



# **Human rights engagement by Dutch banks: efficient tool or black box?**

**A case study for the Dutch  
Fair Bank Guide**

**11 June 2024**

## About the Eerlijke Bankwijzer

This report has been commissioned by the Eerlijke Bankwijzer (Dutch Fair Bank Guide). The Eerlijke Bankwijzer is a coalition of the following organisations: Amnesty International, Milieudefensie, Oxfam Novib, PAX and World Animal Protection. The aim of the Eerlijke Bankwijzer is to encourage corporate social responsibility by banks.

Fair Finance Guide Netherlands is part of Fair Finance International (FFI), an international civil society network working with over 150 CSO partners and allies in twenty-two countries, that seeks to strengthen the commitment of banks and other financial institutions to social, environmental and human rights standards.

## About this report

This report aims to assess if and how Dutch banks address human rights' risks in relation to their lending, underwriting activities and/or investments in extractive companies.

## Authorship

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## Summary

Mining companies and oil and gas producers run a high risk of getting involved in human rights abuses. The activities of these extractive companies regularly have adverse impacts such as resettlement of communities without adequate consultation and compensation, negative impacts on the livelihoods of local communities and their access to water, labour rights abuses, major safety accidents, and violence against protesters.

As mining companies and oil and gas producers need a significant amount of upfront investments to run their business, extractive companies are highly dependent on the banks' willingness to finance their activities. Banks can finance extractive companies by providing loans and by offering underwriting services to companies that want to issue bonds and shares on the capital market. In addition, the asset management divisions of banks can finance those companies by investing in their shares and bonds.

Through such financing and investment activities, banks can become connected to negative human rights impacts in the extractive sectors. As outlined in the United Nations Guiding Principles on Business and Human Rights (UNGPs), banks should have ongoing due diligence processes in place to prevent, mitigate, and remediate human rights abuses they are directly linked to, have caused or contributed to.

This research aims to evaluate the responses of Dutch banks to cases of severe human rights abuses by companies active in extractive sectors. More specifically, the study aims to analyse the human rights due diligence instruments (such as screening, engagement strategies, processes to enable remediation) deployed by the eight banks covered by the Dutch Fair Bank Guide, namely: ABN Amro, Bunq, ING, NIBC, Rabobank, Triodos Bank, Van Lanschot Kempen and de Volksbank.

## Methodology

To understand how the selected Dutch banks address human rights adverse impacts caused by companies in the extractive industries, the Dutch Fair Bank Guide selected ten extractive companies (see Table 1) because of their involvement in severe human rights abuses. The cases presented in Table 1 serve as examples of what is at stake but should not be read as an exhaustive list. More information on cases of human rights abuses can be found in Appendix 1.

**Table 1 Selected extractive companies and cases of human rights abuses**

Company	Country of origin	Location of abuses	Summary of abuses
Barrick Gold	Canada	Papua New Guinea; Tanzania	Water pollution, violence against local communities incl. rape, forced evictions, excessive use of violence by mine personnel incl. torture
Freeport-McMoran	United States	Indonesia	Water pollution, land grabbing, violence against local communities
Glencore	Switzerland	Colombia; Peru	Violence against local communities, forced evictions, water pollution, land rights violations
Newmont	United States	Guatemala; Ghana; Mexico	Unsafe and unfair working conditions, land rights violations, water pollution, damage to houses, violent repression of community protests, loss of access to water and livelihoods, failure to pay compensation, negative health impacts
Orrön Energy	Sweden	South Sudan	Forced evictions, violence against local communities
Rio Tinto	United Kingdom	Myanmar; Guinea; Madagascar	Forced evictions, violence against communities, reduced access to land and water, land grabbing, destruction of livelihoods and environment, water pollution, negative health impacts, violent repression of protest, inadequate compensation
Shell	United Kingdom	Nigeria	Contamination of land and water resources, destruction of livelihoods and environment, negative health impacts
TotalEnergies	France	Uganda, Tanzania; Mozambique	Violence against local communities, forced evictions, destruction of livelihoods, land rights violations, involuntary manslaughter
Trafigura	Switzerland	Côte d'Ivoire	Toxic waste pollution, negative health impacts
Vale	Brazil	Brazil	Corruption, toxic waste pollution, negligence of workers' and public health and safety

To determine if and how the eight Dutch banks are linked to these extractive companies, financial research was conducted using data from Refinitiv, Bloomberg, and IJGlobal. The time scope considered in the financial research was divided into two categories: the creditor research (corporate loans, bond and share issuances) was carried out for the period January 2018 to October 2023 while the holdings in bonds and shares issued by the selected companies were analysed for the most recent filing date, as of October 2023.

The Dutch banks for which financial links with the selected companies were identified, were asked to provide answers to a questionnaire assessing their human rights due diligence processes and

the way they have been engaging on human rights topics with the selected extractive companies. The banks' responses to the questionnaire together with information which was disclosed by the banks over the past two years (such as annual reports, sustainability reports, human rights reports etc.), formed the basis for the assessment.

To assess the human rights due diligence processes and the engagement of banks, Profundo, Amnesty International and Pax developed a methodology based on the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Due Diligence guidance documents for Responsible Business Conduct in the financial sector. The methodology is divided into four main sections based on the structure of the OECD Due Diligence framework:

- Section A: Identification, qualification and prioritisation of human rights issue(s) and risk(s)
- Section B: Using leverage to influence companies
- Section C: Tracking progress and outcomes and communicating about the results
- Section D: Providing for or cooperating in remediation

For each of the four sections (A, B, C, and D), a score was calculated and normalised to a 10-point scale, where 0 represents the worst score and 10 represents the best score. The scores for the four sections were combined to obtain a final consolidated score per bank.

### **Results of the financial research**

For four Dutch banks financial links with the selected companies were identified, namely: ABN Amro, ING, Rabobank and Van Lanschot Kempen.

From January 2018 to October 2023, ING, Rabobank and ABN Amro together provided approximately USD 15 billion in loans and underwriting services to most of the ten selected companies linked to human rights abuses. Among these, ING was by far the largest creditor providing USD 7.6 billion in loans and/or underwriting services to seven of the selected companies over the period. As for the other two banks, Rabobank provided credit worth USD 3.9 billion to four of the ten selected companies and ABN Amro provided credit worth USD 3.5 billion to seven of the ten selected companies. It has to be noted that ABN Amro reduced its financing consistently between 2018 and 2021, and that since then no new financing was identified. This can be explained by the strategical decision of the bank, communicated in August 2020, to wind down its Corporate Banking activities outside of Europe and all its Trade & Commodities Finance activities worldwide.

With regard to their investments, the asset management divisions of three Dutch banks held USD 292 million in bonds and shares issued by the selected companies causing or contributing to human rights abuses. ING was the largest investor among the selected banks, holding USD 132 million in bonds and shares of five of the selected companies, followed by Van Lanschot Kempen, which held USD 114 million in four of the selected companies, and ABN Amro which invested USD 45 million in six of the ten companies.

No financial links with the selected companies, in the form of credits or investments, were identified for Bunq, NIBC, Triodos, and de Volksbank. One of the reasons for this is the fact that these banks do not have large corporate banking nor investment banking activities working for international corporations. Another reason is that some of these banks exclude investments in the selected companies on the basis of sustainability considerations, such as their involvement in the exploitation and production of fossil fuel resources. For instance, bunq does not finance or invest in companies which are active – for any part of their business activities - in fossil fuel-fired power generation and/or extraction of oil and gas and in coal-fired power generation and/or coal mining.<sup>1</sup>

The results of the financial research have been shared with all the banks for their feedback. Out of the eight banks, four confirmed the results, namely: NIBC, Triodos Bank, Van Lanschot Kempen and de Volksbank. ABN Amro provided some comments to confirm its strategy to end its credit

exposure to companies in extractive sectors, while Bunq, ING and Rabobank did not provide any feedback.

Only the four banks for which financial links with the selected companies were identified (ABN Amro, ING, Rabobank and Van Lanschot Kempen) have been further investigated on their response to human rights abuses.

### Banks' responses to human rights abuses

Overall, none of the banks can be presented as a “frontrunner” for its efforts to align its practices with the UNGPs and the OECD Due Diligence framework. Of the four banks for which financial links with the selected companies were found, only Van Lanschot Kempen showed willingness to cooperate in the research process and answered all the questions in the questionnaire. Consequently, the results of the research on the performance of ABN Amro, ING and Rabobank rely on public information only. The fact that these banks publicly disclose only very limited information - most often no information at all - on their engagement with the selected extractive companies, does not enable to properly assess the nature and efficiency of their engagement initiatives. However, the OECD Due Diligence framework emphasises the importance of tracking and publicly communicating about how adverse impacts are addressed. As evidenced by the low scores presented in Table 2, it is not done comprehensively by any of the four banks. We can legitimately wonder why banks would be so reticent to publish information about their engagement initiatives if they were able to demonstrate that strong outcomes had been achieved.

**Table 2 Scores per bank on responses to human rights abuses (/10)**

Section	ABN AMRO	ING	Rabobank	Van Lanschot Kempen
A: Identification of human rights issue(s)	8.6	5.7	3.6	8.6
B: Using leverage to influence companies	2.9	0.0	0.0	4.6
C: Tracking progress and communicating	2.7	1.4	0.5	4.5
D: Providing for or cooperating in remediation	3.3	2.2	1.6	1.7
<b>Average score</b>	<b>4.4</b>	<b>2.3</b>	<b>1.6</b>	<b>4.8</b>

The results presented in Table 2 lead to the following conclusions:

- **Section A: All four assessed banks receive their highest score for the identification, qualification and prioritisation of human rights issue(s) and risk(s).**

Across the four sections of the methodology, all banks received their highest score in section A: Identification, qualification and prioritisation of human rights issue(s) and risk(s). As recognition of and attention for human rights risks have evolved over the past decade, all banks in the Netherlands now have some screening processes to identify human rights risks and most provide some general information on how they integrate external stakeholders into their human rights screening processes. All four banks indicate they use a screening methodology that includes the assessment of high-risk variables, such as the geography, sectors, products, and governance contexts, including weak rule of law or conflict zones.

The highest scoring banks on the identification, qualification and prioritisation of human rights issue(s) and risk(s) are ABN Amro and Van Lanschot Kempen, with both banks receiving a



score of 8.6/10. These high scores are mainly due to the fact that ABN Amro and Van Lanschot Kempen report on (some) of the selected cases of human rights controversies, while ING and Rabobank do not. ABN Amro identified human rights controversies related to Freeport-McMoran, Glencore, Rio Tinto, Shell, and TotalEnergies as evidenced by the fact that these companies are listed among the companies with whom ABN Amro engaged as part of its investment activities. They correspond to five companies out of the six companies the bank is linked to through its investments in shares and/or bonds. Interestingly, the bank also identified human rights abuses by Barrick Gold and Vale, even though no investments were found in these two companies. Van Lanschot Kempen identified human rights controversies for all the companies for which financial links with the bank were found, namely Newmont, Rio Tinto, Shell, and TotalEnergies. However, the bank provides insufficient information about consulting civil society organisations, global trade unions and/or legitimate representatives of impacted rights-holders as part of the identification process, with the bank only listing one example of indirect involvement of CSOs through the use of NGO research.

- **Section B: Evidence that banks define specific and timebound goals, and systematically involve representatives of impacted rights-holders as part of their engagement with the selected companies is missing.**

Once banks have identified the adverse human rights impact across their portfolios, they can take the decision to engage with companies causing or contributing to these impacts to mitigate the impacts based on their prioritisation. Engagement is an ongoing process, which can take time but eventually must bring concrete solutions to prevent and mitigate adverse human rights impacts. Considering the timeline and objective set as part of their engagement strategy, banks should take appropriate actions if progresses to mitigate the adverse impacts are too slow, or if they face persistent failed attempts at mitigation.

ABN Amro and Van Lanschot Kempen report that they engage on human rights with some of the selected companies. While Van Lanschot Kempen has identified cases of human rights abuses for all the selected companies, the bank explains it engages on human rights with only two out of the four companies for which financial links with the bank were identified, namely TotalEnergies and Rio Tinto. However, it should be noted that Van Lanschot Kempen had only USD 0.02 million invested in share and has indicated to be no longer invested in Newmont Corporation.

As investor, ABN Amro engages with Freeport-McMoran, Glencore, Rio Tinto, Shell, and TotalEnergies. ABN Amro was also found to have provided credits to Freeport-McMoran, Glencore, Newmont, Orron Energy, Shell, TotalEnergies and Trafigura but the names of companies with whom the bank engages as part of its lending activities are not disclosed.

Both ABN Amro and Van Lanschot Kempen have formulated some general goals for engagement. Van Lanschot explained in its answer to the questionnaire that none of the formulated engagement goals with the selected companies were timebound. For ABN Amro, the analysis of public information found engagement goals only for TotalEnergies (among the selected companies) but these goals are not specific nor timebound.

Van Lanschot Kempen is the only bank (among the four banks for whom financial links were found) for which an example of consultation with impacted stakeholders was mentioned as part of its engagement with one of the selected companies, namely TotalEnergies. The bank is member of the Dutch Climate Coalition, a group of Dutch investors which has been engaging with TotalEnergies regarding Tilenga and the East African Crude Oil Pipeline Project. As part of this engagement initiative, interviews have been held with local stakeholders to gain a better understanding of adversely affected areas in Uganda and Tanzania.

For ING and Rabobank no information on human rights engagement with the selected companies was found.

- **Section C: Granular reporting on the progress and outcomes of engagement with the selected companies is lacking.**

According to the UNGPs and the OECD Guidelines, banks should account for how they have addressed adverse human rights impacts throughout their business relationships through tracking and communicating on results.

None of the assessed banks publicly report on their engagement processes with the selected companies, such as the contents of the engagement and the escalation tools used during specific points in the engagement process and the (intermediate) goals set and/or achieved.

All banks but Rabobank do disclose aggregated data related to their engagement on human rights as part of their lending and/or investment activities, such as the number of companies engaged, main topics of engagement, or the methodology they applied to identify salient human rights risks in their lending portfolio. While Rabobank mentions that it engages with clients on human rights, the bank does not actually report on their engagement with clients in terms of the number of clients engaged, what steps are taken, which timelines are set for engagement, and what results are achieved through engagement. Accordingly, granular reporting is found to be a structural omission across the assessed banks.

ABN Amro, ING and Van Lanschot Kempen all disclose some examples of human rights engagement cases, however the company names are mentioned only when the engagements relate to their investments and not when they relate to their lending activities. Van Lanschot Kempen is the only bank which provided evidence that it monitors the steps taken by the selected companies it engages with, using a "milestone approach".

All banks have exclusion policies which include criteria related to human rights issues. However, Van Lanschot Kempen is the only one to disclose the names of companies excluded from its investment universe due to "conduct" reasons (which includes human rights conduct). At the time of the research, the exclusion list disclosed by the bank included three of the selected companies, namely Barrick Gold, Glencore and Vale.

At the time of the research, ABN Amro was the only bank to disclose for its investments the full list of companies engaged per sector, theme, sub-theme and country. For its lending activities, the bank does not disclose the company names but the number of high-intensity engagements and focus list clients with a breakdown per sector. Focus list clients are defined as clients operating in very sensitive circumstances or in sectors or countries with high inherent risks, or clients that are material to ABN Amro's business due to the nature of the relationship with a breakdown per sector.

Van Lanschot Kempen is the only bank (among the four banks for whom financial links were found) that participated and cooperated in this case study by reporting on its human rights engagement with the selected companies through the questionnaire and by responding to follow-up questions.

The lack of public reporting from the banks on the content, progress and impacts of their engagement and the absence of cooperation in this research from three of the banks highlight that the substance and impact of engagement is still a black box.

- **Section D: Banks do not provide sufficient information on how they try to use their leverage to influence the selected extractive companies to enable remediation for human rights abuses.**

Where a bank has not contributed to human rights harms, but the impact is directly linked to its products or services, the responsibility for providing remedy rests with the client/investee companies causing the adverse impact. However, it is essential that, in these circumstances, the bank should seek to encourage companies to provide for, or cooperate in, remediation of the impact.

Overall, information on how the banks have tried to use their leverage to influence the selected extractive companies to enable remediation for the human rights abuses they are related to is scarce.

Although ING, ABN Amro and Rabobank have complaints channels open to stakeholders or third parties who want to raise concerns about the ESG impacts of financed projects, as of March 2024 none of the four banks assessed had set up an effective grievance mechanism that meets the effectiveness criteria outlined in the UNGPs. However, ABN Amro has been working on the development of its own grievance mechanism, and reports in its last Integrated Report that in November 2023, the Group Sustainability Committee agreed on the procedure for the mechanism and decided to start preparing for the pilot phase which aims to start in 2024.

Most of the banks acknowledge and commit to carry out their responsibility under the UNGPs to provide (when they contributed to the adverse impacts) or enable remedy when they are directly linked to human rights adverse impacts through their business relationships. However, no specific examples of cases in which the banks provided for remediation or co-operated through legitimate processes to the remediation of adverse impacts, have been found in their public disclosures.

- **There is a discrepancy between banks’ human rights policies and their human rights practices**

The low scores across all four banks call into question how these results compare to the banks’ policies on human rights, which are biannually benchmarked by the Dutch Fair Bank Guide. Therefore, the banks’ scores on responses to human rights controversies are compared with their scores on human rights in the latest policy update (2023) of the Dutch Fair Bank Guide as presented in Table 3.

**Table 3 Banks’ scores on human rights policies and practices**

Bank	ABN AMRO	ING	Rabobank	Van Lanschot Kempen
<b>Human rights policies</b>	8.0	6.9	7.8	7.8
<b>Human rights “practice” score in this case study</b>	4.4	2.3	1.6	4.8

The scores in Table 3 indicate large differences between the banks’ policies on human rights and their actual practice on human rights scored in this case study, with the biggest gaps identified for Rabobank and ING. Subsequently, while banks’ human rights policies have been strengthened over the past years, this study is indicative of the necessity to keep track of their implementation as well, including accountability and transparency to stakeholders on how these policies play out in practice.

## Recommendations of the Fair Bank Guide to the banks

Banks providing lending to or investments in the extractive sector are given the following recommendations to better manage and address the human rights' risks linked to their business relationships.

### **1. Banks should enhance accountability and transparency on the implementation of their stewardship and engagement policies at company level for a significant part of their portfolio**

Rather than highlighting a few examples of engagement with companies in human rights reports, banks should report more structurally on their engagement with companies. More granular reporting should include company names (at least for companies they have investments in), topic(s) of engagement, goals, milestones achieved, voting records of investor in investee company shareholder meeting. It is worth mentioning that the OECD guidelines for institutional investors refer to all this information as elements which can be included in the public reporting of investors as part of their implementation of the due diligence step "tracking and communicating on results"<sup>2</sup>.

Also, when companies are removed from a bank's exclusion list, the bank should transparently report its rationale for allowing the company back into its investment and/or lending universe. If this reintegration is due to a successful engagement, the variables to consider an engagement as successful should be explained.

Similarly to investors disclosing their voting records in an online portal after Annual General Meetings (AGMs), investors should be able to disclose regular updates on the milestones achieved as part of their engagement efforts with companies and escalation steps taken when results are not satisfactory.

### **2. Banks should systematically define SMART goals as part of their engagement with companies and take action when insufficient progress are observed**

To effectively influence companies, it is critical for banks to formulate SMART goals. Goals, timelines and (intermediate) milestones achieved are essential parameters which needs to be effectively monitored to ensure the credibility and success of an engagement process. The outcomes of this monitoring should be used to decide whether engagement goals need to be reformulated or escalation steps need to be taken. If no progress is observed from the company engaged, the banks should consider divestment (if the banks hold shared and/or bonds in the company), suspension of loan disbursement, or if not possible, to refuse refinancing certain credit lines.

### **3. Banks should deploy additional efforts to improve public reporting on their engagement efforts with clients**

To enhance public accountability, banks should improve their public report on their engagement efforts with clients. In doing so, banks should address the information gap between what is disclosed by banks on their engagement activities with companies they are investing in versus their engagement with corporate clients they are providing credits and underwriting services to. While the information gap can be partially explained by what is mentioned in the OECD Guidelines for Responsible Corporate Lending and Securities Underwriting:<sup>3</sup> "many jurisdictions have legal frameworks, which recognise that a bank has a legal duty to keep its clients' affairs confidential", this does not mean, that all forms of disclosure are impossible. Bank can and should shift their practice away from the status quo. Indeed, as highlighted in the OECD Guidelines<sup>4</sup> "banks can still take steps to promote greater transparency with respect to client relationships", for instance they can use their leverage to obtain the consent of their clients to disclose specific information in certain circumstances such as when they are involved in serious human rights controversies.

One possible way, as mentioned in a 2022 report from the Equator Principles and Shift, is for instance to include contractual clauses allowing the bank to make exceptions to general confidentiality clauses to disclose its leverage actions with regard to remedy, if clients fail to take appropriate action towards remedy<sup>5</sup>. The fact that some development banks such as FMO already disclose a significant amount of information about their efforts to engage on complex projects they are financing such as the Barro Blanco hydropower project in Panama<sup>6</sup> shows that it is not impossible.

#### **4. Banks should enhance the integration of stakeholder concerns in the engagement process**

This report provides evidence that banks should strive to improve the integration of stakeholders' voices in their human rights engagement strategy with extractive companies. Banks should ensure that extractive companies in their portfolios respect the rights of workers, local communities, including the most vulnerable groups such as women and children. There are a variety of ways in which banks can ensure the voices of stakeholders, especially rights-holders, are heard in engagement processes, including organising structural stakeholder consultations with civil society organisations demonstrating expertise on the risks associated with the extractive industries, or consulting NGO or trade unions which have access to primary data to assess the conditions of the victims. The engagement with stakeholders to inform the due diligence process should not be limited to the phase of identification and assessment of impacts. As outlined in the OECD guidelines for Responsible Corporate Lending and Securities, impacted rightsholders and their legitimate representatives should be involved in the process to define appropriate forms of remedy. It is also essential that banks pay more attention to consider affected stakeholders' opinions on the progress achieved by engaged companies to assess if an engagement initiative has been successful or not.

While financial institutions' staff working on human rights engagement with companies are often under-resourced, participating in collaborative initiative focusing on human rights such as the PRI-led initiative "advance", can be a good opportunity for banks investing in extractive companies to better integrate stakeholder concerns in the various steps of their human rights due diligence. The PRI released an engagement focus company list which includes companies active in the metals and mining sector<sup>7</sup> including companies covered in this study.

#### **5. Banks should set up their own effective grievance mechanism to enable stakeholders to raise their concerns**

It is essential that stakeholders can access a channel to raise concerns. Moreover, the creation of a grievance mechanism, at individual or sector level for banks, would be a good practice to further understand the adverse impacts caused by companies in portfolio, and understand what is expected from affected stakeholders as remedial actions. The establishment of a grievance mechanism would enable banks to further develop their knowledge and expertise on the topic of access to remedy. Transparency on the banks' business relationships is an essential prerequisite to ensure that a grievance mechanism is actually useful. Indeed, to be able to use a bank's grievance mechanism to report human rights abuses caused by a company, affected stakeholders need first to know who the financiers of the company are.

### **Recommendations of the Fair Bank Guide to the Dutch government and DNB**

Governments need to show strong leadership to contribute to a better integration of human rights issues in the due diligence processes of banks. They have a role to play to ensure that the content of international sustainability standards such as the UNGPs and the OECD Guidelines are embedded into regulation. The following recommendations are made in this regard by the Dutch Fair Bank Guide to the Dutch government and DNB, the Dutch Central Bank.

## **1. Adopt mandatory due diligence requirements for banks**

The discrepancy between banks' human rights policies and their implementation underlines the need for mandatory due diligence requirements that cover the financial sector, including banks. While banks' responsibility to respect human rights has been acknowledged for years, also by banks themselves, the low scores on their human rights engagement with extractive companies underpins that voluntarily measures are insufficient to safeguard the rights of affected peoples and communities.

On 24 May 2024, the European Council formally adopted the Corporate Sustainability Due Diligence Directive, which will oblige large corporations to prevent, mitigate and remedy human rights abuses. After its publication in the Official Journal of the European Union, Member States will have two years from entry into force to transpose its requirements into national law. While downstream financial services are currently not covered by the directive at the European level, the Dutch government can go above and beyond the minimum requirements formulated by the European Union. As a matter of fact, the Dutch financial sector itself is also strongly advocating mandatory human rights due diligence requirements.<sup>8</sup>

This case study has illustrated why the Dutch government should adopt mandatory due diligence requirements that are also applicable to banks when transposing the new directive into Dutch national law. The Dutch government should also make sure to take over the requirement for companies, to conduct heightened, conflict-sensitive human rights due diligence when operating in or, in the case of banks, providing financial services to, companies active in conflict-affected and high-risk areas. In doing so, the law should be designed so as to foster the recommendations formulated in 3.2.1.

## **2. DNB should develop statutory exceptions to a bank's duty of confidentiality to prevent human rights abuses**

As mentioned in the OECD Guidelines for Responsible Corporate Lending and Securities Underwriting: "many jurisdictions have legal frameworks, which recognise that a bank has a legal duty to keep its clients' affairs confidential"<sup>9</sup>. However, the Guidelines also explain that most jurisdictions also recognise specific circumstances, called "statutory exceptions", where a bank may be permitted to disclose confidential information about a client. This can be the case for instance to prevent money laundering or tax evasion. In the Netherlands, DNB, the financial regulator, could consider introducing a statutory exception to such duty of confidentiality to enable banks to disclose confidential information about a client, when after the causing or contributing to serious human rights abuses, the client fails to take appropriate action towards remedy.

## Samenvatting

Mijnbouwbedrijven en olie- en gasproducenten lopen een groot risico betrokken te raken bij mensenrechtenschendingen. De activiteiten van deze ontginningsbedrijven hebben regelmatig negatieve gevolgen, waaronder de hervestiging van gemeenschappen zonder voldoende overleg en compensatie, schendingen van arbeidsrechten, negatieve gevolgen voor het levensonderhoud van lokale gemeenschappen en hun toegang tot water, ernstige veiligheidsongelukken en geweld tegen demonstranten.

Aangezien mijnbouwbedrijven en olie- en gasproducenten aanzienlijke bedragen aan aanloopinvesteringen nodig hebben, zijn ontginningsbedrijven sterk afhankelijk van de bereidheid van banken om hun activiteiten te financieren. Banken kunnen ontginningsbedrijven financieren door leningen te verstrekken en door het aanbieden van onderschrijvingsdiensten aan bedrijven die obligaties en aandelen willen uitgeven op de kapitaalmarkt. Daarnaast kunnen de afdelingen voor vermogensbeheer van banken deze bedrijven financieren door te beleggen in hun aandelen en obligaties.

Door dergelijke financierings- en investeringsactiviteiten kunnen banken in verband worden gebracht met negatieve gevolgen voor mensenrechten in de mijnbouw- en olie- en gasectoren. Zoals beschreven in de Guiding Principles on Business and Human Rights van de Verenigde Naties (UNGP's), moeten banken doorlopende processen voor gepaste zorgvuldigheid hebben om mensenrechtenschendingen waar ze direct bij betrokken zijn, die ze hebben veroorzaakt of waar ze aan hebben bijgedragen, te voorkomen, te beperken en te herstellen.

Dit onderzoek is gericht op het evalueren van de reacties van Nederlandse banken op gevallen van ernstige mensenrechtenschendingen door bedrijven die actief zijn in de ontginningsindustrie. Het onderzoek is daarbij specifiek gericht op het analyseren van de instrumenten voor gepaste zorgvuldigheid (zoals screening, engagement strategieën en processen om herstel mogelijk te maken) die worden ingezet door de acht banken die vallen onder de Nederlandse Eerlijke Bankwijzer, te weten: ABN Amro, Bunq, ING, NIBC, Rabobank, Triodos Bank, Van Lanschot Kempen en de Volksbank.

## Methodologie

Om te begrijpen hoe de geselecteerde Nederlandse banken omgaan met de mensenrechtenrisico's en -schendingen door bedrijven in de ontginningsindustrieën, zijn tien ontginningsbedrijven (zie Table 4) geselecteerd door de Eerlijke Bankwijzer vanwege hun betrokkenheid bij ernstige mensenrechtenschendingen. De casussen in Table 4 zijn niet uitputtend, maar dienen gelezen te worden als voorbeelden van wat er op het spel staat. Meer informatie over gevallen van mensenrechtenschendingen is te vinden in Appendix 1.

**Table 4 Geselecteerde casussen van mensenrechtenschendingen**

<b>Bedrijf</b>	<b>Vestigingsland</b>	<b>Locatie van schendingen</b>	<b>Impact op mensenrechten</b>
Barrick Gold	Canada	Papua Nieuw Guinea; Tanzania	Watervervuiling, geweld tegen lokale gemeenschappen incl. verkrachting, gedwongen uitzettingen, buitensporig gebruik van geweld door mijnpersoneel incl. marteling
Freeport-McMoran	Verenigde Staten	Indonesië	Watervervuiling, landroof, geweld tegen lokale gemeenschappen
Glencore	Zwitserland	Colombia; Peru	Geweld tegen lokale gemeenschappen, gedwongen uitzettingen, watervervuiling, schendingen van landrechten
Newmont	Verenigde Staten	Guatemala; Ghana; Mexico	Onveilige en oneerlijke arbeidsomstandigheden, schendingen van landrechten, watervervuiling, schade aan huizen, gewelddadige onderdrukking van gemeenschapsprotesten, verlies van toegang tot water en bestaansmiddelen, uitblijven van compensatie, negatieve gevolgen voor de gezondheid
Orrön Energy	Zweden	Zuid-Soedan	Gedwongen uitzettingen, geweld tegen lokale gemeenschappen
Rio Tinto	Verenigd Koninkrijk	Myanmar; Guinea; Madagaskar	Gedwongen uitzettingen, geweld tegen gemeenschappen, verminderde toegang tot land en water, landroof, vernietiging van bestaansmiddelen en milieu, watervervuiling, negatieve gevolgen voor de gezondheid, gewelddadige onderdrukking van protesten, ontoereikende compensatie
Shell	Verenigd Koninkrijk	Nigeria	Water- en bodemvervuiling, vernietiging van bestaansmiddelen, negatieve impact op volksgezondheid
TotalEnergies	Frankrijk	Oeganda, Tanzania; Mozambique	Geweld tegen lokale gemeenschappen, gedwongen uitzettingen, vernietiging van bestaansmiddelen, schending van landrechten, doodslag
Trafigura	Zwitserland	Ivoorkust	Vervuiling door giftig afval, negatieve impact op volksgezondheid
Vale	Brazilië	Brazilië	Corruptie, vervuiling door giftig afval, verwaarlozing van de gezondheid en veiligheid van werknemers en lokale bevolking



Om te bepalen of en hoe de acht Nederlandse banken gelieerd zijn aan deze ontginningsbedrijven, is financieel onderzoek uitgevoerd met behulp van gegevens van Refinitiv, Bloomberg en IJGlobal. Daarbij is gekeken naar data uit twee perioden: het onderzoek naar financieringsstromen (bedrijfsleningen, obligatie- en aandelenuitgiftes) werd uitgevoerd voor de periode januari 2018 tot oktober 2023. Voor investeringen (in obligaties en aandelen van de geselecteerde bedrijven) werd gekeken naar de meest recente data van oktober 2023.

De Nederlandse banken waarvoor financiële banden met de geselecteerde bedrijven zijn geïdentificeerd, werden vervolgens gevraagd gevraagd te beantwoorden met betrekking tot hun processen voor gepaste zorgvuldigheid op het gebied van mensenrechten en de manier waarop zij met de geselecteerde ontginningsbedrijven over mensenrechtenthema's hebben gecommuniceerd. De antwoorden van de banken op de vragenlijst, in combinatie met informatie die de banken de afgelopen twee jaar openbaar hebben gemaakt (zoals jaarverslagen, duurzaamheidsverslagen, mensenrechtenverslagen, enz.), liggen ten grondslag aan de beoordeling.

Om de gepaste zorgvuldigheidsprocessen op het gebied van mensenrechten en de betrokkenheid van banken te beoordelen, hebben Profundo, Amnesty International en Pax een methodologie ontwikkeld op basis van de UN Guiding Principles on Business and Human Rights (UNGPs) en de gepaste zorgvuldigheidsrichtlijnen van de OESO voor verantwoord ondernemen in de financiële sector. De methodologie is onderverdeeld in vier hoofdonderdelen die gebaseerd zijn op het raamwerk voor gepaste zorgvuldigheid van de OESO:

- Sectie A: Identificatie, kwalificatie en prioritering van mensenrechtenkwes(s)te(s) en -risico('s)
- Sectie B: Gebruik van invloed om bedrijven te stimuleren
- Sectie C: Bijhouden van voortgang en communiceren over de resultaten
- Sectie D: Voorzien in of meewerken aan herstel.

Voor elk van de vier secties (A, B, C en D) werd een score berekend en genormaliseerd op een schaal van 10 punten, waarbij 0 staat voor de slechtste score en 10 voor de beste score. De scores voor de vier secties werden gecombineerd om een gemiddelde score per bank te verkrijgen.

### **Resultaten van het financiële onderzoek**

Voor vier Nederlandse banken werden financiële banden met de geselecteerde bedrijven geïdentificeerd, namelijk: ABN Amro, ING, Rabobank en Van Lanschot Kempen.

Van januari 2018 tot oktober 2023 verstrekten ING, Rabobank en ABN Amro samen ongeveer USD 15 miljard aan leningen en onderschrijvingsdiensten aan het merendeel van de tien geselecteerde bedrijven die in verband worden gebracht met mensenrechtenschendingen. Daarbij werd het leeuwendeel van de kredieten verstrekt door ING, dat in die periode USD 7,6 miljard aan leningen en/of onderschrijvingsdiensten verstreekte aan zeven van de geselecteerde bedrijven. Rabobank verstreekte voor USD 3,9 miljard aan kredieten aan vier van de tien geselecteerde bedrijven en ABN Amro verstreekte kredieten voor USD 3,5 miljard aan zeven van de tien geselecteerde bedrijven. Daarbij moet genoemd worden dat ABN Amro haar financiering tussen 2018 en 2021 structureel afbouwde. Sindsdien zijn geen nieuwe financieringsstromen voor deze bedrijven geïdentificeerd. Dit kan worden verklaard door de strategische beslissing van de bank, zoals gecommuniceerd in augustus 2020, om haar activiteiten op gebied van zakelijk bankieren buiten Europa af te bouwen.

Wanneer we de beleggingen van de Nederlandse banken onder de loep nemen, zien we dat drie Nederlandse banken tezamen voor USD 292 miljoen aan obligaties en aandelen van de tien geselecteerde bedrijven in hun bezit hadden. ING was de grootste investeerder onder de geselecteerde banken met USD 132 miljoen in obligaties en aandelen van vijf van de geselecteerde bedrijven, gevolgd door Van Lanschot Kempen met USD 114 miljoen in vier van de geselecteerde bedrijven en ABN Amro met USD 45 miljoen in zes van de tien bedrijven.

Voor Bunq, NIBC, Triodos en de Volksbank werden geen financiële banden met de geselecteerde bedrijven vastgesteld, noch in de vorm van kredieten, noch in de vorm van investeringen. Een van de redenen hiervoor is het feit dat deze banken geen grote activiteiten ondernemen op het gebied van zakelijk bankieren. Daarnaast zijn hun vermogensbeheerders weinig gericht zijn multinationale ondernemingen. Een andere reden is dat sommige van deze banken investeringen in de geselecteerde bedrijven uitsluiten op basis van duurzaamheidsoverwegingen. Zo financiert of belegt Bunq bijvoorbeeld niet in bedrijven die - voor welk deel van hun bedrijfsactiviteiten dan ook - actief zijn in fossiele energieopwekking en/of winning van olie en gas en in kolengestookte energieopwekking en/of kolenwinning.

De resultaten van het financiële onderzoek zijn aan de banken voorgelegd voor feedback. Van de acht banken hebben er vier de resultaten bevestigd, namelijk: NIBC, Triodos Bank, Van Lanschot Kempen en de Volksbank. ABN Amro gaf enkele opmerkingen ter bevestiging van haar strategie om haar kredietblootstelling aan bedrijven in ontginningsindustrieën te beëindigen, terwijl Bunq, ING en Rabobank geen feedback gaven.

Alleen de vier banken waarvoor financiële banden met de geselecteerde bedrijven werden geïdentificeerd (ABN Amro, ING, Rabobank en Van Lanschot Kempen) zijn verder onderzocht naar hun reactie op mensenrechtenschendingen.

### Reacties van banken op mensenrechtenschendingen

Over het geheel genomen kan geen van de banken worden gezien als "koploper" voor de eigen inspanningen om praktijken in overeenstemming te brengen met de UNGP's en het raamwerk voor gepaste zorgvuldigheid van de OESO. Van de vier banken waarvoor financiële banden met de geselecteerde bedrijven werden gevonden, toonde alleen Van Lanschot Kempen zich bereid om mee te werken aan het onderzoeksproces en beantwoordde de vragen in de vragenlijst. De resultaten van het onderzoek naar de prestaties van ABN Amro, ING en Rabobank zijn daarom enkel gebaseerd op openbare informatie. Het feit dat deze banken slechts zeer beperkte informatie – en meestal helemaal geen informatie - openbaar maken over hun engagement met de geselecteerde ontginningsbedrijven, maakt het niet mogelijk om de aard en efficiëntie van hun engagementinitiatieven goed te beoordelen. Het raamwerk voor gepaste zorgvuldigheid van de OESO benadrukt echter het belang van het bijhouden van en publiekelijk communiceren over de wijze waarop negatieve gevolgen worden aangepakt. Zoals blijkt uit de lage scores in Table 5 wordt dit door geen van de vier banken uitgebreid gedaan. We kunnen ons terecht afvragen waarom banken zo terughoudend zouden zijn met het publiceren van informatie over hun engagementinitiatieven als ze zouden kunnen aantonen dat er adequate gereageerd wordt en sterke resultaten zijn bereikt.

**Table 5 Scores per bank voor hun reacties op mensenrechtenschendingen (/10)**

Sectie	ABN AMRO	ING	Rabobank	Van Lanschot Kempen
A: Identificatie van mensenrechtenkwestie(s)	8.6	5.7	3.6	8.6
B: Gebruik van invloed om bedrijven te stimuleren	2.9	0.0	0.0	4.6
C: Bijhouden van voortgang en communicatie	2.7	1.4	0.5	4.5
D: Voorzien in of meewerken aan herstel	3.3	2.2	1.6	1.7
<b>Gemiddelde score</b>	<b>4.4</b>	<b>2.3</b>	<b>1.6</b>	<b>4.8</b>

De resultaten gepresenteerd in Table 5 leiden tot de volgende conclusies:

- **Sectie A: Alle vier de beoordeelde banken behalen hun hoogste score voor de identificatie, kwalificatie en prioritering van mensenrechtenkwestie(s) en -risico('s).**

Voor alle vier de banken geldt dat zij hun hoogste score behalen voor Sectie A: Identificatie, kwalificatie en prioritering van mensenrechtenkwestie(s) en -risico('s). Aangezien de erkenning van en aandacht voor mensenrechtenrisico's de afgelopen tien jaar zijn toegenomen, beschikken alle onderzochte Nederlandse banken inmiddels over een of ander screeningproces om mensenrechtenrisico's te identificeren. Ook verstrekken de meeste banken enige (algemene) informatie over de manier waarop zij externe belanghebbenden in hun screeningproces met betrekking tot mensenrechten integreren. Alle vier de banken geven aan dat ze een screeningmethode gebruiken waarbij oog is voor risicovolle variabelen met betrekking tot geografie, sectoren, producten en de bestuurlijke context van het land van herkomst, waaronder een zwakke rechtsstaat of conflictgebieden.

De banken die het hoogst scoren op de identificatie, kwalificatie en prioritering van mensenrechtenkwestie(s) en -risico('s) zijn ABN Amro en Van Lanschot Kempen, waarbij beide banken een score van 8,6/10 krijgen. Deze hoge scores zijn vooral te danken aan het feit dat ABN Amro en Van Lanschot Kempen over (een deel van) de geselecteerde casussen van mensenrechtenkwesties rapporteren, terwijl ING en Rabobank dat niet doen. ABN Amro identificeerde controverses over mensenrechten met betrekking tot Freeport-McMoran, Glencore, Rio Tinto, Shell en TotalEnergies, blijkens uit het feit dat ABN Amro engagement voerde met deze bedrijven in het kader van haar beleggingsactiviteiten. Daarmee voerde ABN Amro engagement met vijf van de zes bedrijven waarmee financiële banden werden geïdentificeerd. Daarnaast is het noemenswaardig dat ABN Amro ook mensenrechtenschendingen door Barrick Gold en Vale heeft geïdentificeerd, hoewel er geen investeringen in deze twee bedrijven zijn gevonden. Van Lanschot Kempen identificeerde mensenrechtenschendingen voor alle bedrijven waarmee financiële banden met de bank werden gevonden, namelijk Newmont, Rio Tinto, Shell en TotalEnergies. De bank laat echter onvoldoende zien hoe maatschappelijke organisaties, vakbonden en/of vertegenwoordigers van rechthebbenden/getroffenen gehoord werden in het proces van identificatie van mensenrechtenschendingen en -risico's. De bank noemt slechts één voorbeeld van indirecte betrokkenheid van maatschappelijke organisaties door gebruik te maken van NGO-onderzoek.

- **Sectie B: Er is geen bewijs dat banken specifieke en tijdgebonden doelen stellen en vertegenwoordigers rechthebbenden systematisch betrekken in de engagement met de geselecteerde bedrijven.**

Zodra banken de negatieve gevolgen voor de mensenrechten in hun portefeuilles hebben geïdentificeerd, kunnen ze de beslissing nemen om in gesprek te gaan met bedrijven die deze gevolgen veroorzaken of daartoe bijdragen. Dergelijke gesprekken, ook wel engagement genoemd, zijn doorlopende processen die tijd kunnen kosten, maar uiteindelijk moet leiden tot concrete oplossingen om negatieve gevolgen voor de mensenrechten te voorkomen en te beperken. Rekening houdend met het tijdpad en de doelstelling(en) die zijn vastgesteld als onderdeel van hun engagementstrategie, moeten banken passende maatregelen nemen als de voortgang om de negatieve gevolgen te beperken te traag is, of als ze worden geconfronteerd met aanhoudende mislukte pogingen om negatieve gevolgen te beperken.

ABN Amro en Van Lanschot Kempen melden dat zij met sommige van de geselecteerde ondernemingen engagement op het gebied van mensenrechten aangaan. Hoewel Van Lanschot Kempen mensenrechtenschendingen identificeerde voor alle (vier) geselecteerde bedrijven waarmee de bank financiële banden heeft, laat de bank weten enkel engagement te voeren op gebied van mensenrechten met twee van de vier bedrijven, namelijk TotalEnergies en Rio Tinto. In het geval van Newmont Corporation moet echter worden opgemerkt dat Van

Lanschot Kempen slechts USD 0,02 miljoen in aandelen had geïnvesteerd. Bovendien heeft de bank aangegeven niet langer te investeren in Newmont Corporation.

Als investeerder voert ABN Amro engagement met Freeport-McMoran, Glencore, Rio Tinto, Shell en TotalEnergies. ABN Amro bleek ook kredieten te hebben verstrekt aan Freeport-McMoran, Glencore, Newmont, Orron Energy, Shell, TotalEnergies en Trafigura, maar de namen van de bedrijven waarmee de bank engagement voert in het kader van haar kredietactiviteiten worden niet bekendgemaakt.

Zowel ABN Amro als Van Lanschot Kempen hebben enkele algemene doelen voor engagement geformuleerd. Van Lanschot heeft in haar antwoord op de vragenlijst toegelicht dat geen van de geformuleerde engagementdoelstellingen met de geselecteerde ondernemingen tijdsgebonden is. Voor ABN Amro zijn in de analyse van openbare informatie alleen engagementdoelstellingen gevonden voor TotalEnergies (van de geselecteerde ondernemingen), maar de geformuleerde doelstellingen zijn niet specifiek of tijdgebonden.

Van Lanschot Kempen is de enige bank (van de vier banken waarvoor financiële banden werden geïdentificeerd) waarvoor een voorbeeld van overleg met betrokken belanghebbenden werd genoemd als onderdeel van de engagementactiviteiten met een van de geselecteerde bedrijven, namelijk TotalEnergies. De bank is lid van de Dutch Climate Coalition, een groep Nederlandse investeerders die in gesprek is met TotalEnergies over Tilenga en het East African Crude Oil Pipeline Project. Als onderdeel van dit initiatief zijn interviews gehouden met lokale belanghebbenden om een beter inzicht te krijgen in de gebieden in Oeganda en Tanzania waar nadelige gevolgen worden ondervonden.

Voor ING en Rabobank is geen informatie gevonden over engagement op het gebied van mensenrechten met de geselecteerde bedrijven.

- **Sectie C: Gedetailleerde rapportage over de voortgang en resultaten van de engagement met de geselecteerde bedrijven ontbreekt.**

Volgens de UNGP's en de OESO-richtlijnen moeten banken verantwoording afleggen over de manier waarop zij nadelige gevolgen voor mensenrechten hebben aangepakt gedurende hun zakelijke relaties door engagement resultaten te volgen en hierover te communiceren.

Geen van de beoordeelde banken rapporteert publiekelijk over hun engagementprocessen met de geselecteerde ondernemingen. Zo werd er geen openbare informatie gevonden met betrekking tot de inhoud van gesprekken, het gebruik van escalatie-instrumenten op specifieke momenten in het engagementproces, of de gestelde en/of bereikte (tussentijdse) doelen.

Alle beoordeelde banken, met uitzondering van Rabobank, publiceren wel geaggregeerde gegevens over hun engagement op het gebied van mensenrechten. Zo rapporteren de banken wel het aantal bedrijven waarmee zij in gesprek zijn, de belangrijkste onderwerpen van gesprek of de methodologie die zij hebben toegepast om in het oog springende mensenrechtenrisico's in hun krediet- of investeringsportefeuille te identificeren. Hoewel de Rabobank vermeldt dat de bank met klanten in gesprek is over mensenrechten, rapporteert Rabobank niet met welke of met hoeveel klanten dergelijke gesprekken worden gevoerd, noch welke stappen ondernomen worden, welke tijdsgebonden doelen worden gesteld, of welke resultaten werden behaald. Gedetailleerde verslaglegging blijkt dus structureel te ontbreken bij alle beoordeelde banken.

ABN Amro, ING en Van Lanschot Kempen benoemen allen enkele voorbeelden van engagement op het gebied van mensenrechten. Echter worden de namen van gesproken bedrijven alleen bekend gemaakt voor bedrijven waarmee engagement heeft plaatsgevonden in het kader van investeringsactiviteiten. Namen van gesproken bedrijven uit de kredietportfolio werden niet gerapporteerd. Met betrekking tot de voortgang van engagementprocessen, is Van Lanschot Kempen is de enige bank die heeft aangetoond dat zij de stappen monitort die

worden genomen door de geselecteerde ondernemingen waarmee zij engagement voert, door middel van een zogenaamde "mijlpaalbenadering".

Alle onderzochte banken hebben een uitsluitingsbeleid met criteria op het gebied van mensenrechten. Van Lanschot Kempen is echter de enige bank die de namen bekendmaakt van ondernemingen die wegens "gedragsredenen" (waaronder mensenrechten) zijn uitgesloten van investering. Ten tijde van het onderzoek bevatte de door de bank bekendgemaakte uitsluitingslijst drie van de geselecteerde bedrijven, namelijk Barrick Gold, Glencore en Vale.

Ten tijde van het onderzoek was ABN Amro de enige bank die voor haar beleggingen de volledige lijst van gesproken bedrijven per sector, thema, subthema en land openbaar maakte. Voor haar kredietactiviteiten maakt de bank de namen van gesproken bedrijven niet bekend, maar rapporteert slechts over het aantal engagements met een "hoge intensiteit" en lijst van focusklanten die enkel wordt uitgesplitst naar sector. Klanten op de focuslijst worden gedefinieerd als cliënten die actief zijn in risicosectoren of -landen of klanten die van wezenlijk zijn voor de activiteiten van ABN Amro vanwege de aard van de zakelijke relatie.

Van Lanschot Kempen is de enige bank (van de vier banken waarvoor financiële banden zijn gevonden) die heeft deelgenomen en meegewerkt aan deze casestudy door te rapporteren over haar mensenrechtenengagement met de geselecteerde bedrijven via de vragenlijst en door te reageren op vervolgvragen.

Het gebrek aan publieke rapportage van de banken over de inhoud, voortgang en impact van hun engagement en het gebrek aan medewerking aan dit onderzoek van drie van de banken laten zien dat zowel de inhoud als de impact van engagement op gebied van mensenrechten nog altijd moeilijk te doorgronden zijn.

- **Sectie D: Banken verstrekken onvoldoende informatie over de manier waarop ze hun invloed proberen aan te wenden om de geselecteerde ontginningsbedrijven te stimuleren om herstel van mensenrechtenschendingen te bieden.**

Als een bank niet heeft bijgedragen aan mensenrechtenschade, maar de impact direct verband houdt met haar producten of diensten, ligt de verantwoordelijkheid voor het bieden van genoegdoening bij de klanten/investeringsbedrijven die de negatieve impact veroorzaken. Het is echter essentieel dat de bank in deze omstandigheden bedrijven probeert aan te moedigen om te zorgen voor of mee te werken aan herstel van de gevolgen.

Over het algemeen is er weinig informatie over de manier waarop de banken hebben geprobeerd hun invloed aan te wenden om de geselecteerde winningsbedrijven te stimuleren om herstel mogelijk te maken voor de mensenrechtenschendingen waarmee ze in verband worden gebracht.

Hoewel ING, ABN Amro en Rabobank klachtenkanalen hebben openstaan voor belanghebbenden of derden die hun bezorgdheid willen uiten over de ESG-effecten van gefinancierde projecten, had geen van de vier beoordeelde banken in maart 2024 een effectief klachtenmechanisme opgezet dat voldoet aan de effectiviteitscriteria die in de UNGP's worden genoemd. ABN Amro heeft echter gewerkt aan de ontwikkeling van een eigen klachtenmechanisme en meldt in haar laatste geïntegreerde verslag dat de "Group Sustainability Committee" in november 2023 overeenstemming heeft bereikt over de procedure voor het mechanisme en heeft besloten te beginnen met de voorbereidingen voor de proeffase die in 2024 van start moet gaan.

De meeste banken erkennen en verplichten zich om hun verantwoordelijkheid onder de UNGP's uit te voeren om genoegdoening te bieden (wanneer ze hebben bijgedragen aan de negatieve gevolgen) of mogelijk te maken wanneer ze via hun zakelijke relaties rechtstreeks in verband worden gebracht met negatieve gevolgen voor de mensenrechten. In hun openbare rapportages werden echter geen specifieke voorbeelden gevonden van gevallen waarin de

banken hebben gezorgd voor herstel of via legitieme processen hebben meegewerkt aan het herstel van negatieve gevolgen.

- **Er is een discrepantie tussen het mensenrechtenbeleid van banken en hun mensenrechtenpraktijken.**

De lage scores bij alle vier de banken roepen de vraag op hoe deze resultaten zich verhouden tot het mensenrechtenbeleid van de banken, dat tweejaarlijks wordt beoordeeld door de Eerlijke Bankwijzer. Daarom zijn de scores van de banken op hun reacties op mensenrechtencontroverses vergeleken met hun scores voor hun mensenrechtenbeleid in de laatste beleidsupdate (2023) van de Eerlijke Bankwijzer zoals gepresenteerd in Table 6.

**Table 6 Scores per bank voor hun mensenrechtenbeleid en -praktijken**

Bank	ABN AMRO	ING	Rabobank	Van Lanschot Kempen
<b>Mensenrechtenbeleid</b>	8.0	6.9	7.8	7.8
<b>Mensrechtenpraktijk zoals onderzocht in deze studie</b>	4.4	2.3	1.6	4.8

De scores in Table 6 duiden op grote verschillen tussen het mensenrechtenbeleid van de banken en hun daadwerkelijke praktijken op het gebied van mensenrechten zoals beoordeeld in deze casestudy. Daarbij zijn de grootste hiaten geconstateerd bij de Rabobank en ING. Hoewel het mensenrechtenbeleid van banken de afgelopen jaren is aangescherpt, laat dit onderzoek zien dat het noodzakelijk is om ook de implementatie ervan te blijven volgen, inclusief verantwoording en transparantie naar belanghebbenden over hoe dit beleid in de praktijk uitpakt.

### **Aanbevelingen van de Eerlijke Bankwijzer aan Nederlandse banken**

Banken die leningen verstrekken aan of investeren in de ontginningsindustrie krijgen de volgende aanbevelingen om de mensenrechtenrisico's van hun zakelijke relaties beter te beheren en aan te pakken.

- 1. Banken moeten hun verantwoording en transparantie over de uitvoering van hun verantwoord investerings- en engagementbeleid op bedrijfsniveau vergroten voor een aanzienlijk deel van hun portefeuille**

In plaats van enkele voorbeelden van engagement met bedrijven uit te lichten in mensenrechtenrapportages, zouden banken structureler moeten rapporteren over hun engagement met bedrijven. Meer gedetailleerde rapportages zouden de namen van bedrijven moeten bevatten (in ieder geval van bedrijven waarin zij beleggen), het onderwerp of de onderwerpen van de engagement, doelen, bereikte mijlpalen, en stemgedrag van investeerders in aandeelhoudersvergaderingen van bedrijven waarin zij beleggen. Het is noemenswaardig dat in de OESO-richtlijnen voor institutionele beleggers al deze informatie wordt genoemd als elementen die kunnen worden opgenomen in de openbare verslaglegging van beleggers als onderdeel van hun uitvoering van de stap voor gepaste zorgvuldigheid met betrekking tot het "bijhouden van en communiceren over resultaten".

Ook wanneer ondernemingen van de uitsluitingslijst van een bank worden verwijderd, moet de bank op transparante wijze verslag doen van haar beweegredenen om de onderneming weer toe te laten tot haar beleggings- en/of kredietuniversum. Als deze re-integratie het gevolg is

van een succesvolle engagement, moeten de variabelen om een engagement als succesvol te beschouwen worden toegelicht.

Net zoals beleggers hun stemgedrag na jaarlijkse algemene vergaderingen op een online portaal bekendmaken, moeten beleggers regelmatig updates kunnen geven over de mijlpalen die ze hebben bereikt in het kader van hun engagement met ondernemingen en over de escalatiestappen die ze hebben genomen als de resultaten niet bevredigend zijn.

## **2. Banken moeten systematisch SMART-doelstellingen definiëren als onderdeel van hun engagement met bedrijven en actie ondernemen wanneer onvoldoende vooruitgang wordt waargenomen**

Om ondernemingen effectief te beïnvloeden, is het voor banken van cruciaal belang om SMART-doelstellingen te formuleren. Doelen, tijdlijnen en bereikte (tussentijdse) mijlpalen zijn essentiële parameters die effectief moeten worden gemonitord om de geloofwaardigheid en het succes van een engagementproces te waarborgen. De uitkomsten van deze monitoring moeten worden gebruikt om te beslissen of engagementdoelen moeten worden bijgesteld of dat er escalatiestappen moeten worden genomen. Als het betrokken bedrijf geen vooruitgang boekt, moeten de banken overwegen om te desinvesteren (als de banken aandelen en/of obligaties in het bedrijf hebben), de uitbetaling van leningen op te schorten of, als dit niet mogelijk is, herfinanciering van bepaalde kredietlijnen te weigeren.

## **3. Banken moeten extra inspanningen leveren om de publieke verslaggeving over hun engagementinspanningen met klanten te verbeteren**

Om de publieke verantwoording te verbeteren, moeten banken hun publieke verslaggeving over hun engagementactiviteiten met klanten verbeteren. Daarbij moeten banken de informatiekloof aanpakken tussen wat banken bekendmaken over hun engagementactiviteiten met ondernemingen waarin ze investeren en hun engagement met zakelijke klanten aan wie ze kredieten verstrekken en overnemen. Hoewel de informatiekloof gedeeltelijk kan worden verklaard door wat wordt vermeld in OESO-richtlijnen voor kredietverstrekkers: "veel rechtsgebieden hebben wettelijke kaders die erkennen dat een bank de wettelijke plicht heeft om de zaken van haar klanten vertrouwelijk te houden", betekent dit niet dat alle vormen van openbaarmaking onmogelijk zijn. Banken kunnen en moeten hun praktijk laten afwijken van de status-quo. Zoals in de OESO-richtlijnen wordt benadrukt, kunnen "banken nog steeds stappen ondernemen om meer transparantie te bevorderen met betrekking tot de relaties met hun klanten". Zo kunnen ze bijvoorbeeld hun invloed aanwenden om de toestemming van hun klanten te verkrijgen om specifieke informatie bekend te maken in bepaalde omstandigheden, bijvoorbeeld wanneer ze betrokken zijn bij ernstige controverses over mensenrechten.

## **4. Banken moeten zorgen van belanghebbenden beter integreren in het engagementproces**

Dit rapport levert het bewijs dat banken moeten streven naar een betere integratie van de stem van belanghebbenden in hun strategie voor engagement met ontginningsbedrijven op het gebied van mensenrechten. Banken moeten ervoor zorgen dat ontginningsbedrijven in hun portefeuille de rechten van werknemers en lokale gemeenschappen respecteren, met inbegrip van de meest kwetsbare groepen zoals vrouwen en kinderen. Er zijn verschillende manieren waarop banken ervoor kunnen zorgen dat de stemmen van belanghebbenden, met name die van rechthebbenden, beter worden gehoord in engagementprocessen. Zo kunnen banken structureel inspraakbijeenkomsten organiseren met maatschappelijke organisaties die expertise hebben op het gebied van de risico's van de winningsindustrieën, of het raadplegen van ngo's of vakbonden die toegang hebben tot primaire gegevens om de omstandigheden van de slachtoffers te beoordelen. De betrokkenheid van belanghebbenden in het proces van gepaste zorgvuldigheid mag niet beperkt blijven tot de fase van de identificatie en beoordeling van effecten. Zoals uiteengezet in de OESO-richtlijnen voor verantwoorde kredietverstrekking, moeten de getroffen rechthebbenden en hun legitieme vertegenwoordigers worden betrokken

bij het proces om passende vormen van genoegdoening te definiëren. Het is ook essentieel dat banken meer aandacht besteden aan de mening van de betrokken belanghebbenden over de vooruitgang die door betrokken bedrijven is geboekt om te beoordelen of een engagementinitiatief al dan niet succesvol is geweest.

Hoewel het personeel van financiële instellingen dat zich bezighoudt met mensenrechtenbetrokkenheid bij ondernemingen vaak over te weinig middelen beschikt, kan deelname aan samenwerkingsinitiatieven die zich richten op mensenrechten, zoals het door de Principles for Responsible Investments (PRI) geleide initiatief "advance", een goede gelegenheid zijn voor banken die investeren in ontginningsbedrijven om de zorgen van belanghebbenden beter te integreren in de verschillende stappen van hun gepaste zorgvuldigheid op het gebied van mensenrechten. De PRI heeft een lijst gepubliceerd met bedrijven waarvoor specifieke aandacht zou moeten zijn bij engagements. Deze lijst bevat bedrijven die actief zijn in de metaal- en mijnbouwsector, waaronder bedrijven die in dit onderzoek zijn onderzocht.

## **5. Banken moeten hun eigen effectieve klachtenmechanisme opzetten zodat belanghebbenden hun zorgen kunnen uiten**

Het is essentieel dat belanghebbenden toegang hebben tot een kanaal om hun zorgen te uiten. Bovendien zou het opzetten van een klachtenmechanisme, op individueel of sectorniveau voor banken, een goede praktijk zijn om meer inzicht te krijgen in de negatieve effecten die bedrijven in portefeuille veroorzaken, en om te begrijpen wat getroffen belanghebbenden verwachten als corrigerende maatregelen. Het opzetten van een klachtenmechanisme zou banken in staat stellen om hun kennis en expertise op het gebied van toegang tot rechtsmiddelen verder te ontwikkelen. Transparantie over de zakelijke relaties van banken is een essentiële voorwaarde om ervoor te zorgen dat een klachtenmechanisme daadwerkelijk nuttig is. Om het klachtenmechanisme van een bank te kunnen gebruiken om mensenrechtenschendingen door een bedrijf te melden, moeten getroffen belanghebbenden eerst weten wie de financiers van het bedrijf zijn.

### **Aanbevelingen van de Eerlijke Bankwijzer aan de Nederlandse overheid en DNB**

Regeringen moeten sterk leiderschap tonen om bij te dragen aan een betere integratie van mensenrechtenkwesties in de processen voor gepaste zorgvuldigheid van banken. Zij hebben een rol te spelen om ervoor te zorgen dat de inhoud van internationale duurzaamheidsnormen zoals de UNGP's en de OESO-richtlijnen worden verankerd in regelgeving. De Eerlijke Bankwijzer doet in dit verband de volgende aanbevelingen aan de Nederlandse overheid en De Nederlandsche Bank (DNB).

#### **1. Stel verplichtingen voor gepaste zorgvuldigheid aan banken**

De discrepantie tussen het mensenrechtenbeleid van banken en de uitvoering daarvan onderstreept de noodzaak van gepaste zorgvuldigheidsverplichtingen voor de financiële sector, inclusief banken. Hoewel de verantwoordelijkheid van banken om mensenrechten te respecteren al jaren wordt erkend, ook door banken zelf, onderstrepen de lage scores voor hun reactie op mensenrechtenschendingen door ontginningsbedrijven dat vrijwillige maatregelen onvoldoende zijn om de rechten van getroffen bevolkingsgroepen en gemeenschappen te waarborgen.

Op 24 mei 2024 heeft de Europese Raad formeel de Corporate Sustainability Due Diligence-richtlijn aangenomen, die grote bedrijven zal verplichten om mensenrechtenschendingen te voorkomen, te beperken en te verhelpen. Na publicatie in het Publicatieblad van de Europese Unie hebben de lidstaten twee jaar de tijd om de vereisten van de richtlijn om te zetten in nationale wetgeving. Hoewel financiële diensten op dit moment niet onder de richtlijn op Europees niveau vallen, kan de Nederlandse overheid verder gaan dan de minimumvereisten die door de Europese Unie zijn geformuleerd. Sterker nog, de Nederlandse financiële sector is



zelf ook sterk voorstander van verplichtingen voor gepaste zorgvuldigheid op het gebied van mensenrechten.

Deze casestudie heeft geïllustreerd waarom de Nederlandse overheid bij de omzetting van de nieuwe richtlijn in Nederlandse nationale wetgeving zou moeten kiezen voor verplichtingen voor gepaste zorgvuldigheid die ook van toepassing zijn op banken. Daarbij moet de Nederlandse overheid hogere, conflictgevoelige, gepaste zorgvuldigheidseisen opnemen met betrekking tot hoge risicosectoren en conflictgebieden. De wet dient daarbij dusdanig opgesteld te worden dat de aanbevelingen opgesteld in paragraaf 3.2.1 worden bevorderd.

## **2. DNB dient wettelijke uitzonderingen op de geheimhoudingsplicht van een bank te ontwikkelen om mensenrechtenschendingen te voorkomen**

Zoals vermeld in de OESO-richtlijnen voor Verantwoorde Kredietverstrekking, "hebben veel jurisdicties juridische kaders die erkennen dat een bank een wettelijke plicht heeft om de zaken van haar klanten vertrouwelijk te houden". In de richtlijnen wordt echter ook uitgelegd dat de meeste jurisdicties ook specifieke omstandigheden erkennen, de zogenaamde "wettelijke uitzonderingen", waarin een bank toestemming kan krijgen om vertrouwelijke informatie over een klant vrij te geven. Dit kan bijvoorbeeld het geval zijn om het witwassen van geld of belastingontduiking te voorkomen. In Nederland zou DNB, de financiële toezichthouder, kunnen overwegen om een wettelijke uitzondering op een dergelijke geheimhoudingsplicht in te voeren om banken in staat te stellen vertrouwelijke informatie over een cliënt openbaar te maken wanneer de cliënt, nadat hij ernstige mensenrechtenschendingen heeft veroorzaakt of daartoe heeft bijgedragen, nalaat passende actie te ondernemen om dit te verhelpen.

## Abbreviations

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AGM	Annual General Meeting
CA100+	Climate Action 100+ initiative
CSOs	Civil Society Organisations
DCC	Dutch Climate Coalition
DNB	De Nederlandsche Bank
EACOP	East African Crude Oil Pipeline
EBW	Eerlijke Bankwijzer (Dutch Fair Bank Guide)
EPW	Eerlijke Pensioenwijzer (Dutch Fair Pension Guide)
EVW	Eerlijke Verzekeringwijzer (Dutch Fair Insurance Guide)
ESG	Environmental, Social and Governance
FFI	Fair Finance International
FPIC	Free, Prior, and Informed Consent
IIGCC	Institutional Investors Group on Climate Change
LNG	Liquefied Natural Gas
OECD	Organisation for Cooperation and Development
OECD MNE Guidelines	OECD Guidelines for Multinational Enterprises on Responsible Business Conduct
PRI	Principles for Responsible Investment
RBC	Responsible Business Conduct
UNGC	United Nations Global Compact
UNGPs	United Nations Guiding Principles on Business and Human Rights

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## Introduction

Mining companies and oil and gas producers run a high risk of getting involved in human rights abuses. The activities of these extractive companies regularly have adverse impacts such as resettlement of communities without adequate consultation and compensation, negative impacts on the livelihoods of local communities and their access to water, labour rights abuses, major safety accidents and violence against protesters.

As mining companies and oil and gas producers need a significant amount of upfront investments to run their business, extractive companies are highly dependent on the banks' willingness to finance their activities. Banks can finance extractive companies by providing loans and by offering underwriting services to companies that want to issue bonds and shares on the capital market. In addition, the asset management divisions of banks can finance those companies by investing in their shares and bonds.

As outlined in the United Nations Guiding Principles on Business and Human Rights (UNGPs), where banks may cause, contribute to, or be directly linked to negative impacts on people, they should conduct ongoing human rights due diligence, and play a role in access to remedy for the communities and individuals that are negatively affected, where appropriate.

Banks' responsibility to respect human rights encompasses not only their own operations (with their employees, suppliers, clients) but also the actual or potential impacts they are connected to through their institutional investments, lending, and underwriting activities. Banks should seek to prevent and mitigate human rights abuses caused by companies they lend to or invest in, and also encourage them to provide remedy where they have caused or contributed to abuses. In practice, these responsibilities take shape in processes of engagement with their clients and investees.

To help banks and other financial institutions implement the due diligence recommendations of the OECD Guidelines for Multinational Enterprises in the context of their corporate lending and underwriting activities and institutional investments, the OECD Centre for Responsible Business Conduct has developed specific guidance for the financial sector.<sup>10</sup>

This research aims to evaluate if the practices of the banks are aligned with the UNGPs and OECD Guidelines for the financial sector. More specifically, the study focuses on the eight banks covered by the Dutch Fair Bank Guide, namely:

- ABN Amro;
- Bunq;
- ING;
- NIBC;
- Rabobank;
- Triodos Bank;
- Van Lanschot Kempen; and
- de Volksbank.

To understand how the Dutch banks respond to cases of human rights abuses caused by companies in the extractive industries, the Dutch Fair Bank Guide selected ten extractive companies because of their involvement in severe human rights abuses:

- Barrick Gold;
- Freeport-McMoRan;
- Glencore;
- Newmont;
- Orron Energy (formerly known as Lundin Energy);
- Rio Tinto;
- Shell;

- TotalEnergies;
- Trafigura; and
- Vale.

For one company, Vale, no further research was done into the performance of the banks towards the company, because no financial links with Dutch banks have been found.

The report is structured as follows. Chapter 1 elaborates on the methodology, including the background of this study, the research design, and the indicators used for the assessment and scoring. Subsequently, Chapter 2 presents the main findings of banks' financial links with the selected companies and their human rights practices. Chapter 3 provides recommendations.

A summary of the findings of this report can be found on the first pages of this report.

# 1

## Methodology

**To assess how Dutch banks respond to extractive companies on human rights topics we first investigated the financial links between the eight banks and a selection of extractive companies. Then, banks were scored on their engagement efforts with the selected companies using a methodology based on the UNGPs and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. This chapter describes the research methodology of this case study.**

### 1.1 Research design

The different steps followed in this study are described in the following sub-sections.

#### 1.1.1 Methodology development

This study builds on two previous case studies: the 2021 Dutch Fair Insurance Guide (FIG) assessment of Dutch insurance companies' responses to human rights abuses in the extractive sector and the 2022 Dutch Fair Pension Guide (FPG) assessment Dutch pension funds' responses to human rights abuses in the extractive industries.<sup>11</sup> A similar methodology which has been simplified and adjusted to be able to assess both the lending and investment activities of banks is used in the current report. The methodology is based on the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Due Diligence guidance documents for Responsible Business Conduct in the financial sector, and assesses banks on their engagement with a selection of extractive companies in accordance with these international standards and best practices.<sup>12</sup> It includes twelve indicators to be assessed.

This evaluation framework sets the basis for the assessment and rating of the response of banks to the human rights abuses committed by the selected companies.

#### 1.1.2 Selected extractive companies

The study focuses in the first place on the banks' business relationships (through their lending activities and/or investments) with a selection of 10 extractive companies, which are associated with cases of severe human rights' abuses namely:

- Barrick Gold;
- Freeport McMoran;
- Glencore;
- Newmont;
- Orron Energy (formerly known as Lundin Energy);
- Rio Tinto;
- Shell;
- TotalEnergies;
- Trafigura; and
- Vale.

To outline examples of human rights adverse impacts related to the aforementioned companies, a description of some case(s) of human rights abuses related to these companies can be found in Appendix 1. The case descriptions should be read as a summary of human rights abuses, and not as an exhaustive report of all facts. Accordingly, the companies in scope may be associated with other cases of human rights abuses as well. For that reason, the methodology in this case study takes into consideration any human rights-related engagement of banks with the selected companies and not exclusively engagements on the cases described in Appendix 1.

### **1.1.3 Selected banks and financial research**

Profundo carried out financial research on the eight banks included in the Dutch Fair Bank Guide - ABN Amro, Bunq, ING, NIBC, Rabobank, Triodos Bank, Van Lanschot Kempen and de Volksbank - to determine whether there are financial relationships between the selected banks and the ten selected companies. To this end, Profundo collected data on the investments by these banks in shares and corporate bonds and their lending activities including loans and underwritings.

Data were retrieved from different sources to collect the financial information of the financiers of equity and liabilities issued by the selected companies. Specifically, this research uses the databases Refinitiv and Bloomberg to retrieve the bulk of the information regarding the loans, bonds and shares issued by the selected companies. However, because these databases do not capture all the bilateral financing, this research also uses other sources such as IJGlobal, which is a database specialised in project financing.

For the banks' investment activities, data covers the latest publication date, as of October 2023. Source data for the banks' lending activities covered the period between January 2018 and October 2023.

The establishment of financial links determined that a bank is connected to the selected cases via its lending, and/or investments, and therefore it was assessed and scored according to the twelve indicators, based on the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Due Diligence guidance documents for Responsible Business Conduct in the financial sector.

The banks for which no financial links have been found with any of the companies in scope were not further investigated. This was the case with Bunq, NIBC, Triodos Bank, and de Volksbank.

Therefore, the assessment of banks' engagement with companies on human rights focuses on:

- ABN Amro;
- ING;
- Rabobank; and
- Van Lanschot Kempen.

The banks were given the opportunity to comment on the outcomes of the financial research and to submit some adjustments in case of identified errors. Out of the eight banks, four confirmed the results, namely: NIBC, Triodos Bank, Van Lanschot Kempen and de Volksbank. ABN Amro provided some comments (see section 2.1.1) while Bunq, ING and Rabobank did not provide any feedback.

### **1.1.4 Assessment and rating of banks**

To assess how the banks have responded to the selected cases of severe human rights abuses, the four banks for whom financial links were found were asked to provide answers to a questionnaire. They were requested to fill in the questionnaire and to provide written evidence to support their answers (such as internal-use documents, public evidence or other documents). The banks' responses to the questionnaire together with publicly available information as of 13 March 2024, disclosed in the past two years (such as annual reports, sustainability reports, stewardship/engagement reports, human rights reports, press releases) formed the basis for the

assessment. When further clarification was needed on the answers of a particular bank to the questionnaire, Profundo reached out to the bank to collect further explanations.

The assessment of banks that did not fill in the questionnaire is fully based on public information.

Subsequently, Profundo aggregated the information into scores and gave a final judgement or qualification to the results of each bank. After finalization of the draft assessments, Profundo shared the draft assessment for feedback to the banks that responded to the questionnaire.

In this case study, only Van Lanschot Kempen responded to the questionnaire and provided feedback on its draft assessment.

## 1.2 Indicators

This section presents the indicators that are used for the assessment. The indicators are designed considering the normative framework included in the United Nations Guiding Principles (UNGPs)<sup>13</sup> and the Guidelines for Multinational Enterprises on Responsible Business Conduct developed by the Organisation for Economic Cooperation and Development (OECD). The normative framework highlights the responsibility of businesses to conduct a due diligence process to prevent, mitigate and remedy human rights abuses. In addition, the indicators strongly rely on the work published by the OECD to promote Responsible Business Conduct (RBC) in the financial sector, especially the Responsible Business Conduct for Institutional Investors<sup>14</sup> and the Due Diligence for Responsible Corporate Lending and Securities Underwriting<sup>15</sup>, which state that effective due diligence is composed of the following essential steps including:

1. Embedding RBC into relevant policies and management systems;
2. Identifying actual and potential adverse impacts of corporate clients/investees;
3. As appropriate, using leverage to influence companies causing an adverse impact to prevent or mitigate that impact;
4. Tracking performance of the bank's own performance in managing RBC risks and impacts in its lending and investment portfolio;
5. Communicating results; and
6. Providing for or cooperating in remediation where appropriate

This research focuses on banks' practices and assesses whether there are gaps with the OECD due diligence framework and UNGPs. Considering that the Dutch Fair Bank Guide conducts a detailed policy assessment of the Dutch banks once every two years, which results in a dedicated publication, the indicators designed for this case study do not cover step 1 (embedding RBC in policies) but focus on the steps 2-6 which are more operational.

The indicators used to score the banks in this research are divided into four main sections, closely related to the structure of the OECD due diligence framework. Each section represents a key step of an effective due diligence process according to the OECD, except section C which combines two steps, namely "tracking performance" (step 4) and communicating results (step 5). Consequently, the indicators are divided in the four following sections:

- A. Identification, qualification and prioritisation of human rights issues and risks;
- B. Using leverage to influence companies to prevent and mitigate adverse human rights impacts;
- C. Tracking progress and outcome and communicating about the results; and
- D. Providing for or cooperating in remediation.

Table 7 presents an overview of the indicators used to assess each section.

**Table 7 Assessment framework**

Section		Indicator	
A	Identification, qualification and prioritisation of human rights issue(s) and risk(s)	A1	The bank has processes to identify actual and potential adverse human rights impacts
		A2	The bank has identified human rights incidents for the selected companies
B	Using leverage to influence companies	B1	The bank engages on human rights topics with the selected companies
		B2	The bank sets timebound goal(s) for engagement
		B3	The bank involves (directly or through companies) multiple stakeholders, including CSOs/trade unions/ representatives of impacted rights-holders when engaging the companies on its human rights impacts
		B4	The bank reports on the various engagement tools and escalation steps it has used to engage with the selected companies
C	Tracking progress and outcomes and communicating about the results	C1	The bank monitors the engagement progress for the selected companies
		C2	The bank is transparent and accountable on its efforts to engage on human rights
		C3	The bank discloses an exclusion list which includes human rights criteria and the names of companies excluded
D	Providing for or cooperating in remediation	D1	The bank has set up a grievance mechanism that is accessible to (potentially) affected stakeholders to raise human rights-related concerns related to the bank's lending activities or investments
		D2	Where the bank is directly linked to the adverse impacts that companies have caused or contributed to, it uses its leverage to encourage the company to provide remedy
		D3	Where the bank has contributed to the adverse human rights impacts, it provides for, or co-operates through legitimate processes in, the remediation of adverse impacts

These indicators are written for banks that have investments in and/or provide lending or underwriting services to companies involved in severe human rights abuses.

### 1.3 Scoring approach

For each of the four sections (A, B, C, D), the score has been normalised to a 10-point scale where 0 represents the worst score and 10 represents the best score. The arithmetic mean of the four scores was calculated to obtain a final consolidated score per bank.

For instance, if Bank X obtains 7 points in section A, 9 points in section B, 6 points in section and 4 point in section D, its consolidated score on a 10-point scale is:  $(7+9+6+4)/4= 6.5$ .

More details about the scoring approach for each indicator can be found in Appendix 2.



## **1.4 Disclaimer**

Not all coalition members of the Dutch Fair Bank Guide work on all themes and/or sectors on which the research of the Dutch Fair Bank Guide focuses. Positions on specific themes therefore do not necessarily reflect the opinion of all coalition members of the Dutch Fair Bank Guide.

# 2

## Main findings

**This chapter presents the main findings of the research. In doing so, section 2.1 presents the outcomes of the financial research, disclosing that financial links with the extractive companies have been identified for four out of the eight Dutch banks. Section 2.2 reveals that none of the four banks can be presented as a “frontrunner” for their human rights-related engagements with the selected companies.**

### 2.1 Results of the financial research

For half of the banks in scope of the research, financial links with the selected companies have been identified, namely: ABN Amro, ING, Rabobank and Van Lanschot Kempen.

From January 2018 to October 2023, ING, Rabobank and ABN Amro provided approximately USD 15 billion in loans and underwriting services to the selected companies linked to human rights abuses. Among these financial institutions, ING was by far the largest creditor and provided USD 7.6 billion in loans and underwriting services to the selected companies over the period.

It should be noted that ABN Amro reduced its financing consistently between 2018 and 2021, and that since then no new financing was identified. This can be explained by the strategical decision of the bank to wind down its Corporate Banking activities outside of Europe and all its Trade & Commodities Finance activities worldwide (see section 2.1.1).

As regard their investments, the asset management divisions of three Dutch banks held USD 292 million in bonds and shares issued by the selected companies causing or contributing to human rights abuses. ING was the largest investor among the four banks, holding USD 132.4 million in bonds and shares, followed by Van Lanschot Kempen, which held USD 114.4 million, and ABN Amro which invested USD 45 million.

No financial links with the selected companies were identified for Bunq, NIBC, Triodos, and de Volksbank. In addition, the financial research shows that none of the banks were linked to Vale. Consequently, the banks were questioned about their engagement practices with the other nine companies in scope. For the full list of selected companies see section 1.1.2.

The results of the financial research have been shared with all the banks for their feedback. Out of the eight banks, four confirmed the results, namely: NIBC, Triodos Bank, Van Lanschot Kempen and de Volksbank. ABN Amro provided some comments (see section 2.1.1) while Bunq, ING and Rabobank did not provide any feedback.

The subsections below outline the results of the financial research in more detail, focusing on ABN Amro, ING, Rabobank and Van Lanschot Kempen.

#### 2.1.1 ABN Amro

For ABN Amro, financial links are identified with eight of the selected companies namely: Freeport-McMoran, Glencore, Newmont, Orron Energy, Rio Tinto, Shell, TotalEnergies and Trafigura. The financial links with selected companies that were identified for ABN Amro are presented in Table 8 and Table 9.

In response to the financial research, ABN Amro highlighted that in August 2020, the bank announced its implementation of a new strategy with regard to its Corporate Banking activities.<sup>16</sup> As a result, ABN Amro confirmed that it has been winding down its Corporate Banking activities outside of Europe and all its Trade & Commodities Finance activities worldwide. In March 2023, ABN Amro reported that this wind-down was almost completed at the end of 2022.<sup>17</sup> Since then, ABN Amro's focus has been on the Netherlands and Northwest Europe. Consequently, in its contact with Profundo, ABN Amro declared that the focus companies in this case study do not fit into this strategy change and that consequently we could "safely assume that - at least from the end of 2022 - ABN Amro no longer maintains a direct financing relationship (via lending/underwriting) with large corporates that are active worldwide in the extractives / commodity field".

As regards its investments in shares and bonds presented in Table 8, ABN Amro clarified in its answer to Profundo's email that it is, however, still possible that there is an indirect financing relationship with these companies, namely through investments from its customers that it has facilitated.

**Table 8 ABN Amro's share and bond holdings as of October 2023**

Company	Country of origin	Investment type	Value in USD mln
Freeport-McMoran	United States	Shares	0.19
Glencore	Switzerland	Shares	0.98
		Bonds	0.21
Newmont	United States	Shares	0.09
Rio Tinto	United Kingdom	Shares	1.20
Shell	United Kingdom	Bonds	0.26
		Shares	17.74
TotalEnergies	France	Bonds	2.60
		Shares	21.72
<b>Total investments</b>			<b>44.99</b>

Sources: Refinitiv, Bloomberg, IJGlobal, (October 2023, most recent filings).

**Table 9 ABN Amro's loans and underwritings Jan 2018 – Oct 2023**

Company	Country of origin	Lending activity	Value in USD mln
Freeport-McMoran	United States	Loans	237.0
		Underwriting	78.0
Glencore	Switzerland	Loans	1,617.0
		Underwriting	113.0
Newmont	United States	Loans	98.0
		Underwriting	21.0
Orron Energy	Sweden	Loans	208.0
Shell	United Kingdom	Loans	364.0
TotalEnergies	France	Loans	488.0
Trafigura	Switzerland	Loans	234.0
<b>Total credits</b>			<b>3,458.0</b>

Sources: Refinitiv, Bloomberg, IJGlobal, includes identified financing deals between January 2018 and October 2023.

## 2.1.2 ING

For ING, financial links are identified with all the selected companies except Vale. The financial links with selected companies that were identified for ING are presented in Table 10 and Table 11.

**Table 10**      **ING's share and bond holdings as of October 2023**

Company	Country of origin	Investment type	Value in USD mln
Barrick Gold	Canada	Shares	8.75
Freeport-McMoran	United States	Shares	24.0
Newmont	United States	Shares	23.53
Rio Tinto	United Kingdom	Shares	74.58
TotalEnergies	France	Bonds	1.58
<b>Total investments</b>			<b>132.43</b>

Sources: Refinitiv, Bloomberg, IJGlobal, (October 2023, most recent filings).

**Table 11**      **ING's loans and underwritings Jan 2018 – Oct 2023**

Company	Country of origin	Lending activity	Value in USD mln
Freeport-McMoran	United States	Loans	30.0
Glencore	Switzerland	Loans	1,932.0
		Underwriting	584.0
Orron Energy	Sweden	Loans	600.0
		Underwriting	133.0
Rio Tinto	United Kingdom	Loans	495.0
Shell	United Kingdom	Loans	364.0
TotalEnergies	France	Loans	193.0
Trafigura	Switzerland	Loans	3,107.0
		Underwriting	207.0
<b>Total credits</b>			<b>7,645.0</b>

Sources: Refinitiv, Bloomberg, IJGlobal, includes identified financing deals between January 2018 and October 2023.

## 2.1.3 Rabobank

For Rabobank, financial links in the form of loans have been identified with four of the selected companies namely: Glencore, Shell, TotalEnergies and Trafigura. The financial links with selected companies that were identified for Rabobank are presented in Table 12. No investments in shares and bonds of the selected companies have been found.

**Table 12**      **Rabobank's loans and underwritings Jan 2018 – Oct 2023**

Company	Country of origin	Lending activity	Value in USD mln
Glencore	Switzerland	Loans	874.0
Shell	United Kingdom	Loans	139.0
TotalEnergies	France	Loans	89.0

Company	Country of origin	Lending activity	Value in USD mln
Trafigura	Switzerland	Loans	2,748.0
<b>Total credits</b>			<b>3,850.0</b>

Sources: Refinitiv, Bloomberg, IJGlobal, includes identified financing deals between January 2021 and October 2023.

#### 2.1.4 Van Lanschot Kempen

For Van Lanschot Kempen, financial links are identified with four of the selected companies under the form of investments in shares and bonds of the selected companies. The financial links with selected companies that were identified for Van Lanschot Kempen are presented in Table 13.

No lending activities for the selected companies were identified for Van Lanschot Kempen. As explained in the bank's *Responsible Lending Policy* of 2023, Van Lanschot Kempen's corporate credit portfolio is mainly focused on Dutch small and medium-sized enterprises and "professionals in sectors that typically show no or little involvement in (potential) human rights violations (business professionals, healthcare professionals, etc.)", thereby limiting the bank's lending exposure to sectors that are more prone to human rights risks, such as the extractive industries.<sup>18</sup>

Van Lanschot Kempen confirmed the financial data but has indicated to be no longer invested in Newmont. At the time of the research, the Exclusion list for Q4 2023 disclosed by the bank included three of the selected companies, namely Barrick Gold, Glencore and Vale. The bank exclusion list states that these companies are excluded because of their "conduct",<sup>19</sup> which refers to exclusions of companies that have received an Environmental, Social and Governance (ESG) Red Flag from its external data provider, MSCI. When Van Lanschot Kempen was asked to clarify the meaning of the category "conduct", the bank explained that companies included in this category are entities that structurally violate international conventions and standards and/or have demonstrated no improvement over the last years.

Noteworthy, in the recently published Exclusion list for Q1 2024,<sup>20</sup> Glencore was removed. MSCI has changed its assessment of Glencore from red flag to orange and subsequently the company has been removed from the exclusion list. However, Van Lanschot Kempen confirmed it does not have any investments in Glencore.

**Table 13 Van Lanschot Kempen's share and bond holdings as of October 2023**

Company	Country of origin	Investment type	Value in USD mln
Newmont	United States	Shares	0.02
Rio Tinto	United Kingdom	Shares	24.07
		Bonds	0.32
Shell	United Kingdom	Shares	36.03
TotalEnergies	France	Shares	43.54
		Bonds	10.46
<b>Total investments</b>			<b>114.44</b>

Sources: Refinitiv, Bloomberg, IJGlobal, (October 2023, most recent filings).

## 2.2 Banks' human rights practices

Overall, none of the banks can be presented as a "frontrunner" for their engagement efforts with the selected companies. Information related to timebound engagement goals and clear escalation steps taken by the banks to influence the selected companies is missing for all the banks under review.

From the four banks, only Van Lanschot Kempen showed willingness to cooperate in the research and provided information in the questionnaire. Consequently, most of the results of this research relies on public information. The fact that these banks publicly disclose only very limited information - most often no information at all - on their engagement with the selected extractive companies, does not enable to properly assess the nature and efficiency of their engagement initiatives. However, the OECD Due Diligence framework emphasises the importance of tracking and publicly communicating about how adverse impacts are addressed. As evidenced by the low scores presented in Table 14, it is not done comprehensively by any of the four banks. We can legitimately wonder why banks would be so reticent to publish information about their engagement initiatives if they were able to demonstrate that strong outcomes had been achieved.

Highest scores were achieved by Van Lanschot Kempen (4.8/10) and ABN Amro (4.5/10). Van Lanschot Kempen shared some information about its engagement efforts with some of the selected companies in its feedback to the questionnaire, including some general goals. Among the four banks, ABN Amro is the bank which publicly disclosed most extensive information on its efforts to manage human rights risks including in its lending and investment activities. More specifically, it was found that ABN Amro engaged with more than half of the selected companies.

The overall scores of ING (2.3) and Rabobank (1.6) are very low because no information on their engagement with the selected companies could be found.

A detailed analysis for each sections (A, B, C, D) of the methodology is presented below.

**Table 14 Scores per bank (/10)**

Section	ABN AMRO	ING	Rabobank	Van Lanschot Kempen
A: Identification of human rights issue(s)	8.6	5.7	3.6	8.6
B: Using leverage to influence companies	2.9	0.0	0.0	4.6
C: Tracking progress and communicating	2.7	1.4	0.5	4.5
D: Providing for or cooperating in remediation	3.3	2.2	1.6	1.7
<b>Average score</b>	<b>4.4</b>	<b>2.3</b>	<b>1.6</b>	<b>4.8</b>

### 2.2.1 Section A: Identification, qualification and prioritisation of human rights issue(s) and risk(s)

This section assesses the processes of banks to identify potential or actual human rights issues associated with their lending and investments activities and the extent to which the banks have identified (some) human rights controversies related to the selected companies.

Table 15 shows the scores per bank on Section A.

**Table 15 Banks' scores on identification of human rights issue(s) (/10)**

Section	ABN AMRO	ING	Rabobank	Van Lanschot Kempen
A: Identification of human rights issue(s)	8.6	5.7	3.6	8.6

Across the four sections of the methodology, all banks received their highest score in section A. This may not be surprising, as Section A assesses the banks' general processes to assess and prioritise human rights risks and overall approaches to stakeholder consultations. As recognition of and attention for human rights risks have evolved over the past decade, all banks in the Netherlands now have some screening processes to identify human rights risks and most provide some general information on how they include external stakeholders into their human rights screening processes.

As presented in Table 15, all of the assessed banks screen their lending and investment portfolios on human rights issues. In doing so, all four banks indicate using a screening methodology that includes assessments of high-risk variables, such as geography, sectors, products, and governance contexts including weak rule of law or conflict zones. For example, ABN Amro's risks assessment framework includes specific screening criteria for high-risk sectors including minerals & metals sectors in addition to more standardised due diligence procedures and quarterly reports on its human rights risk that are integrated in the enterprise risk management process. It is interesting to note that in its Integrated Annual Report 2023, ABN Amro reports that 11% of its lending portfolio has at least a moderately high sensitivity to one or more of the four themes of social risk namely: labour rights, land-related rights, the right to life and health and the right to privacy, freedom of opinion and expression. In addition, ABN Amro reports that the sub-sector with the highest thematic sensitivity is "manufacturing of basic metals" because it is often linked to land rights and community rights issues.<sup>21</sup>

ING states that the bank "screens both clients and projects on human rights issues" and also takes account of "companies' commitment to engaging with local stakeholders (including affected communities), and their procedure in managing grievances".<sup>22</sup> In addition, ING reports on a human rights risks-heatmap to prioritise risk sectors and clients.

Rabobank states to have a human rights due diligence procedure that "is applicable to all clients and business partners. It applies proportional to impacts per business type, size, products, activities and geographies, and includes the responsibility and controls over value chains".<sup>23</sup> Furthermore, the bank has a specific screening policy for extractive sectors, identifying the extractive industry as a high-risk sector for human rights issues.

Van Lanschot Kempen has an extensive human rights due diligence procedure that pays extra attention to specific parameters in certain high-risk sectors, including extractive sectors. The bank identifies that "for companies active in extractive sectors, impacts on local communities may be more material than in other industries".<sup>24</sup> The bank further indicates to monitor its investee companies at least quarterly for compliance with the principles of the OECD MNE Guidelines and the United Nations Global Compact (UNGC), which includes principles on human rights.

Both ING and ABN Amro report that they consult with civil society organisations (CSOs), global trade unions, and/or legitimate representatives of impacted right-holders as part of their process to identify actual and potential adverse human rights impacts. For example, ING reports to have carried out "an engagement session with several CSOs to present our potential salient human rights issues and receive feedback on the identification process, identified issues, and their management".<sup>25</sup> ABN Amro mentions to regularly organise consultation meetings with

representatives from trade unions and civil society to “keep abreast of emerging issues in specific sectors” as part of its risk identification process.<sup>26</sup> Rabobank only reports on “interactions with social welfare organisations” in very general terms.<sup>27</sup> Accordingly, it is unclear to what extent the bank engages representatives from civil society on human rights topics. Van Lanschot Kempen indicates that it involves CSOs to identify actual and potential adverse human rights impacts. However, the bank only specifies the use of NGO research as an example of its engagement with CSOs in relation to human rights topics. Van Lanschot Kempen used NGO research as input for its human rights identification process, thereby only engaging with CSOs on human rights topics in an indirect way.

The highest scoring banks on the identification, qualification and prioritisation of human rights issue(s) and risk(s) include ABN Amro and Van Lanschot Kempen, with both banks receiving a score of 8.6/10. These high scores are mainly due to the fact that ABN AMRO and Van Lanschot Kempen report on (some) of the selected cases of human rights controversies, while ING and Rabobank do not.

In its *Non-financial Data Engagement Factsheet* of 2022, ABN Amro reports for its investment activities the list of companies engaged and the main topic of engagement.<sup>28</sup> Among the listed companies are Freeport-McMoran, Glencore, Rio Tinto, Shell, and TotalEnergies (5 out of the 6 companies for which investments have been found). In addition, although the financial research did not find investments by ABN Amro in Barrick Gold and Vale, the two companies are equally reported in the list of companies engaged by ABN Amro in its *2022 Non-Financial Data Engagement factsheet*.<sup>29</sup> The reported company engagement on human rights topics indicates that ABN Amro has identified human rights incidents related to these companies.

Van Lanschot Kempen is the only bank to have identified human rights incidents for all of the selected companies to which the bank is financially linked, namely Newmont, Rio Tinto, Shell, and TotalEnergies.

In its answers to the questionnaire, Van Lanschot Kempen describes human rights issues, including controversies related to the right to collective bargaining, adverse environmental impacts on local communities, and discrimination in the workplace. While the bank mentions at least one case of human rights controversies for each of the four companies, Van Lanschot Kempen does not describe the human rights impacts of these controversies in much detail. For example, in the case of TotalEnergies, the bank identifies that the company “has faced criticism... over alleged human rights and environmental violations related to the proposed 1,443 km East African Crude Oil Pipeline, which will extend from Lake Albert in Uganda to the coastal port of Tanga in Tanzania, due to come online in 2025”.<sup>30</sup> In this example, the bank does not detail what human rights and environmental violations are related to TotalEnergies’ activities in Uganda and Tanzania and how they affect local communities.

Another interesting aspect worth mentioning is that Van Lanschot Kempen identifies controversies in relation to Newmont’s operations in Mexico, where the company “ceased operations at the Peñasquito gold mine in Zacatecas, Mexico, following the labour strike by approximately 2.000 members of the National Union of Mine and Metal Workers of the Mexican Republic (the Union) calling for an increase in the profit-sharing bonus from 10% to 20% under the Collective Bargaining Agreement”.<sup>31</sup> While the bank reports on these controversies related to Newmont’s activities, Van Lanschot Kempen indicates to be no longer invested in the company and therefore does not engage with Newmont on human rights.

### **2.2.2 Section B: Using leverage to influence companies**

This section assesses the features of the engagement conducted by the banks following the identification of actual and potential human rights adverse impacts associated with the selected companies.



Table 16 shows the scores per bank on section B.

**Table 16 Banks' scores on leverage use to influence companies (/10)**

Section	ABN AMRO	ING	Rabobank	Van Lanschot Kempen
B: Using leverage to influence companies	2.9	0.0	0.0	4.6

With a score of 4.6 out of 10, Van Lanschot Kempen receives the highest score across the assessed banks. While the bank has identified cases of human rights abuses for all the selected companies, the bank explains it engages on human rights with two out of the four companies for which financial relations were identified, namely TotalEnergies and Rio Tinto. The bank also engages with Shell but only on the company's climate actions, not on human rights related issues. Yet, the bank has identified human rights controversies in relation to Shell's operations in the Niger River Delta in Nigeria. As mentioned previously, Van Lanschot Kempen does not engage with Newmont as the bank indicates to have divested from the company. However, as the bank was invested in Newmont at the time of financial research, the company is considered relevant for scoring Van Lanschot Kempen's human rights engagement companies. In addition, the OECD guidelines for institutional investors state that divestment should only be considered after unsuccessful attempts of company engagement.<sup>32</sup> This is because divesting from a company in most cases does not resolve the issue for affected people and/or communities.

ABN Amro ranks second place with a score of 2.9 out of 10 for using its leverage to influence selected companies. As mentioned in the previous subsection, ABN Amro reports to engage on human rights with Freeport-McMoran, Glencore, Rio Tinto, Shell, and TotalEnergies. The information provided by ABN Amro relates to the bank's investments. No details were found regarding the names of companies engaged for the bank's lending activities. While the financial research indicates that ABN Amro is also linked to Newmont, Orron Energy and Trafigura, mainly through its lending activities, no information on engagement with these companies was found. Interestingly, while no financial linkages were found with Barrick Gold and Vale, ABN Amro also reports to engage with these two companies on human rights topics. The bank was asked about the reasons to engage with these companies but did not wish to provide explanations.

Both ABN Amro and Van Lanschot Kempen have formulated goals for engagement. In its *Human Rights Report 2022*, ABN Amro reports on engaging with TotalEnergies to "encourage TotalEnergies to provide more transparency on its activities and on what it was doing to prevent, mitigate and remediate its human rights impacts in Myanmar, particularly given the conflict context in that country".<sup>33</sup> After TotalEnergies' withdrawal from Myanmar in 2022, ABN Amro continued its engagement with the company on a broader scope to include its company-wide human rights due diligence processes and the efficacy of that process' implementation. It is not clear whether the human rights impacts of the East African Crude Oil Pipeline (EACOP) in Uganda and Tanzania or the Liquefied Natural Gas (LNG) project in Mozambique are discussed as part of this engagement (see Appendix 1 for more information about these cases).

Van Lanschot Kempen reports on engagement with Rio Tinto in response to the September 2023 blast incident whereby a sacred rock shelter known belonging to indigenous communities has been damaged. The bank's engagement with the company aimed at understanding how the incident could have happened while new corporate policies were being installed to prevent such events in the future. Additionally, Van Lanschot Kempen engaged with TotalEnergies in collaboration with the Dutch Climate Coalition (DCC), a network of Dutch institutional investors with combined assets under management of EUR 1.6 trillion that support the objectives of the

investor collaboration network of the Institutional Investors Group on Climate Change (IIGCC) and the Climate Action 100+ (CA100+) engagement initiative.<sup>34</sup>

While both ABN Amro and Van Lanschot Kempen report on their engagement objectives, none of the engagement goals are timebound.

In addition, Van Lanschot Kempen is the only bank to report on the involvement of multiple stakeholders when engaging with the selected companies. However, even in the case of Van Lanschot Kempen, CSOs were only involved in relation to one out of the four selected companies, namely TotalEnergies. The bank is member of the Dutch Climate Coalition, a group of Dutch investors which has been engaging with TotalEnergies regarding Tilenga and the East African Crude Oil Pipeline Project. As part of this engagement initiative, interviews have been held with local stakeholders to gain a better understanding of adversely affected areas in Uganda and Tanzania.

ABN Amro, reports that both as part of its role of lender and investment services provider, it has conversations with civil society organisations to “gain insight into the perspectives of potentially affected stakeholders”<sup>35</sup>. In its human rights report 2022, ABN Amro reports that it has ongoing discussion with one of its corporate clients active in the mining sector about the respect of free prior informed consent process of indigenous communities located next to a lithium mining area in South America. However, the name of the company engaged is not disclosed, and no examples of such conversations related to the selected companies are disclosed.

With respect to the other three companies that Van Lanschot Kempen invested in, no evidence was found of involving multiple (CSO-)stakeholders when engaging with companies on human rights.

In its *2023 Stewardship and engagement policy*, Van Lanschot Kempen provides an overview of the various engagement tools and escalation steps the bank may use in its engagement with companies, ranging from writing letters to a company to divesting from a company (list not exhaustive).<sup>36</sup> For two out of the four relevant companies, Van Lanschot Kempen reports on the tools that were used to engage on human rights. In the case of TotalEnergies, the bank held meetings with representatives from middle and top management levels at TotalEnergies. Among the topics discussed were the Free, Prior, and Informed Consent (FPIC) of local communities in situations of resettlement and access to remedy. In the case of Rio Tinto, Van Lanschot Kempen indicates to have voted against the re-election of one Director of the Board (Megan Clark) in the aftermath of the blast incident at the Juukan Gorge, the sacred rock shelter belonging to indigenous communities.

Voting at the Annual General Meeting of companies is indeed a tool for shareholders to make their voice heard. ABN Amro Investment Solutions reports on its shareholder voting via an online dashboard<sup>37</sup>. It was found that ABN Amro Investment solutions voted against the re-election of one Director of the Board of Shell due to a poor oversight of ESG risks, which can be seen as an escalation step. Similarly, at the 2023 General Assembly of TotalEnergies SE, ABN Amro voted against the re-election of some directors for poor management of ESG issues. More specifically the proxy voting dashboard indicates: “Significant risks to shareholders stemming from severe ESG controversies have been identified at the company, which reflects a failure by the board to proficiently guard against and manage material environmental, social and governance risks.”

However, structural reporting by ABN Amro on the various engagement tools and escalation steps it has been using to influence the selected companies as part of its human rights engagement is missing.

For ING and Rabobank no information on engagement with the selected companies was found.

### **2.2.3 Section C: Tracking progress and outcomes and communicating about the results**

Section C assesses how banks track progress and results of their engagement, and publicly report about it.

Table 17 shows the score per bank on section C.

**Table 17 Banks' scores on tracking progress and communicating results (/10)**

Section	ABN AMRO	ING	Rabobank	Van Lanschot Kempen
C: Tracking progress and communicating	2.7	1.4	0.5	4.5

Van Lanschot Kempen is the only bank which provided evidence to Profundo (confidential) that it monitors the steps taken by the selected companies it engages with, using a "milestone approach". The bank explains in its Stewardship and engagement policy<sup>38</sup> that every milestone represents an accomplishment and a step towards reaching a defined SMART (Specific, Measurable, Attainable, Realistic, Timely) goal and that Van Lanschot Kempen Investment Management aims to move every engagement at least one milestone further every six months. However, in practice, specific information on milestones achieved per company and engagement results is publicly reported for a limited number of cases only, which do not include engagement with the selected companies on human rights issues.<sup>39</sup> Notably, the 2021 Stewardship and responsible investment<sup>40</sup> report comprised significantly more detailed reporting on case-by-case engagement than the 2022 report.

All banks but Rabobank disclose aggregated data related to their engagement on human rights as part of their lending and/or investment activities such as the number of companies engaged, main topics of engagement, or the methodology they applied to identify salient human rights risks in their lending portfolio. More specifically, two banks - ABN Amro and ING - disclose specific human rights reports. While Rabobank mentions that it engages with clients on human rights, the bank does not actually report on their engagement with clients in terms of the number of clients engaged, what steps are taken, which timelines are set for engagement, and what results are achieved through engagement.

ABN Amro, ING and Van Lanschot Kempen all disclose some examples of human rights engagement cases, however the company names are mentioned only when the engagements relate to their investments and not lending activities. Among these examples, ABN Amro mentions in its Human Rights Report 2022<sup>41</sup> a collective engagement initiative related to TotalEnergies' activities in Myanmar which was followed by a more general engagement on the company-wide human rights due diligence process and the efficacy of that process' implementation. While ABN Amro mentions that in 2022, TotalEnergies announced it was pulling out of operations in Myanmar, the bank also acknowledges that it does not know if this was a direct result of its engagement. Information on the concrete steps taken by the company or successful outcomes as part of its more general engagement on human rights is missing. ABN Amro and Van Lanschot Kempen discloses examples of human rights engagement cases with companies not covered in this study but in their investment universe such as engagement on forced labour with the fast fashion Japanese company Fast Retailing (ABN Amro)<sup>42</sup>, or on digital rights risks with Alphabet (Van Lanschot Kempen).<sup>43</sup>

Van Lanschot Kempen discloses the names of companies excluded from its investment universe. Among the categories for exclusion, the bank mentions "conduct" which refers to exclusions of companies which have received an ESG Red Flag from its external data provider. In its answer to the questionnaire, Van Lanschot Kempen explains that these companies are entities that structurally violate international conventions and standards and/or have demonstrated no improvement over the last years. At the time of the research, the Exclusion list for Q4 2023

disclosed by the bank included three of the selected companies, namely Barrick Gold, Glencore and Vale. However, it is interesting to note that, in the recently published Exclusion list for Q1 2024<sup>44</sup> Glencore was removed. Van Lanschot Kempen does not disclose an exclusion list applicable to its lending activities. In the questionnaire, the bank explained that it is because its “loan portfolio is highly concentrated and primarily involves lending to Dutch small and medium-sized companies and professionals in sectors that typically show no or little involvement in (potential) human rights abuses (business professionals, health care professionals, etc.), with only a handful of borrowers operating in manufacturing and/or running production sites outside the Netherlands.”

Rabobank, ABN Amro and ING all have various exclusion criteria related to human rights issues. For instance, ABN Amro commits to “not knowingly provide financial products or services that directly facilitate activities causing adverse human rights impacts<sup>45</sup>”, or ING mentions that it “will not directly engage in business activities that are known to have elements of human rights abuses and/or where such violations exist<sup>46</sup>”. However, none of the three banks report the names of the companies it excludes from lending and/or investments due to human rights issues. ABN AMRO only disclose the list of companies it excludes from services and investments because of their involvement in controversial weapons<sup>47</sup>.

At the time of the research (February - March 2024) ABN Amro was the only bank to disclose for its investments the full list of companies engaged per sector, theme, sub-theme and country. For its lending activities, the bank did not disclose the company names but the number of high-intensity engagement and focus list clients with a breakdown per sector. Focus list clients are defined as clients operating in very sensitive circumstances or in sectors or countries with high inherent risks, or clients that are material to ABN Amro’s business due to the nature of the relationship with a breakdown per sector.<sup>48</sup> The list covered engagements on ESG issues related to its lending services in 2021/2022.

However, as of 17 April 2024, this document, which was an excel file named “*Non-financial Data Engagement Factsheet 2022*” seems to have been withdrawn from the bank’s website. Because the bank did not want to cooperate in the research, we cannot explain why this action has been taken. ING discloses a Human Rights report which includes a non-exhaustive list of engagement initiatives with Wholesale Banking clients in 2023<sup>49</sup>. While the names of companies engaged are not disclosed, the list shows that engagement initiatives related to human rights topics are carried out with mining and oil and gas companies active in Latin America, Southern and Central Africa, North America, Eastern Asia, and Western Europe. ING discloses the main topics of discussion such as “occupational health and safety” or “land and resource related community impacts and biodiversity” but no goals or timeline. In addition, while the status of engagement initiatives (“closed” or “ongoing”) is disclosed, no explanation related to the rationale for closing an engagement is provided. The absence of explanation makes it impossible for external stakeholders to understand if the engagement initiatives had positive impacts on affected stakeholders.

Van Lanschot Kempen is the only bank that received additional points for its participation and cooperation in this case study by reporting on its human rights engagement with the selected companies through the questionnaire and responding to follow-up questions.

#### **2.2.4 Section D: Providing for or cooperating in remediation**

This section assesses how the topic of remediation was addressed by the banks as part of their human rights-related engagement.

Table 18 shows the score per bank on section D.

**Table 18 Banks' scores on providing for or cooperating in remediation (/10)**

Section	ABN AMRO	ING	Rabobank	Van Lanschot Kempen
D: Providing for or cooperating in remediation	3.3	2.2	1.6	1.7

Although ING, ABN Amro and Rabobank have complaints channels open to stakeholders or third parties who want to raise concerns about the ESG impacts of financed projects, as of April 2024, none of the four banks assessed had set up an effective grievance mechanism that meets the effectiveness criteria that have been elaborated in Principle 31 of the UNGPs. This Principle details the criteria to ensure the effectiveness of grievance mechanisms. It also includes expectation that mechanisms must be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue. Such mechanisms aim to receive and address grievances from individuals and communities that have been adversely affected, or believe they will be adversely affected, by projects or activities funded by the banks.

ABN Amro has been working on the development of its own grievance mechanism, and reports in its last Integrated Report that in November 2023, the Group Sustainability Committee agreed on the procedure for the mechanism and decided to start preparing for the pilot phase which aims to start in 2024. ABN Amro further explains: "During this phase, which will last at least one year and may be extended to two years, the mechanism will be evaluated to assess aspects such as eligibility criteria and the mechanism's broader functioning (in accordance with the UNGP effectiveness criteria [...])."<sup>50</sup>

Overall, there is scarce information on how the banks have tried to use their leverage to influence the selected extractive companies to enable remediation for the human rights abuses they are related to. While nothing was found for ING and Rabobank, ABN Amro reports it had questioned TotalEnergies on its remediation strategy in Myanmar before the company announced in January 2022 its plans to withdraw its operations from the country.<sup>51</sup>

As regards Van Lanschot Kempen, the bank reports it formulated recommendations to TotalEnergies about the Tilenga and EACOP projects as part of its membership to the Dutch Climate Coalition (DCC), Van Lanschot Kempen shared the full list of recommendations but asked Profundo to treat them as a confidential information. However, it can be communicated that the recommendations to TotalEnergies cover human rights topics including the compensation and access to remedy for local communities and affected people as well as TotalEnergies' monitoring of grievances' resolution. Van Lanschot Kempen did not report any timeline related to the implementation of these recommendations by TotalEnergies. In a public statement released in April 2023, the Dutch Climate Coalition declared: "investors forming part of the DCC have maintained dialogue with civil society organisations who have continued to voice issues surrounding the violation of human rights and the absence of well-communicated and adequately-implemented grievance mechanisms by TotalEnergies. Hence, we will evaluate the implementation of appropriate grievance mechanisms, including monitoring systems for continued evaluation of human rights risk exposures; adherence to Free, Prior & Informed Consent (FPIC) and the eight IFC performance standards; and consider the long-term socioeconomic value created by the projects on areas such as local capacity building, job creation and living wages".<sup>52</sup> In addition, The Dutch Fair Bank Guide also informed Profundo that the DCC released a follow-up statement on the 16th of November 2023. In the statement, the DCC explains that it contacted a number of thematic and local experts (including representative of some local communities) to gain a better understanding of the current situation in affected areas in Tanzania and Uganda. The statement also mentions a

number of additional requests that have been made to TotalEnergies, and some persisting gaps in the commitments taken by the company in response to the investors.

Most of the banks acknowledge and commit to carry out their responsibility under the UNGPs to provide or enable remedy when they are connected to human rights adverse impacts through their business relationships. However, no specific examples of cases where the banks provided for or co-operated through legitimate processes to the remediation of adverse impacts have been found in their public disclosure.<sup>i</sup> Van Lanschot Kempen reported in the questionnaire that it has not been involved in such legitimate processes in relation to human rights controversies.

## 2.3 Human rights policies and practices

The results of this study reveal that none of the assessed banks can be considered “frontrunners” in terms of their engagement with extractive companies on human rights issues. These findings call into question how these results compare to the banks’ policies on human rights, which are biannually benchmarked by the Dutch Fair Bank Guide. Therefore, this section compares the banks’ scores on human rights engagement with their scores on human rights in the latest policy update (2023) of the Dutch Fair Bank Guide.<sup>53</sup>

Table 19 provides an overview of the banks’ scores on human rights policies<sup>54</sup> versus their scores on company engagement on human rights issues.

**Table 19 Banks’ scores on human rights policies and practices**

Bank	ABN AMRO	ING	Rabobank	Van Lanschot Kempen
Human rights policies	8.0	6.9	7.8	7.8
Human rights “practice” score in this case study	4.4	2.3	1.6	4.8

While the four banks receive overall high scores for their human rights policies ranging from 6.9 to 8.0 (out of 10) for the four selected banks, the contrast with their “practice” score in this research is striking as shown in Table 19.

Rabobank has the largest gap (6.2) with the bank scoring 7.8 for its human rights policies, while only scoring 1.6 in this case study. ING takes second place with a gap of 4.6 between its human rights policies and engagement. Also, ABN Amro and Van Lanschot Kempen score much better on their human rights policies than on their engagement with extractive companies, however the gap is less with these banks having score gaps of 3.6 and 3.3 respectively.

In their human rights policies, all banks require companies to respect all human rights described in the UNGPs and to commit to meeting their responsibilities to respect human rights. For example, the four banks all require companies to prevent conflicts over land rights and acquire natural

<sup>i</sup> For example, ING received a complaint by community members from Indonesia in 2021 related to a controversial coal power plant see: ING blijft achter financiering van omstreden Indonesische kolencentrale staan. However no information can be found in its human rights report about how ING handled that complaint and whether the remediation has been effective according to the community.

resources only with free, prior and informed consent (FPIC) of peoples with customary tenure rights. However, in this case study, little evidence was found that the banks engage on these topics with the selected extractive companies that violate these rights, with only Van Lanschot Kempen reporting on engagements related to FPIC rights.

Another striking discrepancy relates to the provision of access to remedy. While the banks' human rights policies require companies to have processes to enable the remediation of any adverse human rights impact which they cause or to which they contribute, for half of the assessed banks (ING and Rabobank), no evidence was found of the banks using their leverage to influence the selected extractive companies to enable remediation for the human rights abuses. For example, no timebound goals related to the remediation of grievance by the selected companies was found during the research. This despite the fact that the selected companies are all linked to serious human rights controversies impacting local communities and their livelihoods. For the other half of the assessed banks (ABN Amro and Van Lanschot Kempen) information on enabling remedy was scarce, with both banks only reporting on general goals for one of the companies they are linked to, namely TotalEnergies, without specifying any timeline for their engagement.

Accordingly, the results of this case study indicate a discrepancy between banks' human rights policies and their human rights practices. In spite of banks' commitment to respecting the OECD guidelines and UNGPs, this case study reveals that banks have much to improve upon in terms of leveraging investee and lending companies, tracking performances and communicating about results, and providing for or cooperating in remediation of adverse impacts of investments and lending activities. Subsequently, while banks' human rights policies have been strengthened over the past years, this study is indicative of the necessity to keep track of their implementation as well.

# 3

## Conclusions and recommendations

**This section summarises the main findings of the study. Four large Dutch banks finance extractive companies responsible for human rights abuses. Even though these violations are widely documented by civil society organisations and the media in the public domain, there is a lack of information about the banks' response to these cases of on? human rights abuses. Drawing on these conclusions, recommendations are made by the Dutch Fair Bank Guide to the Dutch banks and the Dutch government.**

### 3.1 Conclusions

Based on the findings in this research project, the following conclusions are drawn:

- Four large Dutch banks, ABN Amro, Rabobank, ING, and Van Lanschot Kempen have been financing (under the form of credit and/or investments) extractive companies causing serious human rights abuses on local communities and/or workers. From January 2018 to October 2023, ING, Rabobank and ABN Amro provided approximately USD 15 billion in loans and underwriting services to the selected companies. Considering the evolution of the financing by the three identified banks in the period 2018-2023, this research finds that ING Group and Rabobank have maintained their financing (loans and underwriting services) to the companies in scope relatively stable throughout the years of the study. ABN Amro, on the other hand, reduced its financing consistently between 2018 and 2021. Since then, no further financing by this bank was identified, which reflects the announcement by ABN Amro in August 2020 that “trade and commodity finance activities will be discontinued completely, and natural resources and transportation and logistics will focus on European clients only”. Regarding their investments, three Dutch banks together held USD 292 million in bonds and shares issued by the selected companies causing or contributing to human rights abuses. ING was the largest investor among the four banks, holding USD 132.4 million in bonds and shares, followed by Van Lanschot Kempen, which held USD 114.4 million, and ABN Amro which invested USD 45 million. The human rights cases included in this report show that the victims of the abuses have till today not received effective remedy for the damage caused by or contributed to by these companies. Information about the cases has been in the public domain for a long time and it is highly unlikely that the banks or their ESG data provider were not able to identify human issues related to the selected extractive companies as part of their screening activities. Apparently, this did not withhold the banks from entering into or maintaining a business relationship with these companies by providing them with corporate loans, underwriting services or by investing in the shares and bonds of these companies.
- In general, banks provide information about their overall ESG screening and engagement processes but are silent about the steps they take in practice to engage on human rights issues with the selected extractive. The assessment reveals that the banks public reporting mainly covers aggregated data on their engagement practices, with a very limited number of company cases, at most. Banks only highlight a few examples of engagement cases without providing information on timebound goals and milestones achieved. It is notable that there is an information gap between what is disclosed by banks on their engagement activities with



companies they are investing in versus their engagement with corporate clients they are providing credits and underwriting services to.

- There is a discrepancy between banks' human rights policies and their human rights practices. While all banks make policy commitments to implement the OECD guidelines and UNGPs, this study reveals that banks do not adequately implement the various steps of due diligence as defined in these international standards. None of the assessed banks have formulated specific, measurable, achievable, realistic, and timebound (SMART)-goals for their engagement. In addition, banks do not explain if and how they are using their leverage on companies to seek to prevent and mitigate human rights violations and enable remediation when they are directly linked to adverse human rights. Finally, while the OECD guidelines explain that meaningful engagement with relevant stakeholders is essential throughout the due diligence process, the research reveals that most often, banks do not explain if and how it is done as part of their engagement with the selected extractive companies.
- While most of the banks acknowledge and commit to provide or enable remedy when they are connected to human rights adverse impacts through their business relationships, no specific examples of cases where the banks provided for or co-operated through legitimate processes to the remediation of adverse impacts have been found in their public disclosure. One bank, ABN Amro, reports that it has been working on the development of its own grievance mechanism which should be launched in 2024.

## 3.2 Recommendations

Based on the findings of this research project, recommendations are made by the Dutch Fair Bank Guide to the Dutch banks and the Dutch government.

### 3.2.1 Recommendations for banks

Banks providing lending to or investments in the extractive sector are given the following recommendations to better manage and address the human rights' risks linked to their business relationships.

#### 1. Banks should enhance accountability and transparency on the implementation of their stewardship and engagement policies at company level for a significant part of their portfolio

Rather than highlighting a few examples of engagement with companies in human rights reports, banks should report more structurally on their engagement with companies. More granular reporting should include company names (at least for companies they have investments in), topic(s) of engagement, goals, milestones achieved, voting records of investor in investee company shareholder meeting. It is worth mentioning that the OECD guidelines for institutional investors refer to all this information as elements which can be included in the public reporting of investors as part of their implementation of the due diligence step "tracking and communicating on results"<sup>55</sup>.

Also, when companies are removed from a bank's exclusion list, the bank should transparently report its rationale for allowing the company back into its investment and/or lending universe. If this reintegration is due to a successful engagement, the variables to consider an engagement as successful should be explained.

Similarly to investors disclosing their voting records in an online portal after Annual General Meetings (AGMs), investors should be able to disclose regular updates on the milestones achieved as part of their engagement efforts with companies and escalation steps taken when results are not satisfactory.

#### 2. Banks should systematically define SMART goals as part of their engagement with companies and take action when insufficient progress are observed

To effectively influence companies, it is critical for banks to formulate SMART goals. Goals, timelines and (intermediate) milestones achieved are essential parameters which needs to be effectively monitored to ensure the credibility and success of an engagement process. The outcomes of this monitoring should be used to decide whether engagement goals need to be reformulated or escalation steps need to be taken. If no progress is observed from the company engaged, the banks should consider divestment (if the banks hold shared and/or bonds in the company), suspension of loan disbursement, or if not possible, to refuse refinancing certain credit lines.

#### 3. Banks should deploy additional efforts to improve public reporting on their engagement efforts with clients

To enhance public accountability, banks should improve their public report on their engagement efforts with clients. In doing so, banks should address the information gap between what is disclosed by banks on their engagement activities with companies they are investing in versus their engagement with corporate clients they are providing credits and underwriting services to. While the information gap can be partially explained by what is mentioned in the OECD Guidelines for Responsible Corporate Lending and Securities Underwriting.<sup>56</sup> "many jurisdictions have legal frameworks, which recognise that a bank has a legal duty to keep its clients' affairs confidential", this does not mean, that all forms of disclosure are impossible. Bank can and should shift their practice away from the status quo. Indeed, as highlighted in the OECD Guidelines<sup>57</sup> "banks can still take steps to promote greater

transparency with respect to client relationships”, for instance they can use their leverage to obtain the consent of their clients to disclose specific information in certain circumstances such as when they are involved in serious human rights controversies.

One possible way, as mentioned in a 2022 report from the Equator Principles and Shift, is for instance to include contractual clauses allowing the bank to make exceptions to general confidentiality clauses to disclose its leverage actions with regard to remedy, if clients fail to take appropriate action towards remedy.<sup>58</sup> The fact that some development banks such as FMO already disclose a significant amount of information about their efforts to engage on complex projects they are financing such as the Barro Blanco hydropower project in Panama<sup>59</sup> shows that it is not impossible.

#### **4. Banks should enhance the integration of stakeholder concerns in the engagement process**

This report provides evidence that banks should strive to improve the integration of stakeholders' voices in their human rights engagement strategy with extractive companies. Banks should ensure that extractive companies in their portfolios respect the rights of workers, local communities, including the most vulnerable groups such as women and children. There are a variety of ways in which banks can ensure the voices of stakeholders, especially rights-holders, are heard in engagement processes, including organising structural stakeholder consultations with civil society organisations demonstrating expertise on the risks associated with the extractive industries, or consulting NGO or trade unions which have access to primary data to assess the conditions of the victims. The engagement with stakeholders to inform the due diligence process should not be limited to the phase of identification and assessment of impacts. As outlined in the OECD guidelines for Responsible Corporate Lending and Securities, impacted rightsholders and their legitimate representatives should be involved in the process to define appropriate forms of remedy. It is also essential that banks pay more attention to consider affected stakeholders' opinions on the progress achieved by engaged companies to assess if an engagement initiative has been successful or not.

While financial institutions' staff working on human rights engagement with companies are often under-resourced, participating in collaborative initiative focusing on human rights such as the PRI-led initiative “advance”, can be a good opportunity for banks investing in extractive companies to better integrate stakeholder concerns in the various steps of their human rights due diligence. The PRI released an engagement focus company list which includes companies active in the metals and mining sector<sup>60</sup> including companies covered in this study.

#### **5. Banks should set up their own effective grievance mechanism to enable stakeholders to raise their concerns**

It is essential that stakeholders can access a channel to raise concerns. Moreover, the creation of a grievance mechanism, at individual or sector level for banks, would be a good practice to further understand the adverse impacts caused by companies in portfolio, and understand what is expected from affected stakeholders as remedial actions. The establishment of a grievance mechanism would enable banks to further develop their knowledge and expertise on the topic of access to remedy. Transparency on the banks' business relationships is an essential prerequisite to ensure that a grievance mechanism is actually useful. Indeed, to be able to use a bank's grievance mechanism to report human rights abuses caused by a company, affected stakeholders need first to know who the financiers of the company are.

### **3.2.2 Recommendations to the Dutch government and DNB**

Governments need to show strong leadership to contribute to a better integration of human rights issues in the due diligence processes of banks. They have a role to play to ensure that the content of international sustainability standards such as the UNGPs and the OECD Guidelines are

embedded into regulation. The following recommendations are made in this regard by the Dutch Fair Bank Guide to the Dutch government and DNB, the Dutch Central Bank.

## **1. Adopt mandatory due diligence requirements for banks**

The discrepancy between banks' human rights policies and their implementation underlines the need for mandatory due diligence requirements that cover the financial sector, including banks. While banks' responsibility to respect human rights has been acknowledged for years, also by banks themselves, the low scores on their human rights engagement with extractive companies underpins that voluntarily measures are insufficient to safeguard the rights of affected peoples and communities.

On 24 May 2024, the European Council formally adopted the Corporate Sustainability Due Diligence Directive, which will oblige large corporations to prevent, mitigate and remedy human rights abuses. After its publication in the Official Journal of the European Union, Member States will have two years from entry into force to transpose its requirements into national law. While downstream financial services are currently not covered by the directive at the European level, the Dutch government can go above and beyond the minimum requirements formulated by the European Union. As a matter of fact, the Dutch financial sector itself is also strongly advocating mandatory human rights due diligence requirements.<sup>61</sup>

This case study has illustrated why the Dutch government should adopt mandatory due diligence requirements that are also applicable to banks when transposing the new directive into Dutch national law. The Dutch government should also make sure to take over the requirement for companies, to conduct heightened, conflict-sensitive human rights due diligence when operating in or, in the case of banks, providing financial services to, companies active in conflict-affected and high-risk areas. In doing so, the law should be designed so as to foster the recommendations formulated in 3.2.1.

## **2. DNB should develop statutory exceptions to a bank's duty of confidentiality to prevent human rights abuses**

As mentioned in the OECD Guidelines for Responsible Corporate Lending and Securities Underwriting, "many jurisdictions have legal frameworks, which recognise that a bank has a legal duty to keep its clients' affairs confidential"<sup>62</sup>. However, the Guidelines also explain that most jurisdictions also recognise specific circumstances, called "statutory exceptions", where a bank may be permitted to disclose confidential information about a client. This can be the case for instance to prevent money laundering or tax evasion. In the Netherlands, DNB, the financial regulator, could consider introducing a statutory exception to such duty of confidentiality to enable banks to disclose confidential information about a client, when after the causing or contributing to serious human rights abuses, the client fails to take appropriate action towards remedy.

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## **Appendix 1 Examples of cases of human rights abuses related to the selected companies**

### **Case 1 Barrick Gold**

Barrick Gold Corporation is a mining company with a large portfolio in gold and copper. Its headquarters are in Toronto, Canada, and it operates in 18 countries.<sup>1</sup> Barrick Gold's operations in Papua New Guinea and Tanzania were surrounded by extensive human rights abuses, while similar serious abuses appear to take place in other mines they exploit, such as in Chile, Zambia and the DRC.

#### **Barrick Gold in Papua New Guinea**

The Porgera gold mine in the Wuangima area, Enga province in Papua New Guinea (PNG) opened in 1990, though alluvial mining was undertaken long before that. The Porgera Joint Venture (PJV) was established. In 2005/6, Barrick Gold acquired 75% of the mine, in 2007 a further 20%. The remaining 5% was in the hands of the PNG government. In 2015, a Chinese company, Zijin Mining, took over half of Barrick's shares in a new partnership called Barrick Niugini Ltd.<sup>2</sup> During its operation, the mine generally contributed to more than a tenth of PNG's annual export revenues.<sup>3</sup>

Even before Barrick acquired the mine, it was aware that there were many problems, including environmental impacts on surface water related to disposal of waste rock and tailings into adjacent river valleys and excessive use of force against men, women and children (including killings, beatings, rapes and gang rapes) by mine security and police guarding the mine. Barrick failed to investigate, acknowledge and address these issues when they acquired the mine, and denied them for a long time.<sup>4</sup> Over 2009 and 2010, Amnesty International documented numerous human rights violations and abuses around the Porgera gold mine. Between April and July 2009, PNG police forcibly evicted villagers living alongside the mine, burning down at least 130 houses and destroying their belongings, gardens and livestock. The police raids had a dual purpose: to address the deteriorating general law and order situation in the Porgera area, and to address increased illegal mining activity in the Porgera mine. Just before the raid PJV provided a special police squad with accommodation, food and fuel, set up to deal with a worsening law and order situation. PJV was also involved in the Law & Order Committee that advised the raid.<sup>5</sup> Due to the demolition of their houses and gardens, residents have claimed they became homeless and can no longer provide for their own food. Studies document the lack of available fertile soil for gardening within the area as a result of land use for mining and an increase in the population. Barrick Gold and PJV initially disputed this, but after long discussions with Amnesty International, they concluded that further investigation was desirable and promised to correct earlier statements on their website. At the same time, Barrick Gold and PJV continued to provide support to the police forces. In 2014, PNG police again set hundreds of homes ablaze.<sup>6</sup>

In February 2011, a report was issued by Human Rights Watch indicating that the violence against people in the area continued. Barrick Gold employed nearly 450 private security personnel, some of whom continued to commit gang rapes and excessive beatings. Subsequent investigations carried out by Barrick and by the PNG police in response to Human Rights Watch's allegations have discovered other alleged incidents of rape by PJV security personnel.<sup>7</sup> As academic researchers also published about violations and testimonies were delivered at the Canadian parliament, the company finally took some action, firing some employees and setting up a remediation framework for female victims of the rapes. Barrick created a short-term (2012-2014) grievance mechanism through which 119 women were provided limited remedy in return for signing legal waivers (a practice disputed by the OHCHR<sup>8</sup>). Another eleven women received a remedy worth four times as much through an out-of-court settlement in 2015. This unequal treatment, as well as the fact that



many victims were not covered by the remediation framework, received widespread criticism from human rights experts and led to unrest around Porgera. There has not been an effective response by Barrick to the allegations of violence by mine security personnel against families who lost their houses and fields, nor to others who suffered from excessive use of force.<sup>9</sup>

Barrick stopped production at the Porgera mine in 2020, as the PNG government refused to extend the mine lease, “because of community unrest and pollution concerns”. This marked another step in a dispute between the PNG government and Barrick Niugini Ltd, as the former tried to give a 20-year lease to state-owned Kumul Minerals Holding Ltd.<sup>10</sup> In 2022, the conflicting parties agreed to establish a new entity, New Porgera Ltd, with 49% ownership by Barrick Niugini and 51% by PNG stakeholders, including Kumul Minerals, local landowners and the provincial and national governments. Barrick Niugini would continue to operate the mine.<sup>11</sup>

The announced reopening stirred a new flow of protests against environmental damage and violence against local people, without adequate reparations for the victims of human rights abuses (which continued after 2012, notably by PNG police). Opponents said New Porgera was created without the involvement of the people most affected, and it stirred violence between clans and tribes. At the same time however, people lost their jobs and businesses during the shutdown of the mine. The PNG government committed to “fix legacy issues”<sup>12</sup>, among others through a US\$60 million fund, but no information can be found about allocation of those funds.<sup>13</sup>

The mine finally reopened towards the end of December 2023, after the PNG Parliament amended legislation that allowed existing compensation agreements for landowners to stay in place, as new agreements could not be established in time.<sup>14</sup> Communities and victims of human rights abuses are holding their breath for what is about to come.

### **Barrick Gold in Tanzania**

Since 2010 Barrick has adopted sustainability policies and joined the Voluntary Principles on Security and Human Rights. However, Barrick’s operations around the North Mara gold mine in Tanzania show that the practice is different, and has not improved much.

In 2006, Barrick acquired Placer Dome company and thereby three mines in Tanzania. It set up Acacia Mining, and later, in 2019/2020, established the Twiga joint venture with the government of Tanzania, whereby the Government of Tanzania agrees to receive a 16% stake in each of Barrick’s mines in Tanzania and 50% of their economic benefits.<sup>15</sup> In 2019, Barrick took over operational control of the mine from Acacia.

The indigenous Kurya people have long engaged in farming, cattle-herding and artisanal mining in the North Mara area. They say the mine has taken their land and increasingly encroached on their way of life. There is a high concrete wall around the mine, and there have been many security issues, which led to increasing numbers of killings, assaults and torture, bringing the death toll to at least 77 and 304 wounded.<sup>16</sup> Most of the killings and other violence have been committed by the “mine police”, consisting of 100 to 150 Tanzanian policemen assigned to provide security at the mine, though even rapes by mine security guards have been reported<sup>17</sup>. The mining company has an MoU with the Tanzanian police, under which they pay, feed, accommodate and equip them. Barrick Gold claims that they are not responsible for police misconduct, but the UK watchdog RAID found that these police are “part of the mine’s security structure and were overseen by its security team.”

Barrick claims that the human rights concerns at the mine are “legacy issues” and that the relationship with the Tanzanian police was reviewed “to establish clear boundaries” since bringing the North Mara mine back under its control.<sup>18</sup> In July 2022, Barrick said it would investigate the incidents reported, but RAID did not receive any information on such an investigation since then.<sup>19</sup> Barrick established a hotline, but in 2019 only 4 human rights incidents were reported and none in 2020.<sup>20</sup>

In 2022, community members told RAID the violence against them had increased over the past 12 months. They said that “mine police” regularly conduct operations in residential areas, allegedly against illegal miners<sup>21</sup>, force their way into homes without a warrant, arbitrarily arrest and beat residents, and fire teargas and ammunition indiscriminately, including near children. Torture seemed to be on the rise, whereby in at least two cases, mine personnel seemed to have been aware of the torture.<sup>22</sup>

In December 2023, MiningWatch Canada published a report about the forced eviction of thousands of indigenous Kuria to make room for the North Mara mine’s expansion. Most people were evicted in December 2022, with the remaining families losing their homes and lands in August and September of 2023. Barrick Gold denied that the evictions were forced, and refers instead to land speculators.<sup>23</sup> MiningWatch also received information about new alleged victims of excess use of force by mine police at the new pit under construction, as villagers are “trying to eke out a living by entering the waste rock dumps that arise where their homes and lands used to be to find residual gold in the mine’s waste.”<sup>24</sup>

On the 27th of March 2024, Barrick announced that its subsidiaries settled out of court with 14 Tanzanian residents who filed a legal action, claiming to have suffered from the killings and injuries by police engaged in the North Mara mine security operations between 2014 and September 2019. No details about the content of the settlement were shared. In 2015, Barrick’s subsidiary Acacia had already settled with Tanzanian victims, while two legal cases are ongoing: one against Barrick by 21 victims in a Canadian court, for violations after 2019, and one against the London Bullion Market Association (LBMA), which has oversight of the London gold market, related to the deaths of two artisanal miners at the mine in July and December 2019.<sup>25</sup>

## **Case 2 Freeport-McMoRan in Indonesia**

Freeport-McMoRan is an American mining company, headquartered in Phoenix, Arizona. The activities of the company mainly focus on copper and gold mining in Indonesia, in South America (Peru and Chile) and North America.<sup>26</sup>

In Papua Indonesia, Freeport-McMoRan invested heavily in the Grasberg minerals district, one of the world’s largest copper and gold deposits. Freeport-McMoRan operates through its subsidiary, PT Freeport Indonesia (PTFI), into which it maintains a 49% stake. Freeport’s contract, originally set to expire in 2021, is extended to 2041 under new terms.<sup>27</sup> Local communities were excluded from ongoing negotiations with PTFI over the extension of Freeport’s mining concession.<sup>28</sup> Freeport Indonesia produced 3 million tonnes of copper concentrate in 2022, an annual record. The company has in recent years transitioned into underground mining around Grasberg.<sup>29</sup>

Since the start of its operations in Papua in 1967, the Grasberg mine has been associated with severe environmental and human rights adverse impacts. Freeport-McMoRan dumped toxic waste in the Otomina and Ajkwa Rivers, and occupied customary lands of the Amungme and the Komoro indigenous peoples.<sup>30</sup>

The company has also been criticised for fuelling armed conflicts in the area. National security forces, hired and paid by Freeport-McMoRan to guard their mining operations, have committed violent and sometimes deadly violations against residents, employees, and rights groups.<sup>31</sup> For example, in 2017, mass lay-offs led to massive strikes, which have been quelled: the company forcibly evicted striking workers from homes, denied them access to corporate hospitals and schools, and blocked their access to bank accounts and credit services.<sup>32</sup>

Freeport states to have carried out a Human Rights Impact Assessment of PT-FI Grasberg in 2022-23.<sup>33</sup>

Early February 2024, the London Mining Network filed a legal action at the UK High Court against the London Metal Exchange (LME or Exchange). The claimants argue that by enabling the global sale of ‘dirty metals’, the Exchange is in breach of UK anti-money laundering and proceeds of crime

legislation. The case details the LME's trading of metal from the Grasberg mine in Papua, Indonesia. "Over 200,000 tonnes of toxic mining waste, known as 'tailings' are thrown into local rivers every day. This practice is considered so harmful to the environment that it is subject to an almost universal ban across the globe. West Papua remains an exception, as one of the few places where it is still practiced, at the cost of both the environment and the indigenous people inhabiting the region of the mine."<sup>34</sup>

### **Case 3      Glencore**

Glencore is the largest multinational commodity trading and mining company in the world. With its headquarters in Switzerland, it operates around the globe, often through subsidiary companies.

#### **Glencore in Cesar region, Colombia**

In the mid-1990s, the subsidiary company Prodeco started coal mining operations in central Cesar region in Colombia. At the time, Cesar was effectively a war zone. Between 1996 and 2006, paramilitary groups waged a terror campaign in the region, gravely affecting farmer communities. In ten years' time, paramilitary forces killed over 3,100 people and forcibly displaced over 55,000 people. Human rights violations committed by paramilitary forces in the same period include murder, assault, rape and forced displacement. In addition, hundreds of people have disappeared. Action by community organisations and labour unions was being severely repressed, eliminating their capacity to function.

Research by the Dutch organisation PAX has shown that the paramilitary groups responsible for these atrocities arrived around the same time as mining multinationals started their operations. According to former employees of Prodeco, the security departments of the mining companies at the time were well-aware of the large-scale violence that was taking place in the region near the mining operations, but continued with their operations without doing anything to guarantee that large-scale human rights violations would stop.<sup>35</sup> To the contrary, in the following years they profited from the consequences, for instance as it enabled Prodeco to acquire lands that previously belonged to displaced farming communities for the expansion of concessions at cheap prices.

The victims of the violence that took place in the mining region between 1996 and 2006 suffer to this day. Many of them still do not know the truth behind what happened to their loved ones. Land has still not been restituted to the displaced families, and the leaders of victim's group continue to be targeted by illegal armed groups when they try to claim their rights, for example when they participate in justice processes. Further, Prodeco has made no contribution to these processes. On the contrary, evidence has recently emerged that the company has for years been infiltrating local civil society organisations to gather information about their activities related to the human rights abuses that took place in the region.<sup>36</sup>

A recent decision by parent company Glencore to divest from Prodeco's mining operations in Cesar has raised the concern among the population that Prodeco will shirk its responsibility to the victims. This is not unfounded: the company has systematically tried to exclude local stakeholder groups in the development of a mine closure plan and continues to delay dialogue with victims on the link between the mining operations and the human rights violations committed.

#### **Glencore in La Guajira region, Colombia**

Glencore owns another problematic coalmine in Colombia "Cerrejón", based in La Guajira. This is one of the largest open-pit coal mines in the world and is fully owned by Glencore. A recent report by local organisations Cinep and Censat, supported by Oxfam, documented human rights violations in La Guajira.<sup>37</sup> Over decades, thousands of Wayuu indigenous people have been resettled from their ancestral land and mining activities have caused extensive environmental damage and pollution, affecting the health of hundreds of thousands of people. Over the course of

its four decades of operation, the Cerrejón mine has been linked to the forced eviction of at least 15 indigenous and Afro-Colombian communities.<sup>38</sup> At times, evictions have been carried out with armed guards and tear gas.<sup>39</sup> The mine is also environmentally hazardous: nearby communities have been inhaling poisonous dust for decades and air, soil and water supplies have been contaminated. Over 336,000 people have developed respiratory complications that are directly attributable to the mine.<sup>40</sup>

There is no public acknowledgment from Glencore regarding the harm caused by their operations in Colombia, let alone the cumulative and irreparable damage resulting from their mining activities. Instead, Glencore started proceedings against the Colombian government in an ISDS. In an Investor State Dispute Settlement (ISDS) transnational companies can sue countries when they believe that a state's decision impacts their investment and future profits. This claim pressures the Colombian state to pay millions of dollars to Glencore because the Colombia's Constitutional Court suspended in 2017 the extraction of coal from the river Arroyo Bruno and diverting the river for this reason.<sup>ii</sup> Glencore refused to comply with the order, started diverting the river and decided to sue the government of Colombia using the ISDS provisions in the UK-Colombia and Switzerland-Colombia bilateral investment treaties.

### **Glencore in Peru**

Glencore is not only active in coal mining but operates globally in all areas of the mining chain and in a range of minerals. Many of these operations by Glencore are connected to allegations of human rights violations. The Business and Human Rights Centre's 2022 Transition Minerals Tracker found, for the second consecutive year, that Glencore had the most recorded allegations of human rights abuses of all tracked companies (70 allegations).<sup>41</sup> One of Glencore's operations in Peru is the Antapaccay copper mine in the province of Espinar. Recent official reports offer new information that show a causal link between Glencore's operations and water and soil pollution in Espinar. The water in the environment around the mine is contaminated with lead and other heavy metals. Glencore has always denied any responsibility for this contamination. A recent report by CooperAccion<sup>42</sup> demonstrates that there is indeed a causal link between Glencore's mining activities and this pollution. Next to this the report shows serious land rights violations. The expansion of the mining project into a new area called Coroccohuayco would involve a significant enlargement of the area concerned. In the negotiation process for the acquisition of land from indigenous communities, serious flaws are documented. The process is being carried out with contradictory information and without providing communities with objective studies necessary to value the land. In addition, the extension of the area would almost obliterate at least one indigenous community (Pacopata) and would therefore require a resettlement plan in accordance with the recommendations of ILO Convention 169 and IFC Performance Standard 5.

## **Case 4 Newmont**

Newmont is one of the world's largest gold companies and a producer of copper, silver, zinc and lead, mining in North America, Latin America, Africa, Australia and Papua New Guinea. Its headquarters are based in the USA. In 2019, Canadian Goldcorp Inc. and Newmont Mining Corp. have merged to form Newmont Goldcorp Corp., now renamed Newmont.<sup>43</sup>

<sup>ii</sup> In 2013 Glencore announced plans to divert the sacred river Arroyo Bruno – a stream which provides water to some 40,000 people – in a bid to extract 35 million tonnes of coal from the riverbed. It would result in the forcible eviction of indigenous communities from one of the only arable parts of the region into the inhospitable desert. The communities started a campaign to stop the diversion of the river and took legal action.

## **Newmont in Guatemala**

The Marlin gold and silver mine in northwestern Guatemala was purchased by Goldcorp in 2006. Serious human rights abuses have been committed during its exploration, until the mine was closed in June 2017.<sup>44</sup>

Since the mine began operating in 2003 there have been tensions with the local population. Indigenous communities protested because of a lack of consultation over its operations, disagreements over land acquisition and the failure of the company to address risks associated with the mine, such as impacts on local water sources (several reports find high concentrations of heavy metals in drinking water) and cracks in houses. Tensions have been exacerbated by the way in which the security forces have dealt with protests and by attacks, carried out by unknown persons, on anti-mining activists, resulting in at least four deaths and dozens of injuries, especially between 2005 and 2011. No one has been arrested or brought to justice for either of these events.<sup>45</sup>

After a number of other formal attempts to raise concerns about the mine, including local referenda and with the IFC and the OECD National Contact Point in Canada, a petition dating from 2007 led to a decision in 2010 by the Inter-American Commission on Human Rights (IACHR) to order that the Guatemalan government suspend the Marlin Mine operations. This was not done, partly as the Canadian government lobbied against the suspension.<sup>46</sup> In 2011, the IACHR even lifted the suspension order, instead requiring Goldcorp to adopt the necessary measures to ensure that the members of 18 Mayan communities have access to potable water.

However, in 2017 Goldcorp announced the mine was entering into a closure and reclamation phase. The operations at the Marlin Mine ceased on May 31, 2017. The communities presented a formal list of grievances to the company, and a dialogue process started, which included community members, mine employees, and the federal and provincial governments. According to the latest update from Newmont, all grievances are resolved, except two (one of them due to security issues).<sup>47</sup>

In the period of 2005 to 2011, Goldcorp and the Guatemalan government established a pattern of repressing community grievances violently as well as through criminal prosecutions, which became a model for repressing anti-mining protests around Latin America. Those tactics continue to leave families and communities financially affected and psychologically traumatized. In June 2023, the Guardian interviewed inhabitants, who spoke of depression, anxiety, alcohol addiction, water scarcity, forced migration (notably through Mexico to the USA), family feuds and unresolved community divisions. The Guardian also found only "small clusters of wilting trees scattered across the parched and heavily patrolled razed mountain", which were planted to address the community's grievances. The newspaper was not granted access to the mining site.<sup>48</sup>

## **Newmont in Ghana**

Newmont is also involved in other countries and projects where similar human rights violations have been documented. In Ghana Newmont Gold Ghana Limited has two projects and operational sites, in Ahafo and in Akyem. Newmont started expanding its operations in the Ahafo North Project in 2020. In the rush to expand operations, serious human rights violations have been overlooked. Over 200 affected farmers and community activists who demanded respect for human rights and fair and adequate compensation face persistent harassment. Recent research, conducted by the Ghanaian NGO, Livelihood and Environment Ghana (LEG), has exposed "unsafe living and working conditions, corruption, lack of proper and adequate consultation and consent, noise and water pollution, assault". The company is also charged with failing to comply with recommendations made by local institutions - and those of the country's Commission on Human Rights and Administrative Justice, CHRAJ.<sup>49</sup> In January 2024 the same organisation has issued an ultimatum to Newmont to pay outstanding compensation for affected farmers, stating that the company is violating the constitution and the minerals and mining act that is asking for prompt, fair and

adequate compensation.<sup>50</sup> Earlier, in October 2009, Newmont was found negligent for having spilled cyanide at its Ahafo mine that resulted in water contamination and fish kills. The Ghanaian Environmental Protection Agency (EPA) found that Newmont failed to install preventative procedures.<sup>51</sup>

### **Newmont in Mexico**

Newmont's Peñasquito open pit mine in the State of Zacatecas in northern Mexico produces gold, silver, lead and zinc. It started commercial production in 2010.<sup>52</sup>

Indigenous groups and human rights activists in the area have been complaining about negative effects of the mine on the rights to health and a healthy environment of the population living around the mine. They also complain that their houses have become unstable and the grazing land of their animals is affected. In 2019 the groups requested that the Mexican government investigate the damage and sanctions Newmont.<sup>53</sup> Newmont responded that some details of the reports the groups refer to are not correct.<sup>54</sup>

The population has also complained of the drying up of water sources, desiccation of land and thus a reduction of agricultural income, as the mine is using a lot of groundwater for its operations. The mine has repeatedly requested and received groundwater extraction concessions from the Mexican government, in addition to tax exemptions. A current concession is expiring in 2024. Because of the community complaints, Newmont has started providing drinking water to the communities around the mine, but people are wondering for how long. In addition, people have seen children getting skin problems as they are bathing in surface water.<sup>55</sup>

In addition, workers have demanded better payments and organized several strikes. The latest strike, in 2023, took over four months. The 2800 unionized workers decided to strike in order to put pressure on Newmont to comply with clauses of the collective bargaining agreement relating to issues like health and safety and pay.<sup>56</sup> The strike ended in October 2023 when workers agreed to a 8% pay rise and profit payments in 2024, as well as payment of 60% of wages lost since the strike began.<sup>57</sup>

## **Case 5 Orrön Energy in South Sudan**

Orrön Energy was previously known as Lundin Energy, a Swedish oil company that merged with the Norwegian oil company Aker BP in 2022. A tiny remainder of Lundin Energy survived under the name Orrön Energy, to retain Lundin Energy's legal liabilities as well as its human rights responsibilities.

In 1997, Lundin/Orrön Energy entered into an agreement with the Government of Sudan to exploit oil in an area (block 5A) that was not under Government control. This happened in the midst of a civil war in which all sides routinely committed international crimes. Lundin's entry into the region set off a military campaign by the Sudanese government to secure the area where Lundin was operating. An estimated 12,000 people died as a result of this military campaign, and 140,000 civilians were violently displaced.

In 2010, the European Coalition on Oil in Sudan published the report 'Unpaid Debt', in which it argues that Lundin Energy, together with the other members of the operating consortium Petronas and OMV, may have been complicit in international crimes. Mass violent displacement of significant parts of the population enabled the exploitation of its concession and the company benefitted from these crimes. The company allegedly worked alongside perpetrators of crimes and provided them with material support.<sup>58</sup> Subsequently, the Coalition called on the Swedish Government to investigate Lundin's involvement.

That same year, the Swedish Prosecution Authority opened a criminal investigation into links between war crimes and the company's operations in Sudan. The charges include aiding and abetting systematic and intentional attacks on civilians and their property, killing and injuring of

civilians, enslaving adults and children, use of child soldiers, indiscriminate bombing, deliberate destruction of means necessary for survival, pillage, and forced displacement. The Prosecutor has requested the court to declare the company's entire Sudan operation a criminal enterprise and forfeit €230 million as criminal benefits.

In November 2021, both the former Chair and CEO of Lundin Energy were indicted for complicity in war crimes. The suspects stand accused of repeatedly requesting the Government of Sudan for military interventions in the interest of their company, with terrible consequences for the population.

The trial opened in September 2023 and is expected to last until 2026. It is the largest criminal trial in Swedish history. Moreover, it is the first time since Nuremberg that a listed company is brought to court its complicity in international crimes.

Lundin/Orrön Energy, which has endorsed the UN Guiding Principles on Business and Human Rights, denies any wrongdoing. Its legal defence strategy includes efforts to delay the course of justice, to discredit the value of NGO reports and to undermine the credibility of witnesses. Its request to the court to separate the civilian claims for damage from the criminal trial was awarded, which, according to the prosecutor, effectively denies the plaintiffs the right to reparation.

In December 2021, Lundin Energy and the Norwegian oil company Aker BP announced that they would merge their assets.<sup>59</sup> PAX, Amnesty International and 23 other humanitarian and human rights organisations called on Aker BP and its main shareholder Aker ASA to amend the proposed merger transaction with Lundin Energy as it would strip Lundin off of the financial means to come to terms with its South Sudanese legacy and deny victims of war crimes access to their right to effective remedy.<sup>60</sup> The merger took place nonetheless, with the support of an overwhelming majority of Aker BP's shareholders.<sup>61</sup> Following the merger, Lundin Energy lost 98% of its value, and its market capitalization plummeted from USD 12,000 million to USD 200 million. Consequently, it is unlikely to be able to pay the costs of legal defence and the requested forfeiture of criminal benefits, let alone contribute to the remediation of victims in South Sudan.<sup>62</sup> In 2022, eight civil society organisations filed a complaint with the Norwegian National Contact Point (NCP) for the OECD Guidelines against Aker BP and Aker ASA. The NCP is expected to assess the complaint in the Spring of 2024.

## **Case 6 Rio Tinto**

Rio Tinto is an Anglo-Australian multinational mining and metals company. The company's segments include iron ore, aluminium, copper & diamonds, energy & minerals and other operations. The multinational states to work across six continents in 35 countries.

### **Rio Tinto in Myanmar**

From 1996 until 2010, Rio Tinto (through Ivanhoe Mines and later Turquoise Hill Resources) was involved in three mines in Myanmar (Sabetang, Kyisintaung and Letpadaung sites, under the Monywa project), whose operations were tainted by human rights abuses, such as forced evictions and violence against villagers and monks opposing mining activities. These were detailed in the 2015 report 'Open for Business? Corporate Crime and Abuses at Myanmar Copper Mine', by Amnesty International.<sup>63</sup> The case was described in more detail in various previous Fair Finance Guide publications.

In 2010, the Monywa project was taken over by the Chinese company Wanbao Mining and UMEHL, the Myanmar military company. From 2006 to 2011, when the deal was completed, Ivanhoe Mines set up a structure to evade public scrutiny and sanctions related to Myanmar. To date, no actions on this case have been reported showing that Rio Tinto takes or has taken responsibility for any of the human rights violations/abuses.<sup>64</sup>

## Rio Tinto in Guinea

Currently, Rio Tinto is involved in the development of the Simandou iron ore mine project in Guinea, West Africa, where the world's biggest untapped high-grade iron ore deposits can be found. In August 2022, Rio Tinto and Winning International Group, a Singapore-based company with roots in China, agreed to co-develop the railway and port infrastructure for the project, with mining slated to begin by 2025. Human Rights Watch investigated the plan and two environmental and social impact assessments, commissioned by the Winning consortium, and concludes that the Simandou project threatens surrounding communities' access to land and water, affecting more than 100 square kilometres of land. Human Rights Watch also refers to Rio Tinto's negative human rights impact around a bauxite mine in Guinea, where 13 neighbouring villages accused the mine of land grabbing and destruction of their environment and livelihoods, in violation of World Bank loan conditions. Rio Tinto declared it will monitor a mediation process with these communities, and to develop the Simandou project in accordance with the UN Guiding Principles on Business and Human Rights, but there is enough reason to believe that this process needs to be monitored closely.<sup>65</sup> Recently, it has been announced that the Simandou project is now a partnership between Rio Tinto, the Guinean government and at least seven other companies, including five from China.<sup>66</sup>

## Rio Tinto in Madagascar

QIT Madagascar Minerals (QMM) is a Rio Tinto subsidiary (80% ownership<sup>67</sup>). It operates a mine near Fort Dauphin in the Anosy region of south-eastern Madagascar, which is part of a unique ecosystem, a littoral forest occurring in the sandy substrates close to the Indian Ocean.<sup>68</sup> The mine, opened in 2008, produces ilmenite, which is a major source of titanium dioxide, mainly used in products such as paints, plastics and paper. It also produces monazite, a mineral that contains elements used to produce the magnets in electric vehicles and wind turbines.

The most important human rights concerns revolve around the mine's impacts on water quality, leading to health risks for the population and negative impacts on the livelihoods of fishermen. People living in villages around the mine have long complained about these impacts. Locals, civil society groups and media have been accusing the company of damaging the endangered forest, threatening rare endemic species, forcing villagers off their land without proper compensation, destroying fishers' livelihoods and failing to honour promises to employ local people.

On the 3<sup>rd</sup> of April 2024, it was revealed that 64 inhabitants of the villages around the mine filed a lawsuit against Rio Tinto for contamination of lakes and waterways, upon which 15,000 people in the area depend for their drinking and domestic water supply. They are assisted by law firm Leigh Day, which found elevated levels of lead in the blood of people living in the area around the mine (including children), exceeding World Health Organisation (WHO) thresholds beyond which medical care is recommended. Scientific studies have found that children with blood lead levels above the WHO's threshold of 5 micrograms per decilitre are likely to suffer at least some amount of mental impairment as a result. Leigh Day states that people affected by the lead and uranium pollution now urgently need ongoing monitoring of the lead levels in their blood and medical care for high-risk groups such as children and women of child-bearing age.<sup>69</sup>

This is the first time that the actual health hazards have been quantified, though experts already found elevated levels of radioactive material such as uranium in the surface water by 2017. In addition, the extractive industry watchdog Publish What You Pay found in a March 2022 community survey that at least 27 fish species had disappeared from the lakes since the start of the Rio Tinto mining operation. This was in part due to the building of a weir to prevent sea-water from entering the lake system, but also to failings in the treatment of water used for mining, through which harmful mine waste was released several times in surface water bodies (at least in 2010, 2018 and 2022). As a result, local fishermen lost a lot of income.<sup>70</sup>



Following the 2022 dead fish incident, QMM and the Malagasy environmental regulator analysed a series of water samples. The company says the analysis revealed no significant change to water quality in the surrounding water bodies and no link between the mine's activities and the dead fish, but despite requests from civil society actors and the Intercept, the report has not been made available to the public. Several scientific experts have however concluded, even from QMM water reports, that it is highly likely that the mine has a detrimental effect on regional water quality. QMM was also found to have breached a buffer zone around the mining site, imposed by the Malagasy regulator.<sup>71</sup>

In May 2022, QMM set up a grievance redressal process. Nearly 8,800 villagers registered complaints, but serious concerns were raised around the ensuing compensation process and the complaint mechanism itself, including reports that villagers were coerced into signing agreements and had "gagging orders" placed upon them – instructed not to share signed documents with anyone, which is a breach of international grievance procedure standards.<sup>72</sup> After the fish deaths in 2022, QMM also set up facilities to help some communities access safe drinking water. However, further unrest, as well as the mentioned lawsuit show that this has far from satisfied the local population.<sup>73</sup> Between 26 June and 3 July 2023, thousands of protesters blocked the road to the mine in protest over inadequate financial compensation on loss of livelihoods, water pollution, and community exclusion from consultations when the mining licence was renewed by the government. This sparked a violent response from the police, possibly instigated by complaints of QMM, leading to 75 arrests and 6 people injured. While some of the arrested people were released, many still remain in arbitrary detention. During another protest against the mine on 20 October 2023, three activists were shot and killed.<sup>74</sup>

According to Publish What You Pay Madagascar and the Andrew Lees Trust (UK), a so-called "permanent solution" to QMM's wastewater management in the form of a 13m dollar treatment plant, "is no longer a viable long-term option". After two years of inquiries into this new treatment plant process, QMM appears to have acknowledged that there is no in-country capacity to manage the waste residue – which seems to be amassed in 'geotextile bags' on the mine site, the exact contents of which remain unknown.<sup>75</sup>

An op-ed by a Malagasy researcher and activist in Mongabay expressed the local people's demands as follows: "We aren't telling them [QMM] to cease their activities, because we know that despite all the wrong that they've committed, the region still needs mining for its development. What we are calling for, among other things, is an independent audit of the compensation process, the water quality and mine tailings management. We are also calling for the creation of a grievance mechanism which will truly respond to people's concerns and that complies with international standards – not only by giving them financial compensation, but by affording them their dignity and entitlements. This is something which for the past 15 years they've been denied. The story of QMM's mining operation is one of asymmetrical power between the company and government on one hand, and the local community on the other."<sup>76</sup>

## **Case 7 Shell in Nigeria**

Shell plc is an international oil company that explores for crude oil and natural gas around the world. It was a Dutch, and later on an Anglo-Dutch company based in the Netherlands, known as Royal Dutch Shell, but moved its headquarters to the UK and became a British company in January 2022.

In 1958 Shell was the first multinational company to start the exploitation of crude oil in the Niger Delta. Oil exploration and production in Nigeria must be undertaken in joint ventures involving the state-owned Nigerian National Petroleum Corporation (NNPC) and one or more oil companies within production sharing contracts. The NNPC is the majority shareholder in all these joint ventures, while the non-state companies act as the operators, managing daily business activities.

Shell Petroleum Development Company of Nigeria Limited (SPDC) is Shell's main operator in the Niger Delta as part of a joint venture with NNPC (which holds 55 percent), SPDC (30 percent), Total Exploration and Production Nigeria Limited (TEPNG) (10 percent) and Eni subsidiary Nigerian Agip Oil Company Limited (NAOC) (5 percent).<sup>77</sup> SPDC alone operates over 30,000 square kilometres,<sup>78</sup> an area crisscrossed by over 3,000 kilometres of pipelines and flowlines, punctuated by wells and plants.<sup>79</sup>

In the last six decades of oil exploration, frequent oil leaks have heavily polluted the Niger Delta. Every year, about 40 million litres of oil are spilled, with nearly daily reports of new leaks and spillages.<sup>80</sup> These include hundreds of leaks along pipelines owned by Shell, who claims that the majority of leaks are caused by local criminal groups that sabotage the pipes to steal the crude oil.

The consequences for the communities living in the Niger Delta are severe. The UN Environmental Program, UNEP, conducted an independent assessment of the environment and public health impacts of oil contamination in Ogoniland, one of the regions most affected in the Niger Delta, showing that the oil pollution has caused 'an appalling level of pollution', including the contamination of agricultural land and fisheries and drinking water, and exposing hundreds of thousands of people to serious health risks. The UNEP report concluded that: "The Ogoni people live with this pollution every minute of every day, 365 days a year. Since average life expectancy in Nigeria is less than 50 years, it is a fair assumption that most members of the current Ogoniland community have lived with chronic oil pollution throughout their lives. Children born in Ogoniland soon sense oil pollution as the odour of hydrocarbons pervades the air day in, day out."<sup>81</sup>

In addition, with little employment opportunities in the region, three quarters of the local population depend on fishing and farming to survive, but the polluted waterways and contaminated farmland now hardly yield food. In December 2020, 9 years after the UNEP-report, an investigation by Amnesty International, Friends of the Earth Europe, ERA/Friends of the Earth Nigeria and Milieudefensie/Friends of the Earth Netherlands showed that Shell and the Nigerian government did not properly implement the "emergency measures" proposed by UNEP. The affected communities are still suffering health risks, struggling to access safe drinking water, and unable to earn a living due to the contamination of waterways.<sup>82</sup>

Holding Shell accountable for the human rights abuses and pollution has been a major obstacle for the affected communities, who have been fighting for decades to get the company to clean up the mess and provide redress. In 2011, the UN Environment Programme (UNEP) documented the devastating impact of the oil leaks in the region and urged Shell to clean up the pollution. Nearly 10 years later in June 2020, Amnesty International reported that Shell started cleaning works on only 11 percent of planned sites, leaving vast areas contaminated. The researchers in fact found that even areas declared clean by the government regulator were still contaminated with crude oil, with black encrusted soil and oily sheens on waterways in multiple locations.<sup>83</sup>

Recent legal proceedings against Shell have been promising, despite Shell's continuing efforts to escape accountability and deny responsibility. In November 2020, a Nigerian court ruled that Shell has to pay USD 467 million in damages for a 1970 oil spill that severely affected the Ejama-Ebubu community after the polluted waterways destroyed their livelihoods and caused numerous diseases.<sup>84</sup> Shell denies causing the spill and proceedings following Shell's appeal are ongoing.<sup>85</sup> In February 2021, the UK Supreme Court ruled that the Ogale and Bille communities can bring claims against the company and its Nigerian subsidiary in an English court, which was seen as a landmark decision allowing for transnational corporate accountability.<sup>86</sup> Recently, over 13,000 people from Ogale and the Bille communities were entitled to join in their individual claims that seek compensation for individual loss of livelihoods due to the ongoing water pollution and health impact.<sup>87</sup>

In January 2021, a Dutch court ruled in favour of four Nigerian farmers in a case started in 2008. The judges ruled that Shell's Nigerian subsidiary is responsible for four out of the six pipeline leaks covered by the lawsuit and that the mother company Royal Dutch Shell had neglected its duty of

care to prevent these leaks. Shell had initially decided to lodge an appeal in cassation but agreed to pay 15 million euros as compensation in a settlement agreement in December 2022.<sup>88</sup>

After decades of dominating the onshore oil extraction in Nigeria and causing major oil spills that resulted in costly repairs and high-profile lawsuits, Shell recently announced it is selling SPDC to Renaissance Africa Energy Company, a consortium of ND Western, Aradel Energy, First E&P, Waltersmith and Petrolin.<sup>89</sup> Communities and civil society organisations worry Shell's divestment is an attempt to evade accountability for the long-standing damages for which most communities to this date have not seen any remedy.<sup>90</sup>

## **Case 8 TotalEnergies**

TotalEnergies ("Total") is a French multinational integrated oil and gas company founded in 1924 and one of the seven "supermajor" oil companies. The company operates in more than 130 countries and its businesses cover the entire oil and gas chain.

### **TotalEnergies in Uganda and Tanzania**

In Uganda Total operates through its subsidiary, Total E&P Uganda. Since 2006, a series of oil discoveries under and around Lake Albert in the West of Uganda have led to investment by a consortium of multinational companies, in particular Total, CNOOC and Tullow, as well as by the Ugandan Government.<sup>91</sup> The Lake Albert oil extraction and development project entails concessions for exploration and extraction to the Joint Venture Partners, with Total operating the oil fields in the northern part of the lake, the Tilenga area, while CNOOC operates those in the southern part, the Kingfisher area – and for a consortium to build a refinery in the Hoima district, where some of the oil will be refined for national and regional markets. A pipeline of 1443 km, passing mostly through Tanzanian territory (79% of the pipeline located Tanzania and 21% in Uganda), will take the oil for export to the Indian Ocean port of Tanga on the Tanzanian coast.<sup>92</sup> The pipeline is called the East African Crude Oil Pipeline (EACOP), and will be the longest heated pipeline in the world.<sup>93</sup> The pipeline will traverse 231 villages in Tanzania and 178 in Uganda.<sup>94</sup> Nearly 2,000 square km of protected wildlife habitats will be negatively impacted by the EACOP project.<sup>95</sup>

On 23 October 2019 a first court case was filed against the project after Total failed to include satisfactory risk prevention measures for human rights defenders, and better mitigation measures to address adverse effects in the project.<sup>96</sup> In September 2020, two research reports, "New Oil, Same Business?"<sup>97</sup> and "Empty Promises down the Line?"<sup>98</sup> highlighted the major risks of these oil projects. The reports included testimonies of community members who were harassed, intimidated, and forced to leave their lands without receiving adequate compensations. The testimonies also mention that local communities were never involved in the decision-making or consulted about adequate compensation contrary to Uganda law.

Recent reports and data, all from 2023, show that the situation did not improve. On the contrary. A report of Human Right Watch from July 2023 showed how affected communities endured pressure and intimidation to agree to inadequate levels of compensation.<sup>99</sup> The local Ugandan organisation, AFIEGO, published in November 2023 a report mentioning that 96.6% of affected households did not receive replacement land equivalent to that impacted by the project, while 78.1% received delayed, unfair, and inadequate compensation.<sup>100</sup> In December 2023 reports by Global witness and Human Rights Watch<sup>101</sup> uncovered the bullying and intimidation of communities affected by EACOP. Global Witness received reports that Total's subsidiary staff or contractors threatened defenders fighting for compensation or moved together with armed officials to visit communities.<sup>102</sup>

Also new legal cases were filed in 2023. In June 2023 a legal case was filed seeking reparation for damages as a result of the project, including forceful evictions, deprivation of livelihoods, flooding, damage of property, insufficient and delayed financial compensation, threats and arrests of

protesters.<sup>103</sup> In September 2023, another legal action was launched, seeking to hold Total liable for 'climaticide action'.<sup>104</sup>

The human rights and environmental risks involved with this project have caused many financiers to withdraw. TotalEnergies is now turning to Chinese and African financiers as lenders of last resort. The project still does not have committed financing in place and financial close has reportedly been pushed back again until June 2024.<sup>105</sup> However, in December 2023, the first 100 km of pipes were delivered in Tanzania and a representative of the Tanzania Petroleum Development Corporation (TPDC) declared that construction of the pipeline will commence in April 2024.<sup>106</sup>

### **TotalEnergies in Mozambique**

Total is also involved in other countries and projects where similar human rights violations have been documented, showing that the EACOP-project is not an exception. In Mozambique Total is involved in an LNG project that includes ongoing insurgent attacks, human rights abuses and critical impacts on local ecosystems. Forced displacements to make way for the project have resulted in people losing their homes and livelihoods. Fishing communities have been moved 10 kilometres inland, depriving them of their traditional income. Inadequacies in the human rights due diligence conducted by Total led to severe consequences, including during the Palma massacre in March 2021.<sup>107</sup> A criminal complaint is recently filed against TotalEnergies in France for involuntary manslaughter and failure to assist subcontractors in danger.<sup>108</sup>

## **Case 9      Trafigura in Côte d'Ivoire**

Trafigura is a leading global commodities company. These days, it is one of the world's leading suppliers of metals and minerals, oil and petroleum products, gas and power. It employs over 12,000 people worldwide and has a global network of logistics, assets and more than 60 offices.<sup>109</sup>

In August 2006, Trafigura sent a ship named Probo Koala with highly toxic waste material (dirty by-products of crude oil refining) to Ivory Coast. The company had tried and failed to dispose of the waste in various places, including The Netherlands, before it paid a local company in Ivory Coast just under US\$ 17,000 to dispose of the waste. The local company ended up dumping the waste illegally in 18 locations around Abidjan (the economic capital of Ivory Coast), close to homes, workplaces and schools. This led to an environmental disaster and severe impacts on people's health and livelihoods.<sup>110</sup>

Very quickly, people all over Abidjan experienced detrimental health effects such as respiratory difficulties and skin irritations. By the end of October 2006, more than 100,000 people had to be treated, according to official records. Between 15 and 17 people died as a result of the dumping, and many people have lived in fear of the long-term impacts on their health and the health of their children.<sup>111</sup> The clean-up of the sites took several years. In 2018, a United Nations Environment Programme (UNEP) environmental audit finally concluded that there was no immediate risk of contamination anymore, though it recommended further monitoring.<sup>112</sup> Amnesty International made a case for monitoring the long-term health effects of the people who lived in the neighbourhood.<sup>113</sup>

Trafigura claimed that it did not have any responsibility and that the waste material was harmless<sup>114</sup>, but following the arrest of two members of its senior management by the Ivorian authorities, the company reached a US\$ 195 million settlement with the government of Ivory Coast. In exchange for this amount, the government would not pursue criminal charges. The amount was meant to rehabilitate the affected areas and to compensate the victims. This process was finalized in July 2012, but questions remain about the effectiveness of the remedy measures.<sup>115</sup> At the same time, Trafigura's lawyers repeatedly threatened anyone worldwide who sought to find out more about the dumped waste and offered the drivers of the local company sums of money to lie about the substance and its links to Trafigura<sup>116</sup>, but The Guardian discovered from internal emails

that the company was already aware of the dangers of such waste dumping before the operation was finalized.<sup>117</sup> Criminal and civil proceedings were launched against Trafigura in several countries. In the UK, law firm Leigh Day represented 31.000 Ivorian victims in civil claims against Trafigura. Those claims were settled out of court in 2009, whereby Trafigura maintained it was not liable.<sup>118</sup>

Recently, in November 2023, finally the Ivorian government was also found guilty for failing to protect the human rights of the victims, through a verdict reached at the African Court on Human and People's Rights. The Court noted that while the Ivorian government allowed hazardous waste to be imported, endangering the right to life and to environmental rights of its citizens, multinational companies like Trafigura have an independent obligation to abide by international law, which extends to the identification and remediation of the consequences of their actions. The African Court ordered the establishment of a compensation scheme for victims, an independent inquiry into the criminal and civil liability of all parties involved. It is unlikely that the Ivorian government will implement the judgement, as in the meantime the country withdrew its declaration that gave individuals and nongovernmental organisations the right to directly bring cases of human rights violations against it before the African Court.<sup>119</sup> This makes it all the more important that a multinational company like Trafigura takes up its responsibility to admit liability and provide full redress to victims.

Currently, Trafigura publishes a yearly Sustainability Report and in 2022 it published a Human Rights Report, both of which contain general information about the way the company aims to respect human rights.<sup>120</sup> Apart from its failure to take responsibility for the waste dumping in Ivory Coast, the company is also often found to bribe public officials, such as in Angola and Brazil. At the end of 2023, the Swiss federal prosecutor's office said that Trafigura failed to take necessary organisational measures to prevent the payment of bribes in Angola between 2009 and 2011.<sup>121</sup>

## Case 10 Vale in Brazil

Vale is a Brazilian company and the world's largest producer of iron ore, pellets, and nickel. Vale is present in more than 20 countries.

On 25th January 2019, the tailings dam of the Brumadinho iron mine, in the state of Minas Gerais in south-eastern Brazil, operated by Vale SA, collapsed and unleashed a tidal wave of waste and mud (11.7 million cubic meters) that engulfed homes, businesses and residents in its path. In this tragedy, 270 lives were lost. It was one of the deadliest mining accidents in Brazil history.<sup>122</sup> The sirens that would have alerted workers if the dam burst, were destroyed by the mud flow before anyone could sound the alarm.<sup>123</sup> After flowing more than five miles downhill, the mud reached the Paraopeba River, polluting areas downstream with toxic substances. In January 2020, the Brazilian state prosecutors charged Vale's former chief executive, Fabio Schvartsman, and 15 other people with homicide.

According to an investigation from the New York Times, some experts reported that all the elements of a potential catastrophe had been present, and warning signs of structural problems that could lead to a collapse have been overlooked, for years.<sup>124</sup> The investigation also reveals that questions about the safety of the dam had been brushed aside for years. An internal report showed that Vale knew that the Brumadinho dam was unsafe as early as 2003.<sup>125</sup> Beyond the enormous number of victims from this accident, the environmental and social impacts are disastrous including water pollution and biodiversity loss, soil contamination and loss of livelihood for villagers. The 7 billion-dollar settlement between Vale S.A. and the state of Minas Gerais was concluded without the inclusion of civil society and representatives of the affected communities. Funds have been used for infrastructure investments in the state, such as a regional road connecting areas with mining projects, rather than visible reparations for the affected communities. Indigenous villagers depending on the now polluted Paraopeba River are up till today still lacking safe land, water & food.<sup>126</sup>

Vale has also been fined in corruption cases. In 2022, the Brazilian Office of the Comptroller General (CGU) fined Vale over 17 million dollars for the violation of the Anti-Corruption Law due to the company's interference with the Brumadinho dam inspection.<sup>127</sup> In 2023, Vale S.A. agreed to pay 55.9 million dollars to settle the Securities and Exchange Commission (SEC) case, filed in the United States, for false and misleading disclosures in public sustainability reports that assured investors that Vale's infrastructures were compliant with internationally recognized safety standards.<sup>128</sup>

In terms of mining safety, Vale has 27 mining dams currently operating under emergency protocols in the same Brazilian state of Minas Gerais, with 2 dams under "Level 3" threat which indicates an imminent risk of rupture. Vale was fined 46 million dollars for failing the legal deadline to decommission all upstream mining dams by 2022 to avoid a new disaster.<sup>129</sup>

The Brumadinho dam disaster was not the first tailing dam disaster of Vale in Brazil. In 2015 a dam collapse in the southeastern city of Mariana caused a giant mudslide that killed 19 people and severely polluted the Rio Doce river. Vale faces a \$3,8 billion claim by victims of this 2015 Mariana dam break in a recent lawsuit, launched in the Netherlands on the 19th of March 2024.<sup>130</sup>

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## Appendix 2 Scoring approach: guidance and scoring per indicator

In this appendix, the tables for scoring on the indicators can be found.

Table 20 presents the approach for scoring on section A of the research methodology which focuses on the identification, qualification, and prioritisation of human rights issue(s) and risk(s) by the bank.

**Table 20 Scoring table for section A: Identification, qualification and prioritisation of human rights issue(s) and risk(s)**

Indicator		Criteria	Scoring guidance	Points
A1	The bank has processes to identify actual and potential adverse human rights impacts	The bank screens its portfolio on human rights issues	No ongoing screening / no information	0
			The bank screens its lending and/ or investment portfolio on human rights issues	0.5-1
			The bank screens its portfolio and the screening methodology includes assessment of high-risk variables: geography, sectors, products, governance context (including weak rule of law, or conflict zones).	1.5-2
		The bank consults civil society organisations, global trade unions and/or legitimate representatives of impacted rights-holders as part of its process to identify actual and potential adverse human rights impacts	No/no information	0
			Yes, the bank reports it is doing it but does not illustrate it with specific examples	1
			Yes, the bank reports it is doing it and provides evidence of specific cases	2
A2	The bank has identified human rights incidents for the selected companies		For none of the company/ no information	0
			For less than half of the selected companies	1
			For half or more than half of the selected companies	2
			For all the selected companies	3
<b>Maximum score for Section A</b>				<b>7</b>



Table 21 presents the approach for scoring on section B of the research methodology which focuses on the bank’s usage of leverage to influence companies.

**Table 21 Scoring table for Section B: using leverage to influence companies**

Indicator	Criteria	Scoring guidance	Points
<b>B1</b>	The bank engages on human rights topics with the selected companies	For none of the companies/ no information	<b>0</b>
		For less than half of the selected companies	<b>1</b>
		For half or more than half of the selected companies	<b>2</b>
		For all the selected companies	<b>3</b>
<b>B2</b>	The bank sets timebound goal(s) for engagement	Never	<b>0</b>
		For less than half of the relevant selected companies	<b>1</b>
		For half or more of the relevant selected companies	<b>2</b>
		For all of the relevant selected companies	<b>3</b>
	Scope question (applicable only for banks linked to the selected companies through their lending AND investments)	The bank provides information on timebound goals for lending OR investments activities	<b>0.5</b>
		The bank provides information on timebound goals for both lending AND investments activities	<b>1</b>
<b>B3</b>	The bank involves (directly or through companies) multiple stakeholders, including CSOs/trade unions/ representatives of impacted rights-holders when engaging the companies on its human rights impacts	Never	<b>0</b>
		The bank provides examples for less than half of the selected companies	<b>1</b>
		The bank provides examples for half or more of the selected companies	<b>2</b>
		The bank provides examples for all of the selected companies	<b>3</b>
<b>B4</b>	Engagement tools can be voting, participation to collaborative engagement initiatives, bilateral engagement with companies,	Never	<b>0</b>
		Incidentally: ad-hoc examples	<b>1</b>
		Frequently: shows sufficient evidence	<b>2</b>

Indicator		Criteria	Scoring guidance	Points
		engagement with policy makers/regulators. If the engagement goals are not met, the bank can try different options to increase its leverage to address the human rights abuse(s) or in case of persisting unsuccessful engagement, to suspend or end the business relationship	Systematically: evidence for all the relevant selected companies	<b>3</b>
		Scope question (applicable only for banks linked to the selected companies through their lending AND investments)	The bank provides information only for its lending OR investments activities	<b>0.5</b>
			The bank provides information for both its lending AND investments activities	<b>1</b>
<b>Maximum score for Section B</b>				<b>14</b>

Table 22 presents the approach for scoring on section C of the research methodology which assesses how the bank is tracking progress and outcomes of its engagement with companies and how the bank communicates about the results of its engagement, including its willingness to cooperate in this research process.

**Table 22 Scoring table for Section C: Tracking progress and outcomes and communicating about the results**

Indicator		Criteria	Scoring guidance	Points
<b>C1</b>	The bank monitors the engagement progress for the selected companies	The bank monitors the company's progress on the implementation of the concrete steps the company has committed itself to and the achievement of engagement goals.	Never	<b>0</b>
			The bank provides examples for less than half of the selected companies	<b>1</b>
			The bank provides examples for half or more of the selected companies	<b>2</b>
			The bank provides examples for all of the selected companies	<b>3</b>

Indicator	Criteria	Scoring guidance	Points
<b>C2</b>	The bank is transparent and accountable on its efforts to engage on human rights	The bank ensures transparency by disclosing regular reports of its engagement with the companies it has formally engaged.	<b>0</b>
	<p>NB: the scoring approach for this indicator is cumulative. For each level of disclosure, the bank will be given a score according to the scope of the disclosure (lending and/or investments). The scores obtained for each level will be added together to obtain the total score for this criterion.</p> <p>If a bank is only active in investment or lending and meets the content of the criteria it will receive the maximum scoring corresponding to its level of disclosure.</p>	The bank discloses aggregated data/information about its engagement on human rights (for instance in a human rights reports or stewardship report)	<b>0.5-1</b>
		The bank discloses aggregated data/information about its engagement on human rights (for instance in a human rights reports or stewardship report) and some examples of human rights engagement cases	<b>0.5-1</b>
		The bank discloses aggregated data/information about its engagement on human rights (for instance in a human rights or stewardship report). In addition, it provides the list of all the companies engaged on human rights.	<b>1-2</b>
		The bank discloses aggregated data/information about its engagement on human rights (for instance in a human rights or stewardship report). In addition, it provides the list of all the companies engaged on human rights and related information about the status and milestone(s) achieved.	<b>1-2</b>

Indicator	Criteria	Scoring guidance	Points	
		The bank cooperates in the research process and provides detailed answer to the questionnaire (bonus point).	2	
<b>C3</b>	The bank discloses an exclusion list which includes human rights criteria and the names of companies excluded	NB: If a bank is only active in investment or lending and meets the content of the criteria it will receive the maximum scoring corresponding to its level of disclosure.	No information	0
			The bank discloses an exclusion list which includes human rights criteria	0.5
			The bank discloses the names of companies excluded for human rights reasons and the scope of exclusion covers only its investments	1
			The bank discloses the names of companies excluded for human rights reasons and the scope of exclusion covers both its lending activities and investments	2
<b>Maximum score for Section C</b>			<b>11</b>	

Table 23 presents the approach for scoring on section D of the research methodology which assesses how the bank is providing for or cooperation in the remediation of human rights controversies that are linked to the bank's activities.

**Table 23 Scoring table for Section D: Providing for or cooperating in remediation**

<b>Indicator</b>	<b>Criteria</b>	<b>Scoring guidance</b>	<b>Points</b>
<b>D1</b>	The bank has set up a grievance mechanism that is accessible to (potentially) affected stakeholders to raise human rights-related concerns related to the bank's lending or investments	No/No information.	<b>0</b>
		The bank has set up channels through which affected stakeholders can raise human rights-related concerns related to the bank's lending or investments	<b>1</b>
		The bank has set up a grievance mechanism that is accessible (in various languages), and clearly explains its process for managing complaints	<b>3</b>
<b>D2</b>	Where the bank is directly linked to the adverse impacts that companies have caused or contributed to, it uses its leverage to encourage the company to provide remedy	Never	<b>0</b>
		For less than half of the relevant selected companies	<b>1</b>
		For half or more than half of the relevant selected companies	<b>2</b>
		For all the relevant selected companies	<b>3</b>
<b>D3</b>	The bank provides for, or co-operate through legitimate processes, to the remediation of adverse impacts	Never	<b>0</b>
		No example, but public commitment to provides for, or co-operate through legitimate processes in, the remediation of human rights adverse impacts	<b>1</b>
		At least one example	<b>2</b>
		More than three examples	<b>3</b>
<b>Maximum score for Section D</b>			<b>9</b>

For each of the four sections, the score will be normalised to a 10-point scale. These four scores will be combined into a final score by using the weights as shown in Table 24.

**Table 24 Overview of weight per section**

<b>Section</b>		<b>Weight</b>
<b>A</b>	Identification, qualification and prioritisation of human rights issue(s) and risk(s)	<b>25%</b>
<b>B</b>	Using leverage to influence companies	<b>25%</b>
<b>C</b>	Tracking progress and outcome by the bank and communicating about the results	<b>25%</b>
<b>D</b>	Providing for or cooperating in remediation	<b>25%</b>
<b>Total</b>		<b>100%</b>

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