibit III).

[12] See: www.portalmaritimo.com; kincaid.com.br/clipping/8901/Van-Oord- vence-licit.html

[13] Document: "Supplemental EIA: Environmental Impact Assessment Promar S.A. Shipyard – Suape" prepared by Moraes/Albuquerque, Advogados & Consultores and presented on 19 November 2010.

- On 7 November 2011, a service order was signed for the dredging and rock removal work to deepen the access channel to the external port. The work was to increase the channel's depth by four metres (to 21 metres), along a six kilometre stretch that is 210 metres wide. The work was budgeted at R$ 278,194,966.73, with R$ 200 million to come from the state government and Petrobrás, and another R$ 78,815,240.00 to come from the Special Secretariat of Ports. A Van Oord Group company called Somar was hired through a cooperation agreement. This order was signed by the Minister of Ports and the State Governor of Pernambuco[14].
- In February 2013, Both ENDS published a report entitled "Review of Dredging Activities for Entry Channel and Harbour Basin for Promar S.A. Shipyard, Suape, Brazil"[15] (Exhibit V). The preliminary version of this report was presented in 2012 to both Atradius DSB and Van Oord with questions for both firms. The answers came in separate letters, though none of the facts uncovered in the report were challenged. Atradius DSB stated that it was aware of the problems related to "forced resettlement" and the loss of biodiversity. Atradius DSB also said that "the responsibility for consulting with interested local groups is up to our client", which is the Suape port authority and the local government (letter from Atradius DSB to Both ENDS dated 10 January 2013 – Exhibit VI). Similarly, Van Oord stated that the responsibility for consulting with stakeholders was up to the client (letter from Van Oord to Both ENDS dated 18 January 2013 - Exhibit VI).
- In May 2013, the dredging works were halted for contract renegotiation (and remain on hold to date, with 90% of the works completed).
- In September 2013, other irregularities became apparent. The Suape Industrial Port Complex received two infraction notices from the state environmental agency (CPRH) for setting off explosions in the dredging work in April 2013 that affected the habitats of two threatened marine species, in addition to affecting traditional fishing in the region. One of the infraction notices assessed a fine of R$ 2.5 million, and the other set a deadline of 90 days for the Suape Industrial Port Complex to submit a "study containing measures for a detailed diagnosis, with mitigation and offset for the habitat of the Atlantic goliath grouper and the Guiana dolphin."
- In 2013, Van Oord made some noteworthy donations to the Brazilian Socialist Party (PSB), the national president of which was the Governor of Pernambuco. Donations of R$ 1.8 million were reported in 2010, and R$ 2.5 million in 2012[16]. These were the largest donations to the PSB, after the major government contractors.
- From 2011 to 2013, there were operations to "deepen the external channel and dredging works and expansion of the access channel to the Promar Shipyard, with both projects carried out by Van Oord. These works involved removing around five million m^3 of material from the sea floor and estuary[17]

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[14] See: www.suape.pe.gov.br/home/índex.php - news from 08/11/2011 and http://veja.abril.com.br/blog/Reinaldo/geral/pos-rompimento-governo-dilma-cobra-de-campos-devolução-de-dinheiro-federal-investido-em-suape-e-aponta-irregularidades-em-porto/ dated 25/10/2013.

[15] See: http://www.bothends.org/uploaded_files/document/130222_Report_Suape.pdf (Exhibit V)

[16] See: http://tijolaco.com.br/blog/?p=20998. Visited on 15 May 2015.

[17] Costa, H.S. *Efeitos da dragagem e derrocagem no Complexo Industrial Portuário de Suape (CIPS) em Pernambuco*, Direito Aduaneiro, Marítimo e Portuário magazine, v.18, p.214-227, 2014 (Exhibit VII).

(Exhibit VII). The Wavewalker1 platform and the Lelysdad [sic] dredger were used to perform these projects. This engineering project enabled the channel's depth to be increased from 16 m to 20 m. Van Oord's services hired for the works related to the Promar S.A. Shipyard were completed in 2013.

Information and important milestones

Complaints have been made concerning human rights violations and social and environmental degradation caused by Van Oord's works. This work has left a trail of devastated marine, estuary and river ecosystems in the region. There have been countless efforts to publicise the seriousness of this situation, as well as attempts to raise awareness and engage in talks with the accused entities. In recent years, civil society has managed to organize a significant volume of evidence while at the same time reaching the media and international forums, thereby shedding some light on these issues. It is fundamental that the enterprises named herein fulfil their responsibilities under the OECD Guidelines and other nationally and internationally recognised mechanisms.

The work on Promar S.A. Shipyard facilities caused abandonment and worsened the violations endured by the local communities, along with a visible loss of quality of life and environmental quality.

Concerned primarily about the future scenarios in this case, multiple civil society agents have organised into a permanent forum that seeks to discuss the current issues that are being experienced by the populations in the Suape Industrial Port Complex region and their impacts on future generations. Thus, in 2013, the Fórum Suape Espaço Socioambiental [Suape Socio-Environmental Forum] was created to propose, act and interact purposefully with the initiatives that are being implemented in various regions of the country, on issues of socio-environmental justice. In addition to being a place for sharing information and training, the Forum monitors and reports on the damage that is occurring, in particular to the communities, which do not have access to the media and remain invisible to society. It also seeks and encourages alternatives to build a new, fairer, more cooperative and united society. The Fórum Suape Espaço Socioambiental aims to strengthen and support the local organisations that represent the affected populations.

Some of the actions involved in that process are available at an information portal created by Fórum Suape Espaço Socioambiental - www.forumsuape.ning.com.
In recent years, as work has intensified in the Suape Industrial Port Complex region, representatives from local organizations, resident associations and researchers have been gathering and joining forces to monitor the transformations and to seek fair social, economic and environmental solutions. A few examples of the efforts and actions undertaken include:

- Debates and meetings with key players in the state of Pernambuco and society in general;

- Organising and participating in public hearings at the City Council of Cabo de Santo Agostinho;
- Holding a meeting with the Archbishop of Recife and Olinda, Dom Saburido, to make him aware of the situation of exclusion and violence being experienced by the residents of the region around Suape[18];
- Organising and holding a meeting of Suape area residents with the board of directors of the local bar association (OAB-PE) on 10 November 2014, at the association's headquarters. Over 100 people, residents of the region affected by the Suape Industrial Port Complex, met with Bar Association President Pedro Henrique Reynaldo Alves; the president of the Human Rights Commission of the Bar Association, João Olímpio Mendonça; and the president of the Bar Association Office in Cabo de Santo Agostinho, Geny Lyra, seeking the association's support. At that time, the Bar Association President stated his intention to try to establish a dialogue with the company, Suape, but there have been no significant developments. At the meeting, the communities' representatives explained the abuses of power and human rights violations being committed by the Suape Industrial Port Complex, and the association's representatives were given documentary evidence of the facts being reported[19];
- Using the Access to Information Act to request explanations from state agencies about Van Oord's works;
- Submitting complaints to the Prosecutor's Office regarding violations of the communities' rights, in particular regarding expulsions from land, in addition to complaints involving environmental crimes.
- Developing strategic contacts with the National INCRA (National Agrarian Reform Agency) and its state representatives;
- Working with research institutes to generate reliable information;
- Developing international and domestic partnerships with agencies involved in human rights and environmental justice issues;
- Documentation and production of photographs, articles and videos with complaints, revealing circumstances not taken into consideration by the agencies in charge;
- Holding workshops, training courses and field visits to raise awareness;
- Establishing contact with the Dutch Embassy in Brazil, explaining the case and presenting evidence that corroborated the violations;
- Sending reports and notes to the governmental authorities of the municipalities, the state of Pernambuco, and federal departments, such as the relevant ministries, in addition to the state prosecutor's office. Reports were also sent to both Van Oord and Atradius.

Failures to Comply with OECD Guidelines

From Chapter II "General Policies" in the Guidelines

Both Van Oord and Atradius DSB failed in their duties to:

[18] See: forumsuape.ning.com/profiles/blogs/fórum-suape-visita-dom-saburido.
[19] See: forumsuape.ning.com/profiles/blogs/reuniao-dos-moradores-do-territorio-de-suape-com-direcao-oab-p.

Contribute to economic, environmental and social progress with a view to achieving sustainable development (item 1).

Grounds:

- Fishing has been an important component of the state's economy. The studies performed[20] by the Instituto Oceanário and the Department of Fishing and Aquaculture at the UFRPE (Exhibit VIII) resulted in a socioeconomic diagnostic of small-scale fishing on the Pernambuco coast. At the time, this activity accounted for R$ 37.2 million, with 47,269 people directly dependent upon it. Rather than economic development, what has in fact taken place is a continuous decline in the output of fishing, an economic activity that guarantees an average monthly income of 2.5 minimum monthly wages, according to information from the Colônia Z8 of Fishermen. Today, this income is around half the monthly minimum wage. In recent years, coinciding with the works done by Van Oord, there has been a significant reduction in the output and income of fishermen, thus weakening this activity in the state.
- An important piece of data is in the Technical Report from the CPRH/UGC, referred to above (Exhibit I): Van Oord's actions to deepen the external access channel affected solid bottom areas, including sandstone and coral reefs. These works resulted in degradation of the habitat of several species of reef fish, further breaking the connection between the reefs and adjacent mangroves. This connection is important for the biomass of multiple commercially important species that have been harmed by previous works to level and raze the mangroves, including works done by Van Oord for Promar S.A. The dredging and rock removal was done in one of the most fished areas, physically and irreversibly affecting the fishing "*cabeços*", which are the areas where marine species reproduce. The report also emphasises that: ... "they are not duly recorded in official instruments designed to mitigate and offset environmental damage, such that failure to report has led to works being done with insufficient offsetting and mitigating measures or none at all...".
- Van Oord failed by not fulfilling environmental obligations, in accordance with Brazilian law. It also failed in its own obligation to perform due diligence and properly assess impacts. It disregarded the country's official instruments for mitigation and offsetting of environmental damage, and thus caused irreversible impacts on the environment and to interdependent economic activities.
- Atradius DSB failed by not reviewing the information provided by Van Oord and by not performing evaluations and checks on site. It also failed by not following the procedures in its own socio-environmental policy.
- Numerous women from local communities work and sustain themselves by gathering shellfish and crabs. The financial impacts were felt heavily by these women and their families, given the decrease in the shellfish-production areas and environmental degradation (testimony recorded and

[20] Socioeconomic Diagnosis of Small-Scale Fishing on the Coast of Pernambuco. Instituto Oceanário de Pernambuco, Department of Fishing and Aquaculture at the UFRPE, 2010.

provided in videos on Fórum Suape Espaço Socioambiental's website - Exhibit IX).

- The lack of alternative proposals to include traditional communities and the disrespect for their ways of life resulted in a process of social marginalisation. Economic and social alternatives must be included in the recommendations for mitigation and offsetting the damage caused by the project. In the case of installation project at the Promar S.A. Shipyard, the dredging works and actions taken by Van Oord were licenced based on a Supplemental Environmental Impact Assessment (Exhibit IV), which was clearly insufficient in light of the project's impacts and risks. This document does not point out specific alternatives that are appropriate for the affected population; it merely recommends the creation of a "permanent communication channel." Unfortunately, not even that recommendation was followed.
- No records were found of meetings and consultations with the affected communities that might prove their actual, informed and proactive participation. The local communities, entities and associations should have been informed and included in all stages of planning and implementation of the projects, and should have been warned of the risks of dredging and rock removal, as well as the scope of impacts. Instead, what the stakeholders found was that the small-scale fishermen, shellfish gatherers and traditional communities were surprised by the major transformations to their lands, by the high mortality rates of fish and marine fauna, and by the elimination of habitats that ensure the perpetuation of local species, along with the elimination of native vegetation that enables them to survive, and ruining and contaminating the environment. Van Oord failed by not verifying the quality and scope of the initial study (Supplemental Environmental Impact Assessment Report) that supported arguments for licencing the works at Promar S.A.
- Atradius DSB failed by accepting and not verifying the relevance and quality of the studies done in advance of the works being completed.

Respect the internationally recognised human rights of those affected by their activities (item 2).

Comments:

- The dredging, rock removal and filling work caused a vast area to no longer be adequate for fishing, as a result of the work done. These regions were considered among the most important for fishing in the coastal region of north-eastern Brazil.
- The impacts of this work violated Resolution 169 of the International Labour Organisation (ILO), which "acknowledges the right of tribal peoples thus defined by social, cultural and economic conditions that distinguish them from other sectors of the national community, and whose status is regulated wholly or partially by their own customs or traditions, or by special laws or regulations."
- The region is known for being inhabited by generations of traditional communities who survive primarily from fishing and gathering species of

shellfish and crabs. These communities were deprived or had their activities severely affected, as described in the Human Rights Chapter.

Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for workers (item 3).

Comment:

- Only a very small portion of people from the traditional communities and residents of the region affected by the Promar S.A. Shipyard project have been absorbed as part of the labour force, taking jobs that require little skill, are temporary and highly risky. No training, skills and incentive plan was presented or implemented to employ the local population in qualified jobs that might ensure better living conditions.

Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur (item 11);

Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship. (item 12)

Comment:

- There were around 48 families living in the area affected by the earthworks to build the Promar S.A. Shipyard (on Tatuoca Island – likely an underestimated number, as mentioned above), and other families lived around it. For over five generations, they survived off the riches of the local ecosystems. Dredging, clear cutting, and filling were done without proper transparency and negotiation to vacate the area's many residences. Thus, there is no doubt that the project contributed to the arbitrary expulsion of local residents from their residences, with serious losses to their ways of life and fundamental rights (food security, housing, health, income, leisure, etc.).
- The Suape Industrial Port Complex claims to be the owner of the lands where Van Oord was operating, including the lands on Tatuoca Island, which were filled and dredged. However, ownership of those lands is being legally challenged, under the just allegation that it is a territory inhabited by traditional communities. According to the National Policy on Sustainable Development of Traditional Communities and Peoples, Decree 6040 of 7 February 2007: ... "II. Traditional territories are the spaces necessary for the social, cultural and economic reproduction of traditional communities and peoples, whether they are used constantly or temporarily..." Given that the families who inhabited Tatuoca Island had their own forms of social organisation and occupied territories and natural resources as a condition for their cultural, social, religious, ancestral and economic reproduction, studies describe the population of the island as a traditional community; therefore, it is protected by Decree 6040 and by ILO 169. As such, the (local families) have the right to their territories and housing.

- Van Oord failed by not investigating this situation, causing irrevocable harm, with changes to the landscape that seriously affect the local populations, without at least having adequately reviewed the legal grounds for such works.
- Atradius DSB failed by not reviewing the information submitted by Van Oord – which should have been done through a direct, independent check of the situation on site. The communities and populations that were to be potentially affected were not consulted. Thus, Atradius DSB failed by not fulfilling the requirements of the OECD Guidelines.
- Both enterprises, Van Oord and Atradius DB, violated the provisions cited above of the OECD Guidelines by not taking measures to influence the local authorities and the Suape Industrial Port Complex for them to review the studies and prior impact reports, implementing action plans to mitigate the negative effects of the works, and making sure that the affected communities were heard during the various phases of the projects.

Chapter III "Disclosure"

There were failures in disclosing information related to Van Oord's operations and requests for information by the local communities, fishing communities, residents of the region, NGOs and society in general.

The objective of information disclosure would be to encourage a better understanding of Van Oord's operations. However, the information was not provided satisfactorily, in particular with the goal of improving public understanding of the company and its interaction with society and the environment.

As instructed in paragraph 33 of the OECD Guidelines on information practices: "The Guidelines also encourage a ... set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting... In some cases, this second type of disclosure – or communication with the public and with other parties directly affected by the enterprise's activities – may ... also cover information on the activities of subcontractors and suppliers or of joint venture partners. This is particularly appropriate to monitor the transfer of environmentally harmful activities to partners."

Comments:
In violation of paragraph 33 of Chapter III, the environmental licence that allowed the dredging and filling was issued by the state environmental agency (CPRH) without requiring a description of the socio-economic environment, the fishing activities in the region, and the impacts resulting from the project on these components. The only document prepared was a Supplemental Environmental Impact Assessment Report (Exhibit IV).

- Van Oord mentioned on several occasions the existence of an EIA that had been prepared by the Suape Industrial Port Complex after preparing and presenting

the Supplemental Environmental Impact Assessment Report. According to the company, this study was more detailed and comprehensive, including an analysis of the cumulative environmental impacts related to the projects in the Port of Suape (including dredging). However, Van Oord advised consulting the Suape Industrial Port Complex and the state environmental agency (CPRH) to gain access to this document, and it did not provide any information that would enable the document to be identified or to be correctly requested from government agencies. Nonetheless, neither the Suape Industrial Port Complex nor the state environmental agency (CPRH) provided that document.

- Atradius DSB only provided the Supplemental Environmental Impact Assessment Report, but it failed in not providing access to any other document that the agency uses in making decisions on the disbursements and entering into contracts with Van Oord for the two projects at Suape. Atradius DSB effectively failed to facilitate significant consultations with the stakeholders, and did not pursue processes for public participation in these projects.

Passage taken from the EIA report/C 2

" …Mitigation of the impacts on the surrounding communities is based on the mobilisation of actions to establish a direct channel of communication with the populations during all phases of the works. This communication must be given in the form of advance information, rather than a future explanation, that is, the social communication plan to be used must provide information in advance, based on the schedule to be established. Thus, the sharing of ideas, opinions and a discussion about solutions to be adopted are considered a key element in conducting the entire project."
The discussion with the affected communities, through their leaders and also directly with the people, should permeate all phases of the entire project. This contact should occur constantly and frequently, because interruptions and distance, from time to time, by the authorities, undermine understanding and the credibility of the project. (…)

- The relationship between the affected people and the Contractor should be as transparent as possible, so that the shared information not only informs the two parties, but also underscores the solutions to be adopted and leads to a positive result from this joint action;

Paragraph 35 - ... "Enterprises are encouraged to provide easy and economical access to published information ... the information... should be available to all interested users." Furthermore, "....enterprises may take special steps to make information available to communities that do not have access to printed media (for example, poorer communities that are directly affected by the enterprise's activities).

Comments:

- In general, even though Van Oord was hired for the two projects in question and had worked in the region since 1995, the company is not very well known. The people affected and even the local government authorities are

unfamiliar with the company. This situation was pointed out in the 2013 Both ENDS report "Review of Dredging Activities for Entry Channel and Harbour Basin of Promar S.A. Shipyard in Suape, Brazil" (already referred to in Exhibit V). The same situation was also recognised in the multiple field visits and meetings with the community promoted by Fórum Suape Espaço Socioambiental. The media were not used regarding the activity's impacts or the damage to health and to the environment. There are clear signs that the company did not invest in communicating its presence or in promoting mechanisms to interact directly with the players in the region.

- Reports from residents in the region around the Suape Industrial Port Complex, in particular fishermen and shellfish collectors; documents from Z8 Fishing Colony addressed to Suape; public complaints; as well as requests from civil-society entities, including the Fórum Suape Espaço Sociambiental, indicate that warning and reparation measures were not provided for the communities directly affected, to wit: the local residents of Tatuoca Island and *Engenhos* in the area, fishermen and shellfish collectors. It became clear (from testimonies, interviews and local monitoring) that traditional local groups were not duly informed about the damage caused by the works. The process was not transparent. In many cases, people felt threatened by the Suape Industrial Port Complex and were coerced into accepting minimum/unfair mitigation offers because they were unaware of their rights and did not have access to legal aid. Often, they were led to believe, through spokespeople for the Suape Industrial Port Complex, that if they did not accept a proposal, they would lose their rights (since the deadlines would "expire" or the terms and conditions would not be ensured). In short, they were led to believe that they did not have any right to their homes and ways of life.
- On numerous occasions, the Suape Industrial Port Complex, the state environmental agency CPRH, Van Oord and Atradius DSB were contacted by the Complainants, who warned them about this situation. However, the Complainants never received any responses, nor were any solutions or mitigating measures even presented. Unfortunately, the attempts at dialogue were unilateral (by the Complainants) and they failed due to the accused party's unwillingness to talk.
- Dredging took place in the summer months, when the water is more transparent, which makes fishing more productive. The dredging, rock removal and earthworks were all done without joint planning with (or consultation of) the fishermen (cf. reports from members of Colônia Z8, studies and documents sent to the Fórum Suape-Espaço Socioambiental), who had warned of the damage that this type of activity would cause, particularly during this time of the year.

> **In Brazil*, *environmental studies must be prepared for port works and services so that damage to the environment and society as a result of drastic works can be assessed*, *mitigated and offset*.[21 and 22]

[21] The Brazilian Constitution calls for a preliminary environmental impact study, in Article 225, especially in §1, section IV, to ensure the right to an ecologically balanced environment, to be required prior to implementation of the project, when the activity might potentially cause significant degradation to the environment.

No programme was proposed or developed to involve the local communities directly affected. They should have actively participated and been trained in planning of the works, as well as in the decisions related to measures to reduce the social and environmental impacts, and the schedule. The installation plan for the Promar S.A. Shipyard should have included actions to make the communities aware of the impacts and implications for the environment in which they live, and for their ways of life. Even though it was obvious that the installation of this shipyard and the deepening of the external channel were affecting marine life and consequently fishing, there was no concern on the part of governmental agencies or the contractor, Van Oord, about those involved.

Atradius DSB failed to ensure that Van Oord used its influence to have this consultation process implemented.

Chapter IV Human Rights

There was a lack of respect for human rights, violations were not prevented, and adverse aspects were not addressed throughout the activities in which Van Oord and the contracting company (Suape Industrial Port Complex) were involved.

The dredging, rock removal and filling work done by Van Oord under contract with the Suape Industrial Port Complex contributed to serious adverse impacts on the human rights of the traditional communities, and there was a failure to avoid or mitigate those impacts, to wit:

Having a policy committed to respecting human rights (item 4).

Comment:

- Clearly, Van Oord failed to present a policy committed to respecting human rights. There are proven violations of a wide array of human rights, including violations of the fundamental rights to housing, food security, access to potable water, locomotion (the right to come and go), perpetuation of traditional ways of life, and the right to a healthy

[22] " …CHAPTER II ENVIRONMENTAL LICENCING II. 1 – LEGAL REQUIREMENT... The National Environmental Policy – Law 6938/81, with new wording provided for by Law 7804/89, stipulates that the construction, installation, expansion and operation of establishments and activities that use environmental resources considered as currently and potentially polluting, as well as capable in any way of causing environmental degradation, shall require prior licencing by the competent state agency from the SISNAMA or IBAMA, in addition, without limitation to other required licences. As such, an environmental licence as an instrument of this environmental policy refers to the location, installation, expansion and operation of the activity to be licenced. To obtain this environmental licence, in addition to meeting the established standards, the environmental impacts caused by the activity's or project's implementation must be prevented, corrected, mitigated, eventually eliminated or offset, in order to ensure the quality and sustainability of the environmental resources in the region of influence for the activity in question. It emphasises that, in any of its stages, the environmental licencing process shall be paid in full by the contractor, which must reimburse the licencing agency for all costs that have been incurred. II.2 – TYPES OF ENVIRONMENTAL LICENCES. The environmental licences applicable to ports and waterway terminals are as follows: Prior Licence; Installation Licence; and an Operation Licence ...."passage taken from the Port Environmental Licencing Manual: http://www.antaq.gov.br/portal/pdf/MeioAmbiente/manual_de_licenciamento_ambiental_nos_portos_(2).pdf

environment. Van Oord's behaviour in transferring its responsibility for the impacts directly caused by its activities and for the context in which it operates in the region demonstrates its lack of commitment to the OECD Guidelines. The transfer of responsibility to the contracting company (Suape Industrial Port Complex) demonstrates not only a failure, but also improper conduct.

Failure to respect human rights, which means they should avoid infringing on the human rights of others, and should address adverse human rights impacts with which they are involved. (item 1).

Comments:

- At the Port of Suape, Van Oord dug an internal channel in the Massangana River and opened up an area in the estuary for the turning basin for Promar S.A. As a result, a large part of Tatuoca Island was destroyed, thus depriving at least 48 families of their homes, lands and means of subsistence.
- Threatened with violence by the private militia operated by the Suape Industrial Port Complex, these people were violently expelled by the port authority, and received minimal financial compensation that was insufficient for them to resume their former way of life and deprived them of their means of subsistence[23].
- Residents of the region affected by Suape and representatives of the Pernambuco Security Guard Union accused Suape of using armed employees to intimidate and threaten residents and to demolish their homes illegally and violently (*Jornal do Commercio*, 6 May 2012). This situation was recorded in reports, videos and pictures and reported on by the media[24]. This behaviour was repeated throughout the Suape Industrial Port Complex area, and was also reported on Tatuoca Island during the expropriations for the Promar Shipyard. These actions are typical of the militia that has acted in the name of the Suape Asset Management Board, which is presided over by engineer Sebastião Pereira Lima.
- Article 5, paragraph XV, of Brazil's Federal Constitution guarantees the right to "unhindered travel in peace time throughout the national territory, in accordance with the law." While the Promar S.A. Shipyard was being built, the residents of Tatuoca Island were forced to use an identification card, prepared by Suape, to gain access to their own homes and to travel around on their own lands.

Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur. (item 2).

Comments:

- The right to water is legally guaranteed in Brazil by the 1988 Federal Constitution. Implicit in the content of the "right to life", Article 225, first

[23] See: http://acertodecontas.blog.br/artigos/tatuoca-o-lado-social-do-desmatamento-de-suape/.

[24] The complaints were reported by TV stations and newspapers. See: https://www.youtube.com/watch?v=jjTb0tsUatc attach links and reports

paragraph, of the Constitution, along with Article 99, I, of the Brazilian Civil Code, is the notion that water is a common good for use by the people. Field visits by the technical team from Fórum Suape Espaço Socioambiental in August 2013 and testimonies taken from people who at that time still resided on Tatuoca Island found that the springs had been their only source of fresh potable water for decades. The dredging work caused salinization and contamination of the water springs, making them unusable by the island's residents. This situation was reported to the Suape Industrial Port Complex and the local person in charge of Van Oord, but no alternative source of water was provided. That situation lasted for seven (7) months, as reported in the video/documentary: "*Tatuoca, Uma Ilha Roubada*" [Tatuoca, a Stolen Island] and in recorded testimonies.

- Testimonies given by women shellfish collectors and crabbers depict a scenario in which the quality of life and work deteriorated severely. Shellfish-gathering depends directly on "*croas*": sandy formations in the region of the rivers' estuaries. These areas, which are the shellfish gatherers' traditional territories, were dredged and contaminated by "dumping" (illegal disposal of viscous sediments removed from the channel bed). This contaminated the environment, with recorded cases of infections of the reproductive system, skin infections, and serious allergies. Besides the health impacts, the quality of the shellfish was affected, with reports of foul odours and mass die-offs. The economic losses prevent the assurance of food security and a decent life. Before the dredging, the shellfish gatherers had an income of 30 kg/day. After Van Oord's operations to build Promar, productivity fell to less than 5kg/day, which is insufficient to sustain a family[25].
- During the excavation to open the external access channel, explosives were used to remove the rocky bed and reefs along the coast. Large quantities of dredged material were disposed of at improper sites, causing environmental contamination and risks to human health[26] (Exhibit X).
- The dredging and rock removal work caused a significant loss of fishing income, according to reports from members and documents from Colony Z8, due to environmental modifications caused by the clouding of the water and the fish dying off. This work resulted in a 90% drop in fishing production (falling on average from 50 kg/day to 1.5 kg/day) according to testimony given by fishermen.

Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts (item 6).

Comment:

- The economic losses for fishermen and shellfish gatherers were foreseeable and had been reported in previous dredging projects, such as the construction of the Atlântico Sul Shipyard. Thus, the negative impacts of

[25] See the video: Exhibit IX: "Entrevistas e Opiniões de Pescadores e Marisqueiras sobre seus modos de Vidas e Transformações" at https://www.youtube.com/watch?feature=player_embedded&v=I7X1WbGuSSk

[26] Complaint from Colônia de Pescadores Z8 to the President's Office of the Environmental Commission in the Legislative Assembly of Pernambuco. 15/04/2010.

Van Oord's work in the Promar S.A. Shipyard project on the traditional communities' ways of life were not taken into account. In the end, the fishermen and shellfish gatherers alone bore the economic losses arising from the works, without receiving adequate benefits.

- The degradation of fishing and mangrove areas caused a situation of dependency and impoverishment for the traditional fishing communities, which up to that point had been independent and able to ensure their own sustenance and ways of life. Now, this population is subject to degrading conditions, receiving "financial assistance" of less than half the minimum monthly wage, which is insufficient to meet their basic subsistence needs.

In Brazil, the guarantee of traditional peoples' rights is assured by Federal Decree No. 6040 of 2007, which instituted the National Policy for the Sustainable Development of Traditional Peoples and Communities, whose objective is:

- *"Art. 3. The specific objectives of the National Policy are to: (...)*
- *(...) I – guarantee for traditional peoples and communities their lands and access to the natural resources that they traditionally use for their physical, cultural and economic reproduction; (...)*
- *IV – guarantee the rights of the traditional peoples and communities affected directly and indirectly by projects, works and ventures; (...)"*
- Brazilian law is consistent with international conventions and treaties, and the Federal Constitution in the country protects universal rights.
- *"Art. 6. Social rights include education, health care, food, work, housing, leisure, safety, social security, protection for maternity and childhood, and assistance for the neglected, as set out in this Constitution."*
- *"Art. 225. Everyone has the right to an ecologically balanced environment, a public good used by the people and essential to a healthy quality of life, with the government and the people having the duty to defend it and to protect it for present and future generations.*
- *Paragraph 1. To ensure the effectiveness of this right, it is incumbent upon the government to (...)*

(...)IV – require, pursuant to law, an advance environmental impact study will be required for the installation of works or activities that might cause significant degradation to the environment, which shall be published; (...)".

Chapter VI. The Environment

There was a failure to duly take into account the need to protect all environmental aspects and characteristics of the affected ecosystems (mangroves, Atlantic rainforest, *restinga*, reefs, marine and estuarine ecosystems), health and safety.

The studies that set the terms suggested by the state environmental agency (CPRH) and prepared for the Suape Port Dredging Project do not define the limits of the project's direct and indirect geographical area of influence. Since the works are performed specifically in the ocean and estuary bed, it is obvious that the environmental impacts are not just confined to the area of implementation, or to the specific time of the project.

Furthermore, these incomplete studies distance the environmental licence from its legal objective, which is to ensure control over the environmental impacts of the potentially polluting/degrading projects and to guarantee a decent life for traditional fishermen. The impacts felt to date are clear, logical and foreseeable, but no proper compensatory measures have been taken.

The procedures adopted by Van Oord and the Suape Industrial Port Complex suggest that the socioeconomic environmental studies were intentionally ignored, since the project costs would have been higher if they had followed the procedures for the "*bota fora*" [kick out] eviction in remote, more appropriate areas, and for payment of damages.

Regarding the cumulative impacts of the multiple dredging and rock-removal works, according to the Socio-Economic Diagnosis of Small-Scale Fishing on the Coast of Pernambuco, conducted by the Instituto Oceanário and UFRPE. "When the Port of Suape was built, a vast area of mangroves was destroyed and filled, and part of the sandstone reef line, which was the connector between the sea and the Ipojuca River, was blown up. This project was done to minimize the upstream flooding of the dammed rivers caused by the earthworks. This fact caused a significant environmental impact on the ecosystem and made the marine erosion worse…there is still an invisible impact, one that is even more damaging: the degradation and death of the mangroves, because as the fertilisation of the coastal waters diminishes, costal productivity declines. This entire impact falls on the shoulders of the fishermen, who lose their natural food industries, and thus have greater difficulty sustaining their families.

The licencing process is governed by CONAMA Resolution 237/97, which clearly states in Article 10:

> *"The environmental licencing procedure shall take place in the following stages: (...)*
> *(...) III – Analysis by the competent environmental agency, as part of the SISNAMA, of the documents, plans and*

environmental studies presented, and technical visits as necessary;"

Van Oord and the Suape Industrial Port Complex did not comply with the agreements, principles, objectives and national or international standards requiring them to address the need to protect the environment, public health, and safety, and in general, to perform their activities in such a way as to contribute to the overarching objective of sustainable development. In particular, the enterprises failed to:

Provide the public and workers with adequate, measurable and verifiable (where applicable) and timely information on the potential environmental, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance (item 2a).

Comments:

- The official meetings held with the local population did not take place until after Van Oord had started its dredging and rock removal activities. These initiatives were also not held until after a request was made by civil society institutions and the affected parties to the City Council of Cabo de Santo Agostinho.
- The public hearings held were not transparent and did not involve the effective, informed participation of civil society, especially that of the communities that would be affected by the works for the Promar Shipyard. The hearings merely consisted of a project presentation, without any opportunity for review or incorporation of public opinion. The deadlines for disclosure, which ensures participation, were not met, and the hearings were held at locations far away from where the works would be performed.

Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation (2b).

Comments:

- Van Oord, the Suape Industrial Port Complex and Promar S.A. did not provide any effective communication mechanisms and/or opportunities to serve as a continuous channel for dialogue with the local population where the works were performed, so that impact reports, goals to be achieved, and mitigating measures could be provided that might encourage active consultation with the stakeholders. Fishermen and shellfish gatherers have yet to receive any information that would enable them to monitor the environmental impacts.
- Van Oord and the Suape Industrial Port Complex also failed to clarify the roles and responsibilities of the various enterprises for the affected communities and the public in general. As a result, the local communities do not know who to contact for each type of request or question. As such, Van Oord has been largely unavailable to provide an account of its responsibilities regarding the various dredging projects.

Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. (item 3).

Comments:

- Dredging and deepening of the access channel removed an enormous amount of marine soil. The extracted material, or "*bota-fora*", totalled over 4 million cubic metres. Despite the scientific/technical knowledge and standards governing the disposal of the sediment, the material was cast onto the sea bed just 500 metres from the coast line (Technical Report UGC/CPRH 28/2013 and Costa, H.S., 2014 referred to above). The consequences were burial of the rocky areas known as "*cabeços*", "*cascalhos*" and "*tiças*", which are organic, coralline and rocky substrates that are fundamental for reproduction of lobster and other marine species; turbidity and contamination of the water; and degradation of the marine ecosystems.
- The works caused the death of threatened species, such as the goliath grouper (*Epinephelus itajara*) and the Guiana dolphin (*Sotalia guianense*), as reported by the media[27]. This resulted in complaints and investigations and actions (Exhibit XI) by the state environmental agency (CPRH) regarding the improper use of explosives in the habitats of these and other threatened species, like the sea turtle and rare species of starfish.
- By moving the mud, which forms the sediments of the marine floor, the bed was covered over by fine clay particulate material, with an abundance of organic components, which created heavily turbid waters. A persistent strong smell of putrefaction has been reported, as have chemicals in contact with the water (Colony Z8, multiple testimonies, and documents sent to the Fórum Suape Espaço Socioambiental). The sudden change caused itching among swimmers, divers and shellfish gatherers (on-site testimonies), but the real evils were as follows: the death of fish, crustaceans, and other invertebrates; the disappearance of benthic life (associated with the sea floor), and the prevention of recolonization due to the burial of habitats, transforming the formerly fish-rich area into a sterile area. Fishermen have reported thousands of crabs showing up dead on the beach, and have filed complaints with the Suape Industrial Port Complex (but no action has been taken).
- Marine animals with limited locomotive capacity, which live on the sea floor, may suffer alteration and generally die as a result of the excavation. Furthermore, the lives of pelagic animals, like fish, turtles, shrimp, dolphins, etc., are affected due to the movement and transport of sediment, creating stress, lowering productivity, and even causing death. In addition, due to the loud noise caused by the works, species may simply abandon the area.
- Additionally, Report CPRH/UGC 28/2013 (Exhibit I) provides evidence of and complains about several impacts caused by the dredging to open up the external channel[28].

[27] See: http://blogs.diariodepernambuco.com.br/meioambiente/tag/boto-cinza/.

[28] See: http://pt.slideshare.net/Blogosecretariodopovo/rt-28-13-peixe-mero-boto-cinza-e-pesca-artesanal.

Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage (4).

Comments:

- The environmental value of the mangroves and their influence as a nursery for countless forms of marine life were not taken into account.
- The change in turbidity, in the availability of nutrients and contaminants in the water column, do not have an immediate passing effect, but instead last for long periods of time that vary with the region's physical and biological characteristics.
- By being deposited in the "*bota-fora*" area, the sediments do not merely descend to the sea floor. Due to the currents and the air, part of this material may be moved dozens of metres away, reaching other areas. Thus, marine alterations also affect beach and estuarine areas and thus the production of shellfish, crabs and other economically important animals.
- There was no concern about monitoring the "*bota-fora*" material to evaluate the potential effect of this sediment on local marine life, or even recovery of the ecosystem.
- It is fact that there was advance warning about the damage and the consequences of the dredging, rock removal and filling for the project. Proof of this is the nautical chart from the Brazilian Navy[29], which mapped out areas with large production of marine species, like rocky sea floors that ensure lobster reproduction. These areas are well identified in the region and were used by fishermen. As reported by Colony Z8 and residents of the region, these areas were buried.
- The material taken from the sea bed in the dredged areas should not have been merely abandoned around the ocean. All this material removed by dredging should have been returned to the ocean at a specific place set aside for that purpose, called the "*bota-fora*" area.

> The mangroves are considered a transitional coastal ecosystem between land and sea environments, characteristic of tropical and subtropical regions, and subject to the tides, dominated by typical plant species. The biological wealth of coastal ecosystems makes these areas large natural "nurseries", both for the species characteristic of this environment, as well as for fish and other animals that migrate to coastal areas during at least one phase of their life cycle. As such, it plays an important role as an exporter of organic material to the estuary, contributing to the primary productivity of the coastal zone, and it functions as a filter in the recovery of sediment. Nearly 95% of the food that people catch at sea is reproduced in the environment, and its maintenance is vital for the subsistence of fishing communities and the stabilisation of the adjacent coastal area.

- The works led to the simultaneous burial of mangrove areas, such that the sediment taken from the sea bed was disposed of in the mangrove area providing a basis for the earthworks, where new shipyards are to be built. The fill not only reduces the fishing area, but also the fish living in it, which constitute the leading economic activity, the food base and the natural

[29] http://www.mar.mil.br/dhn/chm/box-cartas-nauticas/cartas.html

resource of this population. The population and ecosystem are exposed to high risks of contamination, and health problems and bivalve mortality have been detected, a situation that merits more attention.

Remediation

In light of the descriptions above and the documents and evidence attached hereto, there are clearly acts and omissions on the part of the accused enterprises, which violated the principles and regulations of the OECD Guidelines during the two projects: the External Channel Deepening Project, and the Promar S.A. Turning Basin Expansion Project.

The violations and conduct that are incompatible with the Guidelines include the following:

- The unlawful disposal of dredged materials;
- Loss of fishing areas for the fishermen and shellfish gatherers;
- Non-transparent compensation system for fishermen, with indications of corrupt practices;
- Insufficient due diligence by Van Oord and Atradius DSB;
- Failure by Van Oord and Atradius DSB to engage in relevant, efficient consultations with the affected communities;
- Involuntary resettlement of at least 48 families from Tatuoca;
- Lack of mitigation, offset and remediation;
- Construction of housing and resettlement of families expelled from Tatuoca Island and moved to a housing project built on the peripheral are of the Suape beach (called “New Tatuoca”);
- Failure to provide families with title deeds;
- Lack of transparency and access to information and participation in the environmental mitigation/reforesting actions.

We are asking the National Contact Point (NCP) to intervene in an unbiased, predictable, equitable manner that is consistent with OECD principles and regulations, in order to mediate among the parties involved and thus work towards a resolution of the reported issues.

This complaint includes: substantial claims, which are related to compensation required to meet the claims of the affected communities; and procedural claims, understood as those related to the importance of dialogue, information, and defining the representation of the communities involved.

The substantial claims are: compensation, mitigation and remediation for the damage caused to the traditional communities affected, and to the environment, with restoration to the previous state, and damages for losses suffered, in addition to satisfaction of the communities’ claims, so that respect for their human rights is assured. As reported, the project work was largely

responsible for serious environmental transformations, with losses to ecological interactions and transformation of the landscape. The impacts of these ecological and environmental alterations have had an intense negative impact on the human rights of the people and communities in the region, affecting their economic, social and cultural rights, including income, food security, health, culture and intangible assets.

Given the facts presented above and argued throughout this document, we hereby request:

1. Protection of the remaining areas of mangroves, *restingas*, rocky beds and Atlantic rainforest.
2. Recovery, revitalisation and protection of degraded areas, returning them to their natural states, with priority given to areas known to be used by the traditional populations for their cultural and sustenance activities.
3. Delimitation of the anchoring area and implementation of a marine conservation unit, containing an area for small-scale fishing and shellfish gathering.
4. The participative design and consensual implementation (with the stakeholders) of a system of artificial reefs to make fishing viable, in light of the substantive, regulatory and procedural parameters that govern consultations with traditional peoples and the affected communities, such as ILO Convention 169.
5. Opening a channel from the Ipojuca River and access to the Merepe estuary, with environmental recovery of that region.
6. Permanent, participatory monitoring of environmental indicators (water quality, aquatic biota, fishing productivity, sediment quality).
7. Implementation of a warning and security system.

With respect to the procedural claims, we request that Van Oord and Atradius DSB, within the scope of their authority, and in light of the Recommendations of the OECD Guidelines for Corporate Social Responsibility, seek to mitigate and remediate the impacts directly related to the operations of the two projects mentioned herein, with particular attention to the impacts of dredging, rock removal, disposal and filling; as well as the indirect impacts from the damage done to the social fabric of the local communities and the weakening of ecological interactions of existing ecosystems.

Given these facts argued throughout this complaint, we hereby request:

- Implementation of a communication strategy between the involved enterprises, the communities and the civil-society entities. Monitoring

should be performed by outside auditors. There should be a quality monitoring system and respect for the satisfaction levels of those involved.

- Professional training and education programmes that seek to include the affected people in the labour market, in a qualified and dignified manner. Criteria to be defined in conjunction with the interested social agents.
- Specific health programmes for small-scale fishermen and shellfish gatherers.
- A programme for the prevention and care of the affected parties' physical and mental health, given that the traumas caused by the losses of their ways of life are comparable to the traumas of war.

In light of the above, we hereby request that you grant the foregoing petitions.

Recife, 1 June 2015

EXHIBITS

I – Technical Report CPRH/UGC 28/2013 - Footnote 2.

II – Copy of videos: “Suape, um caminho sinuoso” and “Tatuoca, uma ilha roubada” – Footnote 3.

III – Protocol from documentation request for Supplemental EIA for the CPRH – Footnote 11.

IV- Supplemental Environmental Impact Assessment Report – Footnote 13.

V- Both ENDS Report “Revisão das atividades de dragagem ...” – Footnote 15.

VI – Communication efforts among Both ENDS and Van Oord and Atradius (correspondence).

VII – Technical Paper “Efeitos da dragagem e derrocagem no Complexo Industrial Portuário (CIPS) em Pernambuco” - Footnote 17.

VIII – Socio-economic diagnosis of small-scale fishing on the coast of Pernambuco/Instituto Oceanário/DPA/UFRPE - Footnote 20.

IX – Videos containing testimonies given by fishermen and shellfish gatherers.

X – Complaint from the Z8 Fishing Colony - Footnote 26.

XI – Infraction Notice CPRH 767/768-2013.