

Ending Harmful Investments

A report on investment policies related to
oppressive regimes, labour rights abuses,
military arms industry, and livelihoods at risk

Author: Luc Weyn
Netwerk Vlaanderen



in co-operation with
BANKTrack

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Executive summary

The report 'Ending Harmful Investments' reflect the outcome of a study into the limits set by financial institutions regarding their investments into companies implicated in human rights breaches. In particular, we carried out research into the limits regarding investments into companies which:

- support dictatorial regimes
- are active in the arms industry
- commit serious breaches of labour rights
- cause serious damage to the environment or livelihood

The report will set out the limits that are used.

Supporting Oppressive regimes

This report will study the cases of Burma and Sudan. How do financial institutions deal with companies that are active in these countries? Such companies provide these countries with revenues and essential products and services. They also appear to legitimize the repressive regimes in Sudan and Burma, enabling them to continue their human rights abuses.

During our research, we came across pioneers, i.e. financial institutions that actively exclude almost all companies that are active in these countries. Other financial institutions focus on companies that are most important strategically or financially to the regime concerned. This mostly means companies in the oil and gas sector. In other approaches, companies are only excluded when their own business practices involved them in human rights abuses. However, this narrow approach is coming under increasing scrutiny.

Labour rights

Serious breaches of the fundamental labour rights of their own employees are some-

times a reason to exclude companies from investment. Fundamental labour rights include: absence of discrimination at work, no child labour or forced labour, freedom of association and the right to collective bargaining. The pioneers amongst the financial institutions also exclude companies which commit other serious abuses of labour rights, such as the right to a living wage, reasonable working hours and health and safety at work. Further, pioneers will demand of subcontractors that they respect the rights of their employees.

The arms industry

Pioneers amongst the financial institutions exclude companies in the arms industry almost entirely. Others focus their attention on companies dealing in controversial weapons systems. These are weapons systems which are in contravention of international humanitarian law and/or weapon systems of which production is prohibited or limited through international treaties. In practical terms this includes weapons like anti personnel mines, cluster ammunition and nuclear weapons. Sometimes the supply of arms to certain dictatorial regimes is a reason for exclusion from investment.

Serious damage to the environment or livelihoods

Serious damage to the environment caused by companies is extremely diverse and wide ranging. We will discuss the problems connected with the mining, oil and gas industries.

Pioneering financial institutions almost entirely exclude companies which work in the oil and gas sector, particularly as they do not offer a sustainable solution for our environmental problems. These pioneers

prefer to direct their investments at more environmentally friendly forms of energy production.

Oil, gas companies and mining companies are sometimes excluded for other reasons, for instance when they are operating in nature conservation areas, or because they pollute the groundwater and air of local communities or fail to comply with emission standards. Sometimes their involvement with corruption or a lack of respect for the rights of local populations leads to exclusion.

Ethical banks are followed reluctantly by mainstream financial institutions

The clearest and most far reaching limits are implemented by relatively small banks with a distinctive socially and ecologically informed identity. These banks are responding to a growing social and ecological awareness amongst customers about what their money is being used for. These kinds of niche banks have been applying social and ecological standards for years when choosing companies to invest in. They also usually apply these standards to all products and services they offer.

Stocklisted banks are starting to follow suit, albeit very reluctantly. For instance, more and more financial institutions are beginning to draw up overviews of sensitive issues in certain risky sectors or countries. They state that the risks involved will be taken into account in their investment policy, but in actual fact most of the time no concrete or tangible public limits are set. Several reports by NGOs have shown that they continue to invest in companies and projects that are implicated in serious human rights breaches. Mainstream banks that genuinely impose limits on their investment behaviour are a real minority. In the first instance, they mostly apply limits to supplying credit and investments on their own account. Sometimes also their investments via mutual funds are subjected

to non-financial criteria. The report also contains examples of mainstream pension funds and providers of insurance products which demand that companies are not involved in serious human rights breaches or environmental damage.

Drives for Change

But - as the report clearly shows - it is perfectly possible to set limits on investments. At the end of the day, the decision to set such limits depends on policy choices made by individual financial institutions. Before a financial institution will make such a choice, it needs to be sufficiently motivated. That is why the chapter 'Drives for Change' has been included in the report. This is a chapter in which the need for social and ecological limits to the investment policies of financial institution is further explained. Investments in companies that are involved in human rights breaches can lead to financial loss, to breaking the law, to involvement in activities that contradict ethical principles, ... On the other hand, a sound investment policy can give institutions a competitive advantage and lead to an improved atmosphere at work. 'Drives for Change' also indicates that this will not happen of its own accord, but that there is an increasing need for regulation. It shows that this type of regulation is necessary.

Transparency

The last chapter in this report explains that more transparency is needed in order to give customers, NGOs and politicians insight into the way in which financial institutions invest our money. Examples of transparent minimum standards can be found in several places in the report, but the final chapter adds examples of 'deal transparency'. Examples are given of institutions which publish the names of companies they finance as well as companies they rejected. There are also examples of financial institutions which give the reasons why these companies were selected or rejected.

Preface

Financial institutions are leading forces in society. Their activities direct the flow of money. Their investments partly determine the direction in which society will evolve.

Declarations of intent and codes of conduct which call for respect for human rights are gaining ground in the world of business. Also financial institutions increasingly subscribe to these declarations and codes.

However, reports published by NGOs such as BankTrack¹ and Netwerk Vlaanderen² show that a large gap exists between business principles and codes on the one hand and the actual investment practices of many financial institutions on the other. Reports such as “Where do you draw the line?” and “Banksecrets” by Netwerk Vlaanderen, for instance, demonstrate this discrepancy between speech and action very clearly, as do the so-called dodgy deals and the ‘Mind The Gap’ report by BankTrack. Other NGOs too have found that financial institutions are providing finance to companies that are implicated in serious human rights breaches.

However, in our research for this report, we tried to identify better investment practices.

Setting clear limits to investments

By ‘better investment practices’ we mean investment practices with a very clear public bottom-line.

In this report we will discuss investments. The word ‘investments’ will be interpreted broadly. It will cover not only the supply of credit but also investment banking services and asset management (on institutions’ own account, on account of third parties, through mutual funds, through pension

funds, through re-investment of insurance reserves...)³

We set out to find investment practices with clear limits.

A financial institution can be said to follow such an investment policy when:

- The policy has a bottom-line. Companies wishing to be eligible for investment have to comply with certain basic rules. Particular destructive and/or exploitative practices which the financial institution does not wish to support through its investments are defined.
- The policy has teeth. If companies cross a certain line, they will no longer be considered for investment by the financial institution.
- The limits are clear. This is not only important to the people within the financial institution who have to implement the policy, but also to the customers of the financial institution and for external stakeholders. Lack of clarity within an investment policy gives the impression that the financial institution wants to be able to adapt or side step the policy principles if the customer so desires.
- The limits are in the public domain. This kind of investment policy is not cobbled together behind closed doors. Customers and other external stakeholders have a right to look into the investment policy of a financial institution.

However, even relatively clear limits often leave room for interpretation, as human rights are not an exact science. Therefore, many best practices discussed in this report go beyond setting a bottom-line. The financial institutions concerned mostly publish the actual names of the companies in which they invest and/or exclude. That

way all stakeholders in society (researchers, journalists, specialised NGOs, customers...) can express their appreciation and fulfil their role in society on the basis of relevant and concrete information. Every individual customer, politician and shareholder has the information at their disposal and can make their own choices or assessments as to whether the financial institution meets its responsibilities and fulfils its promises.

Which human rights are discussed in this report?

'Human rights' is an umbrella term. The UN Norms for Business provide an overview of the basic criteria for companies which take their respect for human rights seriously. It would be impossible to discuss all human rights, within the scope of this report. Therefore, we will focus on a number of concrete issues:

- Supporting dictatorships. This chapter will deal more fully with investments in companies that are active in countries such as Burma and Sudan.
- Investments in companies that commit serious breaches of labour rights.
- Investments in business sectors that are notorious for their complicity with human rights abuse. We include a detailed discussion of the arms industry and investments in sectors such as oil, gas and the mining industry.

Which financial institutions are discussed?

We started with the Mind the Gap report by BankTrack.⁴ This report benchmarked the investment policies of 45 stocklisted banks worldwide. Amongst others it mapped out their investment policies regarding labour rights and the arms industry. Our better practices report will include and discuss the bottom-lines of the banks which scored best on these and other human rights issues.

We also tried to find examples of banks and other financial institutions, such as pension funds, that are not quoted on the stock exchange. These examples were provided by

members of BankTrack.

In this report, a distinction is made between 'pioneers' and runners-up'. Pioneers use the strictest criteria. They make very strong demands of their potential business partners regarding human rights, whereas runners-up are less strict in their selection of customers. The distinction between runners-up and pioneers is designed to show the significant differences that exist even between better practices.

This report does not aim to be comprehensive or to provide bench marking. There may well be many further examples of better practice. The practices that are discussed below are primarily intended to show how things can be done differently. They show that it is perfectly possible to use clear bottom-lines in investment decisions. Financial institutions wishing to respect human rights are able to do so.



1. Supporting oppressive regimes

Financial institutions invest worldwide. Dictatorial regimes and companies which work with oppressive regimes look for capital. So there's a risk that financial institutions become involved in the oppression and exploitation through their investments.

How do financial institutions deal with these risks? Some draw a line - they decide not to invest in certain regimes or in companies that work with such regimes.

1.1. Burma

1.1.1. What's at stake?

1.1.1.1. Dictatorship and oppression in Burma

The Southeast Asian country of Burma has

been a military dictatorship since 1962. In 1990 the military rulers held elections and the NLD party led by San Suu Kyi – winner of the Nobel Peace Prize in 1991 – won with over 80% of the votes. However, the military junta annulled the election results, outlawed the NLD, and placed San



Suu Kyi under house arrest. For years now the country has witnessed the most serious breaches of human rights. The army uses slave workers for infrastructure construction and the transport of army equipment. The government has imprisoned and tortured over 10,000 of its democratic opponents. A number of military troops responsible for keeping order, rape and murder women and children.⁵ In his concluding 2007 report for the UN Human Rights Commission, Paulo Sérgio Pinheiro pointed out that the situation in Burma is not improving: “Over the decades, the space for the establishment of civilian and democratic institutions has been seriously curtailed. The exercise of fundamental freedoms has been severely restricted.”⁶

The independent outlawed Federation of Trade Unions-Burma (FTUB) affirms that forced labour in Burma is a state-sponsored violation and that millions of Burmese have been used for state projects such as rail-road and road construction as well as the construction of army buildings. FTUB members collecting evidence of violations of workers’ rights have been sentenced to

life imprisonment, and in some cases, incurred the death penalty.⁷

In a very unusual statement dated 29 June 2007, the International Red Cross abandoned its usual neutral stance and expressed its conviction that the Burmese regime was causing immeasurable suffering amongst the civilian population of the country. The Red Cross was particularly concerned about the widespread use of slave workers by the army, who suffer malnutrition, exhaustion and are arbitrarily killed.⁸

1.1.1.2. Dictators financed by joint ventures with foreign companies

The military regime receives most of its income from the exploitation of natural resources, always in the form of joint ventures with foreign companies. This foreign investment provides a crucial source of support to the junta, allowing it to ignore demands that it return Burma to civilian rule and end human rights abuses. Companies active in Burma are unlikely to be able to prove that their revenues do not fund military repression.

Burma’s military government relies heavily on the oil and gas sector to sustain itself. It earned approximately \$2.16 billion in 2006 from the sale of natural gas, which accounted for half of Burma’s exports and represents its single largest source of foreign exchange.⁹ It is estimated that the junta spends 40% of its annual budget on the army.¹⁰

The absence of the rule of law and endemic corruption characterise the investment climate in Burma. Regulation, also business related regulation, is subject to change without prior notice at the junta’s whim. In the 2007 edition of Transparency International’s annual Corruption Perceptions Index (CPI) Burma comes bottom of the list.¹¹ Specialists regard Burma as the most corrupt country in the world, an ideal place for junta-leaders to fill their pockets.

The violent repression of demonstrations by monks and civilians in the autumn of 2007 has once more revealed the brutality of the Burmese regime to international public opinion. This has led to new initiatives to ban investments and block the money supply of individuals and companies investing in Burma.

1.1.1.3. Bans and divestments

In 1997 the US called a halt to new investments in Burma¹² and in 2003 it imposed import bans. In 2007 the US Congress accepted an additional bill to stop Burma's rubies and high-quality jade from entering the US. This bill also tries to stop Burmese leaders using US banks to launder money in third countries.¹³ Australia too has financially blacklisted business people and companies considered close to the ruling junta.¹⁴

In October 2007 the European Union announced investment, import and export bans in some vital Burmese sectors. Unfortunately, the important oil and gas sector is not included. However, the EU also declared itself prepared to reinforce the measures, including a ban on new investments, depending on the situation on the ground.¹⁵

The International Trade Union Confederation (ITUC), the European Trade Union Confederation (ETUC)¹⁶, Human Rights Watch¹⁷ and The Burma Campaign have called for tougher investment bans.¹⁸ Even the CGT union federation of Total has called on Total to "halt all extraction of gas and freeze all transfers" to the Burmese regime "so long as human rights are being abused".¹⁹ Total is one of the biggest foreign investors in Burma.

The Dutch trade union movement and the Canadian Labour Congress (CLC) have requested pension funds to divest from companies with ties to the military regime.²⁰

All these actions are supported by the Federation of Trade Unions of Burma who have reiterated their support for investment bans

and for the disinvestment strategies of the opposition party of Nobel Peace Prize winner San Suu Kyi.²¹

It is noteworthy that following the protests, the Burmese dictator Shwe asked San Suu Kyi to drop her calls for an economic boycott prior to starting negotiations.²² San Suu Kyi declined, but the demand itself means that the dictators view the investment boycott and economic isolation as an attack on their power base.

Note that relevant information on companies active in Burma can be found on the websites of ICFTU (a list of 400 companies)²³, The Burma Campaign UK (a list of companies who have divested and a 'Dirty List')²⁴, Human Rights Watch (27 oil and gas companies)²⁵, ITUC (overview of investment risks).²⁶

1.1.2. Better practices

1.1.2.1. Pioneers

Triodos Bank, Algemene Spaarbank voor Nederland (ASN) and The Co-operative Bank explicitly exclude companies active in Burma.

Triodos Bank explains its position as follows: "A specific position is taken on Burma where a military regime is ruling the country and the democratically elected government has been banned and has called on the international community to refrain from doing business with the country. Triodos Bank excludes companies engaged in activities in Burma from investment. This includes companies that make use of distributors in Burma and companies that outsource production to, or source from, Burma".

The *Co-operative Bank* declines to provide financial services to any company with a significant presence in Burma. The bank considers that Burma presents a combination of circumstances that make a particularly compelling case for action. The bank refers to

the ILO which has taken the unprecedented step of calling on national governments and private companies to review their relations with Burma, in order to ensure these do not serve to perpetuate the widespread system of forced labour.^{27 28}

ASN states that they use specific social and ecological criteria for companies they invest in. According to ASN, companies operating in Burma cannot adhere to the bank's criteria.²⁹

1.1.2.2. Runners-up

The United States imposed sanctions against Burma in 1997, banning all new U.S. investment in Burma.³⁰ By law American financial institutions cannot invest directly in Burma. However, this does not prevent some of them from investing in companies that have important activities in Burma. The report 'Banksecrets' by Netwerk Vlaanderen revealed investments by American banks like Citigroup and JPMorgan Chase in Total and Citigroup and Goldman Sachs in PetroChina.³¹

In Europe pension funds have shown some sensitivity to the Burma issue. The Guardian newspaper reported that at the end of 2007 European pension funds withdrew almost £110m in investments from French oil company Total in a matter of days due to the company's involvement in Burma.³² Amongst those who divested are ATP and PKA. PKA said it would offload its holdings in French oil firm Total. Their move came after a Danish government statement regarding trade with Burma. PKA said it was also considering divesting its stake in Chevron and its holding in China Petroleum & Chemical Corp as a result of their involvement in Burma.³³ Also ATP, the Danish labour market pension fund, announced it would sell its stake in Total and other oil companies working in the politically troubled state.³⁴ ATP is one of the 5 biggest European pension funds.

The Dutch welfare and healthcare sector pension fund PGGM, also a top five Europe-

an pension fund, announced it was actively engaging with companies in its portfolio on the subject of Burma, and would divest if necessary.³⁵

The Norwegian ex-prime minister Bondevik has stated that the current finance minister should ask the *Norwegian Government Pension Fund's* ethical council to put forth proposals for withdrawal of investments in companies active in Burma. At the moment the Fund's exclusion policies include human rights violation committed by a company. But in practice this does not cover complicity in violation supported by revenues flowing from companies to the junta. "This is all about sending the right signals to an especially brutal dictatorship", the ex-prime minister said.³⁶ The next government review of the ethical standards will include companies that do business with dictatorships such as that in Burma.³⁷

Unfortunately, few major non-American mainstream banks have started initiatives or if they have, they have not made those initiatives public or mentioned them in their response to requests for information for this research project or other BackTrack requests.

Some of these organisations have shown some signs of movement. Rabobank explicitly excludes activities of companies in Burma. Rabobank states that: "In the case of Burma it is generally accepted that it is impossible to do business while at the same time sticking to international agreements on human rights". The leading western opinion, according to Rabobank, is that it is better not to invest.³⁸

ING has stated that it closed its Burma Representative Office in 1997, that it has not had a presence in Burma since, and does not conduct business or finance projects in Burma.³⁹ No reasons are given. Fortis is more explicit. They state : "For many years now, a military dictatorship has been in power in Burma and serious human rights violations

are taking place in the country. As early as the beginning of 2003, Fortis publicly distanced itself from the regime. ... and confirmed that it is our policy not to finance any

projects or activities in Burma.”⁴⁰ But the positions taken up by Fortis and ING have not prevented them from investing in companies with important activities in Burma.⁴¹

Burma	Investment limits
Pioneers	
ASN Bank	Companies active in Burma
The Co-operative Bank	Companies active in Burma
Triodos Bank	Companies active in Burma
Runners-up	
Pension Funds: ATP and PKA	Oil companies in Burma
Banks: ING, Fortis and Rabobank	Companies projects in Burma

1.2. Sudan

1.2.3. What's at stake?

1.2.1.1. A cruel humanitarian crisis

Sudan is being torn apart by a violent civil war. The current crisis in the Sudan region of Darfur broke out in 2003. After decades of neglect, drought, oppression and small-scale conflicts in Darfur, two rebel groups mounted an insurgency against the central government. The Government of Sudan increased the arms supply and support to local tribal and other militias. These local militias have wiped out entire villages, destroyed food and water supplies, and systematically murdered, tortured, and raped hundreds of thousands of Darfuris.

In just one illustration of how the regime has waged its war, the Sudanese military paints many of its attack aircraft white – the same colour as UN humanitarian aircraft – a violation of international humanitarian law. When a plane approaches, villagers do not know whether it is on a mission to help them or to bomb them. Often, it has been the latter.⁴²

The civil war has already cost the lives of 200,000⁴³ - 400,000⁴⁴ people since the start



in 2003 and 2.4 million people have been driven from their homes.⁴⁵ Approximately 1 million more Darfuris are still living in their villages, under constant threat of bombardment, raids, murder, rape and torture.⁴⁶

The UN considers the Darfur crisis the worst humanitarian crisis in the world.⁴⁷ The total number of civilians requiring relief assistance has reached 4.2 million, or nearly two-thirds of the entire population of Darfur.⁴⁸ Nevertheless, humanitarian agencies are losing access to hundreds of thousands of people in need due to increasing attacks on relief staff and their convoys. According to UN estimates, in June 2007 there were some 560,000 people in need of aid who could not be reached.⁴⁹

In the first half of 2007 the continuing violence and targeting of civilians have displaced nearly 160,000 people.⁵⁰ Various recent reports document the numerous and ongoing indiscriminate aerial bombings, attacks on villages and incidents of forced displacement, as well as summary executions, 'disappearances', looting and destruction of property.⁵¹ These attacks are characterised by co-ordination of operations between the Sudanese armed forces and government-supported militia, by a failure to respect the principles of distinction and proportionality, and by grave violations of international human rights and humanitarian law. Rape, sexual violence, and other forms of gender-based violence continue to be committed by Sudanese armed forces and by Sudanese government-armed opposition groups, including violence against children.⁵²

The Sudanese government fails to fulfil its duty to protect. Instead, the government of Sudan continues to bomb villages, relocate its supporters onto land vacated by the displaced and block international interventions.⁵³

1.2.1.2. Oil fuels the war

All this has not prevented companies from supporting the Sudanese regime by

delivering military equipment or from cooperating with the government in order to exploit the huge oil fields in Sudan. A former Sudanese finance minister reported that 70% of the oil revenues are used to finance the country's military potential.⁵⁴ According to a Human Rights Watch analysis of IMF-figures, between 1999 and 2002 Sudan oil revenues have risen from 8 to 45% of Sudan Governmental Revenues. The NGO claims that in the same period, 27% to 60% of these revenues have been used for military expenditures.⁵⁵ Oil revenues have increased the national income from US\$900 million in 1999 to over US\$ 11.7 billion (projected) in 2007.⁵⁶

1.2.1.3. International bans and divestments

The international community has increased pressure on the regime, for instance through UN Security Council Resolution (UNSC) 1591 (2005) concerning restrictive measures against Sudan. UNSC Resolutions 1556 (2004) and 1591 (2005), include strict prohibitions on arms and military items likely to be used by the regime in Darfur.⁵⁷



In the US the Clinton government imposed a trade embargo on Sudan in 1997. The main reason given at that time was the presence of Osama bin Laden in Sudan in the 1990s.⁵⁸ As a result of these US trade sanctions from 1997, very few companies received an exemption from the US Treasury Department and are able to operate in Sudan. The vast majority of US companies are barred from operating in Sudan. In 2001, the US House of

Representatives passed a bill that prevented firms investing in Sudanese oil development from raising money in US capital markets or trading on the New York Stock Exchange or NASDAQ, in order to prevent further fueling of the civil war in Sudan through oil money.⁶⁰ But investing in foreign companies operating in Sudan was no problem at all. On December 31 2007 president Bush signed the Sudan Accountability and Divestment Act,⁶¹ which authorizes and encourages state and local divestments from companies operating in Sudan.

Sudan divestment campaigns have been initiated in 15 countries outside the USA.⁶² In a speech on the involvement of Swiss banks in PetroChina Andreas Missbach of the Suisse Berne Declaration illustrates the spirit of the campaigns: "The financing of oil businesses which fuel the genocide in Darfur demonstrates that Swiss banks must urgently take all necessary steps to discontinue their complicity in human rights abuses or risk their credibility in other areas".⁶³

In May 2005 the EU Council took a Common Position⁶⁴ concerning restrictive measures against Sudan and in 2007 the EU Parliament hardened its position further. The 'European Parliament resolution of 12 July 2007 on the situation in Darfur' includes a call on the Government of Sudan to publish its oil revenue figures in a transparent way and calls on the Member States to encourage divestment of European companies and funds from Sudan. It also calls for measures that tackle business activities which fuel the conflict.⁶⁵

Sudan Divestment Task Force has declared that 9 companies have ceased operations in Sudan (or formalized and publicly released a plan to do so), or significantly changed their behaviour in the country since the proliferation of the Sudan divestment movement. Those companies are : La Mancha Resources, CHC Helicopter, ABB, Siemens, Rolls Royce, ICSA of India, Weatherford International, Weir Group and Schlumberger.⁶⁶ Rolls-Royce

has decided to stop supporting existing contracts in the African state and no longer to pursue new business, while the Swiss power engineering group ABB has suspended business. Siemens has also pulled out, citing moral reasons.⁶⁷

But all this has not prevented many financial institutions from investing in companies that enforce the regime in Sudan.⁶⁸

1.2.2. Better practices

1.2.2.1. Pioneers

Below we describe pioneering efforts by a bank (ASN Bank), a pension fund (The Maryland State Retirement and Pension System) and a university (the Howard University Board of Trustees).

ASN Bank employs specific criteria for companies they invest in. The bank states that it is impossible for companies operating in Sudan to adhere to these criteria.⁶⁹

The Maryland State Retirement and Pension System is bound by Maryland State Law to divest from any company with operations in Sudan and was prohibited from future investment in those companies on April 10, 2007.⁷⁰

On January 27th, 2007, the *Howard University* Board of Trustees voted to divest Howard's holdings from all companies operating in Sudan. The Board of Trustees notes that: "companies continue to conduct business there. This has resulted in concerns from international observers that the revenue from foreign interests is paying for the Khartoum government's military endeavours. The Sudan economy has thrived in the past few years, despite the ongoing genocide".⁷¹

Note that Institutional Shareholder Services (ISS) offers a list of companies with ties to Sudan based on a "blanket" divestment model. ISS charges a fee for access to this service.⁷²

1.2.2.2. Runners-up

1.2.2.2.1. In the US

A less strict policy is implemented by the social investor Domini Social Investments. Their policy excludes companies if :

- The company's activities directly benefit the government of Sudan. This includes companies that pay oil and mining royalties to the Sudanese government, as well as those that build roads, develop infrastructure in government strongholds, or provide assistance to government agencies.
- The company offers substantial indirect benefits to the government of Sudan, or, in our view, is otherwise complicit in human rights abuses in Sudan. This includes companies that have substantial operations or customers in government stronghold areas of Sudan and therefore help to provide a stable economic environment that supports the government in its oppressive policies.⁷³

In the US 22 states and 11 cities have adopted Sudan divestment legislation. Fifty-eight universities and 8 international or religious organisations have adopted Sudan Divestment policies. Forty-seven universities and 23 states have initiated divestment initiatives and the number of states adopting legislation will certainly rise because many of them were waiting for the legislative initiative by the federal government which had been announced.⁷⁴ Also the following asset managers have adopted Sudan Divestment policies for all their investments or have announced that they will do so : Calvert Group, Clean Yield Group, Prentiss Smith and Company Inc, Trillium Asset Management, Walden Asset Management.⁷⁵

Many of these US institutions which have adopted a divestment policy on Sudan, use criteria based on a policy promoted by the Sudan Divestment Task Force (SDTF). According to SDTF's own reporting, 15 of the

22 US States which have adopted a Sudan Divestment policy have based it on the SDTF model.⁷⁶ The SDTF model encourages divestment from companies that meet the following three criteria :

- They engage in business with actors or projects that directly or indirectly benefit the government of Sudan's revenue streams, military or capacity to resist international pressure on Darfur, and
- Provide minimal benefit to those outside of government or the small circle of government supporters based mainly in the Khartoum state, and
- Have no significant corporate ethics policy dealing with how a company's business in Sudan may inadvertently worsen Darfur's genocide.⁷⁷

SDTF explains that nearly all of the companies they target are in the oil, mineral extraction, power, or defence industries. They limit the scope of divestment to worst offenders and engage with others.⁷⁸ A list with descriptions of the targeted companies can be requested by their website.⁷⁹

Note that one of the main issues dealt with here concerns 'direct or indirect benefit to the government of Sudan's revenue stream, military and other capacities'. It is not just about possible human rights' abuses within the internal operations of a company. The most important consideration is whether the company's operations strengthens the government's capacities.

Some US-based financial institutions have introduced 'Sudan Divestment' financial products, for example Northern Star, which has created Sudan-Free index products for state pension funds. Claymore Securities have released a KLD-Certified Sudan Free Index Exchange Traded fund and Barclays Global Investors have announced the exploration of ex-Sudan fixed income options.⁸⁰

1.2.2.2.2. In Europe

In Europe too investors are increasingly sensitive to the Sudan issue. In a press release at the start of 2008 PGGM, a pension fund which manages the pensions of two million employees, states that they are ceasing their investments in PetroChina. PGGM gave the following motivation: "PetroChina's mother organisation, the Chinese state company CNPC, is involved in human rights' abuses in Sudan. CNPC's involvement is evident from its behaviour, including human rights' breaches by its security personnel. Furthermore, CNPC is the largest player in the Sudanese oil industry. This makes it an important financial supporter of the Sudanese government, which commits human rights abuses on a large scale. CNPC has taken insufficient steps to prevent its involvement with these human rights abuses or to contribute to a solution to the human rights problems in the country. Because of the large overlap of property, governance and financial links between CNPC and PetroChina, PGGM considers the two organisations to be effectively one party. PGGM has engaged PetroChina in a discussion about human rights abuses in Sudan. As a result of these conversations, PGGM has decided that further dialogue will serve no purpose and therefore PGGM has ceased investing in PetroChina."⁸¹

Sudan	Investment limits
Pioneers	
ASN Bank	Companies operating in Sudan
Maryland state retirement and pension system	Companies operating in Sudan
Howard University	Companies operating in Sudan
Runners-up	
Domini social investments	Companies who benefit government of Sudan or Complicated in other human rights abuses
Sudan Divestment Task Force - model	Companies who benefit government revenues and have minimal benefit to local population and have no meaningful policy on Sudan
PGGM	PetroChina (human rights abuses and financial support government)



2. Labour rights abuses

Financial institutions invest in companies worldwide. Some of these companies are very casual about labour rights and some systematically breach these rights. So through their investments in such companies, financial institutions might be complicit in labour rights abuses. How do financial institutions handle this ?

2.1. What's at stake?

2.1.1. Breaches of fundamental labour rights

The fundamental labour rights were defined by the International Labour Organization (ILO), a tripartite UN agency which brings together governments, employers and workers. With the adoption of the ILO Declaration on Fundamental Principles and Rights

at Work in 1998, the ILO identified eight of its conventions as "Fundamental". These eight conventions cover four subjects that are considered as fundamental principles and rights at work:

- the elimination of all forms of forced or compulsory labour;⁸²
- the effective abolition of child labour;⁸³
- freedom of association and the effective recognition of the right to collec-

- tive bargaining;⁸⁴
- the elimination of discrimination in respect of employment and occupation.⁸⁵

But how are these fundamental principles applied ?

At least 12.3 million people around the world are trapped in forced labour. Forced labour takes different forms, including debt bondage, trafficking and other forms of modern slavery. The victims are the most vulnerable – women and girls forced into prostitution, migrants trapped in debt bondage, and sweatshop or farm workers kept there by blatantly illegal tactics and paid little or nothing.⁸⁶

More than 200 million children in the world today are involved in child labour, doing work that is damaging to their mental, physical and emotional development. They work because their survival and that of their families depend on it. Child labour persists even where it has been declared illegal, and is frequently surrounded by a wall of silence, indifference, and apathy. Nearly three-quarters of working children are engaged in the worst forms of child labour, including trafficking, armed conflict, slavery, sexual exploitation and hazardous work.⁸⁷

Several countries have not signed the conventions on freedom of association and the right to collective bargaining.⁸⁸ In some countries, such as China, employees are prohibited from founding a union themselves. But even in countries where there is freedom of association, employees are prevented from practising that right. Some companies or regimes use clever and sometimes illegal techniques to stop employees forming unions. In some cases union representatives are intimidated or eliminated. In many cases employees are not able to defend themselves collectively against bad conditions in or around their place of work.

Hundreds of millions of people suffer from discrimination in the world of work. This not only violates a most basic human right,

but has wider social and economic consequences. Discrimination stifles opportunities, wasting the human talent needed for economic progress, and accentuates social tensions and inequalities.⁸⁹

2.1.2. Other labour rights

Other labour rights too are flouted. By the end of 2006, the ILO had adopted 187 Conventions and 198 Recommendations covering a broad range of labour subjects,⁹⁰ but their worldwide implementation and observance are far from guaranteed. The desire within many companies to maximise profits and reduce costs as much as possible motivates them to try and save money on wages and labour costs, for example the costs involved in securing health and safety at work. Many employees still work in dangerous workplaces or workplaces that damage their health.

2.1.3. Subcontractors

Large companies are not only implicated in breaching labour rights on their own shop floor, but are also responsible for a knock-on effect. Subcontractors in particular are locked in stiff competition for the contracts that large companies are able to give them. In this competitive environment many subcontractors do everything in their power to reduce costs, including their labour costs. As a result they offer their employees temporary or loose contracts, expect working weeks of more than 50 hours and evening and weekend work without recovery time or financial compensation.

2.1.4. Financial institutions concerned

Three hundred and sixty nine financial institutions and insurance organisations have signed the UN Global Compact.⁹¹ They promise to embrace, support and enact, within their sphere of influence, the fundamental labour standards.⁹² Yet the 'dodgy deals' listed on the BankTrack website and in the Banksecrets report by Netwerk Vlaanderen demonstrate that signatory financial institutions continue to invest in companies

which systematically flout labour rights.

2.2. Better practices

Some financial institutions do use labour rights related minimum standards in their investment policies.

2.2.1. Pioneers

Triodos Bank will not invest in companies which are frequently involved in controversy with regards to fundamental labour rights.⁹³ Companies are also excluded when their suppliers are frequently and substantially involved in such controversy. If companies are active in countries and sectors posing a high risk to breaches of labour rights, *Triodos* expects these companies to have a public policy and a management system with regard to labour rights.⁹⁴ The *Triodos* policy is applicable to all its products.

ASN Bank will only invest in companies which respect fundamental labour rights. Furthermore, it will exclude companies which do not provide safe and healthy labour conditions and companies which do not pay a fair and adequate wage. Companies are also excluded when subcontractors and suppliers over which they have an influence or exert management control do not respect labour rights. The *ASN* Bank policy applies to all its products.

2.2.2. Runners-up

The Co-operative Bank

The Co-operative Bank⁹⁵ will exclude companies from credit supply if their behaviour with regard to fundamental labour rights is the subject of permanent criticism. Companies are also excluded if they do not take action on their supply chains when these are the subject of major reputation criticisms.

Co-operative Bank described two businesses which were rejected in 2006 in connection with labour conditions.⁹⁶

- A £15 million contribution to a syndicated loan facility for a global sports-

wear and jeans wear manufacturer. The business tolerated violation of both Mexican labour laws and the Fundamental ILO Conventions on Freedom of Association and Collective Bargaining in its supply chain. A sub-contractor factory routinely dismissed workers who sought to secure independent trade union rights.

- A £10 million contribution to a syndicated loan facility for a kitchen appliance manufacturer. Twenty per cent of the business' operations were centred in the Guangdong province of China; a region renowned for poor enforcement of labour laws. Business failed to provide adequate assurance that it had policies and procedures to safeguard the welfare of its workforce.

The Co-operative Bank is part of the Co-operative group. The Co-operative Insurance Society (CIS) is the group branch that offers products including pensions, unit trusts, investment and protection. It operates an Ethical Engagement Policy, which integrates similar criteria to seek to influence the social, ethical and environmental impacts of its investments, but does not use them as exclusion criteria.⁹⁷

IFC and World Bank

In May 2006 the International Finance Corporation (IFC) introduced a requirement that all enterprises borrowing from the IFC abide by the core labour standards. Then in December 2006 the World Bank announced that it would extend the core labour standards requirement to public works projects financed by the International Bank for Reconstruction and Development and the International Development Association. The World Bank started including the core labour standards requirement in its procurement contracts in May 2007.⁹⁸

Rabobank

The human rights policy specification of Rabobank⁹⁹ contains a number of specific guidelines related to the importance they

place on labour rights in their investment policy. These guidelines concern three of the four fundamental labour rights; freedom of association and the right to collective bargaining forms a part of the specification “poor working conditions” as stated in their Annual Sustainability Report 2006 and in the position paper on our website . The guidelines “poor working conditions” are also concerned with safe and healthy working conditions.¹⁰⁰ The Rabobank policy specification consists of guidelines which indicate the kind of things Rabo does not want to be involved in and recommendations indicating in which direction Rabobank wants to go. Companies which do not comply with the guidelines are approached by Rabobank and if it appears that the company concerned does not show sufficient will to improve, Rabobank will ‘not pursue or sever the business relation’. But it is not completely clear where Rabobank draws the line. Some Rabobank documents shed a little more light on certain sectors. For instance, the sector file on the wholesale and retail industry states the following : “Rabobank does not want to finance clients who are in some way involved in harmful child labour, even throughout their supply chains. One way for companies to enforce this is to have their suppliers sign policies in which they declare not to make use of harmful child labour, and make these policies part of the supplier audits. Industries have an obligation to see products are made responsibly, which also relates to worker safety. Good practices: declare to abide by third party regulations regarding worker safety, declare ambition for injury rates lower than industry’ average.”.

Dexia assurances

According to Dexia’s Sustainable Development Report 2006 Dexia insurance companies include respect for the major conventions of the International Labour Organization in their investment policy, in the context of the project named “Portfolio21”. Companies are not just screened on the labour rights of their own workforce, but also on those of

all consolidated subsidiaries, joint ventures and shareholdings. Holding companies are screened on compliance from the moment the company has 20% of the voting rights. In other words, subcontractors and suppliers with whom the company is not in a joint venture or where the company is not a shareholder, are not brought to account. If a company does not comply after a certain period of engagement the company will not or no longer be accepted in the eligible investment universe.¹⁰¹ As Dexia does not publicise this ‘universe’, it remains unclear where the line is drawn in practice.

Norwegian Government Pension Fund - Global¹⁰²

The Norwegian Government Pension Fund

- Global is the second largest pension fund in the world. The Fund excludes companies that constitute an unacceptable risk of the Fund contributing to: serious or systematic human rights violations, such as forced labour, the worst forms of child labour and other forms of child exploitation.

The Fund has divested from Wal-Mart. The council on Ethics of the Fund assessed that “an extensive body of material indicates that Wal-Mart consistently and systematically employs minors in contravention of international rules, that working conditions at many of its suppliers are dangerous or health-hazardous, that workers are pressured into working overtime without compensation, that the company systematically discriminates against women in pay, that all attempts to unionise by the company’s employees are stopped, that employees are in a number of cases unreasonably punished and locked in, along with a number of other circumstances... What makes this case special is the sum total of ethical norm violations, both in the company’s own business operations and in the supplier chain. It appears to be a systematic and planned practice on the part of the company to hover at, or cross, the bounds of what are accepted norms for the work environment. Many of the violations are serious, most appear to

be systematic, and altogether they form a picture of a company whose overall activity displays a lack of willingness to countervail violations of norms in its business operations.”

Banco do Brazil

Banco do Brazil has stated that it does not finance people or companies involved in forced or slave work. They use a list of companies which is regularly published by the Brazilian Ministry of Labour and employment. They also underwrite the Combat Slave Labour Initiative (CSLI), which covers the charcoal iron and steel sector.¹⁰³ The implications of CSLI for their investment policy are unclear.

KBC Bank

The sustainability report published by KBC contains a very general policy direction, which states that “KBC will not provide loans to those customers of which we know that they do not respect human rights”.¹⁰⁴ In a written communication, KBC gives some examples: outsourcing production (textile, shoes, electronics) in which labour rights are violated, employing and exploiting illegal labour.¹⁰⁵ KBC gives no further specifics.

Labour rights	Investment limits
Pioneers	
ASN Bank	Companies (including subcontractors) who do not respect fundamental and other labour rights
Triodos Bank	Companies (including subcontractors) involved in controversies regarding fundamental labour rights and Companies at risk with no policy
Runners-up	
The Co-operative Group	Companies (including subcontractors) involved in Controversies regarding fundamental labour rights (policy for credits, not for f.e. insurances)
IFC and World Bank	Companies who do not abide by the fundamental labour standards
Rabobank	Companies who do not respect the fundamental labour rights (commitment after consultation, for loans only)
Dexia	Companies who do not respect the fundamental labour rights (only for insurances, not for other products)
Norwegian Government Pension Fund - Global	Companies involved in serious or systematic human rights abuses
Banco do Brazil	Companies involved in forced or slave work
KBC Bank	Costumers of which KBC knows they do not respect human rights (vague commitment for loans only)



3. Military industry and arms trade

Financial institutions invest in companies active in the weapons industry throughout the world. Investments in such companies lead to important ethical questions and involve great risks, because through their investments, the financial institutions become involved in armed conflicts. What are the activities financial institutions do not wish to invest in ?

3.1. What's at stake?

3.1.1. Weapons threaten the right to life itself

Weapons have a common inherent property: they are designed and developed to kill, maim or destroy. In this context they threaten the most fundamental human right, the right to life.

Obviously, weapons are used in wars and other armed conflicts, and wars are not yet a thing of the past: in the 1990's 3.6 million people died in violent conflicts.¹⁰⁷ Civilians – women and children predominantly – represent 90% of conflict fatalities.¹⁰⁸ And of course, many more people are injured or driven away from their homes and families.

In 2005, a total of 17 wars and armed conflicts were recorded. Non-state actors, such as arms manufacturers and their intermediaries, are often very prominent in these conflicts, and the limited capacity of the international community to hold them accountable for their abuse of civilians continues to pose a grave threat to human security.¹⁰⁹



However, weapons are not only used to kill people in wars or armed conflicts. Wherever people are able to get their hands on weapons, conflicts between individuals, within families or between groups or gangs tend to be 'solved' by the force of arms. There are an estimated 639 million small arms in the world today, nearly 60% of them in the hands of private individuals.¹¹⁰ This is a time bomb ticking away in the midst of today's society.

3.1.2. Weapons as cause of poverty

Another important consideration is the relationship between military spending and development. Total world military expendi-

ture in 2005 is estimated at US\$ 1,118 billion, which corresponds to 2.5% of the global GDP. Over the period 1996-2005, military expenditure showed a real terms increase of 34%.¹¹¹

Twenty-two of the thirty-two countries at the bottom of the Human Development index have experienced conflict since 1990.¹¹²

Worldwide military spending averages ten percent of national public spending. In developing countries, where there is a greater need for investment in constructive initiatives, military spending amounts to fifteen percent. According to the Human Development Report 2003 of the United Nations' Development Programme (UNDP), military expenditures are a major barrier to reaching the UN Millennium Development Goals (MDG). Military spending competes with investments in human development; it often equals the amount spent on education and healthcare together. According to the UNDP, attaining the MDG is not possible without reducing military expenditure, since money spent on military development cannot be spent on human development.¹¹³

The detrimental effect of military spending on the MDG is further exacerbated by the cost of military-related debt. Between 15 and 20 percent of total global debt is related to military expenditure. In many developing countries, interest payments on military debt far exceed spending on healthcare and education.¹¹⁴

3.1.3. International treaties

States have a right to individual or collective self defence and their legitimate security interests. However, such rights are accompanied by responsibilities, such as to control and monitor the transfer and use of arms.

There seem to be no international standards covering the military industry and arms trade as a whole. Various international treaties exist regarding the production, use,

stockpiling and trade of specific weapon systems. Some examples are the Nuclear Non-Proliferation Treaty or the Ottawa convention on anti-personnel mines. Despite these treaties, many banned weapon systems continue to be produced and traded, often because major producing countries have not ratified the instruments, or are continuously breaching the spirit of the treaty.¹¹⁵

Even when there is no specific treaty banning a weapon, the established principles of International Humanitarian Law (IHL) often lead to the conclusion that the use



or threat of that particular weapon would constitute a violation of IHL. IHL is a set of rules which, for humanitarian reasons, seeks to limit the effects of armed conflict. It protects people who are not or are no longer participating in the hostilities and restricts the means and methods of warfare, by introducing the basic rules of proportionality and discrimination.¹¹⁶ A recent development underlining this argument was the decision by more than 40 countries in February 2007 to work on an international treaty banning cluster munitions in 2008. By May 2007, this group had already grown to 75 countries. Recent research has revealed that 98% of the casualties of cluster munitions are innocent civilians.¹¹⁷

3.1.4. Arms trade not under control

The Control Arms Campaign has mobilised strong support for a global Arms Trade Tre-

aty. This treaty should prevent international arms transfers that fuel conflict, poverty and serious human rights violations. In October 2006 the United Nations General Assembly's First Committee voted overwhelmingly in favour of the proposal to develop an Arms Trade Treaty: 139 countries voted for, with only the United States voting against.¹¹⁸

Regarding arms trade, various international bodies, such as the United Nations, the European Union and the Organisation for Security and Co-operation in Europe (OSCE), have arms embargoes in force against countries or non-state actors, often for being involved in armed conflict or serious human rights abuses.¹¹⁹

In practice arms trade controls, arms embargoes and weapon licence systems have so far not been able to keep weapons away from dictators, conflicting parties or the worst abusers of human rights. Most of these instruments do not prevent armaments from being sold to intermediaries and eventually ending up in the hands of banned regimes. Many regimes are also not covered by the restrictions. The Co-operative Bank uses a list of 72 countries classified as oppressive regimes, of which just 17 countries are subject to UN arms embargoes or EU restrictions.¹²⁰ These instruments also have not prevented the stockpiling and use of controversial weapons by some of the most influential members of the global community. A recent report by the Control Arms Campaign revealed how the arms industry exploits existing loopholes to circumvent arms export regulations and embargoes.¹²¹

3.1.5. Corruption

Fifty percent of all bribes paid worldwide between 1994 and 1999 were related to trade in arms.¹²² Corruption can add 20 to 30 percent to the cost of government procurement and may divert public spending away from human development areas.

3.1.6. Growing legal pressure on financial institutions

As has already been mentioned, several weapon systems are in contravention of international humanitarian law or international treaties. New legislative initiatives aim to fill the legal hiatus, for example the European Parliament resolution on a mine-free world of 7 July 2005 calls on the EU and its Member States to prohibit financial institutions through appropriate legislation from investing directly or indirectly in companies involved in anti-personnel mines and other related controversial weapon systems such as cluster sub-munitions.¹²³ In March 2007 Belgium enacted legislation prohibiting all financial institutions operating under Belgian law from investing in manufacturers of anti-personnel mines and cluster munitions.¹²⁴

3.1.7. Banks involved

Not only the lethal nature of the arms industry's products, but also the weakness of existing bans and treaties, the limited transparency of trade flows and the documented history of corruption and law-breaking, demand a clear and restrictive investment policy. Any investment in this industry could involve banks in transactions which violate human rights, fuel conflicts, support corrupt practices or lead to the production of controversial weapons.

3.2. Better practices

Some financial institutions have taken measures to restrict their investments in the arms industry.

3.2.1. Pioneers

ASN, Banca Etica and Triodos Bank exclude traders and manufacturers of weapons and weapons-related activities from all their products and services. The threshold is absolute set at 0% of the companies revenues.

The exclusion criteria of ASN Bank include companies engaged in or benefiting from war crimes, or the manufacture or trade in arms. ASN Bank will refrain from providing any form of funding for or investment in companies which are active in the development, manufacture, distribution or trade in arms. "Arms" refers to all types of conventional weapons, ammunition, parts, supporting technologies and associated expertise. For a precise definition of "arms" ASN Bank uses the Common Military List of the European Union.¹²⁵ ASN Bank will also exclude companies that manufacture products which are primarily used in armaments in addition to having a civil application.¹²⁶ ASN Bank relies on the EU list of dual use products in order to decide whether this definition is applicable to a particular product.¹²⁷

Triodos bank excludes companies that produce and sell weapons or weapons-related services. This includes both conventional weapons, such as pistols and rockets, and non-conventional weapons, such as nuclear, chemical and biological weapons and integral weapon systems.¹²⁸ Triodos also exclude important shareholders of weapons manufacturers and financial institutions with big investments in the weapons industry. Triodos recently developed a policy to exclude financial institutions who invest in producers of controversial weapons.¹²⁹

Also *Banca Etica* will not invest in the arms and military industry.¹³⁰

3.2.2. Runners-up

Other banks too have developed and disclosed policies on military industry and the arms trade.

Loopholes in the arms investment policies of the runners-up

The arms investment policies of the runners-up have significant loopholes which allow the financial institution to invest in the arms industry in a significant way. The following analysis shows the limitations of the approaches taken by the runners-up.

A number of policies relate to specific types of weapons, in most cases controversial weapons such as nuclear weapons, uranium weapons, anti-personnel landmines, cluster munitions or biological and chemical weapons. Obviously, in a policy that only relates to controversial weapons, conventional weapons such as rockets, missiles, grenades, fire guns, fighter helicopters and bomber planes are not excluded, even when they are being supplied to countries engaged in civil war, to dictatorial regimes or to regions locked in conflict.

Other policies focus on the end users of the weapons. Financial institutions with those types of policies usually exclude investments in weapons, including conventional weapons, for dubious users. The value of this type of approach depends on the list of end users that is used. Furthermore, the widespread use of intermediaries and brokers in the arms trade and the prevalence of corruption and lack of transparency in the weapons industry make it very difficult to implement such a policy.

Other policies do not exclude arms companies as long as the excluded activities are not the core business of the company. As there has been a growing integration of military and civil technologies, many of the biggest weapon producers in the world have non-defence related divisions that in terms of revenues are more important than those in the weapon industry. With 10% or less of their revenues some conglomerates are amongst the biggest weapon producers in the world.

Some policies only exclude the financing of armaments related transactions, they allow general corporate finance of weapon companies.

Most policies of runners-up do not apply to all their products. They allow investments in weapon companies by their mutual funds and assurance products, for example. Exceptions here are the Norwegian Pension Fund and KBC. Their arms policy applies to all their investments and excludes general corporate financing.

3.2.2.1. Exclusion from all investments

The Norwegian Government Pension Fund - Global, is the second largest pension fund in the world. In December 2004 the fund adopted Ethical Guidelines, which state that it "should not make investments which constitute an unacceptable risk that the Fund may contribute to unethical acts or omissions, such as violations of fundamental humanitarian principles, serious violations of human rights, gross corruption or severe environmental damage." One of the consequences voted in is the exclusion of com-

panies involved in anti-personnel mines, cluster munitions or nuclear weapons. For this reason, up to the present the fund has excluded 19 military companies, including major players like Lockheed Martin, Northrop Grumman and BAE Systems from its investment universe.¹³¹

KBC rules out loans to manufacturers or traders of weapons prohibited by law (e.g., anti-personnel mines, chemical and biological weapons, cluster bombs and munitions – the latter being banned under Belgian law) or to companies that manufacture or trade

in weapons that are not prohibited by law, but are internationally recognised as having led to disproportionate suffering among civilians in the last fifty years (such as weapons containing depleted uranium)^{132 133}

3.2.2.2. No investments in weapon companies connected with oppressive regimes

The Co-operative Bank has a user-based approach - it will not invest in companies connected with the sale of arms to oppressive regimes. Arms include products designed to kill, maim or destroy, and parts for equipment which have a battlefield application or are essential to the operation of a weapon, such as radar and electronic warfare, military communications and armour.¹³⁴ At present the Co-operative Bank uses a list of 72 regimes classified as oppressive, of which just 17 countries are subject to UN arms embargoes or EU restrictions.¹³⁵

Apart from this end-user related policy, The Co-operative Bank does not invest in companies involved in the manufacture and/or sale of torture and repression equipment : electric shock batons and leg irons, execution equipment, water canons, armoured vehicles, security equipment and surveillance equipment, CS gas and pepper gas.¹³⁶

As this policy does not automatically exclude producers of controversial weapons, the Co-operative Bank has announced it will review its position on this point.¹³⁷

The arms-related exclusion criteria are used by the bank but not by Co-operative Insurance, also part of the Co-operative Group. Co-operative Insurance uses its influence as a shareholder to seek to challenge organisations that manufacture or transfer armaments to oppressive regimes.¹³⁸

3.2.2.3. No investments in a large part of the weapon industry

Dexia's broad principles, applicable across all of Dexia's activities, include "the exclusion of companies linked to the production

of anti-personnel mines and companies producing or selling cluster bombs".¹³⁹

Dexia also excludes "companies with an offensive or indeed defensive intervention objective and of assets with a research, development and manufacturing objective in relation to offensive or defensive equipment". This part of the policy merely applies to the financing and direct investment activities of Dexia. Dexia excludes investments in these companies only as far as the arms-related activities are the core business of the company.¹⁴¹ It is not quite clear how Dexia determines the core business of a company.

3.2.2.4. No investments in controversial weapon systems

Fortis¹⁴², ING¹⁴³ and Rabobank¹⁴⁴ do not wish to finance or invest their own funds in companies connected with 'controversial' weapons'. The following weapons are considered controversial: cluster bombs, anti-personnel mines, nuclear weapons and biological or chemical weapons. However, the Fortis, ING and Rabobank policies provide a back door which makes it possible to continue to invest in manufacturers of controversial weapons. All three of them allow for an exception to be made if controversial weapons are only a small part of the activities of the company in question and if guarantees are given that the money will not be used for controversial weapons.

3.2.2.5. No direct financing or lending in (controversial) weapons-related transactions

Intesa Sanpaolo's policy bans entering into new financial transactions related to the trade and manufacture of weapons, weapon components and related products.¹⁴⁵ Intesa Sanpaolo adds that possible transactions considered consistent with the spirit of an "unarmed bank" may, as an exception, be authorised by the Chief Executive Officer. In order to ensure appropriate transparency

towards stakeholders these will be published on the website of the Bank.¹⁴⁶

Standard Chartered has a Defence Equipment and armament policy on lending money to fund defence equipment contracts. Standard Chartered states they will under no circumstances support the manufacture or distribution of: any weapons or munitions including controversial weapons (nuclear, biological or chemical weapons, landmines) and ordinance such as missiles, rockets, artillery shells and bullets, any military or security equipment transaction involving a third party broker and any military or

security equipment where the destination country has an oppressive regime. The policy also excludes lending for any equipment designed to be used as an instrument of torture, or for inflicting cruel, inhuman or degrading treatment.¹⁴⁷

Royal Bank of Canada's website states that 'transactions that are directly related to trade in or manufacturing of equipment and/or material for nuclear, chemical, and biological warfare, as well as landmines, are not eligible for RBC financing support or services under any circumstances.'¹⁴⁸

Military and arms industry	Investment limits
Pioneers	
ASN Bank	Traders and manufacturers of weapons and weapon-related products and services
Banca Etica	Traders and manufacturers of weapons and weapon-related products and services
Triodos Bank	Traders and manufacturers of weapons and weapon-related products and services
Runners-up	
Norwegian Government Pension Fund - Global	Companies involved in controversial weapons f.e. anti-personnel mines, clustermunitions, nuclear weapons
KBC Group	Companies involved in controversial weapons f.e. anti-personnel mines, clustermunitions, weapons with depleted uranium
The Co-operative Group	Companies connected with sale of arms to oppressive regimes or with torture instruments
Dexia	Large parts of the weaponindustry (for investments for own own account), in companies involved in some controversial weapons (for all products)
Fortis, ING, Rabobank	Companies heavily involved in controversial weapons f.e. anti-personel mines, cluster bombs, nuclear weapons (for investments for own account only)
Intesa Sanpaolo	Transactions related to trade and manufacture of weapons and weaponrelated products
Standard Chatered	lending for weapons or torture instruments
Royal Bank of Canada	transactions directly related to controversial weapons f.e. anti-personnel mines,nuclear weapons



4. Livelihoods at risk

Some business activities inflict irreversible damage to the environment in which we live or ride roughshod over the rights of local populations. Financial institutions are at risk of becoming involved because of their global investments. Which minimum conditions do they require before they will invest ?

4.1. What's at stake?

4.1.1. Oil, gas & mines severely damage the environment, threatening livelihoods and life itself

Over the past 50 years, humans have changed their way of life more rapidly and extensively than in any comparable period of time in human history.¹⁴⁹ The standard of living has been raised, but at the same time significant damage has been inflicted on the environment. Our activities contribute to global warming, the logging of rainforests and irreversible poisoning of rivers and

ground water. This report will shed more light on the effects of business practices in the oil, gas and mining industries.

Leaking pipes, oil tankers which sink at sea, exploitation of protected natural areas, green house gas emissions and depletion of the earth's resources are all environmental consequences that often follow on from the exploitation of oil and gas.

Mining and ore processing activities are highly contaminating processes, ultimately affecting land, air and water quality. Mining can also have a devastating effect

because of defective waste management. Huge quantities of often toxic waste are generated and frequently dumped into river systems. The pollution even continues after operations are closed, for instance because of acid mine drainage that can go on for years. Ore processing plants, even when using modern technology, often cause significant air pollution over a wide area. This pollution of waterways and air affects the health of local communities not only directly, as they use this water for drinking and other needs, but also indirectly as it impacts on subsistence livelihoods and other agriculture, agro forestry and fishery activities. Their pollution also affects protected areas.



This is all a far cry from the universal human right included in Art. 22 of the UDHR: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family”, and from the first principle of the Rio Declaration on Environment and Development : “Human beings are

... entitled to a healthy and productive life in harmony with nature”.

Although it is the role of states in the first instance to ensure respect for these rights, businesses are nonetheless responsible too. The UN Norms on business, for example, include the statement that business enterprises shall “carry out their activities in accordance with ... relevant international agreements, principles, objectives, responsibilities and standards with regard to the environment as well as human rights, public health and safety, bioethics and the precautionary principle, and shall generally conduct their activities in a manner contributing to the wider goal of sustainable development”.¹⁵⁰

4.1.2. Fuelling violence and repression

Between 1990 and 2005 civil wars in 18 countries have been exacerbated by natural resources such as oil, gas, copper, diamond and gems¹⁵¹ Natural resources have provided the bulk of revenues financing wars in developing countries since the end of the Cold War.¹⁵² The companies involved often financially equipped armed troops involved in the conflict which enabled them to initiate, intensify and sustain conflict,¹⁵³ with a huge impact on society and the environment.

Extractive industries are often involved in corruption and the violent enforcement of security measures. In many cases they disregard the rights of local communities, including land rights, compensation rights and rights to prior and informed consent.¹⁵⁴

¹⁵⁵ ¹⁵⁶

The special representative of the Secretary-General of the UN reported he had surveyed sixty-five instances of human rights abuses recently reported by NGOs. He concluded that the extractive sector – oil, gas, and mining – utterly dominates the sample of reported abuses, with two-thirds of the total. He also reported that the extractive industries are at the centre of most

allegations of the worst abuses, including complicity in crimes against humanity, large-scale corruption, violations of labour rights and a wide array of abuses in relation to local communities, especially indigenous peoples.¹⁵⁷

4.1.3. Trampled rights need more and better regulation

Inadequate local and international laws, corrupt officials and resistance to regulation by the business world mean that the above mentioned business practices are allowed to continue unabated. In many places the lack of regulation is replaced by codes of conduct and guidelines which vary in quality and binding force. Furthermore, none is binding to non-signatories. Even signing these codes does not lead to the banning of



controversial activities.

Taking into account the huge shortfalls in these voluntary codes and principles, the pressure on states to take action on regulation will only increase. There will, for instance, be calls to take action on 'the improvement of all aspects of environmental and industrial hygiene', included in Art. 12 of the International Covenant on Economic, Social and Cultural Rights, and to take action on the commitments made by signing the Rio Declaration on Environment and Development. This Declaration includes the following commitments:

- eliminate unsustainable patterns of production and consumption

develop law regarding liability and compensation for pollution and other environmental damage

- wide application of the precautionary approach
- support for the identity, culture and interests of indigenous people and other local communities
- protection of the environment and the natural resources of people under oppression, domination and occupation
- in general : states recognise that the right to development must be fulfilled so as to equitably meet the developmental and environmental needs of present and future generations

4.1.4. Involvement by financial institutions

The lack of adequate legislation does not let companies off their moral and social responsibility. Financial institutions, too, are at great risk of becoming involved in business practices that would be best avoided.

4.2. Better practices

In a sustainable world there is no future for oil and gas. We need to access and develop renewable and less polluting sources of energy. Mining must be carried out in a responsible way.

4.2.1. Pioneers

Some financial institutions will not invest in companies that are involved in practices which are a serious threat to our environment. In addition, they will direct their investments towards more durable alternatives.

ASN

ASN excludes the oil and gas sector from all its investments. For ASN, oil and gas are irreconcilable with their vision of sustainable development. The sector is accompanied by too many damaging social and ecological side effects and does not offer a solution in the long term. They direct their investments

towards alternative energy sources.¹⁵⁸

ASN Bank does not invest in mining companies although they are not excluded by definition by ASN Bank, but ASN Bank does use a number of general exclusion criteria which make it very hard for a mining company to qualify for finance. The following are excluded:



- Companies which do not protect the environment by failing to act in accordance with national and international guidelines and laws;
- Companies which breach the cultural, social and economic rights of vulnerable groups;
- Companies with activities which lead to social breakdown or which harm the economic foundations or the cultural heritage of a society;
- Companies with business activities which lead to a deterioration in health, living conditions or an increase in poverty;
- Companies systematically involved in bribery and/or corruption;
- Companies with corporate security practices which systematically disregard human rights.¹⁵⁹

Banca Etica

Banca Etica too excludes the oil and gas sector from all its investments.

The Co-operative Bank

The Co-operative Bank will not invest in any business whose core activity contributes to global climate change, through the extraction or production of fossil fuels such as oil, gas and coal.¹⁶¹

Triodos Bank

Triodos has a number of exclusionary criteria that make it hard for oil, gas and mining companies to be accepted for investments. The following are excluded :

- Companies that have frequently and/or seriously violated (environmental) legislation, codes or conventions.
- Companies that caused frequent and serious environmental damage
- Companies active in countries with repressive governments and active in high-risk industries such as oil, gas and mining that do not have a policy and programme in place related to the use of security services. The policy and programmes should include training of security personnel, monitoring, and a grievance procedure.
- Companies sentenced by court for frequent and serious corruption and bribery. Companies operating in high-risk countries and high risk sectors must have a pro-active policy.¹⁶²

All financial institutions mentioned above also apply criteria mentioned in earlier chapters (such as criteria related to labour rights), which raise the threshold for companies from the oil, gas and mining sector where acceptance for investments is concerned.

4.2.2. Runners-up

Norwegian Government Pension Fund - Global

The Norwegian Government Pension Fund - Global makes use of the criteria of 'severe environmental damage' and 'serious or systematic human rights violations' as bottom-line for its investments. The fund's description of what exactly it means by this includes references to international codes,

treaties and norms. These types of descriptions leave a lot of room for interpretation. However, the fund publishes and explains its disinvestments. This enables us to shed light on their policies using the example of two mining companies which they have excluded:

Vedanta Resources

Vedanta Resources' treatment of mining waste in their copper refinery in India leads to penetration of poisonous substances into the ground. A quarter of a million people live nearby their installation, who are at risk of being poisoned through the use of the ground water. Vedanta's copper production causes air pollution with substances including dust, sulphur and fluorides. Vedanta has allegedly been involved in evictions, destruction of homes and farmland, harassment and oppression of villagers, insufficient compensation without mitigation and corruption. Vedanta's practices threaten the extinction of the Dogrib Tribe, which lives in 200 settlements in a forest used by Vedanta.¹⁶³

According to the assessment of the Council on Ethics of the fund the allegations that have been levelled, including abuse and forced eviction of tribal peoples, are well founded. In the Council's view the company seems to be lacking the interest and will to do anything about the severe and lasting damage that its activities inflict on people and the environment. In the Council's view, the violations indicate a pattern in the company's practices where such violations are accepted and make up an established part of its business activities. Such a pattern of conduct constitutes an unacceptable risk that the company's unethical practices will continue in the future. After an overall assessment the Council has found that the criteria for severe environmental damage and gross or systematic human rights violations have been met in this case.¹⁶⁴

Freeport-McMoRan

Freeport-McMoRan (Copper and Gold Inc.) employs a natural river system to dispose

of nearly 230,000 tonnes of tailings each day, thereby releasing large quantities of sediments and heavy metals such as copper, cadmium and mercury into the watercourse. Its reverine tailings disposal has inflicted serious damage to the river system and parts of the nearby reverine rainforest and has a considerable negative impact on the indigenous peoples residing in the area.¹⁶⁵

The Funds Council on Ethics has found that the environmental damage caused by the mining operations is extensive, long-term and irreversible. The Council notes that Freeport gives no indication of intending to alter the way the company manages waste in the future, or of initiating measures that will significantly reduce the environmental damage, despite the fact that Freeport, in the Council's view, has long been aware of the environmental damage caused by the company's practices.¹⁶⁶

The Dexia insurance products which are part of the Portfolio21 Project will not invest their insurance reserves in companies excluded by the Norwegian Pension Fund because of serious environmental damage.¹⁶⁷

HSBC

HSBC has an energy sector policy¹⁶⁸ as well as a mining and metals sector policy.¹⁶⁹ The energy sector policy does not just apply to oil and gas, but also to activities within all forms of power generation, electricity transmission and electricity distribution. The policies apply to nearly all products and services offered by HSBC.

The policies state that HSBC will not provide financial services to the energy, mining and metals sector which directly supports operations in a number of specified protected nature areas. HSBC also requires the companies concerned to keep to the emission limits which have been allocated to them. Further, the mining and metals policy states that HSBC will not invest in artisanal mining, uranium mining for weapons purposes or the mining of rough diamonds

not certified under the Kimberley Process Certification Scheme. If companies use cyanide in the mining of gold HSBC expects them to observe the International Cyanide Management Code or its equivalent. HSBC's mining and metal sector policy also lists a number of activities that HSBC would prefer not to get involved in. HSBC also recommends a number of international norms to its customers.

Equator Principles Signatories

The Equator principles are a set of voluntary guidelines created by financial institutions to ensure that projects they finance are developed in a socially and environmentally responsible fashion. Many financial institutions have signed up to the principles.

It is a work in progress, but at the moment it is clear that the principles fail to live up to their potential. For one thing, the principles are non-binding - financial institutions can sign up and simply not comply. The principles are also very vaguely worded - they leave ample room for interpretation. They lack clear bottom-lines.

It is also important to note that they only apply to project finance, which is no more than a niche market within the financial sector. In 2006 the global project finance market had a volume of just US\$ 181 billion,¹⁷⁰ compared with US\$ 3,881 billion for the global syndicated loans market¹⁷¹ and US\$ 7,653 billion for the global bond and equity market.¹⁷² The oil & gas sector received 15% of the project finance in 2006.¹⁷³

All in all, signing up to the Equator principles does not prevent financial institutions from investing in companies and projects that do not respect people and their natural environment. Lots of examples of this can be found in the 'dodgy deals' section on the website of Backtrack.

It is impossible to identify better practices because the signatories specify neither the projects they have financed nor the projects they have rejected. The 'dodgy deals' mentioned above give an indication of the weakness of the commitments through examples. A comprehensive overview, which is needed to highlight the best practices, is not available.

Livelihoods at risk	Investment limits
Pioneers	
ASN Bank	Oil, gas and mining companies and companies that do not respect number of environment related criteria
Banca Etica	Oil and gas sector
The Co-operative Bank	Companies extracting or producing fossil fuels such as oil, gas and coal
Triodos Bank	Companies that do not respect a number of environment related criteria
Runners-up	
Norwegian Government Pension Fund - Global	Companies that cause severe environmental damage
Dexia	Companies that cause severe environmental damage (only for insurances)
HSBC	Operations in energy, mining and metals sector in some protected areas or not in line with some international standards

5. Drives for change

Why should financial institutions integrate social and ecological minimum standards into their investment decisions?

5.1. Ethical drive

A recent UN financial sector report states that as the flow of finance across national borders has increased, financial institutions (FIs) have come under increasing scrutiny with respect to their role in operations that may cause or facilitate human rights abuses. Today, many FIs and their key stakeholders share the view that they bear responsibility for the human rights impacts of their operations. While FIs face risks related to human rights in their own operations, they must also acknowledge the fact that their activities can enable - or disable - human rights impacts caused by others.¹⁷⁴

Remaining neutral is an illusion. Every investment decision includes resource allocation and thus affects the ongoing dynamic. It can change it or just keep it going. It can keep the problem going, or be part of the solution. Companies, as well as financial institutions, are part of the socio-ecological context in which they operate.

Corporate citizens have a responsibility not only towards their shareholders but towards society as a whole. Financial institutions most definitely have this responsibility because they manage money that belongs to all of us, not just their shareholders.

Herman Mulder (former Senior Executive Vice President, ABN AMRO) puts it like this : “while the financial sector cannot be held responsible for its clients’ actions, it is responsible for the selection of its clients

and suppliers, and therefore active engagement by financial institutions is of the essence”¹⁷⁵.

The engagement that is needed is to stop reducing the decision to financial metrics. The extinction of a culture and many species cannot be seen in terms of money. What price the extinction of a tribe or of the Siberian tiger? It is not about financial values, it is about respect for people and nature and taking responsibility. True, financial products such as life-assurances already put a price on the life of individuals, but those prices are driven by ‘economic values’. They do not start from equal rights and values. Assessing risks to the potential financial outcome is fundamentally different from assessing risks to rights. Respect for human rights needs to be taken into account at all times, even if it has no impact on financial outcome.

Peter Frankental (Economic Relations Strategy Adviser, Amnesty International - International Secretariat) has stated that many financial institutions have shown a willingness to address human rights issues when there is a regulatory requirement or a clear business case, or when steps can be taken that will not affect profitability. The human rights community, on the other hand, expects companies to respect human rights and avoid complicity even when there are no such requirements.¹⁷⁶

5.2. Reputational drive

The products and services of different leading financial institutions are becoming more and more similar, so the perception of the social and ecological values of the brand can make a difference.

In the last few years financial institutions have founded their business principle statements on human rights, making these statements available to concerned customers and publishing them in their sustainability reports.

A large number of financial institutions have signed up to voluntary frameworks, such as the United Nations Global Compact, the Principles for Responsible Investment and the Equator Principles, but many customers are not aware of the very loose and non-binding nature of these policies and frameworks.

However, shared knowledge and concern about what is happening is on the increase. Although transparency in the financial sector remains very limited, more and more stakeholders are beginning to realise that financial institutions play an important part in how our money is used and are starting to look at the allocation of that money. Their investigations very often demonstrate that there is still a big gap between principles and practice. Some financial institutions realise that not taking social and ecological criteria into account in their investment decisions, or signing up to voluntary principles without binding force, may result in distrust of the brand name and even of the financial sector as a whole.

5.3. Financial risks and opportunities

5.3.1. Understanding risks and responsible behaviour reduces costs

Some companies and financial institutions have experienced for themselves the fact that events like unforeseen leaks in the coating of pipelines that stretch over thousands of kilometres or irresponsible storage of sulphur can cause a delay in profitability and/or minimise profits. Some take into account the fact that mining projects which, for instance, contaminate the fish eaten and traded by the local population, can lead to local uprisings and realisation problems. For example, in Indonesia foreign companies have frozen or abandoned mining investments worth \$2 billion, stating that disruptive activism at mining sites and a weak policy framework caused them to withdraw.¹⁷⁷ Some companies and their investors have learned that projects which deprive people of their land rights will lead to delayed payments and delay-related penalties.

A better understanding and implementation at the start of a project can lead to a decrease in lost staff time due to crisis management, as well as to lower security costs and insurance premiums. It can also reduce the costs incurred in fighting allegations, and the potential costs of compensation.

A recent report by the World Resources Institute shows the potential financial advantages to companies which include prior community consent into their project development. Equally, it spells out the potential financial cost of not doing so.¹⁷⁸ Some financial institutions have learned this lesson and now request prior informed consent by local affected communities and/or commission independent social and ecological impact assessments before financing.

Companies which opt for obsolete and dirty production methods risk giving themselves a competitive handicap at the very least. Companies which offer products that are harmful to public health or which do not meet a number of minimum standards will have to switch to different products or cease their present activities. A company which relies on exploitation will have to foot the bill sooner or later. In South America and Asia, for instance, oil and gas companies have been evicted from some countries by new governments with the support of the people - years of exploiting local raw materials with no benefit flowing to the local population led to resistance amongst the population against these companies.¹⁷⁹

Irresponsible behaviour can also impact on the share price of a company. To give but two examples: Talisman Energy's operations in Sudan, where civil war has long been raging, drew protests from several church and human rights organisations. It was estimated that by late 1999, Talisman had suffered a loss of about US\$1.8 billion in market value, a consequence of the loss of institutional investors, and of a regulatory action to curtail financial flows fuelling the conflict.¹⁸⁰ Between March 2005 - when an explosion in the company's Texas City oil refinery killed 15 people - and June 2006, BP's "stock has underperformed the world oil and gas sector by 10.7 per cent".¹⁸¹

5.3.2. Responsible investments deliver good returns

Various studies have proven that integrating ecological, social and governance (ESG) criteria into investment decisions does not lead to weaker portfolio performances.¹⁸²

This is easy to understand where ecological issues are concerned. Reducing the consumption of resources leads to cost

reductions and taking the initiative on new ecological technology gives an important competitive advantage in a fast growing market. Where social issues are concerned, the financial advantages are less obvious. After all, at first sight paying the lowest possible wages, demanding extreme flexibility of employees, not investing in health and safety measures or training, outsourcing and downsizing all have a cost-cutting effect. More research needs to be carried out into the financial advantages of social policies and practices. However, it does not need a lot of research to understand that good social policies lead to less social disaffection with its associated loss of income, easier recruitment of personnel because of the better reputation of the brand, employees who are more highly motivated, suffering from less stress and taking fewer days off. Surely it makes a company more recognisable, stronger and more sensitive to its customers' needs in a global market if it employs more women and people from different cultural backgrounds in the company as a whole, from product design through to advertising and the board of directors. The World Development Report 2005 states that higher wage and working time standards, investments in vocational training and respect for equality tends to translate into better-trained and more satisfied workers and higher employment levels. Safety standards are indispensable to reduce the number of accidents and people needing health care, whereas employment protection can encourage workers to take risks and to innovate. Establishing communication channels between employer and employee, and maintaining robust grievance and arbitration processes, can all contribute to enhanced productivity and more stability in the workforce.¹⁸³

Fiduciary duty allows for ESG considerations and sometimes even requires them

Some financial institutions argue that fiduciary duty imposes a barrier to the consideration of human rights and other ESG issues. They argue that mutual and pension funds, for instance, have no mandate to include ESG issues in their investment decisions, because they must act in the sole interest of their client.

The first objection to this argument is that of the financial return studies¹⁸⁴ discussed above, which demonstrate that it is not against the financial interest of the clients to invest using ESG-criteria - returns will not be lower.

The fiduciary duty argument is further undermined by a report published by the third largest law firm in the world (Freshfields Bruckhaus Deringer) for the United Nations Environment Program Finance Initiative. This report states that there is no duty to maximise the return of individual investments, but instead a duty to implement an overall investment strategy that is rational and appropriate to the fund.¹⁸⁵ This means that, apart from being bound by risk-spreading obligations under certain laws, fund managers are free to take into account ESG criteria. The only thing an asset holding body is obliged to do is to show their ESG approach in their product information. It is up to the asset holding body to decide how much responsibility they want to take on this issue. Asset holding bodies have a great responsibility with regards to the money they manage. But who, in the long run, is taking this responsibility seriously: those who take sustainability issues into account or those who do not?

Moreover, in some cases it is even required by law that they do so. According to the report, decision-makers are required to have regard for ESG considerations at some level in every decision they make. This is because there is a body of credible evidence demonstrating that such considerations often have a role to play in the proper analysis of investment value. As such they cannot be ignored, because doing so may result in investments being given an inappropriate value.¹⁸⁶ The report makes clear that it is not only possible within fiduciary duty obligations to take into account ESG criteria in investment decisions, but that this is positively required where there is the potential for material or financial impact of these factors.

5.4. Competitive opportunities

The impact of our ecological footprint, the unequal distribution of wealth leading to the threat of war, the race to the lowest possible levels of labour rights and tax payments will not be accepted endlessly. Concerns about sustainability will only increase. There is much that needs to be done, willingly or unwillingly. Building up insight into what sustainability is all about can lead to modified products and services that

will be in demand. For example, the integration of social and ecological criteria into mainstream investment decisions can lead to 'conflict free' funds, index funds that use exclusionary criteria, adapted assurances, more attention on micro-credit and other local development related financing. Those financial institutions that take sustainability issues into account when making their investment decisions and developing their products will have a competitive edge in a growing market. Those who remain behind

risk being identified as slow moving and irresponsible, and will miss opportunities.

Studies carried out by Ethibel¹⁸⁷, Dutch Sustainability Research¹⁸⁸ and ING¹⁸⁹, for example, have pointed out that human rights are of great concern to customers. More than 50% and, for some issues, up to 83% of respondents replied that financial institutions should avoid investments connected with human rights violations. Although the respondents in these studies are not totally representative of the whole of society, these studies at least point out that there is a big difference between what major banks practise and what customers would like them to do.

This growing concern by customers about sustainable development affects their choice of financial institutions and products. There is a big market of customers who are not being served at present.

Triodos Bank, a bank that imposes a lot of limits on its investments, has grown by 25% per year over the past few years and is opening branches in more and more European countries.

The ASN Bank (Algemene Spaarbank voor Nederland), a Dutch bank that uses a large number of exclusion criteria for all their products and services saw its customer base and deposits grow by more than 60% in the period 2006-2007. The assets in their funds grew by 27% over the same period.

In many countries, the market share of ESG funds is growing faster than that of conventional funds. And there is a large part of the market still to conquer. Paul Clements-Hunt (Head of the UNEP Finance Initiative Secretariat) has stated that the private banking community servicing ultra-high net worth individuals, which by 2010 will control 50 per cent of the world's assets, or US\$ 44 trillion, manage just 2 to 5 percent of their capital on an ethical basis.¹⁹⁰

5.5. Litigation risks

5.5.1. Ineffective voluntary principles, mounting pressure for regulation

Inadequate legislation and resistance to further regulation on the part of, for instance, business representatives mean that in many places in the world blatant human rights breaches are being committed. Instead of (international) regulation, codes and guidelines have been developed of varying quality and with varying binding force.

Now that these voluntary codes have been in existence for some years, it is possible to evaluate them. In these evaluations the codes have come out as inadequate. For example, in a Global Witness report entitled 'Oil and Mining Companies in War Zones Should Face Tougher Human Rights Standards' this NGO evaluated various voluntary frameworks such as the United Nations Global Compact, the OECD Guidelines for Multinational Enterprises, Global Reporting Initiative (GRI) and Voluntary Principles on Security and Human Rights. Global Witness concludes : "Some companies talk about these frameworks as if they were a credit rating for human rights protection. In reality, they don't measure what companies actually do and have no meaningful sanctions for those whose actions contribute to human rights abuses." The evaluation by BankTrack of 'the Equator Principles'¹⁹¹, the 'Mind the Gap' report by BankTrack¹⁹² and the reports by Netwerk Vlaanderen¹⁹³ show that voluntary codes and principles do not prevent financial institutions from investing in companies involved in very severe human rights abuses. The codes and principles are never binding on companies that do not sign up to them and even if companies do sign up, this does not mean that the financing of extremely controversial activities is banned. What is required is a set of legal initiatives.

Of special interest is a Joint Open Letter to the UN Special Representative on Business and Human Rights of 10 October 2007. In this letter 151 signatories from around the globe stressed the inherent limitations of voluntary initiatives and the need for an outlining of global standards on business and human rights in a UN declaration or similar.¹⁹⁴

5.5.2. Legislative initiatives and litigation risks on the rise

Several examples have been given in previous chapters. We focus here on a number of other issues.

In the past few years, legal actions have been filed seeking to hold companies liable in 'home country' courts for acts of violence allegedly associated with their operations abroad. Examples include US litigation under the Alien Tort Claims Act against Canadian company Talisman Energy over its oil investment in the Sudan, against Shell over its operations in the Niger Delta, against Rio Tinto over the Bougainville Mine in Papua-New Guinea, and against Total over its investments in Burma.

In their report 'The sinews of war, eliminating the trade in conflict resources'¹⁹⁵, Global Witness plead for a recognition by the Security Council of a definition of 'conflict resources' and an empowerment of the international Criminal Court to investigate and punish. Global Witness recently teamed up with the United Nations Secretary-General's Special Representative for Business and Human Rights, Professor John Ruggie. Their project seeks to identify advisory, facilitative and regulatory means home states have or could develop to prevent and deter abuses in the first place, and to punish wrongdoing by companies where it does occur. The UN¹⁹⁶, the G8¹⁹⁷ and the UK government¹⁹⁸ have all expressed support for a definition of conflict resources.

Financial institutions do not stay out of sight.

In the wake of September 11, over 160 countries put blocking orders on hundreds of bank accounts, estimated at more than US\$70 million in frozen assets.¹⁹⁹ In the US, it is estimated that the implementation of the Patriot Act dealing with terrorist financing could cost some banks as much as 20% of their annual profits.²⁰⁰

In the late 1990s, several major banks in the United States were sued for their actions with respect to the dormant bank accounts of Holocaust victims and their heirs. Plaintiffs alleged the Swiss banks had facilitated the Nazis' looting and retention of wealth that found its way out of Germany and into Swiss vaults. The banks were portrayed as a shield for the Nazi regime: repositories and places where the Nazis could hide or convert their ill-gotten and blood-tainted gains. The Holocaust-era bank cases were eventually settled.

Last year around 50 international corporations were brought to court by victims of the Apartheid regime, claiming compensation of up to \$400 billion in total.²⁰² The companies have been brought to court for aiding and abetting the South African government.²⁰³ Banks including Barclays, Citibank and Deutsche Bank are being sued because they gave loans to the Apartheid Government and helped the regime to obtain loans from other investors. The companies are being sued under the Alien Tort Claims Act (ATCA) in the USA, where victims of human rights abuses occurring overseas can sue individuals or corporations. The so-called Kluhmani Lawsuit seeks to hold accountable those internationally-based businesses that aided and abetted (and at the same time profited from) the apartheid regime for enabling the perpetration of gross human rights abuses and violations carried out mainly by the security forces in South Africa through their financial and other forms of support to

that government.²⁰⁴ It is interesting to note that the arguments used are in line with the moral and legal crackdown of the USA on corporate entities and charities that are alleged to have financed terrorist activities.

The Rome Statute, which created the International Criminal Court (ICC) to try war criminals for human rights abuses, states that an accused is liable for the crimes of others if they provide substantial assistance (action component) to those perpetrating the crime for the purpose of facilitating such a crime (mental component). The International Criminal Tribunal for Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda use a less restrictive standard of complicity. The accused must provide substantial assistance and have knowledge that their actions assists the commission of the crime. The intent to facilitate the crime itself is not required.²⁰⁵

International and criminal law can quickly evolve to a point where knowingly financing grave breaches of international law may give rise to liability. Financial institutions have the option of using their influence to block this development or they can take up a pro-actively responsible position.

6. Transparency

6.1. The importance of transparency

6.1.1. Transparency - a civil right

People have a right to know about the impacts and risks of business activities. Moreover, every company has to earn its social licence to operate. Public information is needed in order to know the impact of companies and in order to participate meaningfully in democratic discussions. Society as a whole needs to set the boundaries of the activities of companies. It is not up to companies on their own, or in silent alliance with certain other parties, to decide what sustainable development is all about. In the case of financial institutions it is up to society to decide how our money ought to be invested. Therefore civil society has the right to have access to all relevant information. The massive global financial currents are much too important to leave to financial institutions alone.

6.1.2. Special interest groups rights and demands

Many specific interest groups can claim extra transparency and reclaim their right to informed participation.

In order to make informed choices as consumers, the customers of financial institutions must be kept in the know about what their money is used for.

Local stakeholders potentially affected by a specific investment activity cannot secure their legitimate interests unless they are fully apprised of an activity's environmental, social and economic benefits, and its costs, risks and potential alternatives.

The task of social, cultural and environmental interests organisations is to protect the environment and workers' rights. These types of civil society organisations are not able to fulfil their legitimate protective task without access to all relevant information

Politicians and shareholders too need additional information. Neglecting social and environmental concerns can effect the share value of a company and lead to investments in companies and activities that do not comply with (international) commitments made by governments.

6.1.3. Positive side-effects of transparency

Image

Transparent financial institutions demonstrate that society can trust them, that they have nothing to hide.

Negotiated outcomes

Transparency helps to create a shared base of information on which various stakeholders can build trust and negotiate outcomes.

Transparency increases appreciation by specialised stakeholders

Too many non-binding and vague policy statements have been shown to lack substance. This has caused a shift in the positions of many stakeholders. People no longer trust financial institutions but want them to make crystal clear what exactly they are doing.

Competition

By being transparent, pro-active financial institutions can show that they are ahead of their competitors. Reporting stimulates

this competition, may serve as a basis for benchmarking studies and gives customers doubly informed freedom of choice.

Reduce risks

Greater transparency can also reduce the risk of corruption. Publishing the risks that were taken on social, ecological and financial fronts can lead to controversies which result in a more careful policy.

6.2. Transparency of policies

6.2.1. What's at stake?

Vaguely worded non-binding policies

In recent years, several financial institutions have expressed their respect for human rights in various policy statements and by signing voluntary codes of conduct. However, the published policies and codes leave a number of important questions unanswered. Sometimes it is even unclear whether their respect for human rights is limited to their own employees or is also applicable to the companies that they invest in.

The policies and codes are very vaguely worded, non-binding and leave a lot of room for interpretation. A report that refers to those principles makes a good first impression, but has very little informative value in terms of explaining if and how human rights are taken into account in investment decisions. Some examples follow below.

The UN Global Compact includes two general human rights principles : "Businesses should support and respect the protection of internationally proclaimed human rights" and "Businesses should make sure that they are not complicit in human rights abuses". They also include references to the core labour rights and corruption and bribery. Many financial institutions have subscribed to these principles without having a human rights-related investment policy.

The Equator Principles are social and ecological guidelines for investors in large-scale

projects : mines, dams, pipelines, etc. Subscription to these guidelines by no means guarantees that a company will not finance very nasty projects. On BankTrack's website there is a long list of financial institutions which have financed projects where human rights are abused.

The Principles of Responsible Investing provide another example. By subscribing to these principles financial institutions commit themselves to integrate social, ecological or governance considerations into their investment practices. So companies can subscribe without taking human rights into account. A company can also subscribe without ever divesting, even in the worst situations, but always opting for investment-related engagements; proxy voting on governance issues for example.

6.2.2. Better practices

In earlier chapters we have given a large number of examples of publicised investment practices which set minimum standards. Publicising these standards is an essential part of this kind of transparent reporting.

Transparent reporting

Although this report is not primarily concerned with better reporting practices, we would just like to point out that a transparent report will provide answers to the following questions:

- What sort of responsibilities does the financial institution wish to assume by taking into account human rights - moral, social, legal or merely financial?
- Does the policy apply to the investments of the financial institution?
- Which human rights does the policy take into account?
- Are there human rights breaches which will lead to a refusal to invest? If so, which human rights and what are the minimum standards?
- To which product lines are these minimum standards applied?

Answers to these questions are essential because they will make clear what the minimum requirements are and therefore provide a good picture of what the financial institution stands for and what it accepts as being compliant with its business principles.

In addition to qualitative descriptions of a policy, quantitative performance indicators too can be informative. Financial institutions that apply different minimum standards and approaches to different product lines can make this clear by using, for example, next performance indicators. The company can give an overview by product line of the number of investments and % of assets under management :

- where human rights are taken into account,
- where human rights-related minimum standards are applied,
- where a human rights-related commitment is being enacted or has been undertaken

The following issues too are very important.

- A description of human rights-related practices which the company wishes to avoid and the practices they wish to encourage in their investment partners.
- A description/overview of the actions the company has undertaken to in vestment partners to improve a particular situation
- Reporting on complaint mechanisms and stakeholders response.

When it is clear what the minimum investment standards are and what a financial institution is aiming at, it is also relevant to explain how this is going to be realised.

- Clarification of how human rights assessments will be carried out and followed up; the items researched, the sources consulted, frequency and nature of follow-up;
- Information about procedures, responsibilities, training of personnel, IT;
- Information about the content and re-

sults of internal and external audits.

An investment policy which respects human rights can not be put into place overnight. The following are some steps that need to be taken:

- identify the banks human rights risk profile (regions, clients, critical business areas)
- develop a policy with clear standards (including exclusion criteria)
- consult human rights specialists and specialised NGOs develop clear procedures (including action to identify risks and procedures to deal with problem costumers)
- implement, train, monitor and report

A transparent policy will clarify where the priorities lie, will provide for the publication of a progress report and makes clear what kind of staged plan is being followed. To make an assessment of the priorities and the chosen methods of realising them, information about the involvement of the financial institution is essential. For instance information about the sums invested by sector and most definitely information about the sums invested in controversial sectors such as the arms trade, oil and gas and mining.

Banca Etica

To finish off, we highlight a very special way to publicise and embed respect for human rights.

Banca Etica has enshrined its respect for human rights with regard to its investment policy in its constitution. Banca Etica's constitution includes the following statement:

"In any case, any financial relationship with economical activities that, even indirectly, infringe the human development and contribute to violations of the fundamental human rights will be excluded."²⁰⁶

This firm grounding of their policy is even more impressive when we know that chan-

ges to the constitution can only be made with two thirds of all votes. Banca Etica has more than 28,000 share holders. None of these is allowed to own more than 0,5% of the capital. Furthermore, each share holder has one vote only, regardless of the number of shares they possess. Therefore, the risk of Banca Etica having to compromise their human rights policy because of pressure by a few (large) shareholders is very small.

The shareholders are gathered in regional and local groups (each one made of a few hundreds of shareholders). These groups elect a local coordination committee of 6 to 11 persons. Among this coordination group, 1 or more persons are in nominated for doing the social and environmental evaluation of all the loans request that are made to Banca Etica. This evaluation goes in parallel with the “traditional” economic evaluation that all the banks do. Loans are approved only if both the evaluations give a positive outcome.

6.3. Deal transparency

6.3.1. What is at stake?

Human rights are not an exact science. A policy which states that human rights should be respected raises expectations, but are these expectations fulfilled? The common saying goes: the proof of the pudding is in the eating, and in this case the proof is in the assessment of the list of companies that are (not) being invested in.

Publishing the names of the companies that are (not) invested in makes a policy concrete and tangible. It means that all societal stakeholders, including researchers, journalists and specialised NGOs, can express their appreciation and fulfil their role within society on the basis of relevant data. This way each individual customer, politician and shareholder can gather additional information and decide for themselves whether a financial institution faces up to

its responsibilities and meets its promises.

Furthermore, publication of the shares that are being invested in turns into public appreciation of the selected companies. By the same token, publishing the names of companies that failed to be selected demonstrates publicly that these companies do not meet the ESG criteria used. Both can act as an incentive for the companies involved.

It may be necessary not only to publish the enterprises that have already received finance, but also the pending deals. This offers an opportunity for stakeholders to respond before a dubious investment is entered into. This process is certainly advisable in the case of projects with a large socio-ecological impact, such as the construction of dams, oil pipes and mining projects.

Confidentiality does not prevent publication of names

Financial institutions often refuse to publish the names of companies they invest in. They justify this by referring to the duty of confidentiality attached to their trust-based relationship with these customers. However, financial institutions are largely able to define the nature of this trust-based relationship for themselves. For instance, they could provide in their credit contracts for the stipulation that they may publish the names of the companies they finance.

As far as project financing is concerned, there should be no problem at all publishing the list of allowed project investments. After all, these are mostly investments via publicly issued bonds for institutional investors. Financial institutions are free to choose their priorities: either the confidentiality of their transactions or their social responsibility and concomitant transparency duty. In our opinion, private business interests should not supersede social interests.

6.3.2. Better practices

The following financial institutions have consciously opted for publishing their actual (dis)investments.

The World Bank

On its website, the World bank publishes detailed information about many projects it finances. This includes information prior to the investment, in the form of appraisal reports, for example. The website also provides information about the sums of money approved, environmental assessment reports, and reports on the development of the project.²⁰⁷

Private banks

The names of all companies and enterprises which are in debt to ASN by the end of the year are listed in their annual report, including the sums still outstanding.²⁰⁸ ASN Bank's annual reports contain the shares portfolio and a brief description of the socio-ecological reasons why certain companies were accepted or rejected.²⁰⁹

Banca Etica publishes the names of all companies and enterprises they give credit to on their website. The Banca Etica website also enables the visitor to look for projects

approved in the last 12 months, by geographical area, region or province, by sector, or following other research criteria.²¹⁰

At their Belgian and Spanish headquarters, Triodos Bank makes lists available of companies that have received credit from the bank. In Britain the enterprises that have received finance are published in a brochure. Further, the Triodos website gives an overview of all stock exchange listed companies that the bank is allowed to invest in.²¹¹ Their Dutch website also contains a brief description. Furthermore, the annual report of the Triodos funds contains a brief description of the socio-ecological reasons why certain companies were accepted or rejected.²¹²

In its annual Sustainability Report, The Co-operative Bank lists all credit requests that were refused on social or ecological grounds. The report states the objective of the credit, the sum involved and the reason why it was refused.

The quarterly magazine "Bankenspiegel" by the German GLS Bank gives an overview of all newly issued credit. Under the telling headline 'We like to put our cards on the

table', they publish the name of the debtor, the sum loaned and the purpose of the loan.²¹³

On its website, KBC Bank publishes a list of all companies which were excluded from all investments by the KBC group because of their arms policy.²¹⁴ KBC's website also contains a brief company profile of all companies which were examined by KBC's sustainability service. The profile includes information about the reasons why a company was selected for their sustainable investment. Human rights issues too are mentioned in the profile.²¹⁵

Pension funds

Norwegian Government Pension Fund - Global not only publishes a list of shares they invest in,²¹⁶ but also a list of companies they do not wish to invest in.²¹⁷ Their website also contains a detailed report listing the reasons for their disinvestments. PGGM too publishes a list of companies on its website which are excluded from investments for ethical reasons.²¹⁸

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COLOFON

Author:

Luc Weyn, Netwerk Vlaanderen.

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