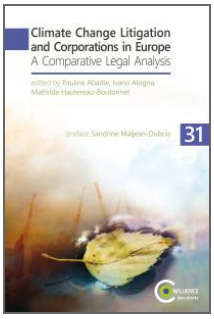

Under the direction of Pauline Abadie, Ivano Alogna and Mathilde Hautereau-Boutonnet

Climate Change Litigation and Corporations in Europe
A Comparative Legal Analysis

Climate Change Litigation and Corporations in Belgium

The Farmer Case in Context

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Climate Change Litigation and Corporations in Belgium
The Farmer Case in Context

Delphine Misonne[1]

Abstract: The contribution provides an overview of the Farmer Case (Falys v. Total) in Belgium, for which no judgment on the merits had yet been rendered at the time of writing. This first lawsuit against a major oil company on grounds related to liability and the Belgian civil code offers an opportunity to highlight the broader context in which such litigation arises, both with regard to developments under Belgian law and to insights that may be drawn from recent judgments in Germany and Italy, particularly on issues such as distance, neighborhood, fair share, and the global climate challenge.

Résumé *: Lorsque l'on se penche sur le contentieux climatique à l'égard des entreprises en Belgique, c'est d'abord du « farmer case » (Falys c. Total) qu'il convient de traiter, même si l'affaire n'a pas encore conduit à un jugement au fond. Cette action intentée contre une grande compagnie pétrolière sur la base du Code civil belge offre en effet l'occasion de mettre en lumière le contexte juridique plus large dans lequel ce type de contentieux s'inscrit, en ce qui concerne les évolutions récentes du droit belge. La contribution met tout autant en lumière les enseignements récents d'autres jugements, prononcés en Allemagne, en Italie et aux Pays-Bas, qui pourraient inspirer le juge belge, sur des questions telles que la distance, le voisinage ou encore la juste part dans la responsabilité à assurer à l'égard du défi climatique mondial.*

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Introduction

In Belgium, just as the Klimaatzaak[2] case was clearly modelled after Urgenda in holding the State accountable for climate inaction,[3] the currently pending Farmer Case appears to be directly inspired by the early stages of *Milieudefensie v. Shell in The Netherlands*.

In the current wave of climate litigation, the *Shell* climate case marked quite a breakthrough on the continent. The first decision that was obtained—the judgement of the district Court of The Hague in May 2021—had showed that it was possible for civil society to take action against Big Oil in Europe and to obtain important clarifications from the judiciary on the role, the responsibility, and even the liability of oil giants in relation to the impact of their activities on climate change. Moreover, such decisions could rely on tort-based civil liability and human rights arguments. This did not fall on deaf ears and sparked the enthusiasm of Belgian NGOs dedicated to the protection of human rights and the environment.

Even if grounded on an objective liability approach, the *Lliuya v. RWE* case and the recent judgement of the Court of Appeal of Hamm[4] can also be seen as a source of inspiration in the Belgian case, due to the profile of the main plaintiff (an individual farmer suing a major company) and, as we will see, due to the tension that is being created around the spatial configuration characterizing the position of both plaintiffs and defendants, at the crossing of the global dimension of climate effects and a bilateral approach to potentially concurring activities.

This is only confirming the observation that lawsuits on climate change tend today to nurture each other: the global conversation is rolling on, even if decisions are far to be aligned, and this for various legitimate reasons.[5]

The present contribution offers a brief overview of the so-called Farmer Case, for which no judgment had been rendered yet on the merits at the time of writing. But this first lawsuit against a major oil company on grounds related to its liability towards climate change gives the opportunity to highlight the broader context in which such litigation arises, illustrating how courts are increasingly venturing into novel legal territory when called upon to assess the environmental conduct of major corporations and their impact on both ecosystems, populations and even individuals, including in Belgium.

2 *ASBL Klimaatzaak v Kingdom of Belgium, Flemish Region, Walloon Region and Brussels-Capital Region* (Cour d'appel de Bruxelles, 30 November 2023, 2023/AR/1338).

3 D. Misonne, "Affaire Klimaatzaak (2015)," in Ch. Cournil (ed.), *Les grandes affaires climatiques*, Aix-en-Provence, DICE Éditions, 2020. [https://doi.org/10.4000/books.dice.11063].

4 *Lliuya v RWE AG (Oberlandesgericht Hamm, 30 November 2017, Case 5 U 15/17*).

5 See the yearly Chroniques sur la justice climatique en Europe, by D. Misonne, M. Torre-Schaub et A. Adam in *Revue trimestrielle des droits de l'homme.*

I. The Farmer Case

A. Essentials

Filed on March 13, 2024, before a specialized commercial court in Tournai (Tribunal de l'entreprise) in southern Belgium, the Belgian Farmer case lawsuit bears the name of an individual farmer, Mr. Falys, who is suing an Oil Major, TotalEnergies, having its headquarters in Paris. The farmer benefits from the support of three NGOs, dedicated to the protection of human rights (Ligue des droits humains), the environment (Greenpeace) and food security (FIAN).[6] Law students have also had the opportunity to participate to the legal thinking around the initiative.[7]

The choice of the location of the tribunal is justified by the location of the damage caused to the farming activities. The competence of such commercial court is mainly to set disputes between enterprises, and the farmer is acting against the Oil Major in his own quality of enterprise as a physical person.[8]

B. The Shell model

Like the *Milieudefensie v. Shell* case was based on fault-based liability and the unwritten standard of care, the *Farmer* case is based on fault-based liability and the unwritten standard of care, as deduced from article 1382 and 1383 of the former Civil Code. Now replaced and modernized by article 6.5 and 6.6. in the new Belgian Civil Code which entered into force in January 2025, those articles formed the cornestones of the general principle of extra-contractual liability, both by action (Article 1382) or negligence (Article 1383).

The unwritten standard of care is a key aspect of the merits of the Farmer case, the ambition being to hear the judge on the expected attitude of a major company in the face of its own impact on climate change, taking due account of human rights duties and the scientific consensus on the need to keep the rise of temperature to 1.5℃ by comparison to the preindustrial times. The Shell judgment in first instance is also clearly inspirational in taking the 1.5℃ of the Paris Agreement as a common (political) ground for establishing the unwritten standard of care of the oil company. The confirmation, provided by the Court of Appeal in the same Shell case, that "there can be no doubt that protection from dangerous climate change is a human right,"[9] obviously consolidates the argumentation developed in the Farmer case. Because, by contrast to Klimaatzaak which opposed citizens and an association to public authorities, the Farmer case raises liability issues with regard to climate change in private relationships, answers given by the Court of Appeal of The Hague do also consolidate the importance given to UN Guiding Principles on Business and Human Rights

6 The case is supported by a dedicated website: [https://www.thefarmercase.be/].
7 Rosa Park Legal clinic on human rights at UCLouvain.
8 See the Belgian Code on Economic Law and its modern definition of the notion of enterprise.
9 *Milieudefensie and Others v Royal Dutch Shell plc (Court* of Appeal of The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2099), § 7.17.

and OECD guidelines, according to which the responsibility of companies to respect human rights is a global standard of behaviour to which all companies are expected to adhere, wherever they operate : "To combat the danger posed by climate change, everyone has a responsibility. To fulfil that responsibility, the focus does not lie exclusively on states. Especially, companies whose products have contributed to the creation of the climate problem and have it in their power to contribute to combating it are obliged to do so vis-à-vis other inhabitants of the earth, even when (public law) rules do not necessarily compel them to do so. This follows from the instruments discussed above, including the OECD guidelines and the UNGP, to which Shell has subscribed. Those instruments place responsibility for protection against dangerous climate change also on (large) companies and call on them to take appropriate measures themselves to counter dangerous climate change."[10]

The model effect of the Shell case on the Farmer case is more obvious and promising than the original copy-paste effect of the Urgenda case[11] on the Klimaatzaak case. This is because a lawsuit involving two private entities can evolve alonside similar notions of civil liability, without being confronted to tricky differences in State structures and distribution of powers, typical of Belgian federalism.

Similarities between the two cases can also be observed, quite interestingly, in the first reactions of the defendants, showing that in such circles too, there seem to be a transversal dialogue around ideas and concepts, where climate litigation is at stake. In the Shell case, one could for instance read in the public comments made by the company that the lawsuit was not constructive or that Dutch law would anyway not be applicable. Precisely the same kind of reactions could be noticed in the first reactions echoing the Farmer case.

C. Damage to farming activities

As the farmer explains: "when the climate fails, my work fails." In recent years—notably in 2018, 2020 and 2022—long droughts and periods of heavy rainfall scorched pastures, forcing animals to eat grass roots. He had to buy fodder and even sell livestock to reduce the herd and make it through winter. He is therefore seeking compensation for the material and moral losses sustained. Falys's lawsuit against TotalEnergies is thus intended, first and foremost, to establish the company's liability for the climate-related damage suffered by its farming activities.

The farmer also reproaches the carbon major for having denied climate change, and in this respect, the case draws inspiration from other well known cases involving major corporations, like the Saúl Ananias Luciano Lliuya case or the more recent Total Greenwashing case currently pending in France, which was launched in 2022 based on misleading commercial practices. According to the plaintiff's submissions, the defendant's influence on climate disruption was not limited to massive greenhouse gas (GHG) emissions. Rather, "the defendant actively manufactured doubt as to the existence of climate change and its effects, and lobbied in favour of fossil fuels, which hindered the adoption of regulations to combat climate disruption and thus contributed to creating dependence on fossil fuels.

10 Idem, § 7.26.
11 *Urgenda Foundation v The State of the Netherlands (*HR, 20 December 2019, ECLI:NL:HR:2019:2007).

When the defendant could no longer deny the existence of climate change, it claimed to be embarking on the path of energy transition. Yet an analysis of its transition strategy shows that this is wholly inadequate and that, in reality, the defendant plans to increase its fossil fuel production, and thus its GHG emissions—a strategy that obstructs the move away from fossil fuels. In order to continue doing so in a world increasingly aware of the climate emergency, the defendant engages in greenwashing, which both increases GHG emissions and also obstructs the exit from fossil fuels."[12]

Beyond financial redress, the farmer seeks behavioural change from the company, which he believes has the means to make a difference. He is therefore asking the court not only for damages, but also for injunctions. In particular, he wants TotalEnergies to be compelled to adopt a credible transition plan, aimed at halting all new fossil fuel investments (including in gas) for which no final investment decision has yet been taken.

D. Jurisdiction

The first obstacle to overcome was to confirm the jurisdiction of the court seized, from an international private law angle, due to the fact the claimants and defendant are not located in the same country: the headquarters of the firm are located in Paris, and the damage of the claimants is occuring, now and in the near future, in Belgium.

A dispute arose indeed around the interpretation of current EU law[13] on jurisdiction in civil and commercial matters, and more specifically on the interpretation of the provision mentioning that "a person domiciled in a Member State may be sued in another Member State in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur" (article 7). The defendant contested the possibility to locate a specific damage, because the damage in question is of a "diffuse nature, global and geographically unlimited." The farmer and associated NGOs refered to a landmark case of 1976, Mines de Potasse d'Alsace,[14] which made clear that the plaintiff has an option between two possible connecting factors: the place of the event giving rise to the damage, or the place where the damage occurred. The defendant may be sued, at the option of the plaintiff, either in the courts for the place where the damage occurred or in the courts for the place of the event which gives rise to and is at the origin of that damage (§ 25). Somehow ironically, the defendant tended on the contrary to argue that there cannot be such thing as a "place where the damage occurred" when facing the effets of global climate change. It suggested the tribunal to ask for a preliminary ruling before the Cour of Justice of the European Union on the relevance of the Mines de Potasse test to a situation of global pollution.

12 Applicant's submissions, septembre 2025.

13 Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L351/1 ("Brussels I").

14 Case *21/76 Handelskwekerij GJ Bier BV v Mines de Potasse d'Alsace SA [*1976] ECR 1735 (CJEU).

On March 18, in 2026,[15] the Tribunal confirmed its jurisdiction and competence to hear the case, with no need to request a preliminary ruling from the Court of Justice of the European Union. It endorsed the standing of the farmer (the lawsuit is not an *actio popularis*, because the farmer has a direct personnal interest in obtaining a redress) and of the NGOs. But the tribunal decided to stay the proceedings on the merits. Arguing that a another lawasuit currently pending in France at the same moment against the same Oil major might lead to contradictory judgements, even if on different legal grounds, the tribunal opted for a postponement of its own decision, till September 2026.

This is only the beginning of a long procedure. Interestingly, any potential appeal procedure will first end up before the Court of Appeal of Mons, which has a chamber specialized in environmental matters and is eager to finally handle a major lawsuit on environmental-related matters.

In the meantime, similar questions of jurisdiction in a global climate change context were also solved in Italy by the Supreme Court.[16]

II. The spatial dimension of climate liability

If the famer and the associated NGOs intervening to the case have decided to sue TotalEnergies in particular, this is because "as with all carbon majors, the TotalEnergies group has produced, and continues to produce, hydrocarbons, thereby generating massive greenhouse gas emissions and obstructing the transition away from fossil fuels. It has done so by manufacturing doubt regarding their harmfulness and their impact on climate disruption, by engaging in lobbying activities, and by resorting to the greenwashing of its products and brand." They consider that the damage they suffer and will suffer in the near future is related to the breach of a duty of care by that same big company and its appetites for investing in even more fossil fuel exploration, production and consumption.

Thus, even if appealing drawings in media coverage of the case—showing a bucolic farm near a polluting facility, the two entwined through droplets of black rain—might raise some doubts, the lawsuit is not framed as a neighbourhood issue, nor even related to the presence of facilities of TotalEnergies in Belgium (like oil refineries) or across the border. The Belgian-French component of the case might falsely resonates like a transboundary issue, which the Farmer case is apparently not. If the plaintiffs did not opt for such avenue, this is related to the very specificity of the accumulation of greenhouse gases in the global atmosphere.

Still, the "Farmer case" raises interesting issues related to the spatial dimension of climate liability, by way of explanation or even by contrast. The Farmer case would thus not be a case about neighbourhood, nor about borders. Or is it? This requires some explanation.

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15 Tournai, *Falys c. Total*, Decision n° 2026/ 462, 18 March 2026.
16 Supreme Court (Italy), *Greenpeace c. ENI*, 18 February 2025.

On May 28, 2025 the Higher Regional Court of Hamm delivered a ruling in the case *Saúl Ananias Luciano Lliuya v. RWE*, another climate lawsuit against a major energy company. The case had also been brought by an individual, also a farmer, but located far away from Germany (the headquarter of the company), in Peru. In appeal, the court dismissed the claim, while recognizing that companies may be held legally responsible for climate damages tied to their emissions under German Civil law, even when the damages occur far away.

The appeal was dismissed on factual grounds because the evidence demonstrated no concrete or substantial risk to the plaintiff's property. The likelihood of water from a nearby glacier lake reaching his home within the next 30 years was assessed at only about one percent—a probability the court deemed too low to justify legal intervention. Even if such an event were to occur, the projected flood would reach the house with a height of just a few centimeters and a flow speed insufficient to compromise the building's structural integrity. But would the farmer property have been located elsewhere, a bit further down, the sentence might have been different.

Most interestingly, the Higher Court emphasized that the mere fact that there is a large distance between the defendant's power plants and the plaintiff's residence in Peru was not sufficient grounds to dismiss the claim as unfounded, based on the German Civil Code.

Article 1004 of the German Civil Code is pivotal in that interpretation. It is important to note that the provision is does not resort to fault-based extracontractual liability situations but organizes the regime of (possibly objective) interferences with the enjoyment of property. It addresses the protection of ownership against interferences, on the one hand, and to situations where interferences must be tolerated. The first sentence mentions that "if the ownership is interfered with by means other than removal or retention of possession, the owner may demand that the disturber remove the interference. If there is the concern that further interferences will ensue, the owner may seek a prohibitory injunction." The second sentence mentions that "The claim is excluded if the owner is obliged to tolerate the interference." Those provisions, together with article 906 of the same code on interferences between plots of land,[17] could be compared, even if the content differs on several aspects, to the "théorie des troubles de voisinage" in Belgium.

For the Appeal Court, the fact that the farmer lives in Peru does not prevent the plaintiff from asserting a claim against the defendant under § 1004 (1) sentence 2 BGB, as the Federal Court of Justice does not require a current legal relationship of the defendant to the impairment or to the source of the ongoing property disturbance. The Court adds that "the distance between the source of the disturbance and the affected property is also irrelevant; proximity is not a prerequisite—both according to the wording and the meaning and purpose of the provision. Paragraph 1004 BGB is intended to protect the owner comprehensively, both with regard to movable and immovable property. However, toleration obligations may arise from the federal law on neighbors, the Court adds."

17 The interferences between plots of land is regulated under Article 906 of the Civil Code, which can be compared to the Belgian provisions on so-called troubles de voisinage, while not being fully similar, in particular with regard to the "tolerance" to polluting activities.

In a nutshell, the Court finds not comprehensible why the affected owner of a property that is not located in the vicinity of the emitting property—such as the plaintiff's property here—should have to accept damage and even the complete destruction of his property due to the permitted remote emissions without being able to claim compensation for this like the neighbor.[18]

The international dimension is therefore not at all a motive of exclusion for approaching the impact of the activity of a big company on the movable or inmovable property located abroad, and even far away. Because the plaintiff in Lliuya v. RWE appears to be the owner of a property affected by immissions, the property-relatedness required by the Civil code is therefore given, says the Court. Because the case is characterized "by the fact that the defendant's CO2 emissions generally affect everyone," a particularly high degree of impact on the property owners located in close proximity to the emission source cannot be established. Rather, the owners of particularly exposed properties, which may be located all over the world—such as the plaintiff, whose property is located below a glacier and a glacial lake in the Peruvian Andes—are more affected by climate change caused by greenhouse gases than the neighbouring property owners.

The German Court decides that there is no objective reason that non-neighbouring property owners are in a worse position than neighbouring property owners despite being equally and in some cases even more affected. As a qualified affected citizen, the plaintiff would in principle have had the right and the opportunity to be involved in the approval procedure for the defendant's plants and to raise objections there. However, the plaintiff did not have this possibility as a person affected by remote effects—at least in fact.[19]

The presiding judge emphasizes that the court's legal view does not mean that in the future every single citizen could be held legally liable: "this is precluded by the fact that the contribution of an individual person is so minimal that it cannot establish liability." Likewise, the defendant cannot rely on its statutory obligation under German law to provide energy supply as justification for requiring the plaintiff in Peru to tolerate impairment of his property.

It will be interesting to observe if the Belgian jurisdiction, in a fault-based liability analysis, will find the need and legal justification to transplant a similar approach, in order to accept the objective connection between the activity of an oil major and the risks climate change is causing to a farming activity, based in Belgium.

III. Neighbours and pollution

That detour via a doctrine akin to the Belgian doctrine of the "troubles de voisinage" invites to share the new avenues recent legislative changes are offering in Belgium, in relation to pollution, corporate behaviour and objective liability (no demonstration of fault is needed), even if this is *a priori* not related to the Farmer case.

18 *Lliuya v. Rewe*, 2025, p. 66.
19 Lliuya v. Rewe, 2025, p. 69.

Article 3.101. § 1 of the new Civil Code provides that "neighbouring property owners each have the right to the use and enjoyment of their immovable property. In exercising such use and enjoyment, each of them must respect the established balance by not causing their neighbour a disturbance that exceeds the normal inconveniences of neighbourhood relations and that can be attributed to them. In assessing whether the disturbance is excessive, all the circumstances of the case must be taken into account, such as the timing, frequency and intensity of the disturbance, as well as the purpose or public utility of the immovable property from which the disturbance originates." Three specific conditions are thus required: an imbalance, an excessive disturbance caused to the neighbour; and the disturbance must be attributable to the person whose liability is being invoked.

Since the recent inclusion in the New Civil Code of an Article 3.102, that opens the possibility for the local judge to take preventive action in cases of serious and obvious risks to safety, health, or pollution affecting a neighbouring property, lower jurisdictions in charge of pacificating neighbourhood relations (la *justice de paix/vredegerecht*) have the power to become new key actors in the defense of the quality of the environment. "If a property (bien immeuble) causes serious and obvious safety, health or pollution risks to a neighbouring property, thereby upsetting the balance between the properties, the owner or occupier of the neighbouring property may apply to the court for preventive measures to be taken to prevent the risk from occurring."

Moreover, the basic provisions are also interpreted more proactively. In 2023,[20] in a ruling concerning a contamination by forever pollutants (PFAS) affecting the home and gardens laying under the plume of smoke and emissions from a neighbouring multinational (located at a distance of over one kilometer), and even though the observed pollution was legal under the existing administrative permit, the judge decided that the impact constituted an excessive neighbourhood nuisance, resulting in an obligation for the company to pay a compensation to the family. The obligation to offer a compensation might seem modest to observers, but a crack is now made in the wall: even in the case of authorized pollution, the civil rights of third parties can be affected in Belgium, when a neighbourhood disturbance is proven.

IV. Knowledge engages

Article 6.6. of the new Belgian Civil Code mentions that the state of scientific knowledge is one of the elements to be taken into consideration by the judge when assessing the general standard of care, which requires that conduct be adopted which would have been adopted by a prudent and reasonable person in the same circumstances.

The farmer case is not alone in its quest for more accountability from major energy companies and might even benefit from the advances of scientific knowledge. In September 2025, a publication in Nature shows that climate change made 213 historical heatwaves reported over 2000–2023 more

20 Justice of Peace of Antwerp, 15 May 2023.

likely and more intense, to which each of the 180 carbon majors (fossil fuel and cement producers) substantially contributed. The authors found that the emissions of carbon majors contribute to half the increase in heatwave intensity since 1850–1900. Depending on the carbon major, their individual contribution is high enough to enable the occurrence of 16–53 heatwaves that would have been virtually impossible in a preindustrial climate. Therefore, they establish that the influence of climate change on heatwaves has increased, and that all carbon majors, even the smaller ones, contributed substantially to the occurrence of heatwaves. By producing such results, they want to contribute to filling the evidentiary gap to establish accountability of historical climate extremes.

In the judgment *Jonckheere v. Eternit* of 27 November 2023,[21] the Brussels Court of First Instance held that a company producing asbestos-cement materials had to manage the risk of which it was aware, even if this was not explicitly required by the lawmaker. This is because the company could not ignore the enormous health risks—particularly of cancer—to which it was exposing local residents due to the way it handled asbestos around its factory. The judge found that the defendant's main fault was to continue spreading asbestos fibers despite already being fully aware of the severe health risks. The issue of causation was not, in essence, whether the claimant's illness might have been avoided through earlier implementation of stricter government policies, but rather through the defendant's earlier cessation of its harmful practices, so that the claimant would have been prevented from inhaling such fibers.

The case was mentioned in the original written summons of the Farmer case, by the plaintiffs, in relation to the need for a company to adopt a precautionary attitude, as soon as she is scientifically aware of a possible health problem.

V. The fair share

Another new provision of the Belgian Civil Code, in the book dedicated to extra-contractual liability, imposes that if several similar acts for which different persons are liable have exposed the injured party to the risk of the damage occurring, without it being possible to prove which of these acts caused the damage, each of these persons is liable in proportion to the probability that the act for which he is liable caused the damage. However, a person who proves that the event for which he is liable did not cause the damage is not liable.

This provision echoes a constant issue in climate litigation, whether against States or major companies: what is the fair share of their responsibility and relative duties? This is not the place to enter here any further in that discussion, except for mentioning the recent opinion of the International Court of Justice of 23 July on the obligations of States in respect of climate change, that do also provide answers in relation to the role and duties of private entities.

21 *Jonckheere v Eternit (Court of First* Instance, Brussels, 27 November 2023).

Conclusions

While wandering in the narrow streets of the old Aix-en-Provence at the occasion of the conference on climate change litigation and corporations, in September 2024, I happened to enter in a very beautiful inner garden which was also a gallery. In the middle of the gravel, there was the huge head of a swimmer, and his arm and hand pointing forward, giving the impression he was trying to get out of the ground. The figure—a huge red sculpture—was symbolically moving forward and concentrated on its effort. The *imaginaire* was one of both fragility, risk and determination. The task did not seem easy, it obviously required strong muscles. This was the perfect image to conclude my preliminary analysis of the Belgian Farmer case in context: a certainly courageous initiative, not easy though and with still a long way to go. But maybe promising though, in stark contrast to the severity of the climate challenge and its impact on the economic activities of farmer, when one knows that the name the artist attributed to the sculpture was *Nager dans le bonheur*[22].

22 By Diadji Diop, Espace Gallifet.