

One Step Forward, Two Steps Back

Credit Suisse, UBS and
Human Rights

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The Berne Declaration (BD) is an independent organization specializing in questions of development and financed for the most part by members and donors. BD is committed to global justice and addresses issues like:

- Corporate Social Responsibility (CSR)
- Economic relations and trade policy
- Financial markets and banks
- Agriculture, biodiversity and intellectual property
- Textile industry (Clean Clothes Campaign)

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1. Introduction

In April 2010, the Berne Declaration (BD) published a discussion paper about the two largest Swiss banks – Credit Suisse and UBS – and human rights.¹ Based on the work of John Ruggie, UN Special Representative on Business and Human Rights, and an analysis of financing in high-risk areas, we examined the dealings of both major Swiss banks regarding this important subject. We came to the conclusion that both Credit Suisse and UBS fail to fulfill their corporate responsibility to respect human rights.

With this update, the Berne Declaration documents the developments since the publication of the discussion paper. We examine John Ruggie’s Guiding Principles

and analyze the Swiss national implementation of the Convention on Cluster Munitions. The financing of cluster munitions was an example in the discussion paper for the violation of the right to life. Then we analyze the three defining dimensions – human rights policy, due diligence, and transparency – at Credit Suisse and UBS. Finally, we have also updated the research on financing, because what is important regarding “banks and human rights” is not how convincing processes come across on paper, but rather that these processes are implemented in daily business practices, and banks do not contribute to human rights violations in their core business.

¹ www.bankenundmenschenrechte.ch/sites/default/files/B&HR_EN_fin.pdf

2. Developments in the Ruggie Process

The mandate for John Ruggie, UN Special Representative on Business and Human Rights, ended in 2011. His final report, unanimously accepted by the Human Rights Council in June 2011, contains the Guiding Principles on Business and Human Rights. These guiding principles make concrete and add to the Protect, Respect and Remedy Framework from 2008, which itself is the “authoritative focal point”² for business and human rights.

The guiding principles apply to all corporations,³ independent of size, industry, place of business, ownership or structure. Their goal is “to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.”⁴ The responsibility of all companies to respect human rights means essentially two things: “[T]hey should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”⁵ The responsibility of the corporation refers to a clear human rights foundation, namely at least the international human rights charter⁶ and the ILO core labor standard conventions.

2.1 The Responsibility to Respect in the Financial Sector

Although the UN Special Representative had always stressed, even in earlier documents, that his recommendations apply to all corporations, certain wording and examples focused attention on well-known high-risk sectors, such as mining, oil exploration and low-wage production. The Guiding Principles improve significantly the application to all companies, and the connection to bank activities is clear. Already the wording chosen in the introductory principle – “with which [business enterprises] are involved” – makes clear that companies are not only called upon in cases of direct causation of human rights abuses. The 13th principle fur-

ther states the responsibility for such impacts on human rights. Companies must “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”⁷ The explanatory comment on this principle makes clear: “‘Business relationships’ are understood to include relationships with business partners, entities in the value chain [...] directly linked to its business operations, products or services.”⁸ Such products and services clearly also include financing, whether directly through lending, or indirectly through assistance in the placement of shares and bonds.

With the Guiding Principles, the UN Special Representative on Business and Human Rights calls for the responsibility to respect human rights, also unambiguously from the financial sector.

2.2 “Policy Commitment” and “Human Rights Due Diligence”

According to the Guiding Principles, in order to exercise their “responsibility to respect,” corporations need:

- “(a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”⁹

Since banks commit direct human rights violations only in exceptional cases, the focus is on the outcome of the human rights policy and the due diligence process. As part of such a process – for example for the assessment of a mining firm as a potential business client – the question that is crucial is how this firm has dealt with past human rights violations, that is, the question of remediation (item (c) above).

A **human rights policy** should contain the obligation and the responsibility to comply with respect for human rights. It must therefore be mandated by the highest management

2 A/HRC/17/31, p.3.

3 Also for all nations. Here we limit ourselves to the second pillar, the responsibility to respect.

4 A/HRC/17/31, p. 6.

5 A/HRC/17/31, p. 13.

6 The Universal Declaration of Human Rights, and both binding covenants: The International Covenant on Civil and Political Rights, and The International Covenant on Economic, Social and Cultural Rights (both 1966).

7 A/HRC/17/31, p. 14.

8 A/HRC/17/31, p. 14.

9 A/HRC/17/31, p. 15.

levels, it should be supported by internal and/or external expertise, and it should meet “the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services.” The human rights policy should be published, communicated internally and externally, and implemented in operational guidelines and processes.¹⁰

Human rights due diligence is the central step that companies must take to fulfill their responsibility for the respect of human rights (“in order to identify, prevent, mitigate, and account for how they address their adverse human rights impacts”¹¹). This assessment includes existing and potential infringements of human rights. It demands a reaction and action, to find a remedy, as well as documentation and open communication.

The UN Special Representative mentions the possibility to integrate human rights due diligence into existing risk management systems. This option presents itself to Swiss banks that have processes to deal with environmental and reputation risk. However John Ruggie names a requirement that must be met: “[P]rovided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders.”¹² This reversal of perspective is the deciding aspect that distinguishes the human rights approach from all other forms of dealing with risk in corporations.

2.3 Act and Talk About It

As is the case with nations, the UN Special Representative finds policy coherence lacking within corporations, therefore he urges

that: “business enterprises need to strive for coherence between their responsibility to respect human rights and policies and procedures that govern their wider business activities and relationships”.¹³ So, for example, financial and other internal incentives should be adapted.

Wherever possible, corporations should assert their influence to remedy human rights violations. This influence – or leverage – is defined as “the ability to effect change in the wrongful practices of an entity that causes harm.”¹⁴ When banks make a significant contribution to the financing of their clients, the banks have this influence. But John Ruggie also identifies the need to end business relationships when influence cannot be exercised: “There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so.”¹⁵

Policies and due diligence processes are necessary so that a company can even identify (“knowing”) where its actions are already in conflict, or could be in conflict with human rights. In addition to this “knowing,” it also urgently needs “showing”: “[This] involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders [...]”¹⁶ Transparency is also an essential element of a company’s responsible dealing with human rights.

10 A/HRC/17/31, p. 15.

11 A/HRC/17/31, p. 16.

12 A/HRC/17/31, p. 16.

13 A/HRC/17/31, p. 16.

14 A/HRC/17/31, p. 18.

15 A/HRC/17/31, p. 19.

16 A/HRC/17/31, p. 20.

3. The End of the Beginning

John Ruggie characterized his final report as “the end of the beginning” of the discussion about corporations and human rights.¹⁷ For the continued implementation of the Protect, Respect and Remedy Framework and the Guiding Principles, the Human Rights Council created a group of experts for an initial three-year period. The composition of this five-person Working Group will be determined by the Council at its 18th session, in autumn 2011. Likewise, there will be an annual multi-stakeholder forum on business and human rights. This forum should also explicitly address “challenges faced in particular sectors.”¹⁸

With the completion of its revision of Performance Standards in May 2011, the International Finance Corporation (IFC) also

committed itself to the Ruggie Framework. In the latest draft (the adopted version has not yet been published) it said: “IFC recognizes the responsibility of the private sector to respect human rights [...] companies meet their responsibility by undertaking due diligence in order to identify adverse risks and impacts of their actions, and by avoiding or addressing them as appropriate.”¹⁹ The Performance Standards form the material basis of the Equator Principles and therefore have particular relevance for the financial sector. With all the developments outlined above, it is assured that corporations in general and banks in particular will also in the future (be forced to) deal with the topic of human rights.

17 For example, in consultation with civil society. 10./11.10.2010.

18 A/HRC/17/L.17/Rev.1, p. 3.

19 IFC, Policy on Social and Environmental Sustainability, p. 223

4. Development in Swiss Law: Financing Ban on Cluster Munitions

On the Web site www.banksandhumanrights.ch and in the 2010 discussion paper, we chose the financing of firms that manufacture cluster munitions as an example where the right to life is violated. On June 6, 2011, the Swiss Federal Council voted to ratify the Convention on Cluster Munitions. For national implementation, the War Material Law will therefore be revised. In order to implement the convention's prohibition to "assist and encourage," the Federal Council established a funding ban on cluster munitions in the legislative message for the revision of the law submitted to Parliament. This ban covers direct financing ("granting of credits, loans, donations or comparable fi-

nancial benefits for the development, manufacture or acquisition of prohibited war materials"²⁰) and indirect financing, "if it serves to evade the ban on direct financing"²¹. "Indirect financing for the purposes of this provision applies in particular to the participation in corporations that develop, manufacture or purchase prohibited war materials, as well as the acquisition of bonds or other investment products issued by such corporations [...]"²² Since it can be very difficult in practice for banks to prove that indirect financing does *not* serve to circumvent direct financing, the hope is that the financing of cluster munitions by Swiss banks will soon belong to the past.

20 Botschaft über die Genehmigung des Übereinkommens über Streumunition und zu einer Änderung des Kriegsmaterialgesetzes, p. 50

21 Ibid.

22 Ibid.

5. Developments at the Major Swiss Banks

Next, we analyze the developments in non-financial risk and reputation review processes and the handling of the issue of human rights at the two major Swiss banks. We examine three of the key areas identified by the UN Special Representative: human rights policy, due diligence processes, and transparency.

5.1 Credit Suisse: Human Rights Policy

Credit Suisse has no overriding policy commitment as the Ruggie Framework and the Guiding Principles demand of corporations. The bank however comments on the issue on its Web site and in the report “Corporate Responsibility Report 2010.”²³ The report says: “We also support the efforts of the UN Special Representative on Business and Human Rights to clarify the respective human rights responsibilities of states and individual businesses.” Where this support lies is not explained. It’s not in the adoption of John Ruggie’s work, in any case, since Credit Suisse refers only to the Universal Declaration of Human Rights. But the UN Special Representative requires compliance with the civil and social pact as well as the ILO core labor standards as the non-negotiable basis for responsible corporate behavior. Credit Suisse also mentions the Global Compact and its utterly meaningless “CEO Statement.”²⁴ One of the concrete results of the UN Special Representative’s earlier work is that voluntary agreements such as the Global Compact must be measured against the benchmark of the Framework and the Guiding Principles: “In the future, the value of voluntary initiatives will lie in the extent to which they enable or support the operationalisation of the framework. Those which merely provide a less ambitious alternative are likely to become irrelevant.”²⁵

The contents of Credit Suisse’s Web site and report hardly discuss their core business of financing activities. They only mention their

limited influence and refer to the reputation and risk review process.

5.2 Credit Suisse: Human Rights Due Diligence

In recent years, Credit Suisse has developed sector-specific guidelines for high-risk industries. Although this step is naturally welcomed, it must however be clearly stated that also taking “social risks” into account and even the mention of the term “human rights” are not sufficient for Credit Suisse’s reputation risk review process to qualify as human rights due diligence for the purpose of the UN Special Representative. As the name implies, the bank and its reputation stand clearly at the center of this process. The required change of perspective is not achieved, and the risks to right-holders remain systematically left out.

Credit Suisse has policies for forestry, mining, oil and gas, as well as guidelines for palm oil and hydropower, published in summaries (see below).²⁶ In addition, it has a “position” on anti-personnel mines and cluster bombs that rules out business relationships with the manufacturers of such weapons.

The forestry policy illustrates the difference between a risk versus a human rights perspective: Credit Suisse will ensure that a forestry company “has considered and, if applicable, responded to local community issues in a meaningful and credible way.” In conflicts between timber companies or palm oil producers and local communities it is not about vague “issues,” but rather about the violation of human rights, such as the right to housing, the right to food, or the collective rights of minorities. In that the bank here assumes the perspective of the corporation, which can itself decide when to “consider” and when to “respond,” the potential victims are never the focal point.

The policies for mining, as well as oil and gas, state that Credit Suisse will provide no financing for corporate business activities “against which there is credible evidence of involvement in human rights abuses such as, e.g., forced labor, employment of children or the use of violence against local communi-

23 www.credit-suisse.com/investors/doc/ar10/csg_crr_2010_en.pdf

24 www.unglobalcompact.org/issues/human_rights/CEO_Statement.html

25 Institute for Human Rights and Business, *From Red to Green Flags, The corporate responsibility to respect human rights in high-risk countries*, 2011, p. 40.

26 www.credit-suisse.com/responsibility/doc/policy_summaries_en.pdf

ties and indigenous groups.” So that this formulation can be effective, it is crucial that the list of human rights abuses has really only illustrative character, and all rights are taken into account, as called for by the UN Special Representative.

But in the implementation it is also important to specify what constitutes “credible evidence.” During the discussion of the cases on the Web site www.banksandhumanrights.ch, Credit Suisse raised doubts about the credibility of reports of human rights violations by Barrick Gold in Papua New Guinea. In the meantime, far worse incidents have been established (systematic sexual violence by security personnel) and Barrick has for the first time confirmed them.²⁷ Wording like “credible evidence” has the potential to make the Credit Suisse policies ineffective, for example if reports of human rights violations are seen as “not credible” until the concerned company admits to them (after which time the bank can continue a business relationship, because the company shows itself to be reasonable and then surely promises improvements). A consistent human rights perspective cannot discount the statements of rights-holders in advance. Lastly, we have the very limited number of cases of global bank financing that reach the reputation risk review process. In 2010 there were 279 transactions; in 2009 there were 132. Over half of these cases were approved without restrictions.

5.3 Credit Suisse: Transparency

In autumn 2010 Credit Suisse published summaries of its policies and guidelines. This enables a debate on the content for the first time. This limited “showing” is very welcome. Since the policies and guidelines are not an integral part of Credit Suisse publications, the bank still remains behind leading international banks (such as the Dutch Rabobank). But because of the substance of the summaries, Credit Suisse stands far ahead of its national rival UBS.

5.4 UBS: Human Rights Policy

UBS offers the “UBS Statement on Human Rights,” unchanged since November 2006.²⁸

27 www.barrick.com/CorporateResponsibility/KeyTopics/PorgeraJV/Response-to-Human-Rights-Watch-Report/default.aspx

28 www.ubs.com/1/e/about/corp_responsibility/commitment_strategy/policies_guidelines/human_rights.html

Even the date shows that it does not take the developments of the agenda on business and human rights from the Ruggie process into account. Thus it lacks any reference to the human rights charter; the Universal Declaration on Human Rights isn’t even mentioned. The UBS core business is only mentioned twice: “our level of influence is limited with our clients,” and “We aim to promote the responsible use of our products and services by taking human rights standards into account when vetting prospective clients and executing transactions.” Which human rights standards are meant, is not specified.

5.5 UBS: Human Rights Due Diligence

In 2009, UBS developed sector guidelines for the following industries: chemistry, forestry and biofuels, infrastructure, mining and metals extraction, oil and gas, and utilities. UBS also has a policy that prohibits “investments in companies associated with anti-personnel mines and cluster munitions.”²⁹ However this policy only applies to Asset Management, i.e. for stocks actively managed by UBS, but not for investment banking services and lending.

The UBS sector guidelines serve “Managing environmental and social risks.” These risks are defined as “the potential reputational or financial damage resulting from transactions, products, services or investments that involve a party associated with environmentally or socially sensitive activities [...]”³⁰ As with Credit Suisse, the bank’s reputation and additionally a possible financial loss take center stage. Reference to the rights-holders is nowhere to be found.

Because of the very limited transparency, the commitment to take human rights into account in the “UBS Statement on Human Rights” cannot be examined. On the corresponding page of the Annual Report, “human rights” is hidden under “social risks.” However on the same page only “environmental risk review” is mentioned. The topic of human rights seems to be a piece inserted after the fact into an otherwise unmodified process, and not an independent and equally-important part of due diligence. The Institute for Human Rights and Business emphasizes that the adoption of the work of the UN Special Representative would make a differ-

29 http://www.ubs.com/1/g/about/corp_responsibility/news?newsId=182778

30 UBS Annual Report 2010, p. 62.

ence precisely here: “One underlying purpose of the ‘Respect’ framework is to bring human rights into the center, rather than add layers to the periphery.”³¹

In addition to seven environment-related points, four social risks are explicitly named: child labor (ILO Conventions 138 and 182), forced labor (ILO Convention 29), indigenous peoples (IFC Performance Standard 7) and diamond mining and trading. From the foundation of human rights due diligence (Universal Declaration on Human Rights and ILO core labor standards) called for by the UN Special Representative, UBS refers explicitly only to the core labor standards – and also here only to three of the eight standards.

In 2010, UBS “referred 194 transactions to their environmental risk functions for a detailed environmental assessment.”³² Here

too, neither “social risks” nor “human rights standards” (as in the “UBS Statement to Human Rights”) are mentioned. UBS gives no information – not even a summary as does Credit Suisse – about the decisions for these transactions.

5.6 UBS: Transparency

In its annual report and on its Web site, UBS offers few clues to the content of its guidelines for dealing with environmental and social risks. This is clearly insufficient and does not correspond with the scope called for in Guiding Principle 12 (“information that is sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved”³³).

31 Institute for Human Rights and Business, 2011, p. 110.

32 UBS Annual Report 2010, p. 62.

33 A/HRC/17/31, S. 20.

6. Two Steps Back

“The proof of the pudding is in the eating”: The developments at banks in human rights policy, due diligence and transparency are only relevant when the result is that banks are entangled less often in human rights violations while operating their core business. The Berne Declaration therefore revised the finance research that was the underlying document for the 2010 study.³⁴ This research brought to light that since 2010, both Credit Suisse and UBS finance the world’s most controversial mining company: Vedanta Resources.

6.1 Worst in Class: Vedanta Resources

In 2009, Vedanta earned the number two spot on a list of “most environmentally and socially controversial multinational companies” by RepRisk, a service provider for reputation risk, specializing in the financial sector. In 2010, Vedanta Resources occupied third place, just behind Transocean and BP. Amnesty International had already written about Vedanta in 2009, in an investor briefing specially-tailored to the financial sector. Vedanta is also one of the few firms for which Amnesty has produced a detailed research report on its human rights violations.

Vedanta Resources was founded by Indian billionaire Anil Agarwal in 1976. The company, listed in London, recorded sales of \$11.4 billion in 2010. It is controlled by Agarwal with a 61% stake via Volcan Investments. Vedanta is one of the world’s largest producers of zinc (79% market share in India). It also mines copper and produces aluminum and lead. It has plants in India, Zambia and Australia. In the high-risk mining industry, Vedanta has a particularly bad reputation. Since 1997, the firm has been confronted time and again with complaints and charges of displacement, land grabs, pollution, lack of security, tax evasion, construction without a permit, etc. The cases described here cover only the most dramatic allegations.

34 Profundo, The involvement of Swiss banks in the financing of companies violating human rights, a research paper prepared for Berne Declaration, June 2011.

6.2 No Right to Water and Health

Through various subsidiaries and with partner firms, Vedanta has been pursuing plans in the Indian province of Orissa since 1997 for an alumina refinery in Lanjigarh, and a bauxite mine in the Niyamgiri Hills to supply the refinery. Both projects are highly controversial.³⁵

The refinery, which became operational in 2006, was built illegally in protected woodland belonging to the Adivasi tribal group.³⁶ This approach appears to work, because the planned six-fold expansion of the refinery also began without authorization. According to Vedanta, 60 percent of the expansion had been completed by February 2007, although the construction should have required environmental approval in advance. The relevant application was filed by Vedanta only in October 2007.³⁷ Vedanta wanted to create a *fait accompli*, in order to more easily carry out the planned bauxite mine (see below).

Vedanta had assured the authorities that there would be no uncontrolled contamination of the environment by toxic residues at its refinery. From the viewpoint of Amnesty International, Vedanta Aluminium (VAL) did not meet this condition between 2006 and 2009: “Our findings show that both the proposed mine and the refinery have serious implications for the human rights of the affected communities – including the rights to water, food, health and a sustainable livelihood.”

The environmental protection commission Orissa State Pollution Control Board (OSPCB) has repeatedly pointed to runoff of alkaline wastewater into the Vamsadhara River, the primary source of water for over 5,000 people. The communities near the refinery told Amnesty of skin problems after contact with the water. The highly toxic residue from alumina production – a sort of red mud – is held in open reservoirs. These

35 Amnesty International 2010, p. 38f.

36 “[I]t is clearly established that the company has occupied 26.123 ha of village forest lands within the refinery boundary with the active collusion of concerned officials. Hence, the environmental clearance given to the company for setting up the refinery is legally invalid and has to be set aside.” Ministry of Environment and Forests: <http://moef.nic.in/downloads/public-information/Vedanta-24082010.pdf>, p. 6.

37 Government of India 2010, p. 10.

ponds, as well as an ash pond, lie near the Vamsadhara; the wastewater pond lies directly next to the river.

The firm never informed the people in the vicinity of the refinery of the possible dangers or measures taken by the firm to prevent such incidents. This uncertainty and anxiety hinders those affected from using the river water and thereby impairs their human right to water. Many people have little access to other drinking water sources in summer and must use the river water. Dalit women who cannot use the same public water sources as other castes suffer the most.

Based on video footage, Amnesty accused Vedanta with cases when heavy rainfall resulted in sludge overflowing from the red mud pond in April and May 2011. "Vedanta and the authorities must take action – with rainy season approaching the situation is a ticking time bomb. The red mud pond poses a serious threat to the health, livelihoods and safety of the local people," said Ramesh Gopalakrishnan, Amnesty International's South Asia researcher.³⁸

It is not only in Orissa where Vedanta violates the right to water. Its subsidiary in Zambia, Konkola Copper Mines, was fined by a court for contaminating the Kafue River in October 2010.³⁹ One hundred thousand inhabitants in the Chingola district draw their water directly from the river. Back in November 2006, toxic residues flowed from a burst pipeline into the Kafue River, turning it a greenish-blue color. Drinking water for the Chingola district was interrupted for over two days. Hundreds who ate fish from the river became ill. The level of heavy metals lay two to ten times over the limits set by the World Health Organization (WHO).⁴⁰

6.3 Livelihoods Undermined

In order to more easily supply its alumina refinery with raw materials, Vedanta hopes to develop a bauxite mine in the Niyamgiri Hills. The Dongria Kondh, an indigenous people with a population of only 8,000, has lived close to nature in the Niyamgiri Hills for over a thousand years. The people are dependent on the area for their economic, physical and cultural survival. According to the Indian Ministry of Environment and Fo-

rests, the mine would destroy one of the holiest sites of the Dongria: the pristine summit area, protected by the Dongria from logging for centuries, and essential for the fertility of the region.

Construction of the mine would render the indigenous way of life impossible. It would lead to deforestation, resettlements and water pollution. Amnesty International warned investors: "The bauxite mine threatens the survival of protected Indigenous communities [...]. In particular, the proposed mine could have grave repercussions for their human rights to water, food, health, work and other rights as indigenous communities in respect of their traditional lands."⁴¹

The case has provoked international outrage. The UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises found in September 2009 that Vedanta had neglected to consult the Dongria Kondh in an adequate and timely manner about the construction of the mine, and also had carried out no human rights impact assessment. The NCP could not find a single indication that Vedanta had ever considered the situation of the Dongria.⁴² After a longstanding tug of war, the Indian government forbade construction of the mine on August 24, 2010. Yet Vedanta's project partners are appealing the decision before the state's High Court.⁴³

The almost chronic disregard for the law by Vedanta has had fatal consequences. A subsidiary built a 240-meter-high chimney at the power plant in Korba, in the state of Chhattisgarh, without authorization. The chimney collapsed in 2009, burying over 40 workers. It was one of the worst industrial accidents in Indian history. As a result, the British Safety Council withdrew safety awards that had been recently given to Vedanta.⁴⁴

6.4 Exit and Entry of Financial Institutions

These cases, as well as a steady stream of new accusations, prompted the Norwegian Pension Fund to exclude Vedanta from the Fund in November 2007. Since then, other financial actors have followed: The Church of England, the Dutch pension administrator

38 www.amnesty.org.uk/news_details.asp?NewsID=19490

39 www.minesandcommunities.org/article.php?a=10613

40 www.monde-diplomatique.de/pm/2009/05/08.mondeText.artikel,a0018.idx,18

41 Amnesty International 2009, p. 10.

42 Amnesty International 2010: p. 32.

43 www.minesandcommunities.org/article.php?a=10833

44 www.guardian.co.uk/business/2010/aug/29/vedanta-safety-awards-stripped

PGGM, and many other socially-responsible investors.

On the other hand, the major Swiss banks welcomed Vedanta as a new client in 2010, before the temporary halt to construction of the controversial mine in Orissa was known. UBS financed Vedanta in April 2010 as the only bank with a “revolving credit facility” of over \$200 million. Furthermore, in March

2011 UBS was one of four leading banks that participated in the issuance of bonds worth over \$883 million. In May 2011, Credit Suisse was one of the leading banks in the issuance of bonds worth over \$1.65 billion. If Vedanta is able to acquire oil concern Cairn India, Credit Suisse will contribute \$737.5 million to a credit line of \$5 billion.⁴⁵

⁴⁵ Profundo 2011.

7. Conclusion

With the completion of the work of the UN Special Representative on Business and Human Rights, the question as to whether corporations – and thus also banks – must respect human rights is answered with an unequivocal “yes.” The discussion can now meaningfully only revolve around *how*. With this update we have contributed to this discussion.

Both Credit Suisse and UBS do not yet meet the requirements of the Ruggie framework and the Guiding Principles in terms of the criteria “human rights policy” and “human rights due diligence.” Credit Suisse goes further than UBS with the direct reference to human rights violations in the guidelines for mining, and oil and gas. But it still lacks a systematic consideration of the rights-holders with the indispensable change in perspective for the respect of human rights. Similarly, the publication by Credit Suisse of substantive summaries of its guidelines and policies makes it considerably more transparent than UBS. But here too, a genuine and convincing commitment to “showing” is missing. Only through the full publication of the criteria of reputation risk review could the quality of the standards in relation to human rights be appropriately evaluated.

The importance of human rights in the due diligence processes of banks is increasing, and the implementation of the Framework and Guiding Principles is becoming a key distinguishing feature of potential bank cli-

ents, such as firms in the mining or oil and gas sector. Assessing respect for human rights will never be done through a simple “check the box” exercise. Nor are there voluntary agreements, through which corporations automatically exercise their responsibility, as the Institute for Human Rights and Business notes: “[A]dherence to voluntary initiatives does not constitute fulfilment of a company’s responsibility to respect human rights.”⁴⁶ Banks need therefore not only human rights-specific and transparent due diligence criteria, but also appropriately-trained personnel to adequately evaluate the increasingly complex questions relating to the human rights performance of their clients. Only then can the banks do justice to the rights-holders.

One step forward, two steps back: The Berne Declaration would have been pleased to report only the small steps of both major Swiss banks in the right direction. It is disturbing that both Credit Suisse and UBS welcome the world’s most controversial mining firm as a new client, whose human rights violations have been documented by respected organizations. If the human rights violations of Vedanta are not enough to warrant the refusal of business dealings with the firm, then both banks still have a long way to go before they possess credible human rights due diligence processes. Until then, Credit Suisse and UBS do not fulfill their corporate responsibility to respect human rights.

⁴⁶ Institute for Human Rights and Business, 2011, p. 41