

Dredging in the Dark

An analysis of the Dutch dredging industry's failure to identify, prevent, and mitigate adverse impacts in dredging the Suez Canal



Niels Hazekamp, Gisela ten Kate, Wiert Wiertsema and Joseph Wilde-Ramsing

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Together with environmental justice groups from poor and developing countries, Both ENDS works towards a sustainable, fair and inclusive world. We gather and share information about policy and investment decisions that have a direct impact on people and their livelihood, we engage in joint advocacy, we facilitate multi-stakeholder dialogues and we promote and support sustainable local alternatives.



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The Centre for Research on Multinational Corporations (SOMO) is an independent, not-for-profit research and network organisation working on social, ecological and economic issues related to sustainable development. Since 1973, the organisation investigates multinational corporations and the consequences of their activities for people and the environment around the world.



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Contents

| | | |
|----------|---|-----------|
| 1 | Introduction | 4 |
| 2 | The global dredging sector | 7 |
| 2.1 | Primary competitive factors | 7 |
| 2.2 | Importance of Dutch companies in a consolidated market | 8 |
| 2.3 | Financial risks and the role of export credit insurance | 9 |
| 2.4 | Risks of adverse social and environmental impacts associated with dredging | 10 |
| 2.5 | Implications of developments in the global dredging sector for addressing social and environmental risks | 12 |
| 3 | The international normative framework for responsible business conduct, as applied to the dredging sector | 13 |
| 3.1 | The state duty to protect human rights and the environment | 14 |
| 3.2 | The corporate responsibility to respect human rights and the environment | 16 |
| 4 | The Suez Canal expansion project | 20 |
| 4.1 | The role of the Egyptian government | 21 |
| 4.2 | The dredging consortium and getting the contract | 23 |
| 4.3 | Specific risks of adverse social and environmental impacts | 23 |
| 5 | Meeting the standards? Analysis of the actions taken by the dredging companies, Atradius DSB, and the Dutch government | 26 |
| 5.1 | Causing, contributing, or directly linked? | 26 |
| 5.2 | Actions expected of the dredging companies to address the risks of adverse impacts | 27 |
| 5.3 | Actions expected of Atradius DSB to address the risks of adverse impacts | 29 |
| 5.4 | Actions taken by the Dutch government | 31 |
| 6 | Conclusions and recommendations | 34 |
| 6.1 | Conclusions | 34 |
| 6.2 | Recommendations | 35 |
| | Annex | |
| | Company profiles of the Suez dredgers – Boskalis, Van Oord, Jan de Nul, and NDMC | 37 |
| | Boskalis | 37 |
| | Van Oord | 38 |
| | Jan de Nul | 39 |
| | NMDC | 40 |

Acronyms

| | |
|--------------|---|
| AOI | Arab Organization for Industrialization |
| CHEC | China Harbour Engineering Company |
| CSO | Civil society organisation |
| CSR | Corporate social responsibility |
| DEME | Dredging, Environmental & Marine Engineering |
| EAF | Egyptian Armed Forces |
| ECA | Export Credit Agency |
| ESIA | Environmental and Social Impact Assessment |
| FPIC | Free, prior, and informed consent |
| IAPC | International Association of Dredging Companies |
| ICIEC | Investment and Export Credit |
| ILO | International Labour Organization |
| IMF | International Monetary Fund |
| MoU | Memorandum of Understanding |
| NAP | National action plan |
| NCP | National Contact Point |
| NGO | Non-governmental organisation |
| NMDC | National Marine Dredging PSC |
| OECD | Organisation for Economic Co-operation and Development |
| PIANC | World Association for Waterborne Transport Infrastructure |
| SCA | Suez Canal Authority |
| SOMO | Centre for Research on Multinational Organisations |
| UNGP | United Nations Guiding Principles |

1 Introduction

In the autumn of 2014, Egyptian President *Abdel Fattah el-Sisi* proudly announced his ambition to add an extra shipping lane to the world-famous Suez Canal between the Mediterranean Sea and the Red Sea. El-Sisi wanted this massive infrastructure project completed in record-breaking time, meaning that 200 million cubic metres of earth would need to be dredged in just nine months. The expanded canal would provide the world with a two-way traffic shipping lane through Egypt's Sinai Desert. This was intended to be a major prestige project for Egypt – a feather in el-Sisi's cap. However, shortly before the start of the dredging activities, several media outlets reported that there were significant adverse human rights and environmental impacts and risks associated with the project. Thousands of Egyptians were reported to have been forcibly evicted from their homes without consultation or sufficient compensation in order to make way for the Suez Canal.¹ Despite these abuses and the media attention, the project went forward as planned. In the autumn of 2015, the dredging was completed.

Two Dutch companies, Boskalis and Van Oord – global leaders in the dredging industry – had partnered up with two other dredging companies from Belgium and Abu Dhabi (United Arab Emirates) to form a consortium that won the bid to implement the Suez megaproject. The total value of the contract amounted to US\$ 1.5bn (€ 1.2bn), with each of the four partners entitled to an equal share of US\$ 375m (€ 300m).² The Dutch export credit facility – run by the privately-held insurance company Atradius Dutch State Business (Atradius DSB) – supported the Dutch-led consortium's bid with an export credit guarantee to the tune of more than € 515m.

The Dutch water management sector is seen as a global leader in developing water-related infrastructure and has a broad global orientation.³ The Dutch dredging companies and the Dutch government, via its export credit facility, were therefore eager to contribute to this high-visibility project. It was presented to the public as a prestigious contract. The significant adverse social and environmental risks associated with the project were not part of the industry's presentation, nor was the public provided with any information about whether the companies had sought to avoid or mitigate the risks or if it was even aware these risks existed.

The fervent political and financial support provided by the Dutch government to the Dutch dredging industry in situations like these raises questions of a potential conflict with the binding commitment the Dutch government has made to promote and implement international normative frameworks for responsible business conduct such as the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprise (OECD Guidelines)⁴ and the UN Guiding Principles on Business and Human Rights (UNGPs).⁵ These frameworks spell out clearly that governments have a duty to protect human rights and that companies – including dredging companies, as well as financial sector companies such as Atradius DSB – have a responsibility to respect human rights and avoid adverse impacts. Companies are expected to undertake a process called 'due diligence' to identify, prevent, mitigate, and account for adverse impacts to human rights and the environment. Importantly, companies are not only expected to identify, prevent, and mitigate impacts that they themselves cause or to which they contribute, but they are also expected to mitigate any impacts

caused by other businesses or governments that are linked to their products or services. Unfortunately, the implementation and enforcement of these frameworks by signatory states – including the Netherlands – remains patchy and is largely left to the voluntary efforts of companies.

This report analyses whether the Dutch-led dredging consortium and its financial backer Atradius DSB have lived up to their responsibilities – and the Dutch government to its duty – under the OECD Guidelines and the UNGPs in the specific case of the Suez Canal expansion project.

Aim and target groups

The ultimate aim of this report is to contribute to reducing the adverse social and environmental impacts caused by the Dutch dredging sector by holding Dutch dredging companies and the Dutch government accountable for fulfilling their international responsibilities and commitments to respect and protect human rights and the environment. The report also aims to highlight how the global dredging sector operates, the role of Dutch dredging companies in the global market, and some of the key specific social and economic risks faced by the sector. The report does not aim to provide a comprehensive overview of all the risks faced by the sector, but it does provide a starting point for developing a more detailed sector risk analysis. The Suez Canal expansion project is used as an example because it illustrates a number of the sector-specific social and environmental risks facing the dredging sector as a whole. Although the primary focus of the report is on Dutch dredging companies and the Dutch government, there are clear implications for other dredging companies and governments around the world.

By providing recommendations to both business and governments on how to improve implementation of the UNGPs and the OECD Guidelines, this report seeks to influence and improve both the policies and practices of dredging companies as well as Dutch government policy related to support for the dredging sector abroad (in particular the policy on providing export credit insurance). In addition to policy-makers and corporate managers, the findings and recommendations are intended to strengthen civil society organisations (CSOs) working to support communities and individuals impacted by dredging operations around the world. The ultimate beneficiaries are those individuals and communities that are potentially adversely impacted by dredging operations around the world.

Structure of the report

This paper begins by sketching some context, including a description of the main characteristics of the global dredging sector, the role of export credit insurance, and the potential adverse social and environmental risks of dredging. Section 3 provides a description of the international normative framework for responsible business conduct that is used to benchmark the actions of the dredging companies. Section 4 then explores the Suez Canal expansion project itself, and Section 5 seeks to analyse what – if any – actions the dredgers and the financial backers took to identify, prevent, and mitigate the social and environmental risks of expanding the Suez Canal. The paper concludes by drawing conclusions and providing recommendations for the Dutch dredging companies and Atradius DSB, as well as for the Dutch government, as to how to take human and environmental risks into account on the level of companies and governments in home and host states.

Methodology

The primary research method used in this report is normative-empirical analysis based on desk research. The normative benchmark employed to evaluate the actions of the Dutch government and companies is the internationally-accepted set of standards contained in the OECD Guidelines and the UNGPs. These standards are used first of all because they are based on protecting and respecting the fundamental rights in the Universal Declaration on Human Rights, International Labour Organization (ILO) Core Conventions,⁶ and other international agreements on social and environmental issues, but also because they represent standards that the Dutch government and the Dutch business community have publicly endorsed and promoted.

Information about company structures, market shares, and financial information was obtained using corporate databases. The identification of the risks (both sector-wide and Suez-specific), as well as the analysis of the actual performance of the Dutch government and dredging companies against the normative benchmark is based on second-hand sources such as company publications (annual and corporate social responsibility (CSR)/sustainability reports), company websites, and media reports.

Additionally, a draft version of the report was sent to Boskalis, Van Oord, Jan de Nul, National Marine Dredging Company (NMDC), Atradius DSB, and the Dutch Ministry of Finance, all of which were given the opportunity to make comments and corrections on the draft that would be incorporated into the final version. NMDC did not provide a response within the two-week review period. Boskalis, Van Oord, Jan de Nul, Atradius DSB, and the Dutch Ministry of Finance all responded by simply saying that the draft contained "factual inaccuracies" and "misunderstandings". However, none of the companies or government representatives was prepared to indicate specifically which issues they felt were inaccurately presented or misunderstood, nor were they willing to provide any more concrete comments or suggestions for correcting or improving the report.

2 The global dredging sector

Dredging is defined as “an excavation activity or operation usually carried out at least partly underwater”.⁷ As a commercial activity, dredging is undertaken with large, specially designed ships to develop and maintain access to waterways and ports, for coastal protection, land reclamation, and the extraction of sand and gravel. Dredging companies also conduct maintenance of oil and gas terminals, wreck clearance, and offshore services for the oil and gas industry.

Governments account for a large share of the sector’s customer base, and many of the large public works contracts are awarded through public tendering processes. Companies compete for these large contracts on the basis of a number of factors, including the size and availability of their fleet and their individual vessels, their reputation and relations with contracting governments, and the speed and flexibility with which they can deliver projects.

There are a number of macro-economic drivers that determine the shape and development of the dredging industry. The most important factor is global trade, and in particular seaborne trade. Container ships are getting larger, and the capacity and efficiency of ports has been adjusted accordingly.⁸ A growth in seaborne trade and an increase in the size of the largest tankers and container ships have also led to rising investments in the canals that are crucial for international trade, such as the Suez and the Panama canals, as well as the planned Nicaragua Canal and Development Project.

Other drivers include a growth in population, in particular in coastal areas, and the related need for land reclamation; the need for improved coastal protection as a result of climate change and the increased risks of major floods; increasing demands for energy, leading to investments in offshore wind parks and port infrastructure for liquefied natural gas; and water-related tourism, with growth in the size of cruise ships and a growing demand for maintenance of beaches affected by erosion. As a result of the favourable market conditions created by these business drivers, the dredging industry has grown at a steady pace since the beginning of the 21st century. Between 2008 and 2013, the industry grew by 13 per cent.⁹

2.1 Primary competitive factors

There are a number of factors that determine the competitiveness of the players in the dredging sector, including the capacity of their fleet of dredging vessels and their reputation and relationship with contracting governments. Because of favourable market conditions during the last 15 years, the overall capacity of dredging vessels has increased significantly (61 per cent growth in hopper capacity and 28 per cent growth in cutter capacity between 2004 and 2012), with all the major companies investing heavily in new vessels.¹⁰ The increase can be explained by a growth in the number of dredging vessels as well as the capacity of each vessel. After the China Harbour Engineering Company (CHEC), the Dutch and Belgian companies have the next largest fleet of dredging vessels at their disposal. Each of the dredging companies operates a variety of different dredging vessels

specifically designed for different projects. The Belgian company Jan de Nul currently owns the largest cutter vessel in the world, and has recently placed an order for a new cutter vessel with a capacity of 40,000 kW, which is approximately 150 per cent larger than its largest current cutter.

With the significant investments of dredging companies in the capacity of their fleets, ever larger megaprojects can now be carried out in ever shorter periods of time. In order to save costs, dredging companies attempt to use their fleet as much as possible. The need to have vessels used as much as possible, and the growth in vessel capacity, creates a dynamic that encourages dredging companies to develop ever larger megaprojects, which in turn stimulates further investment in dredging capacity.

In addition to fleet utilization and flexibility, dredging companies are dependent on their reputation in order to compete. Dredging companies are vulnerable to “adverse market perceptions as it operates in an industry where integrity, customer trust, and confidence are paramount”.¹¹ When the reputation of a dredging company is damaged, this could result in customers being reluctant to do business with the company. Alternatively, the successful completion of high-profile megaprojects, such as the Suez Canal expansion, can give a major boost to a dredging company’s reputation.

Beyond reputation, relationships and personal contacts matter in the dredging industry. A Boskalis director has put it this way: *“In the dredging industry, it is all about contacts. Technical expertise in itself is not enough to distinguish yourself. Successful dredging companies require a network of good contacts within governments around the world.”*¹²

In the case of the Suez Canal expansion project, the relationship with the indirect funders of a project also appears to be important. The inclusion of NMDC, an Abu Dhabi-based dredging company, in the consortium of the Dutch and Belgian companies was seen as one of the critical factors for securing the contract.

2.2 Importance of Dutch companies in a consolidated market

The global dredging industry can be broken down into two segments. On the one hand, there are the ‘closed’ markets such as the United States and China, where dredging contracts can only be awarded to local companies. On the other hand, there are open markets such as Europe and the Middle East, in which international companies can compete for contracts. The largest dredging company in the world is CHEC, a state-owned company that until recently operated exclusively in the ‘closed’ Chinese market.

In the open market, the dredging industry is dominated by four large companies from the Netherlands and Belgium: Van Oord; Boskalis; Jan de Nul; and Dredging, Environmental & Marine Engineering (DEME).¹³ These four companies control a large share of the market and have built their reputation by protecting their home states against the sea, but also through the large dredging projects they have carried out in Dubai, Panama, Singapore, and elsewhere. The Dutch companies Van Oord and Boskalis have a long history and are made up of several companies that have merged over the years

to create two large companies that generate most of their revenues abroad. Van Oord is a family-owned company, with minority ownership by private equity, whereas Boskalis is a publicly-traded firm.

The importance of these four companies for the sector is also reflected in the major role they play in the various business associations, such as the International Association of Dredging Companies (IADC)¹⁴ and the World Association for Waterborne Transport Infrastructure (PIANC).¹⁵

In recent years, the market position of the four large companies has been under pressure from the international ambitions of CHEC, which is increasingly moving from its 'closed' home market of China to competing in the 'open' international markets.

2.3 Financial risks and the role of export credit insurance

The dredging industry is a highly capital-intensive industry.¹⁶ Not only does the expansion of a company's fleet require significant capital investments that need to be earned back through their use in projects, but the vessels also require costly maintenance on a daily basis. Together with fuel and insurance costs, maintenance costs account for 62 per cent of the total operating costs of a dredging company.¹⁷ The maintenance costs for the equipment a dredging company uses are included in the cost price it charges to its customer when it wins a contract.¹⁸ However, dredging companies are forced to cover these maintenance costs themselves every day that a vessel is not used in a project. These costs can run into the tens of thousands of euros per vessel per day.¹⁹

As such, fleet utilisation is an important factor for the profitability of a dredging company. Companies strive to have their fleet operational for as many weeks of the year as possible. This frequently results in dredging companies adopting a strategy of tendering for large projects at a relatively low price (i.e. with minimal profit margins) just to keep their vessels in use and the maintenance costs covered by the client.

Table 1 Key figures for dredging companies, 2014

| | Dredging revenues million € | Dredging profits million € | Capacity of vessels cutters and hoppers |
|--------------|--------------------------------|-------------------------------|--|
| CHEC* | 3,408 | 328 | not available |
| Jan de Nul** | 2,124 | 34 | 42 |
| Boskalis* | 1,665 | 380 | 45 |
| Van Oord*** | 1,292 | not available | 40 |
| NMDC**** | 399 | 22 | 17 cutters, hoppers not available |

* Source of financial figures for CHEC and Boskalis: Thomson Reuters Eikon (26 November 2015).

** Jan de Nul financial figures are for 2013 and for the total JdN Group (not just the dredging unit). Source Annual Report 2013.

*** Source; Van Oord Annual Report 2014.

**** Source of NMDC financial figures is Annual Report 2014. Currency converted from AED=1 to €=0.2449, www.xe.com (27 July 2015); NMDC does not break down its dredging fleet into cutters and hoppers. The company has a fleet of 17 dredgers.

Dredging companies also face financial risks after they have won a tender. Project costs can exceed the contract price, turning profit margins into significant losses. Furthermore, as a contractor, dredging companies face financial risks related to legal claims and the costs of soil decontamination. Furthermore, dredging companies face financial risks related to political developments and violence, as well as the risk of non-payment by clients.²⁰

To cover the significant financial risks related to non-payment by contracting governments and other parties, export credit insurance and guarantees provided by export credit agencies (ECAs) are an important additional factor defining the dredging industry. Through these mechanisms, dredging companies are able to shift a substantial part of the financial risk of their capital-intensive business to governments and, ultimately, taxpayers. Due to the high degree of leverage possessed by government-backed ECAs, official export credit insurance provides cover for risks that cannot be taken on in the private insurance market.

Because of the importance of Dutch dredging companies in the global market, the Dutch ECA is one of the most important financial sector actors in the global dredging industry. Export credit insurance on behalf of and for the account of the Dutch state is issued by Atradius DSB, a subsidiary of the privately-owned, Spain-based Atradius Group. In terms of both volume and number of transactions supported, the export credit insurance facility is the most important government instrument to support private companies exporting capital-intensive goods and services. Dredging companies are amongst the largest beneficiaries of Dutch export credit facilities.

2.4 Risks of adverse social and environmental impacts associated with dredging

Bribery and corruption

As mentioned above, the dredging sector is characterised by large government contracts. Usually, the awarding and extension of contracts is subject to a public bidding process. However, incidents of corrupt practices and bribery scandals do occur in the dredging sector. Indeed, in 2005 the OECD highlighted the risks of corruption in large international biddings for dredging contracts.²¹

Human rights risks

Numerous intergovernmental organisations have acknowledged the human rights risks posed by dredging activities. To provide just a few examples, the European Commission has highlighted the risks to communities of having restricted access to land and fishing grounds without appropriate compensation.²² The UN Global Compact has raised concerns related to the blocking of access to existing clean water resources, which risks impacting livelihoods based on fishing and tourism.²³ The OECD has noted negative impacts on public health generated by dredging-related pollution of air and water. The dredging and building of ports often consumes large areas of land, frequently forcing the relocation of villages and disturbing fishery operations.²⁴

A brief scan of relevant media outlets reveals that these concerns are well-founded and that the risks are all too real. For example, a project to connect the Pacific and Atlantic oceans by means of

dredging a second canal through Nicaragua has impacted indigenous groups there. They have already begun to experience adverse impacts from the project for their people and their land, livelihoods, wildlife, and ecosystems.²⁵ In another example, dredging activities by Van Oord in the industrial port of Suape in north-eastern Brazil caused traditional fishermen and small-scale farmers to lose their homes and livelihoods in violation of their human rights. The adverse impacts led the affected communities to file an OECD Guidelines complaint against Dutch dredger Van Oord and its financial backer, Atradius DSB, with the Dutch and Brazilian National Contact Points (NCPs).²⁶ In a third example, the Belgian dredger Jan de Nul was accused of illegally displacing sand and land during a dredging project in Manila Bay. The natural coastal barriers are crucial for the protection against floods and typhoons, and damaging them would expose communities to danger. Jan de Nul has denied that the adverse impacts exist.²⁷

In addition to the risks of causing adverse human rights impacts through their own activities, dredging companies frequently do work for governments that have a questionable record of protecting human rights. This puts dredging companies at additional risk of contributing to, or being directly linked to, human rights abuses through their business relationship with these governments.

Risks to the environment

By its very nature, the construction and dredging of canals involves large-scale displacement of submerged and near-water earth, affecting marine environments.²⁸ In tropical waters, dredging activities frequently result in mangrove forest destruction, which in turn may affect local coastal protection and livelihoods.²⁹ Dredging waste is often contaminated by undesirable levels of metals and chemical compounds. Contaminants may be released into the water column, adversely affecting the lifecycles of aquatic flora and fauna and with a risk of negatively impacting biodiversity more generally. Dredging may further alter water currents and wave patterns and can damage coral reefs, all of which can diminish coastal defences.³⁰ A 2014 report commissioned by the Dutch Ministries of Foreign and Economic Affairs identified the impact on biodiversity as the principal potential adverse impact of the Dutch dredging sector.³¹

Coral reefs and fish nurseries are particularly vulnerable to the removal and dumping of large parts of the seabed. Sediment can smother sea grasses, which are the key food source of marine creatures such as dugongs and sea turtles.³² Researchers at Penn State's College of Agricultural Sciences compared dredged and un-dredged sections of the Allegheny River and found that dredging significantly reduces populations of fish and causes a reduction in the variety of aquatic life.³³ Dredging activities also have an impact on aquatic mammals such as whales and dolphins through noise pollution and vibrations, as well as the release of heavy metals, as identified by Greenpeace in a 2014 report on a dredging project being undertaken by Jan de Nul and DEME in the Arctic.³⁴

In addition to the risks of causing adverse environmental impacts through their own activities, dredging companies frequently do work for governments that have a questionable record of protecting the environment, putting them at risk of being directly linked to abuses committed by such governments.

2.5 Implications of developments in the global dredging sector for addressing social and environmental risks

A number of the characteristics of and developments in the global dredging sector identified in Sections 2.1–2.3 above have implications for the ability and willingness of dredging companies to address the risks of adverse social and environmental impacts described in Section 2.4.

The development of ever larger mega-dredging projects is accompanied by heightened risks to the environment and human rights. The fact that the dredging sector is characterised by dredging companies carrying out large-scale projects commissioned by and on behalf of governments that have a questionable record of protecting human rights and the environment means that dredging companies face an additional risk of contributing to, or being directly linked to, adverse social and environmental impacts through their business relationship with these governments. These risks are exacerbated by the fact that competitive success in the industry is largely based on being able to complete a job as quickly and cheaply as possible, as well as by maintaining good relationships with contracting governments. These factors discourage dredging companies from insisting that they should be given the space and time to identify, prevent, and mitigate social and environmental risks, and from raising concerns about their government partners' own human rights and environmental performance.

In addition, the entrance of the Chinese company CHEC into the 'open' international markets has raised the competitive pressures on traditional open market leaders like Dutch dredgers Boskalis and Van Oord. The constant pressure on companies to keep their fleet in use for as much of the year as possible can lead dredging companies to ignore social and environmental risks in their fervent push to win contracts. Because of the importance of export credit guarantees in dredging companies' ability to bid for large, financially-risky projects, this competitive pressure is also felt by ECAs and the governments backing them. Similarly, the fierce competition for large projects forces companies to bid at very low prices. In turn, this can lead to companies cutting corners in the execution of the project on areas such as the avoidance and mitigation of (risks of) adverse social and environmental impacts.

3 The international normative framework for responsible business conduct, as applied to the dredging sector

The normative framework that can be used to benchmark responsible business conduct in the dredging sector is focused on two sets of internationally-accepted normative standards for corporate behaviour: the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles for Business and Human Rights. These standards cover a wide range of topics that are relevant to companies' impacts on people and the planet, from human and labour rights and environment to disclosure, bribery, and taxation. They are based on protecting and respecting the fundamental rights in the Universal Declaration on Human Rights, ILO Core Conventions, and other international agreements on social and environmental issues.

Governments that have signed the OECD Guidelines – a group of 46 States including both the Netherlands and Egypt – have made a binding commitment to implement the standards. The UNGPs contain very specific guidelines for actions that should be taken not just by companies, but also by governments, to respect (in the case of companies) and protect (in the case of governments) human rights in relation to business activity. Unfortunately, the implementation and enforcement of these frameworks by signatory states remains patchy and is largely left to the voluntary efforts of companies.

Despite their overall weak enforcement by governments and limited uptake by companies, the OECD Guidelines and UNGPs nevertheless represent an appropriate benchmark for analysing and measuring the conduct of the dredging and financial sector companies being investigated in this report. The OECD Guidelines and UNGPs are an appropriate benchmark both because they are based on multilaterally-agreed human rights and environmental agreements, but also because they represent standards that the Dutch government and the Dutch business community have publicly endorsed and promoted.

The OECD Guidelines provide a general framework upon which to develop expectations of multinational companies operating in the dredging sector. The UNGPs provide a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. The UNGP framework rests on three pillars:

- The first is the state's duty to protect human rights from abuses, including abuses committed by third parties such as private companies.
- The second pillar is the corporate responsibility to respect human rights, which means that business enterprises should avoid infringing on human rights and conduct due diligence identify, prevent, and mitigate actual and potential adverse impacts they cause or to which they contribute or are directly linked through a business relationship.

- The third pillar of the UNGPs is the need for victims of corporate-related abuses to be able to access effective remedy mechanisms, both judicial and non-judicial. The third pillar is addressed to both governments and companies, but ultimately it is the duty of governments to ensure that access to effective remedy exists.

In addition to the OECD Guidelines and UNGPs, the OECD 'Common Approaches'³⁵ provides an appropriate framework for benchmarking the actions of export credit agencies such as Atradius DSB. A first OECD 'Council Recommendation on Common Approaches on Environment and Officially Supported Export Credits' was adopted in 2003. The Common Approaches were subsequently further developed to include due diligence on social and human rights impacts of ECA-supported transactions. Under the Common Approaches framework, every transaction is classified into a different category based on its potential adverse environmental and/or social impacts. For transactions classified as 'Category A', which means the transaction is likely to have 'severe' adverse impacts well beyond the direct project area, the applicant is required to submit an environmental and social impact assessment (ESIA) or a comparable document. This document is to be available to the wider public for a period of at least 30 days prior to the issuance of an export credit insurance policy. The Common Approaches allow for a much shorter consultation timeline than most other international standards. Also the Common Approaches allow "in exceptional cases" to derogate from applying international standards.³⁶ While the OECD Guidelines recommend an SEIA for high-impact projects, the Common Approaches appear to have less strict requirements by providing the possibility of derogating from this standard. In a similar way to the Common Approaches, the CSR policy of the Dutch export credit facility allows for such a derogation³⁷ that is weaker than the usual international standards.

3.1 The state duty to protect human rights and the environment

With regard to business activity – including dredging projects – states have the primary duty to protect human rights and the environment. This is laid down in internationally-agreed normative frameworks for responsible business conduct such as the UNGPs and the OECD Guidelines. Guiding Principle 2 of the UNGPs emphasises that governments' duty to protect human rights extends to impacts linked to the operations of businesses based or headquartered in their territory. The UNGPs suggest that the duty to protect is particularly strong in cases where the government controls or supports the company in question: *"States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies."*³⁸

Box 1 Implementation of the UNGPs and OECD Guidelines by the Netherlands and Egypt

The Dutch government regards the UNGPs and OECD Guidelines as integral parts of its foreign and human rights policy. The Dutch government is an OECD member and has made a binding commitment to implement the OECD Guidelines. The Dutch government has publicly stated its expectation that Dutch companies operating abroad should respect the UNGPs and OECD Guidelines, and that they should conduct due diligence to identify, prevent, and mitigate any potential adverse impacts of their operations.

In 2012, the Dutch government became the second government worldwide (after the UK) to make good on its commitment to develop a national action plan (NAP) for business and human rights to implement the UNGPs. The Dutch NAP highlights that companies benefiting from government support “*in the form of grants or other types of finance for activities abroad, export credit insurance and trade missions*”,³⁹ are required to apply due diligence. Applicants for export credit insurances have to declare that they have taken note of the OECD Guidelines and will implement the standards to the best of their ability.⁴⁰ The NAP also states that Dutch embassies should be active in providing information on responsible business conduct, human rights issues in their country, and the OECD Guidelines and the NCP procedures.

While the Dutch are to be commended for being only the second government worldwide to develop an NAP, an assessment of the Dutch NAP reveals that it provides detail on what the Dutch government currently expects of Dutch companies, but pays little attention to future action needed to fill remaining governance gaps and fails to emphasise actions taken or to be taken with regard to the state’s duty to protect human rights.⁴¹

Egypt is one of the 12 non-OECD countries that adhere to the OECD Guidelines. This means that Egypt is supposed to have an NCP to promote the OECD Guidelines and handle cases of alleged violations by business. On paper, the Egyptian NCP is housed in the Ministry of Investment and has an advisory body composed of representatives from several ministries, the Egyptian Trade Union, and the Egyptian National Competitiveness Council. However, at the time of publication of this report, the Egyptian NCP exists on paper only and is not considered to be functional in any way. Egypt does not have an NAP to implement the UNGPs.

3.2 The corporate responsibility to respect human rights and the environment

The OECD Guidelines are the most comprehensive set of government-backed recommendations on responsible business conduct in existence today. They contain far-reaching recommendations addressed by governments to multinational enterprises operating in or from adhering countries. Both the Netherlands and Egypt adhere to the OECD Guidelines, which provide businesses with principles and standards for responsible business conduct in areas relevant to the dredging sector such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.

Governments adhering to the OECD Guidelines expect companies to *“Carry out risk-based due diligence... to identify, prevent and mitigate actual and potential adverse impacts”* on all matters covered by the OECD Guidelines (e.g. human rights, environment, labour rights).⁴² This includes (potential) adverse impacts that the company (may) cause or to which it (may) contribute.⁴³ It also includes adverse impacts that the company itself may not cause but to which the company is *“nevertheless directly linked through its operations, products or services by a business relationship”*.⁴⁴ In other words, companies should identify and address adverse impacts that are caused by other companies or even states (as these are considered “business relationships”), if the impact is linked to their operations or services. This expectation is particularly relevant to the dredging sector, which frequently operates through projects where a state is primarily responsible for an infrastructure project development, and dredging companies are merely contracted to execute a specific task. Even in these cases, the OECD Guidelines consider all corporate actors involved in the project to have an individual responsibility to identify and address risks to human rights and the environment.

In the event that any risks of human rights impacts are identified, the OECD Guidelines state that *“enterprises should avoid causing or contributing to adverse impacts and address such impacts when they occur”*.⁴⁵ This is the case even if the host government does not protect or promote internationally recognised human rights or other standards contained in the Guidelines. The OECD Guidelines are clear that, in situations where the standards in the Guidelines go beyond domestic laws and regulations (or their implementation), companies are expected to abide by the Guidelines. Beyond the adverse impacts that companies directly cause, or to which they contribute, companies are expected to *“seek to prevent or mitigate adverse impacts directly linked to their operations, products or services by a business relationship”*.⁴⁶ This means that companies are responsible for seeking to prevent or mitigate impacts caused by other companies or even a government with which they do business if the impact is linked to their operations.

Companies that cause or contribute to adverse impacts are expected to immediately cease causing these impacts or their contribution to the impact, and to remediate any adverse impacts that have occurred. Companies that are directly linked to an impact are expected to *“use their leverage to influence the entity causing the adverse impact to prevent or mitigate that impact”*.⁴⁷ Given the concentration of market share in the hands of a few dredging companies (including Boskalis and Van Oord), the leverage those companies have in large-scale dredging projects is likely to be

Box 2 Corporate policies on respect for human rights and the environment

As global leaders in the dredging sector, it is relevant to take a more in-depth look at the corporate responsibility policies of Boskalis, Van Oord, Jan de Nul, and NMDC. Of the four, Boskalis appears to have the most developed corporate responsibility policy. Boskalis reports annually in accordance with the G3.1 guidelines of the Global Reporting Initiative (GRI). Boskalis' 2014 CSR report touches on a wide range of sustainability issues such as emissions, water use, waste, emissions, and the safety of employees. Boskalis declares that it does not pay any bribes and that it pays taxes in those countries where value is added. Its social policy focuses on investments in local communities and the support of fundamental human rights.

Through 2015, Boskalis worked with a 'Statement of General Business Principles' based on the UN Universal Declaration of Human Rights. The company claims that it accepts responsibility for matters within its sphere of influence (though this concept is out of line with the OECD Guidelines and UNGPs.⁴⁸ In January 2016, Boskalis replaced its General Business Principles with a "General Code of Business Conduct" in which it added an endorsement of the OECD Guidelines. The new code acknowledges Boskalis' responsibilities relating to the prevention of bribery and corruption, human rights, care for the environment, and safety.⁴⁹ The same principles are also laid down in its code of conduct for suppliers.⁵⁰ Boskalis claims that it avoids first-tier suppliers that pose a significant risk of causing adverse social and environmental impacts. Boskalis also indicates in its 2014 report that it has the intention of engaging second-tier suppliers as well as those in the first tier.⁵¹

In contrast to these policies targeted at upstream business relationships (e.g. suppliers), Boskalis does not appear to have any policies or codes aimed at its downstream business relationships, i.e. the (state) clients for whom it conducts dredging. Boskalis does confirm that it does not engage in business in countries that are subject to international or relevant national embargoes. Boskalis also mentions that relevant unions, local residents, officials, and non-governmental organisations (NGOs) are consulted in the planning and implementation of projects.⁵²

Boskalis' new (2016) code of conduct shows important improvements over its previous policy. However, it is not clear how Boskalis will implement its responsibilities relating to human rights and care for the environment, nor whether it will conduct human rights due diligence in both directions (upstream as well as downstream) of its value chain. Downstream value chain responsibility – i.e. their responsibility for the social and environmental impacts that are caused by the (government) clients for whom they work but that are nonetheless linked to their activities – is a particular point of concern for Boskalis and for the dredging industry as a whole.

◉ **Box 2: Corporate policies on respect for human rights and the environment**

Beyond Boskalis, the corporate policies of Van Oord, Jan de Nul, and NMDC reveal more of a focus on environment than on human rights. None of these three dredging companies explicitly mentions either the OECD Guidelines or the UNGPs in their CSR policies.

Van Oord uses the UN Global Compact as a frame of reference for its CSR policies. It publishes a 'social overview', which deals with safety issues for employees and employees' well-being.⁵³ Van Oord has a sustainability steering group that prioritises four topics: environmentally friendly engineering solutions; energy efficiency; 'attractive employership'; and sustainable supply chains.

For its work on supply chains, Van Oord – like Boskalis – focuses exclusively on upstream business relationships, such as suppliers and subcontractors, rather than downstream relationships, such as the governments for which it works. Van Oord has mapped the sustainability policies of its top 150 suppliers and subcontractors. In 2015, Van Oord planned to take this into account in its procurement practices.⁵⁴ During a meeting between SOMO and representatives of Van Oord, the company representatives acknowledged that their value chain also included clients (i.e. contracting governments). However, Van Oord does not explicitly take human rights risks into account for either suppliers or clients.

Jan de Nul's sustainability reporting and policies are significantly more limited than the two Dutch companies. It focuses on employees' safety and CO2 emissions.⁵⁵ NMDC's miniscule sustainability programme focuses on donations to communities, safe working conditions, ethical behaviour with unspecified business partners, and environmental protection.⁵⁶

significant. In all three scenarios – causing, contributing to, and directly linked to adverse impacts – companies are expected to account for how they address the (risk of) adverse impacts.

According to the OECD Guidelines and UNGPs, accounting for how impacts and risks are addressed implies that companies must be transparent about the specific impacts they consider themselves to be at risk of either causing, contributing to, or to which they are directly linked. Companies are also expected to be transparent about the specific measures they have taken to prevent or mitigate each of those risks/impacts. The disclosure chapter of the OECD Guidelines states that companies should publicly disclose material information on "foreseeable risk factors", including non-financial information on risks such as social and environmental risks.⁵⁷

Financial sector companies

As noted above, it is important to recognise that the OECD Guidelines and UNGPs apply not just to the dredging companies, but also to companies in the financial sector that support and facilitate

Box 3 Policies of Atradius DSB related to respect for human rights and the environment

Atradius DSB expects all recipients of its financial services to be familiar with the OECD Guidelines and to do their utmost to comply with them. A statement to that end is part of all its application forms. Atradius DSB screens all applications for export credit insurance to determine whether a more detailed environmental and social review is considered to be necessary. No information is publicly available about the way in which Atradius DSB undertakes human rights due diligence. In its policy documents, Atradius DSB refers to the UNGPs but does not suggest any operational guidance in this respect. Atradius DSB does not have any grievance mechanism in place to provide the victims of transactions financed with its export credit support with access to effective remedy.

For its anti-bribery policy, Atradius DSB refers to the 2006 OECD “Recommendation on Bribery and Officially-supported Export Credits” that is based on the “Convention on Combating Bribery of Foreign Public Officials in International Business Transactions”. In this context, Atradius DSB rejects an application if there is serious concern that the applicant or its agent has engaged, or will engage, in bribery or has been an accessory to bribery to win a contract. In the case of serious suspicions of bribery, Atradius DSB may terminate an insurance policy. In such cases, Atradius DSB also reserves the right to report this suspicion to the Dutch Ministry of Finance, which may turn to Dutch investigative authorities.

the activities of the dredging companies. This means that financial sector companies like Atradius DSB are also expected to *“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”*. The reference to services means that paragraph 12 (in Chapter II, General Policies) of the Guidelines is applicable to any financial service, including the insurance of export credits. In a recent decision in a case filed against Atradius DSB with regard to two dredging projects in Brazil the Dutch NCP confirmed that Atradius DSB is a multinational company that is subject to the Guidelines.⁵⁸

4 The Suez Canal expansion project

On 20 October 2014, newspapers around the world reported that the two major Dutch dredging companies Boskalis and Van Oord, working together with the Belgian company Jan de Nul and the National Marine Dredging Company (NMDC) of Abu Dhabi had won a € 1.5bn contract with the Suez Canal Authority in Egypt to expand part of the Suez Canal. The project that these companies were selected to implement would add a new 35 kilometre-long second shipping lane to the existing 164 kilometre canal, providing for separated shipping lanes in opposite directions.

This assignment, along with a separate project to deepen the canal, would be part of a record-breaking effort to expand the Suez Canal. The contract to deepen the canal was issued to a separate consortium comprising the Belgian dredging company DEME and an American dredging company. There are also significant plans to develop industrial areas and free trade zones around the expanded Suez Canal. The Egyptian Suez Canal Authority is reported to have raised an amount of more than US\$ 8bn (€ 7.2bn) for the entire project by issuing bonds in the local Egyptian capital market.

Egyptian President el-Sisi ordered the works to be completed within an extremely short period of nine months. To be able to accomplish this challenging task, the two Dutch dredging companies brought together a massive fleet of more than 30 dredging ships from locations all over the world. Within a period of nine months the dredging companies were expected to remove some 200 million cubic metres of soil.

On winning the contract to carry out the dredging operations, Boskalis's CEO Mr. P. Berdowski publicly called for export credit insurance for this massive project to be provided by the Dutch ECA, Atradius DSB.⁵⁹

The Suez Canal expansion project evolved according to the following timeline:

- **5 August 2014** El-Sisi announces the Suez Canal expansion project.
- **1 October 2014** Various media outlets report on the adverse impact of forced evictions related to the Suez expansion project.⁶⁰
- **15 October 2014** The project is awarded to the consortium led by Dutch dredgers Boskalis and Van Oord.
- **18 October 2014** Dredging contract signed between the Suez Canal Authority and Dutch-led dredging consortium; according to the CEO of Boskalis the consortium started working immediately.⁶¹

- **28 October 2014** Atradius DSB confirms to Both ENDS that it received an application for insuring the Suez Canal expansion project, that the project is classified as 'Category A', and that the environmental impact information will be shared at least 30 days before an eventual insurance policy is issued.
- **4 November 2014** Dutch Minister of Infrastructure and Environment, Melanie Schultz van Haegen, meets with the Chair of the Suez Canal Authority, Admiral Mameesh, to discuss current and future cooperation in the Suez Canal expansion project.⁶²
- **Around 10 November 2014** Head of the Suez Canal Authority gives the green light to start dredging works, when exactly the dredging activities began is not clear, media report that consortium dredging ships arrived from 5 November onwards'.⁶³
- **17-19 November 2014** Environmental consultancy Witteveen+Bos, Atradius DSB, Van Oord, and Boskalis visit the project area, ostensibly to evaluate impacts.
- **12 December 2014** Witteveen+Bos finalises the environmental and social review commissioned by Boskalis and Van Oord in an effort to comply with requests for additional information on these aspects from Atradius DSB.
- **17 December 2014** Atradius DSB's export credit insurance for Boskalis and Van Oord's operations in Suez is unofficially approved.
- **12 February 2015** Atradius DSB export credit guarantee for Boskalis and Van Oord's operations in Suez is unofficially approved.
- **5 March 2015** Both ENDS is informed by Atradius DSB that environmental information on the project is not available, but that – despite this situation – an export credit insurance policy has been issued several weeks before.
- **15 July 2015** The Dutch-led dredging consortium completes its dredging activities.
- **6 August 2015** The expanded Suez Canal is officially opened with a ceremony; Dutch Minister Schultz van Haegen is present.

4.1 The role of the Egyptian government

Egyptian officials claim that the expansion of the Suez Canal will more than double annual revenues to some US\$ 13.5bn (€ 12.4bn) by 2023.⁶⁴ This requires a yearly growth of some 10 per cent. However, compared to the world seaborne shipping, which grew by just 37 per cent in the period of 2000 to 2013, this promise will be hard to fulfil. Furthermore, the International Monetary Fund (IMF) projects that the annual rate of growth for global merchandise trade will have averaged 3.4 per cent in the decade up to 2016.⁶⁵ The expansion and upgrades allow two-way traffic and reduce transit time from 18 to 11 hours. As economists state that ships already save as much as ten days at sea by using the Suez Canal, there was no urgent need for the expansion. In this light, reducing transit time by a few hours will make little difference.⁶⁶

Rather than critical infrastructure that will dramatically improve global trade, the Suez Canal expansion is simply part of el-Sisi's plan to attract additional foreign investment and to boost the Egypt economy. The Egyptian government wants to convert the surrounding area into a special economic zone with a high level of autonomy. This means that the Suez Canal area will have special powers to complete contracts with investors, separate from legislations that apply to other regular economic activity in Egypt. In the Suez Canal zone, investors are to pay only five per cent income tax, versus 10 to 20 per cent outside this area.⁶⁷

The Egyptian army not only protects the Canal zone against potential attacks from terrorist movements active in the nearby Sinai region,⁶⁸ but it also supervised the actual construction of the expansion.⁶⁹ The Egyptian Armed Forces (EAF) have a central role in the domestic economy. The EAF run industrial operations, control massive infrastructure projects like Suez, and have influence at many levels of government.⁷⁰ The EAF have also repressed labour demonstrations such as those in Suez.⁷¹ The role of the military also relates to the future plans of turning the Suez Canal into a major logistics hub and centre of heavy manufacturing. The military's economic planners want to establish solar, wind, and geothermal power stations in and around Suez. The military's own companies can provide equipment for such projects and both the Ministry of Military Production and the Arab Organization for Industrialization (AOI) have factories for manufacturing parts of wind turbines.⁷²

The right to inheritance is guaranteed by Egypt's Constitution of 2014. The law only allows government appropriation with a court order under strict conditions. It requires fair compensation to be paid in advance. Moreover, arbitrary forced displacement of citizens is a crime.⁷³ However, more than 2,000 people (approximately 500 families) were hastily displaced from their homes and lands by the EAF and the local authorities (the Governorate of Ismailia) for the building of the Suez expansion.^{74,75} Simultaneously, they confiscated hundreds of agricultural feddans (one feddan = 1.038 acres) rendering the dispossessed families homeless and jobless.⁷⁶ These families gave no prior consent, nor did they receive fair compensation.⁷⁷ Permits to work with contracting companies on the new Suez Canal Project were also denied.⁷⁸

The Suez Canal Authority (SCA) is a public authority reporting directly to the Prime Minister. The SCA manages, operates, uses, maintains, and improves the Suez Canal. It operates independently. It is the SCA, alone and exclusively, that issues and keeps in force the rules of navigation in the Canal. It can also issue other rules and regulations, start or promote projects, rent out its land or real estate, and it can hire others' land or real estate "to serve a purpose set forth for the Canal, for the welfare of its employees and staff, or for establishing projects and utilities related to the Canal that provide for a well performance of the Canal..." [sic].⁷⁹ The SCA is the agency concerned with the protection of the water environment. And under Egyptian environmental law it has been required to conduct an environmental assessment.⁸⁰

The complex and non-transparent involvement of the Egyptian military amplifies concerns about human rights and the environment that were raised in the media. These concerns trigger substantial increased risks for any business activity in Egypt, including dredging. This means that a detailed environmental and social impact assessment was absolutely essential for ensuring that business activity does not cause or contribute to harm to local people and the environment.

4.2 The dredging consortium and getting the contract

The Suez Canal project has seen two consortia, consisting of six of the seven largest dredging companies in the world, being awarded contracts. The only company left out is China's CHEC, the relative newcomer on the 'open' market. CHEC reportedly tendered but lost the contract to the consortium consisting of Boskalis, Van Oord, Jan de Nul, and NMDC. In a 20 October 2014 article in the Dutch newspaper *Financieel Dagblad*, Boskalis CEO Berdowski, and Van Oord CEO, Pieter van Oord, stated their belief that their consortium had won the contract because of the speed with which they proposed to execute the dredging and the participation of NMDC as the national dredging company of one of the largest financiers of the project.⁸¹

The fact that the two Suez consortia consisted of all of the major 'Western' players seems to point to a retaliation strategy against the relative newcomer, CHEC, by the incumbent companies. By joining forces, the Dutch and Belgian companies were able to gain a competitive advantage in terms of speed and flexibility, which allowed them to block CHEC from gaining a foothold in the megaprojects segment of this industry. Because the members of the Dutch-led consortium agreed to send their largest vessels to Egypt, they were able to execute the project in ten months instead of three years. This appears to have been a decisive factor in the awarding of the contract. In order to meet the tight deadlines, the consortium used a total of 21 cutters and five hoppers, which it had to mobilise from all around the world.⁸² This represents more than 30 per cent of the combined cutter capacity of the four companies in the consortium.

Around the year 2000, the Dutch and Belgian dredgers had worked in developing Port Said on the Red Sea, but had run into problems in collecting outstanding payments from the Egyptian government. Boskalis was involved in a multiple-year legal case, while Jan de Nul had to write off US\$ 75m (€ 68.8m) in unpaid additional work. Against this backdrop, it is not surprising that the Dutch companies publicly insisted that they required export credit insurance from the Dutch government to realise this massive deal.⁸³ By getting the export credit insurances with the Dutch state through Atradius DSB, the risks of non-payment were shifted to the budget of the Dutch government.

4.3 Specific risks of adverse social and environmental impacts

Bribery and corruption

The Egyptian government – host to the Suez Canal – has a notoriously poor record with regard to bribery and corruption, which is considered to be widespread in Egypt. According to the Business Anti-Corruption Portal, *"a culture of nepotism and favouritism has tainted Egypt's economy and investment climate. A poor legal framework and a widespread culture of corruption leave businesses reliant on strong connections and the use of middlemen, and well-connected businesses enjoy privileged treatment. Existing anti-corruption legislation is unevenly enforced, leading government officials to act with impunity"*.⁸⁴ Egypt ranks 94th in Transparency International's Corruption Perception Index.⁸⁵

Human rights risks

The fact that the Suez Canal expansion took place in Egypt raises specific human rights concerns. Human rights are under pressure in Egypt. The new constitution, adopted after the January 2014 referendum, falls short of international human rights standards, in particular when it comes to military trials of civilians, freedom of religion, and the rights of foreign nationals. Labour rights are under pressure, in particular when large-scale and prestigious projects have to be executed rapidly. According to the UN Economic and Social Council, Egyptian legislation allows only for limited freedom of association, and does not guarantee a minimum wage that allows for a decent standard of living.⁸⁶ As a result, human rights abuses by businesses frequently occur in Egypt; a recent report detailed five cases of workers' rights abuses by foreign businesses.⁸⁷ The precarious situation of human rights in Egypt requires companies involved in or linked to activities in Egypt to be alert and to conduct continuous due diligence throughout their involvement in the country. As stated before, these concerns trigger substantial increased risks for any kind of business activity in Egypt, specifically for the dredging activity in the Suez region where the EAF seem to play an active role.

One particular human rights impact that appears to have been clearly present in the Suez Canal project is the forced eviction of local residents to make way for the expansion. In 2014, before the dredging began, the inhabitants of two villages in the path of the canal reported to *The Guardian* that 1,500 homes had already been destroyed and another 5,000 were under threat.⁸⁸ In March 2015, *Vice* reported on the eviction of more than 60 families who lived in Abtal, a village that had been destroyed for the construction of the new canal.⁸⁹ According to *Vice*, "Soldiers told the evicted villagers they had no right to live on the land as it technically had always belonged to the army. Some of those who argued were arrested. The villagers are in an unenviable situation – homeless if they stay silent, and labelled unpatriotic if they speak out against a project and a military institution that are deeply entwined with Egypt's national identity".⁹⁰ Villagers who demanded compensation from the SCA and the governorate have seen little progress. According to *Vice*, the SCA attempts to portray the displaced villagers as squatters who owed decades of back rent.⁹¹

A December 2014 social and environmental review of the Suez operations of Boskalis and Van Oord specifically mentioned the risk of forced displacement. The review noted that, "Estimates of project affected persons (PAPs) losing residence and/or income vary from 1,000 up to 50,000. It is unclear whether a Resettlement and Compensation Plan is in place. According to media sources, displaced families did not receive any form of compensation. However, promises were made by officials involved in the New Suez Canal Project. In the current stage of assessment, no interviews with possible project affected persons have been conducted".⁹² The review also clearly notes that no mitigation measures to minimise the impact on local inhabitants were in place when the project began. Beyond the involuntary resettlement that had already taken place, the report did not identify any additional resettlement that would need to take place as a result of Boskalis' and Van Oord's dredging operations.

The review also identified that indigenous peoples are present in the Suez area, stating that the indigenous inhabitants of Sinai "are the descendants of ancient Egyptians in addition to the Bedouins who had earlier emigrated from the Arabian Peninsula".⁹³ The review further identified that the fisheries and agricultural land may be at risk. The dredging will impact fisheries and expose local residents and farmers to the loss of residential arable and agricultural land or access to it (land used

for mango trees, maize crops, grazing land, etc.). These impacts may adversely impact the livelihoods of local populations.⁹⁴

Risks to the environment

As mentioned above, the risks of adverse environmental impacts from dredging are well known. Dredging can cause significant damage to the environment, including releasing toxic compounds into the water and (through the dumping of dredged material) onto land, the destruction of aquatic and terrestrial habitats. Although Egypt has an environmental law that stipulates that a competent administrative or licensing authority must assess the environmental impact of new projects, violations of the law are frequent. A recent report detailed five cases of serious environmental abuses by businesses in Egypt.⁹⁵

According to marine biologists, one very specific environmental risk associated with the Suez Canal expansion is the risk of causing serious harm to marine life in the Mediterranean Sea. The enlargement of the canal will likely increase the number of invasions of non-native species from the Red Sea, resulting in a diverse range of harmful effects on the ecosystem structure and functioning of the entire Mediterranean Sea, with implications for the services it provides for humans.

The Mediterranean Sea has about 700 non-native species, about 350 of which have entered from the Suez Canal since its construction in the late 19th century. A notorious newcomer is the nomad jellyfish, "*which invaded the Mediterranean via the Suez in the 1970s. Now its vast swarms, which can measure tens of miles in width, frequently make commercial fishing impossible and have sometimes closed tourist beaches lining the Mediterranean for days at a time, and some of them disabled power stations lining the eastern Mediterranean*".⁹⁶ The scientists have called on signatories to the UN Convention of Biological Diversity to press Egypt to conduct a full and detailed environmental impact assessment. The Executive Secretary of the Convention on Biological Diversity has acknowledged the potential environmental and socio-economic effects of the Suez expansion and asked Egypt, which is a party to the Convention, to conduct a rigorous environmental assessment.⁹⁷ Unfortunately, this has not been done.

The Witteveen+Bos review identified a wide range of risks and potential impacts from the construction and operational phase of the dredging project. For example, numerous marine plant and animal species will be impacted, an increase in air emissions is likely, noise pollution and vibrations will occur, and surface and ground water sources are likely to be affected. The review stated that most of these issues are considered to have low impact and that no further mitigation measures are deemed necessary.⁹⁸

5 Meeting the standards? Analysis of the actions taken by the dredging companies, Atradius DSB, and the Dutch government

In order to determine exactly what responsibilities and actions the OECD Guidelines and UNGPs expect of the various corporate actors involved in the Suez Canal expansion project, it is important to define what the relationship between each company and the (risk of) adverse impact is. The OECD Guidelines and the UNGPs offer instructions for determining this relationship. As we will see below, the type of relationship between the company and the (potential) adverse impact determines what actions are expected of a company under the OECD Guidelines and UNGPs.

5.1 Causing, contributing, or directly linked?

The OECD Guidelines and UNGPs distinguish four types of relationships between a company and a risk of adverse impact:

- the company can risk *causing* an adverse impact;
- the company can risk *contributing to* an adverse impact;
- there may be a risk that an adverse impact is *directly linked* to the company's operations, products, or services by a business relationship; or
- the company may be considered *not linked* to the impact.

For the purposes of the Guidelines, for scenario 2 “contributing to” an adverse impact should be interpreted as a substantial contribution, meaning an activity that causes, facilitates, or incentivises another entity to cause an adverse impact and does not include minor or trivial contributions. Also note that the OECD Guidelines and UNGPs explain that “activities” can include both actions and omissions. For scenario 3, the “business relationship” that can link a company to an impact includes relationships with business partners, entities in the supply chain, and any other non-State or State entities directly linked to its business operations, products or services. This means that a company can be considered “linked to” an adverse impact, even if that impact was caused by a supplier or even a government.⁹⁹

With regard to the specific human rights risks associated with the Suez Canal expansion, it is unlikely that the individual companies in the Dutch consortium – Boskalis, Van Oord, Jan de Nul, and NMDC – can be considered to have caused the adverse human rights impact of forced evictions. These evictions were conducted by the Egyptian authorities under the direction of the Suez Canal Authority (SCA), which is thus considered to have “caused” the adverse impact. However, because the forced evictions occurred in order to clear the way for the dredging of the canal (which is the service provided by the companies), and because Van Oord, Boskalis, Jan de Nul, and NMDC have a business

relationship with the SCA – which is responsible for the evictions – all four of the dredging companies are at the very least *directly linked* to the impact of forced evictions. Their responsibility may go further, however. If the dredging companies did not conduct appropriate due diligence to identify and mitigate adverse human rights impacts to which they were linked (such as the forced evictions), this omission could be considered as enabling/facilitating the continuing harm from the forced evictions, thereby bringing the enterprise within the scope of the *contributing* responsibility scenario.

Atradius DSB has a business relationship with Boskalis and Van Oord (and by extension with the SCA) and provided a financial service to these companies specifically for the Suez dredging. Atradius DSB can be considered to be *directly linked* to the adverse human rights impact of forced evictions. However, if Atradius DSB did not conduct appropriate due diligence to identify and mitigate the adverse human rights impacts to which it was linked (such as the forced evictions), this omission could be considered as enabling/facilitating the continuing harm from the forced evictions, thereby bringing the enterprise within the scope of the *contributing* responsibility scenario.

The specific risk of adversely impacting marine life (including fisheries and biodiversity) and the related risk of adversely impacting local livelihoods based on that marine life (e.g. fisheries) stems directly from the dredging activities themselves. The dredging companies can be considered as *contributing* to these risks. The dredging activities themselves comprise a substantial, non-trivial contribution to the risks. Because they are operating together in a consortium, each of the four dredging companies is contributing to the risk. Atradius DSB can again be considered to be at the very least *directly linked* to these risks because it has a business relationship with Boskalis and Van Oord (and by extension, with the SCA), and because Atradius DSB provided a financial service to these dredging companies specifically for the Suez dredging. If Atradius DSB did not conduct appropriate due diligence to identify and mitigate the adverse environmental impacts to which it was linked, this omission would be considered as enabling/facilitating the harm (which took place after the export credit guarantee was issued), thereby bringing the enterprise within the scope of the *contributing* responsibility scenario.

5.2 Actions expected of the dredging companies to address the risks of adverse impacts

As established in the previous section, the four companies in the Dutch dredging consortium can be considered as *contributing* to some of the social and environmental risks associated with the Suez Canal expansion and are *directly linked* to others, the OECD Guidelines and UNGPs outline a number of clear expectations for actions that should have been undertaken by these companies.

In order to address the risk of contributing or being linked to adverse human rights impacts associated with the Suez Canal expansion, the OECD Guidelines and UNGPs expect that Boskalis, Van Oord, Jan de Nul, and NMDC should each have individually:

- Had a policy commitment to respect and avoid infringing on internationally recognised human rights.¹⁰⁰
- Carried out risk-based due diligence to identify, prevent, and mitigate potential adverse human rights impacts to which it risked contributing or being linked, and accounted for how these risks/impacts were addressed.¹⁰¹
- Avoided contributing to adverse human rights impacts and addressed any such impacts that nevertheless did occur. “Addressing” impacts in this case includes ceasing its own contribution to the impact, mitigating any further impacts, and actively providing remediation through legitimate processes, by itself or in cooperation with other actors.¹⁰²
- Sought to prevent or mitigate adverse human rights impacts where it had not contributed to that impact, when the impact is nevertheless directly linked to its operations, products, or services by a business relationship (such as the Suez Canal Authority).¹⁰³
- Engaged with relevant stakeholders (including those displaced and otherwise impacted by the expansion) in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision-making for projects or other activities that may significantly impact local communities.¹⁰⁴ The OECD Guidelines recognise that indigenous peoples have special rights under international law, and supplemental OECD guidance indicates that companies should take extra measures to meaningfully engage and seek the free, prior, and informed consent (FPIC)¹⁰⁵ of any impacted indigenous peoples.¹⁰⁶
- Encouraged business partners, including the Suez Canal Authority, to apply principles of responsible business conduct compatible with the Guidelines.¹⁰⁷

In order to address the risk of contributing or being linked to adverse environmental impacts associated with the Suez Canal expansion, the OECD Guidelines and UNGPs expect that Boskalis, Van Oord, Jan de Nul, and NMDC should each have individually:

- Carried out risk-based due diligence to identify, prevent, and mitigate potential adverse environmental impacts to which it risked contributing or being linked, and accounted for how these risks/impacts were addressed.¹⁰⁸
- Avoided contributing to adverse environmental impacts and addressed any such impacts that nevertheless did occur. “Addressing” impacts in this case includes ceasing its own contribution to the impact, mitigating any further impacts, and actively providing remediation through legitimate processes, by itself or in cooperation with other actors.¹⁰⁹
- Sought to prevent or mitigate adverse environmental impacts where it had not contributed to that impact, when the impact is nevertheless directly linked to its operations, products, or services by a business relationship.¹¹⁰
- Established and maintained a system of environmental management, including:
 - collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;
 - establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including periodically reviewing the continuing relevance of these objectives; and
 - regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.¹¹¹

- Engaged with relevant stakeholders (including those displaced and otherwise impacted by the expansion) in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision-making for projects or other activities that may significantly impact local communities.¹¹²
- Provided the public and workers with adequate, measureable, verifiable, and timely information on the potential environmental, health, and safety impacts of the activities of the enterprise.¹¹³
- Engaged 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.¹¹⁴
- Prepared an environmental impact assessment to assess, and address in decision-making, the foreseeable environmental impacts associated with the services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them.¹¹⁵

Based on the information available, it appears that none of the four dredging companies has acted in accordance with the OECD Guidelines or UNGPs with regard to addressing and accounting for the risks of adverse human rights and environmental impacts associated with its involvement in the Suez Canal expansion. There is no evidence that any of the dredging companies conducted appropriate risk-based due diligence or an environmental impact assessment to identify, prevent, and mitigate potential human rights and environmental risks prior to initiating dredging activities. There is no evidence that any of the companies meaningfully engaged with local stakeholders impacted by their activities, nor that any of the companies provided the public with adequate and timely information about the potential environmental, health, and safety impacts of the Suez dredging.

The December 2014 review that was made by the engineering consultancy Witteveen+Bos on behalf of Boskalis and Van Oord (which had been required to do so by Atradius DSB) does not meet the standard of risk-based due diligence nor that of an environmental impact assessment expected the Guidelines. The review only evaluated the companies' risk of directly causing impacts. It ignored the fact that companies may also contribute and be linked to adverse impacts that they should seek to prevent or mitigate and – if contributing – remediate.

The Witteveen+Bos review was substandard for many reasons. It entailed no interviews with (potentially) affected local stakeholders. Furthermore, Witteveen+Bos's visit to the project area was made from 17-19 November 2014, after the dredging activities had already commenced. Finally, the Witteveen+Bos report was never shared with local stakeholders; it was only made public when a 2015 Freedom of Information Act request by a Dutch journalist forced its release.¹¹⁶

5.3 Actions expected of Atradius DSB to address the risks of adverse impacts

As established in section 5.1 above, Atradius DSB can be considered to be *directly linked to* – and potentially *contributing to* – a number of specific social and environmental risks associated with the Suez Canal expansion, the OECD Guidelines and UNGPs outline a number of clear expectations for actions that should have been undertaken by the Dutch export credit agency.

In order to address the risk of being directly linked to adverse human rights and environmental impacts associated with the Suez Canal expansion, the OECD Guidelines and UNGPs expect that Atradius DSB should have:

- Had a policy commitment to respect human rights.¹¹⁷
- Carried out risk-based due diligence to identify, prevent, and mitigate potential adverse human rights and environmental impacts to which it risked being directly linked through a business relationship, and account for how these risks/impacts were addressed.¹¹⁸
- Avoided contributing to adverse environmental impacts and addressed any such impacts that nevertheless did occur. “Addressing” impacts in this case includes ceasing its own contribution to the impact, mitigating any further impacts, and actively providing remediation through legitimate processes, by itself or in cooperation with other actors.¹¹⁹
- Sought to prevent or mitigate adverse human rights and environmental impacts where they have not contributed to that impact, when the impact was nevertheless directly linked to its operations, products or services by a business relationship (such as Boskalis and Van Oord).¹²⁰
- Engaged with relevant stakeholders (including those displaced and otherwise impacted by the expansion) in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision-making for projects or other activities that may significantly impact local communities.¹²¹
- Encouraged business partners such as Boskalis and Van Oord, as well as the SCA, to apply principles of responsible business conduct compatible with the OECD Guidelines and the UNGPs.¹²²

Based on the information available, it appears that Atradius DSB has not acted in accordance with the OECD Guidelines or the UNGPs with regard to addressing and accounting the risks of adverse human rights and environmental impacts associated with its involvement in the Suez Canal expansion. There is limited evidence that Atradius DSB conducted appropriate risk-based due diligence to identify, prevent, and mitigate potential human rights and environmental risks to which it contributed and is directly linked. As mentioned above, the December 2014 Witteveen+Bos review is insufficient to meet the expectations the OECD Guidelines and UNGPs have of financial sector companies directly linked to risks of adverse impacts. Atradius DSB did not consult with or provide timely information to its stakeholders in the Netherlands, nor those in Egypt, about potential human rights and environmental impacts to which it is directly linked.

Atradius DSB also has to meet requirements under its so-called country policies.¹²³ For each export target country, specific criteria apply depending on a range of conditions laid down and regularly updated in these country specific policies. To allow for the cover of the applications relating to the expansion of the Suez Canal, the country ceiling for Egypt had to be lifted.¹²⁴ The strategic cooperation agreement between Atradius DSB and the Islamic Corporation for the Insurance of Investment and Export Credit (ICIEC) of Saudi Arabia seems to be instrumental in this context, as it allows the ICIEC to provide reinsurance cover to Atradius DSB for excess exposure to transactions in Egypt.¹²⁵

5.4 Actions taken by the Dutch government

The first pillar of the UNGPs defines the duties of states to protect against human rights abuses by third parties, including businesses. As stated above, the UNGPs suggest that the duty to protect is particularly strong in cases where the government supports (for example, by providing export credit insurance) companies involved in (risks of) human rights abuses. At the time of the Suez Canal expansion project, Dutch government policies dictated that companies benefiting from government support were required to conduct due diligence. Applicants for export credit insurance had to declare that they took note of the OECD Guidelines and would apply the Guidelines to their best ability in their business.¹²⁶ Additionally, the government had identified the dredging sector (as an explicit part of the construction sector) as one of the country's official 'high-risk sectors'.¹²⁷

However, these standards and intentions appear to have been subordinated to the Dutch government's endeavour to strengthen the international competitiveness of Dutch companies in nine 'top' sectors. In these sectors, the government supports Dutch companies through tax instruments, research and development efforts, and tailor-made solutions for sector-specific issues. The Dutch maritime sector is one of the top sectors.¹²⁸ The OECD Guidelines are not mentioned as a condition to access these facilities.

Strengthening the international competitiveness of the Dutch dredging sector also takes place by diplomatic contacts, trade missions, and the embassies. When it comes to Egypt, the Dutch government has sought many opportunities for Dutch companies in sectors such as transport, energy, infrastructure, water, and agriculture. The Dutch government cooperated with the government of Egypt in order to facilitate the Dutch-led consortium's winning the contract to dredge the Suez Canal. After the Suez contract was awarded, the Dutch Minister of Infrastructure and Environment signed a Memorandum of Understanding (MoU) with her counterpart in Egypt to strengthen a 38-year partnership between Egypt and the Netherlands in the water sector.¹²⁹ Here again, responsible business conduct does not seem to have played any significant role in the extensive diplomatic contacts.

Economic interests prioritised over human rights in Suez export credit

The actions of the Dutch government in issuing the Suez export credit insurance reveal an inconsistency with the government's duty to protect human rights under the UNGPs and its commitment to implement the OECD Guidelines.

Because Atradius DSB classified the transaction as a Category A project under the OECD Common Approaches framework (see section 3 above), it was supposed to disclose an ESIA at least 30 days prior to taking a decision on an eventual application from Boskalis and Van Oord. In an October 2014 email to Both ENDS,¹³⁰ Atradius DSB announced that the environmental information on the project would indeed be released before a decision on the application was taken. A few days later, newspaper reports emerged in which Atradius DSB indicated that the approval of an export credit insurance policy for the new Suez Canal would not be an easy decision, due to a wide range of risks to be taken into account.¹³¹ A few days after that, the Dutch Ministry of Infrastructure and Environment issued a press release following a visit of Minister Melanie Schultz van Haegen to Egypt.¹³² In the release, the Minister expressed her enthusiasm about the opportunities for Dutch companies,

not only in the field of dredging, but also future opportunities related to water management, port development, energy supply, and other activities along the Suez Canal. Together with a number of Dutch CEOs, the Dutch Minister had a meeting with Admiral Mameesh, the Chair of the SCA, on 4 November 2014. Atradius DSB visited the dredgers in Egypt together with the Dutch embassy, the Egyptian Ministry of Environment and the Egyptian Environmental Affairs Agency. However, none of these visits or missions ever made the effort to speak to or consult with any of the people affected by the project.¹³³

A spokesperson for Dutch Minister for Foreign Trade and Development Cooperation, Lilianne Ploumen, has stated that “the Ministry of Foreign Affairs, including the embassy, did everything they could to gather relevant information on the CSR risks”.¹³⁴ Although this information gathering did not involve speaking to affected individuals, the Dutch Embassy in Egypt had indeed informed both the dredging companies and the Ministry of Finance about the forced evictions, noting that “*All the project land is property of SCA, and various persons unofficially inhabited the area. A number of 61 plots have been evacuated, and affected persons are compensated with land on which they can build houses. No compensation for (agricultural) use of the land has taken place, as this is not required according to Egyptian Law.*”¹³⁵ The Dutch embassy in Egypt thus seems to have relied solely on Egyptian national policies instead of also using the international normative framework (OECD Guidelines and UNGPs) to analyse which actions should have been taken by Dutch companies involved in the project.

While the implementation of the Suez Canal expansion project was swiftly proceeding to meet the extremely tight deadline set by the Egyptian authorities for early August 2015, it was only in early February 2015 that the export credit insurance policy was officially issued to the Dutch dredgers.¹³⁶ Atradius DSB’s promise – and indeed, responsibility – to provide the public with information about the environmental impacts of the project prior to the decision to issue the insurance was blatantly ignored. Although some relevant information on social and environmental impacts had been collected by Witteveen+Bos, Atradius DSB refused to disclose this information to the public.

In the process of deciding whether or not to issue the export credit insurance, Atradius DSB provided its client, the Dutch Ministry of Finance, with several options: 1) to reject the application for export credit insurance due to the inadequate information that had been provided and non-compliance with procedural and substantive guidelines, 2) to hire an external consultant to gather the additional information (e.g. an ESIA) required under its procedural guidelines, or 3) to deviate from the regular social and environmental due diligence practice and proceed with approving and issuing the insurance policy. The Ministry of Finance opted for the third scenario and issued the export credit insurance policies to Boskalis and Van Oord.¹³⁷ In so doing, the Ministry invoked Article 3.7 of Atradius DSB’s CSR policy document: “*The Dutch export should not suffer any substantial competitive disadvantages of any rigorous evaluation process relative to other subscribers to the Common Approaches, unless national policies explicitly make other choices.*”¹³⁸ Since the Belgian ECA, Delcredere, had already issued export credit insurance to Jan de Nul for its share in the international consortium, the Dutch Ministry of Finance felt that Dutch business interests were under threat and saw this article as justification to “*deviate from regular social and environmental due diligence*”.¹³⁹

In addition to paying insufficient attention to social and environmental risks, the ceiling of maximum financial risk to be incurred on export credit cover for transactions in Egypt was also lifted to enable

the application of the Dutch dredging companies to go ahead. Since other companies in the consortium had already obtained export credit support, the Dutch Ministry of Finance felt that it could not competitively disadvantage the two Dutch companies by withholding similar support, despite the fact that international standards such as the OECD Guidelines and UNGPs had clearly not been met. In other words, the Dutch Ministry of Finance prioritised the competitive economic interests of Dutch dredging companies over the Dutch government's duty and commitment to protect human rights by having Dutch companies seek to prevent and mitigate adverse human rights and environmental impacts.¹⁴⁰ Indeed, not only did the Dutch government turn a blind eye to the irresponsible behaviour of Boskalis and Van Oord, it actually facilitated the behaviour by actively seeking an exception to its normal procedure of requiring a proper impact assessment, as was expected under the OECD Guidelines and UNGPs.

6 Conclusions and recommendations

6.1 Conclusions

This report has analysed responsible business conduct in the global dredging sector, with a particular focus on two of the world's leading dredging companies – Boskalis and Van Oord, both based in the Netherlands – and their role in the expansion of the Suez Canal in Egypt. The normative framework used to analyse the behaviour of the Dutch dredging companies is the set of norms for responsible business conduct laid out in the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.

The research revealed that the risks to human rights and the environment in the dredging sector are significant, and that the Dutch companies have a clear responsibility to prevent and mitigate such risks of adverse social and environmental impacts associated with their operations. Given their position as global market leaders in a very concentrated market, the Dutch companies could have considerable leverage to ensure that human rights and environmental norms are respected.

In the case of the Suez Canal, however, Dutch dredgers Boskalis and Van Oord did not follow international standards for responsible business conduct for identifying and avoiding risks of adverse social and environmental impacts. The companies did not engage with local stakeholders and affected communities, and they did not sufficiently encourage their business partner – the Suez Canal Authority – to respect human rights and mitigate and remediate adverse impacts.

Market conditions in the dredging industry and the business model of the leading dredging companies represent a source of structural pressure on respect for human rights. By its very nature, dredging comprises relocation of large amounts of earth, which makes it prone to substantial adverse social and environmental. Dredging companies frequently work for authoritarian governments – such as Egypt's current military regime – which means extra attention to potential human rights risks is appropriate and expected. On the other hand, dredging projects are characterised by tight deadlines and pressure to keep a capital-intensive fleet operational for as many weeks of the year as possible, which discourages companies from conducting proper due diligence to identify and avoid risks of adverse impacts.

In addition to evaluating the behaviour of the dredging companies, the report also analysed the Dutch government-backed export credit insurance scheme, administered by Atradius DSB, which provided a financial service to the Dutch dredgers and enabled their work in Suez. Atradius DSB should therefore live up to both the OECD Common Approaches framework for ECAs, but also the OECD Guidelines and the UNGPs. The report found that while the Dutch government committed to implementing the OECD Guidelines and publicly promotes the standards, its policy and actions to promote the competitive strength of Dutch dredging companies abroad lead to a conflict of interest and incoherence in policy.

Applicants for export credit insurance have to declare that they are familiar with the OECD Guidelines and will apply them to the best of their ability. However, Atradius DSB does not require human rights due diligence from companies, though this is required by the OECD Guidelines. Atradius DSB is a private company offering export credit insurance on behalf of the Dutch state. In the case of the Suez Canal expansion, Atradius DSB even dropped its own requirement for a full social and environmental impact assessment out of fear that the Dutch companies might lose their competitive edge in the project. In the case of the Suez Canal, the economic interests of the Dutch dredging companies clearly prevailed over the Dutch government's commitment to protect and ensure respect for human rights and the environment.

The Dutch government regards itself as a front runner in the field of business and human rights. However, this reputation is in serious jeopardy if it continues to promote and support dredging companies that fail to implement the OECD Guidelines. The Suez Canal project is a very clear example of this tension. It is hard to see how the issuing of export credit insurance in this case is be compatible with a credible government policy to promote the protection of human rights and the application of the highest standards on corporate accountability.

6.2 Recommendations

Recommendations to Boskalis, Van Oord, Jan de Nul, NDMC and Atradius DSB

- Use the OECD Guidelines as the explicit basis for corporate policies, including project assessment and evaluation. Carry out continuous risk-based due diligence for each project to identify, prevent, and mitigate risks of adverse impacts, and remediate impacts that have already occurred. Ensure that relevant stakeholders, including local communities and individuals (potentially affected by the dredging (or other) activity, are meaningfully consulted and their views taken into account during the due diligence and decision-making processes. Make sure that human rights policies and due diligence efforts (and the results of these efforts) are publicly available.
- Ensure that information about all relevant social and environmental risks regarding the project are made publicly available in the design stage to allow all local stakeholders to meaningfully take part in discussions and contribute to decision-making.
- Even if they do not cause the adverse impacts themselves, dredging companies and ECAs should use their leverage to influence the entity causing the adverse impacts (even if this is a government body) to prevent or mitigate and remediate the impacts. If the companies have insufficient leverage to ensure that impacts are prevented, mitigated and remediated, the companies should work together to increase their leverage.
- Include a human rights clause in contracts with clients. Make an explicit statement that – in projects that are likely to cause, contribute to, or exacerbate human rights abuses – a failure on the part of the client to respect human rights and prevent, mitigate and remediate adverse impacts will result in the termination of the contract.
- Start a dialogue with the Egyptian authorities to ensure fair and satisfactory compensation for all damage caused to locally affected communities, and to set up a body that may be charged with reviewing any current and future environmental impacts of the Suez Canal expansion project.

Recommendations to the Dutch government (home country)

- Require all applicants for export credit insurance from Atradius DSB to conduct risk-based due diligence, including an environmental and social impact assessment, prior to granting the insurance policy. For high-risk projects (Category A), the depth and extent of the due diligence must be especially thorough. Verify that the companies have conducted due diligence and that it is of sufficient quality and the results publicly available.
- As part of the due diligence verification, make eligibility for support from Atradius DSB based on whether the following criteria are met:
 - A social (including human rights) and environmental impact assessment is carried out and its findings are accepted by right-holders.
 - The project does not pose unacceptable risks (based on an exclusion list that defines a clear bottom line).
 - Prevention and mitigation measures are in place to address any potential or actual adverse social and environmental impacts.
- Ensure that social and environmental protection policies of Atradius DSB cannot be side-lined by strategic or economic interests and thus become applicable under all circumstances by abolishing the current derogation clause, paragraph 3.7.
- Have Atradius DSB develop and implement – in collaboration with stakeholders – an effective grievance mechanism that allows for affected people (individuals, communities, or civil society organizations working on their behalf) to resolve disputes about adverse impacts. The grievance mechanism should meet the effectiveness criteria outlined in the OECD Guidelines and UNGPs, including being impartial, transparent, and accessible to all right-holders.
- Adopt legal provisions that prohibit the export credit agency from supporting companies whose operations abuse human rights. These provisions should explicitly recognise a legally enforceable duty of care for the export credit agency towards those who are directly affected by the products and services for which they provide export credit insurance.
- Build on the on-going sector “covenant” process to take the initiative to come to a binding agreement with the entire Dutch dredging and/or water management sector on identifying, preventing, and mitigating environmental and human rights risks. In determining these risks and actions, local and Dutch stakeholders should meaningfully take part in discussions and contribute to decision-making.

Annex

Company profiles of the Suez dredgers – Boskalis, Van Oord, Jan de Nul, and NDMC

Boskalis

Koninklijke Boskalis Westminster NV (Boskalis) is a Netherlands-based company engaged in the dredging and earthmoving, maritime infrastructure, and maritime services sectors. In July 2013, the Company sold 40 per cent stake in Archirodon Group NV. In October 2013, it sold its Smit Marine Australia Pty Ltd and the activities of Dockwise Yacht Transport.¹⁴¹

Segments and divisions

While traditionally a dredging company, Boskalis has diversified into other maritime services in recent years through the acquisition of companies such as Smit Internationale, MNO Vervat and Dockwise. Before 2010, the company generated more than 85 per cent of its revenues from dredging and earthmoving operations. However, it has since shifted part of its business to offshore energy, towage and salvage. In recent years, dredging accounted for approximately half of the company's revenues. In 2014, Boskalis' dredging segment completed large projects in Brazil, Russia, the Netherlands, Australia, UK and South Korea. It also signed contracts for work in Singapore, Indonesia, and the Suez Canal project in Egypt.

Ownership and management

Unlike the other three large Benelux dredging companies, the majority of Boskalis' shares are publicly traded. The company's largest shareholder is HAL Trust with 33.8 per cent of the shares. HAL Trust is the investment firm owned by the Van der Vorm family, founded after the Holland America Line was sold to Carnival Cruises in 1989. HAL also has significant shares in a range of other Dutch offshore, oil and gas companies, including Vopak and SBM Offshore.

Finances and customers

Boskalis' revenues have grown consistently over the last few years, and the company generated revenues of € 3.1bn in 2014. The company has also been consistently and increasingly making profits, up to a net profit of almost half a billion euros in 2014. The company reports 2014 as being the most successful year in its history.¹⁴² Most of the revenue growth is accounted for by the company's offshore energy operations, rather than its dredging activities. Boskalis' total assets grew steadily between 2010 and 2014, primarily because of a growth in investments in affiliate companies. These include joint venture companies such as VBMS B.V., Smit Lamnalco and Ocian Marine Egypt, as well as a minority share in SAAone Holding B.V., a public-private partnership in the Netherlands.

According to its annual report, Boskalis' main clients include oil, gas, and power companies, port operators, governments, shipping companies, international project developers, insurance companies and mining companies.¹⁴³ The company operates worldwide.

Van Oord

Van Oord Groep NV is a Netherlands-based marine contractor. The company focuses on dredging, marine engineering, and offshore projects.¹⁴⁴

Segments and divisions

Van Oord's dredging segment is active throughout the world. In 2014, the company was active in the land reclamation project KNPC in Kuwait, a large new island off the coast of Jakarta in Indonesia, and the Suez Canal project in Egypt. Van Oord is expanding its fleet of dredging vessels, with orders for two new hoppers and a new cutter placed at the end of 2014.

Van Oord's offshore wind segment also grew rapidly in recent years, primarily because of tenders by Dutch energy company Eneco for a large offshore wind park in the Netherlands.

The company has bought up a number of smaller companies in recent years. In 2014, Van Oord acquired Dravo S.A., a dredging company primarily active in the Southern European market, J.T. Mackley, a UK-based civil engineering company, and the assets and personnel of Ballast Nedam Offshore. One of the developments that turned Van Oord into a global player in the dredging industry was the acquisition of the much larger Ballast Ham Dredging in 2003.¹⁴⁵

Ownership and management

Van Oord is a privately held company with three shareholders: MerweOord B.V. (78.5 per cent); Cobepa N.V. (10.75 per cent); and ConsOord B.V. (10.75 per cent). MerweOord is the holding company of the Van Oord family. Cobepa is a private equity firm that was acquired by European family investors from BNP Paribas in 2004. ConsOord B.V. is a consortium of three Dutch investment companies (Janivo, Breedinvest, and Rinkelberg).

Finances and customers

Van Oord generated its highest ever revenues in 2014. That year, it generated 62 per cent of its revenues from its dredging segment (2013: 79 per cent), while a growing portion of its revenues came from its offshore wind operations. While Van Oord was less profitable in 2014 than in 2013, this is partially due to one-off payments it received in 2013 for the cancellation of a large project in Dubai.

Customers that are mentioned in Van Oord's most recent annual report include Rijkswaterstaat, the Port of Rotterdam, Eneco, and ExxonMobil.¹⁴⁶

Jan de Nul

Jan de Nul is a family-owned Belgian company. It is a globally active multi-specialist company that performs all kinds of dredging activities,¹⁴⁷ including port extensions, maintenance dredging, land reclamation, bank protection, port infrastructure, and salvaging.¹⁴⁸ The company states that it conducts projects "from A to Z", including the design and study of projects. Projects that Jan de Nul has been involved in in the past include the Palm Island in Dubai and the Chek Lap Kok Airport in Hong Kong. Jan de Nul is the second largest dredging company in the world, after the Chinese firm CCCC (CHEC).¹⁴⁹ In recent years it has invested heavily in new and larger vessels, more than doubling its dredging capacity between 2004 and 2012.¹⁵⁰

Segments and divisions

In its latest annual report, Jan de Nul gives an overview of all its vessels. These include: 28 'trailing suction hopper dredgers'; 14 'cutter suction dredgers'; and six backhoe dredgers. The company uses six of its dredgers in the Suez Canal Project.¹⁵¹ This includes one of the world's largest cutter dredgers – the JFJ De Nul.¹⁵² The company also has the two largest trailing suction hopper dredgers in the world; the 46,000m³ Cristóbal Colón and the 46,000m³ Leiv Eiriksson.¹⁵³

While Jan de Nul is a privately held company and publishes less detailed financial information than listed companies, it does report on its turnover distribution for its four segments; dredging (61 per cent); offshore (14 per cent); civil engineering (22 per cent); and environmental (3 per cent).¹⁵⁴

Jan de Nul is active globally, and its geographical distribution of revenues is well spread throughout all continents. According to its 2013 annual report, it generates 32 per cent of its revenues in Europe, 25 per cent in Latin America, 31 per cent in Asia and the Middle East, 10 per cent in Australia and 2 per cent in Africa. It should be noted that these are 2013 figures that might have changed significantly after the Suez Canal contract was signed.

Ownership and management

Jan de Nul's board of directors consists of the following six executives, including three members of the de Nul family: J.P.J. de Nul, Dirk de Nul, Julie de Nul, Gérard Becquer, Paul Lievens and Johan van Boxtael. The company has its head office based in Luxembourg and another main office in Belgium.

Finances and customers

Jan de Nul is the largest of the four Benelux-based dredging companies in terms of revenues, with sales of more than € 2bn annually since 2011. In its 2013 annual report, Jan de Nul lists 64 different dredging projects in 33 different countries worldwide. Clients include public port authorities, new private enterprises, and large companies in the oil and gas industry.¹⁵⁵

NMDC

National Marine Dredging PSC (NMDC) is a United Arab Emirates-based public shareholding company primarily engaged in carrying out dredging contracts and associated land reclamation works in the territorial waters of the United Arab Emirates, under the directives of the Government of Abu Dhabi. The company's projects include, among others: Mangroves, Suwa Island, Al Bahr Palace Channel, Sir Baniyas Island, Mussafah Channel Project, and Zukum Project.¹⁵⁶

Segments and divisions

While Thomson Reuters reports two business segments (Dredging & Reclamation, and Civil Works division) NMDC lists three main activities on its website; Dredging & reclamation; Marine construction; and Marine logistics. Its Dredging & Reclamation segment is described as its mainstream business, and includes a fleet of cutter suction dredgers, ranging in capacity from 1,795 kW to the Al Sadr automated dredger with a capacity of 20,725 kW. It lists the following activities as part of this segment:

- capital and maintenance dredging (inclusive deepening of water passages)
- artificial Island construction
- environmental protection dredging (inclusive beach and sea beds cleaning)
- land reclamation using dredged material
- creating water channels, intakes and outfalls.

Within the Marine Construction segment, the company has been involved in the Zakum project, a large offshore oilfield off the coast of Abu Dhabi.¹⁵⁷ Other projects it mentions include the construction of super yacht harbours, new fishing ports, man-made islands, rock breakwaters at a nuclear power plant, and dredging and reclamation works.¹⁵⁸

While NMDC is mostly active in Abu Dhabi, it has been expanding to other Middle Eastern countries. The company has international branches in Egypt, Bahrain, Qatar, Saudi Arabia and India, and is in the process of establishing a presence in Oman.¹⁵⁹

Ownership and management

NMDC is partially stock listed. Its significant shareholders include: Government of Abu Dhabi (32 per cent), Al Nahyan (Sheikh Mansour Bin Zayed) (20 per cent) and Al Khazna Insurance Co PSC (7.11 per cent) The company's board of directors consists of ten members, three of which represent the government of Abu Dhabi. Between 2008 and 2009, the company's CEO was Hendrik Jan de Kluiver, a Dutch national with several years of experience in the Middle East. According to his LinkedIn profile, his main priority was *"to introduce a more commercial, effective structure whereby all procedures, processes and also the IT system had to be revised"*.¹⁶⁰ He currently works as an Operational Manager at Damen Dredging Equipment. Other former board members all appear to be UAE nationals.

Finances and customers

NMDC's revenues have dropped in recent years, as has its profitability. The company points to aggressive competition in the market as a cause of its reduced profit margins.¹⁶¹ In its financial statements, the company reports having received advances from customers in 2014 to the amount of AED 212m (€ 52.9m).¹⁶² This includes an advance for the Suez Canal of AED 186m (€ 46.6m).¹⁶³ NMDC lists many national customers (in the public domain) in its annual report.

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Dredging in the Dark

An analysis of the Dutch dredging industry's failure to identify, prevent, and mitigate adverse impacts in dredging the Suez Canal

This report analyses responsible business conduct in the global dredging sector, with a particular focus on two of the world's leading dredging companies – Boskalis and Van Oord, both based in the Netherlands – and their role in the expansion of the Suez Canal in Egypt. The normative framework used to analyse the behaviour of the Dutch dredging companies is the set of norms for responsible business conduct laid out in the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights. In addition, the report also analyses the Dutch government-backed export credit insurance scheme, administered by Atradius DSB, which provided a financial service to the Dutch dredgers and enabled their work in Suez.