



# Dutch banks and human rights in practice

A practical study for the Fair Bank Guide

*Profundo*

economisch onderzoek

# **Dutch banks and human rights in practice**

**A practical study for the Fair Bank Guide (Oxfam Novib, Milieudefensie, Amnesty International, FNV Mondiaal and Dierenbescherming)**

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## Summary

Companies that extract oil and mineral resources have several options when it comes to their approaches to the local communities living in the areas in which they work. In concrete terms, this involves the ways in which these companies provide information, consult local communities, take the interests of the local population into account, seek and achieve agreement, respect property and means of subsistence, and handle protests.

The activities of companies extracting raw materials are often associated with serious violations of the human rights of the local populations. This may occur when these companies use the territory on which a local community depends economically for a mine or processing facility without providing (sufficient) compensation, without obtaining voluntary, timely and well-informed permission and/or through the use of force and even violence. In addition, these activities may involve forced evictions or the expropriation of land. Incidents resulting in the use and damage, without reason, of locations with a great social, religious or cultural value have also been known to occur. By polluting the local environment (drinking water, fishing water, water for sanitation and irrigation, air, soil, etc.), these companies can inflict serious damage to the sources of income and harm to the health of the local communities.

This study focuses specifically on (the investment relationships with) three raw materials extraction companies that were systematically involved in these types of human rights violations in recent years. These human rights violations were documented extensively in recent Amnesty International reports. The following three companies are involved:

- *Barrick Gold Corporation: involved in human rights violations near the Porgera gold mine in Papua New Guinea;*
- *Royal Dutch Shell: involved in human rights violations in the Niger Delta (Nigeria);*
- *Vedanta Resources: involved in human rights violations in Orissa (India).*

There are nine large Dutch banks (actually, banking groups)<sup>i</sup> that are the objects of this study. We studied whether or not these banks invest in shares or bonds issued by the three aforementioned companies, for their own trading purposes and/or for the investment funds that they offer to clients. If these banks did make these types of investments, we studied if and how these banks call the companies to account regarding their involvement in human rights violations ('*engagement*'). If investments are not made in these companies, we studied whether or not this choice was based on human rights or sustainability considerations.

Using a short questionnaire, the banks were asked to provide information in writing regarding their voting behaviour at shareholders meetings, their engagement with the three companies, and possible other contacts. The banks were also asked to substantiate their answers (if desired, on a confidential basis) by allowing the inspection of relevant documents. The banks' responses were compared with a pre-determined scoring table:

1. The bank invests in the company, yet does not call the company to account regarding its involvement in or responsibility for the structural human rights violations;

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<sup>i</sup> The term 'banking group' refers to the broader financial group to which a bank belongs, and to which (national and international) subsidiaries of the bank belong.

In the interest of readability, they are referred to in this report as 'banks'. The nine banks are ABN AMRO Bank, AEGON Bank, ASN Bank, Friesland Bank, ING Bank, Rabobank, SNS Bank, Triodos Bank and Van Lanschot Bankiers.

ASN Bank is part of the SNS Reaal group, yet implements its own policy, and has been monitored as an independent bank since the creation of the Fair Bank Guide.

2. The bank invests in the company, and confronts the company on an incidental basis regarding its involvement in or responsibility for the structural human rights violations (for example, by voting in favour of a disapproving shareholder's motion or in a one-off meeting);
3. The bank invests in the company and calls the company to account in an intensive manner regarding its involvement in or responsibility for the structural human rights violations (for example, during an engagement procedure);
4. The bank invests in the company and calls the company to account in an intensive manner regarding its involvement in or responsibility for the structural human rights violations (for example, during an engagement procedure). The bank also determines that the investment relationship will only be continued if the company terminates or minimises the human rights violations within a realistic period of time;
5. Via a successful engagement procedure, the bank has made a contribution to putting an end to the structural violation of human rights OR the bank stops investing (or refrains from investing in to start with) the company on the basis of its human rights policies (or the sustainability policy which includes human rights).

If the bank does not invest (or no longer invests) in the company based on financial or other reasons (other than human rights or sustainability considerations), it will receive a score of 'N.A. (not active)'.

All nine banks participated in the study. The scores were assigned based on the results of the research and the information provided by the banks. The scores for the nine banks are summarised in Table 1.

**Table 1 Banks and raw materials extraction companies: in practice**

<b>Bank</b>	<b>Barrick Gold</b>	<b>Shell</b>	<b>Vedanta Resources</b>
ABN AMRO Bank	1	1	1
AEGON Bank	2	2	2
ASN Bank	5	5	5
Friesland Bank	5	5	5
ING Bank	2	2	2
Rabobank*	3	3	N.A.
SNS Bank**	5	3	5
Triodos Bank	5	5	5
Van Lanschot Bankiers	3	3	3

\* Includes Robeco Direct

\*\* Includes RegioBank

**Key:**

**1 = poor;**

**2 = unsatisfactory;**

**3 = fair;**

**4 = satisfactory;**

**5 = good.**

**N.A. = not active in this area**

ABN AMRO Bank, which does invest in the three companies involved, did not provide any information indicating that it undertakes any engagement activities with respect to these companies. For this reason, the bank received three scores of 1 (poor).

AEGON Bank and ING Bank do indicate that they participate in engagement with the relevant companies, however did not provide any further information regarding the form, content and the frequency of this engagement and the results this led to. For this reason, they both had three scores of 2 (unsatisfactory).

Van Lanschot Bankiers has implemented an intensive engagement project with all three companies, yet has not clearly established any policy that the investment will no longer be continued if the company fails to terminate or minimise the human rights violations within a realistic period of time. For this reason, this bank received three scores of 3 (fair).

For financial reasons, the Rabobank does not invest in Vedanta Resources. Rabobank has implemented an intensive engagement project with the other two companies, Barrick Gold and Shell, although it is not clear whether it has established any policy that the investment will no longer be continued if the company fails to terminate or minimise the human rights violations within a realistic period of time. For this reason, the bank received two scores of 3 (fair).

ASN Bank, Friesland Bank and Triodos Bank all score a 5 (good) with respect to all three companies since they have consciously decided not to invest in these companies based on human rights considerations.

This also applies to SNS Bank with respect to Barrick Gold and Vedanta Resources, yet when it comes to Shell, it has decided to implement an engagement procedure. In addition, it has not been clearly established that the investment will no longer be continued if the company fails to terminate or minimise the human rights violations within a realistic period of time. For this reason, SNS Bank scores a 3 (fair).

In addition to the specific recommendations for engagement with the three companies which are discussed in this report, the report also contains more general recommendations regarding the manner in which financial institutions can apply John Ruggie's human rights due diligence process, and how they may effectively implement engagement with companies that are involved in or responsible for violations of human rights.

## Introduction

The 2011 Fair Bank Guide compares eleven important providers of private current and savings accounts in the Netherlands market.<sup>i</sup> An evaluation has been prepared outlining the (sustainable or ethical) investment policies these banks implement when it comes to their investments. In January 2009, this comparison was presented for the first time, and an update follows every quarter.

With the aid of the practical studies, the Fair Bank Guide attempts to evaluate whether or not the banks actually put their investment policies into practice.

*Since its launch in January 2009, the Fair Bank Guide focuses primarily on the (sustainability) policy of Dutch banks with respect to funds that they have under their own management, including savings deposits. In 2011 however, the policies implemented by these banks with regard to funds that they manage for their clients (in the form of investment funds, private banking and other forms of asset management) will also fall under the scope of the Fair Bank Guide. In anticipation of this, the asset management aspect has already been included in this practical study.*

In this report, nine large Dutch banks are evaluated on their implementation of investment policy in relation to human rights. To this end, the investment relationships and engagement activities with the companies Barrick Gold Corporation, Royal Dutch Shell and Vedanta Resources were studied. This is the fourth practical study initiated by the Fair Bank Guide.

This report contains a summary of the research findings. Chapter 1 shows the research structure and methodology. Chapters 2 through 4 then address the human rights problems involved in the business activities of Barrick Gold Corporation, Royal Dutch Shell and Vedanta Resources. In Chapter 5, the bank relationships are presented for each company, as well as the findings regarding their engagement activities.

Finally, Chapter 6 contains recommendations for all of the financial institutions that have invested or are considering investing in raw materials extraction companies, with respect to the way (possible) violations of human rights are handled by or on behalf of these companies. Additionally, a description is provided of how, in their investments in raw materials extraction companies, banks can apply the concept of due diligence as formulated by John Ruggie, Special Representative of the U.N. Secretary-General on business and human rights.

A summary of the results of the study may be found in the first pages of this report.

## Disclaimer

Any opinions on sub-topics, such as those discussed in practical studies, do not necessarily represent those of all of the organisations participating in the Fair Bank Guide.

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<sup>i</sup> As of 27 January 2011, in addition to the banks mentioned in footnote 1, Delta Lloyd Bank and NIBC were also included in the list of banks which were studied for the Fair Bank Guide. Since the current study was already initiated in 2010, both banks have been excluded from this report.

## Chapter 1 Research structure and methodology

### 1.1 Research objective

There are several guidelines in existence for companies which indicate that they have the responsibility to respect the human rights of those who are affected by their activities. Well-known guidelines are the *OECD Guidelines for Multinational Enterprises* and the *UN Global Compact*. In order to identify, prevent and reduce the negative impact of their activities on human rights, companies must carry out a *human rights due diligence* process.<sup>i</sup>

Banks are also required to implement a human rights due diligence process. This process consists of determining whether or not the company in which the bank would like to invest has structured its own human rights due diligence process properly and whether or not the company might be (or have been) involved in or responsible for human rights violations. However, it is possible that these types of violations do not start occurring or come to light until this evaluation has been performed and the investment has already been made. When this happens, the bank may be expected to confront the company in question in this regard (engagement). Engagement is a commonly occurring process at banks, and also an important form of a bank's attempt to carry out due diligence. In order to evaluate the effectiveness of these efforts, the study focuses specifically on this engagement.

The objective of this study is to determine whether or not:

- *the banks studied for the Fair Bank Guide invest in three specific companies which are involved in or responsible for serious violations of the human rights of local communities;*
- *if they do invest: whether or not they call these companies to account regarding these violations, and if so, how they do this;*
- *if they do not invest: whether or not the choice not to invest in these companies is based on human rights or sustainability considerations.*

The starting point is that in principle, banks do not invest in companies which are involved in or responsible for serious violations of the human rights. If these human rights violations do not start occurring or come to light until after the investment has been made, the bank may be expected to confront the company regarding these violations. This act of confronting, or calling to account, may be done on an incidental basis, for example through voting behaviour at a shareholders meeting, but this is preferably something that is intensive in nature, for example, in the form of a dedicated engagement procedure or meetings held within the context of credit loans.

An engagement procedure is understood to mean a series of meetings between one or more shareholders or financiers and the upper management of the company. In this regard, it is important for the bank to formulate clear objectives and a realistic time period: if, for example, at the end of the pre-determined period, the violations of human rights have not been demonstrably minimised or terminated, the bank should ultimately decide not to make the investment, or should sell its existing investments.

The scope of this study is limited as it only assesses the banks for their investment relationship and engagement practices with three companies. However, since these companies are involved in or responsible for the violation of the human rights of local communities on a structural or long-term basis, this structure certainly allows for conclusions to be drawn and useful lessons to be learned for the future.

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<sup>i</sup> Detailed information on this process will be provided in Chapter 6.

## **1.2 Definitions**

### **1.2.1 Human rights**

Human rights may be roughly divided into Civil Rights and Political Rights (CiPo rights) and Economic, Social and Cultural Rights (ESC rights). Civil rights comprise the freedom of religion and speech, protection from torture and the invasion of privacy, the right to a fair trial and the protection of minorities. The right to privacy, rights related to arrest and imprisonment, the right to the freedom of the press, and the protection from hate speech and discrimination are also civil rights. The right to vote, the freedom of assembly and the right to form political parties are classified as political rights.

Economic, Social and Cultural Rights (ESC rights) are given to mean the minimum conditions which can guarantee a decent existence, namely, the right to employment, an adequate standard of living, the right to health and the right to education. The right to employment implies that people have access to work without discrimination at a reasonable wage within a safe work environment and with reasonably limited working hours. Clear violations of the right to employment are forced labour and slavery. In addition, all people have the right to form trade unions and to strike, and are entitled to social security.

The right to water, food, clothing and housing falls under the right to an adequate standard of living. Water and food must be available, accessible and of good quality. The right to water is also seen as a fundamental human right in and of itself. The most direct violation of the right to food is the deliberate withholding of food from population groups or from prisoners, for example. The most direct violation of the right to housing consists of forced evictions.

The right to a healthy living environment and the right to physical and mental health fall under the right to health. This includes both the right to have control over one's own body and health as well as the right to adequate health care.

### **1.2.2 Companies involved in human rights violations**

This study focuses on (the investment relationships with) companies that extract oil and mineral raw materials. These companies have several options when it comes to their approaches to the local communities living in the areas in which they extract these raw materials. In concrete terms, this involves the ways in which these companies provide information, involve local communities in consultations, take the interests of the local population into account, seek and achieve agreement, respect property and means of subsistence, and handle protests.

The activities of companies extracting raw materials are often associated with grave violations of the human rights of the local populations. This may occur when they use the territory on which a local community depends economically for a mine or processing facility without providing (sufficient) compensation, without obtaining voluntary, timely and well-informed permission and/or putting a mine or processing facility into operation through the use of force and even violence. In addition, these activities may involve forced evictions or the expropriation of land. Incidents resulting in the use and damage of locations with a great social, religious or cultural value have also been known to occur. By polluting the local environment (drinking water, fishing water, water for sanitation and irrigation, air, soil, etc.), these companies can inflict serious damage to the sources of income and harm to the health of the local communities.

This study focuses specifically on three raw materials extraction companies that were systematically involved in these types of human rights violations in recent years. These human rights violations were documented extensively in recent Amnesty International reports. The following three companies are involved:

- *Barrick Gold Corporation: involved in human rights violations near the Porgera gold mine in Papua New Guinea;*
- *Royal Dutch Shell: involved in human rights violations in the Niger Delta (Nigeria);*
- *Vedanta Resources: involved in human rights violations in Orissa (India).*

### **1.2.3 Investments in companies involved in human rights violations**

Investments in companies involved in or responsible for human rights violations are defined in this study as follows:

- *The banks' investment in the shares and bonds issued by these companies for their own purposes;*
- *The banks' investment in the shares and bonds issued by these companies for clients via investment funds.*

To determine the size of these investments, in late 2010, the situation as of the last available reporting date was examined.

## **1.3 Research structure**

First, an inventory was taken to determine whether or not the banks that were studied for the Fair Bank Guide owned shares or bonds in these companies or managed these for their clients as of the most recent report date. Relevant details are reported for all of the investment relationships found.

For those banks for which investment relationships with the three companies were found, a study was then carried out to determine what the banks publicly report regarding any interaction they have with these companies regarding human rights violations. Among other things, these interactions might consist of voting behaviour at annual meetings and engagement practices<sup>i</sup> with companies. Using a short questionnaire (see Appendix 1), the banks were then asked to provide information in writing to supplement the information found on these interactions with information on the bank's voting behaviour, their engagement with the three companies, and other possible contacts.

## **1.4 Evaluation**

### **1.4.1 Criteria**

The following criteria were applied in evaluating the banks' investments and engagement activities as these relate to the three companies in question.

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<sup>i</sup> In principle, all of the interactions between a bank and a company may be grouped together under the common denominator 'engagement', however in practice, the term is mostly used to describe a more or less informal consultative process between one or more financial institutions and a company with respect to social, environmental or governance topics. Some financial institutions carry out this engagement themselves, however many financial institutions outsource this to specialized companies or asset managers operating on behalf of several financial institutions.

- *Does the bank (still) invest in the company, for its own purposes or on behalf of clients?*
- *If the bank invests in the company, does the bank call the company to account regarding its involvement in or responsibility for the structural human rights violations?*
- *If the bank calls the company to account regarding its involvement in or responsibility for the structural human rights violations, how intensively<sup>i</sup> does it do this?*
- *If the bank calls the company to account for its involvement in or responsibility for the structural human rights violations, does the bank then establish that the investment relationship will only be continued if the company terminates or minimises the human rights violations within a realistic period of time?*
- *If the bank does not invest (or no longer invests) in the company, was this decision based on the bank's human rights policy (or the sustainability policy in which human rights are included)?*

#### **1.4.2 Scoring table**

The outcome of the practical study have been summarised in a scoring table. Based on the results, the banks' investments and their engagement activities were individually assessed with respect to each company. This leads to three separate assessments with three scores.

The following table was used to assign these three scores:

1. The bank invests in the company, yet does not call the company to account regarding its involvement in or responsibility for the structural human rights violations;
2. The bank invests in the company, and calls the company to account on an incidental basis regarding its involvement in or responsibility for the structural human rights violations (for example, by voting in favour of a disapproving shareholder's motion or in a one-off meeting);
3. The bank invests in the company and calls the company to account in an intensive manner regarding its involvement in or responsibility for the structural human rights violations (for example, during an engagement project);
4. The bank invests in the company and calls the company to account in an intensive manner regarding its involvement in or responsibility for the structural human rights violations (for example, during an engagement procedure). The bank also determines that the investment relationship will only be continued if the company terminates or minimises the human rights violations within a realistic period of time;
5. Via a successful engagement procedure, the bank has made a contribution to putting an end to the structural violation of human rights OR the bank stops investing (or refrains from investing to start with) the company on the basis of its human rights policies (or the sustainability policy which includes human rights).

If the bank does not invest (or no longer invests) in the company based on financial or other reasons (other than human rights or sustainability considerations), it will receive a score of 'N.A. (not active)'.

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<sup>i</sup> The degree of intensity of the discussions between the bank and the company will, at any rate, be evaluated based on the following criteria: the frequency of the discussions (at least a few times per year), the duration of the discussions, the level at which the discussions are held, the content of the discussions (does the discussion focus specifically on the human rights violations of the local individuals and communities; is the company expected to follow Ruggie's due diligence concept), and agreements regarding a timeframe.

For several reasons (apart from the numerical), the three scores are not combined to create a total score. As a result, the three companies differed a great deal from one another (activities, size, etc.). For this reason, the relationship and the engagement procedure with one company will thus be different from another company. A single conclusion has been formulated for each bank, however, based on the three scores, and this is also reported on the Fair Bank Guide website. These conclusions were presented to the banks in advance to provide them with the opportunity to respond.

## **1.5 Sources used**

For the purpose of conducting the study, the banks studied were asked to supply information regarding their engagement practices. This information was evaluated based on its reasonableness, and where permitted by the bank, substantiated with documentation.

The investments referred to in section 1.2.3 have been taken from annual reports and financial databases and relate only to investment funds. Investments in the three companies via mandates or private banking are not made public, and are therefore not included in this report.

The banks have been given the chance to respond to the draft version of this report, yet not all of the banks took advantage of this opportunity. Some of the findings and formulations have been modified based on the responses received.

## **Chapter 2 Barrick Gold Corporation**

### **2.1 Introduction**

The Canadian company Barrick Gold Corporation (Barrick Gold) is one of the world's largest gold mine operating companies. In 2009, Barrick Gold produced 7.4 million ounces of gold. Its operations are spread widely over the globe. Over 2009, Barrick Gold generated revenues of US\$ 8.1 billion (€ 5.9 billion) and for the first time in years, Barrick Gold suffered a loss of US\$ 4.3 billion (€ 3.1 billion) due to a non-operational, one-off expense of US\$ 5.9 billion (€ 4.3 billion). At the end of that year the company owned total assets of US\$ 27.1 billion (€ 18.9 billion).<sup>1</sup>

One of the gold mines operated by Barrick Gold is the Porgera gold mine in the Wuangima area in Papua New Guinea. The mine is located at an altitude between 2,200 to 2,700 meters. The Porgera deposit is being mined using open pit and underground mining methods. Operation of the mine was initiated in 1990 and since 2006 the area is operated under a Special Mining Lease (SML).<sup>2</sup>

The mine is owned and operated by the Porgera Joint Venture (PJV), a 95% owned subsidiary of Barrick Gold. Half of the remaining 5% is owned by the Enga provincial government, which leaves local landowners with 2.5% ownership in the PJV. In 2009, the Porgera mine's production totalled 627,000 ounces of gold.<sup>3</sup> The proven and probable mineral reserves of the mine amounted to 7.7 million ounces of gold at the end of 2009.<sup>4</sup>

### **2.2 The Porgera Mine conflict**

#### **2.2.1 Amnesty International study**

Three sub-clans, the Uape, Lakima and Wangalo, populate the Wuangima area in the province of Enga. These clans have lived there for several generations. In the second quarter of 2009, police officers raided villages in the Wuangima area, forcibly evicting people from their homes, burning down houses and destroying their belongings, gardens and livestock.<sup>5</sup> The police raids had a dual purpose: to address the deteriorating general law and order situation in the Porgera area, and to address increased illegal mining activity in the Porgera mine.<sup>6</sup>

On 11 May 2009, Amnesty International issued a public statement calling for immediate action to stop the forced evictions, remedy the violations that had occurred and prevent further human rights abuses. Subsequently, between 18 August 2009 and 2 October 2009, Amnesty International visited Porgera and engaged in investigating the current human rights situation of those affected by these raids. This included inspecting the burned remains of houses and interviewing various community members including police officers, government officers, local politicians, religious leaders and land owners.<sup>7</sup>

Amnesty's findings were summarised in a report published in January 2010.

#### **2.2.2 Violent police evictions**

Between April and July 2009, the police evicted Wuangima clans from their homes alongside the Porgera gold mine in Papua New Guinea. Families were forced to flee from their homes as police burned down their houses. In many cases residents had no opportunity to take their belongings before their houses were burned. Other villages in the area including Kulapi and Mungalep faced similar violence.<sup>8</sup>

Residents say police officers used and threatened to use force to evict people from their homes, including elderly people and women nursing their children. The police even fired at or near them and killed their animals and livestock. Three women were raped by police officers during the evictions in Wuangima. At least 130 buildings were burnt down in Wuangima between April and July 2009. Local community members report many more were destroyed. They witnessed residents fleeing from heavily armed police officers of the Mobile Squad who surrounded their houses setting fire to them. Others returned home from their gardens and jobs to be shocked by the fact that their houses had turned to ashes.<sup>9</sup>

On around 21 May 2009, police also destroyed several houses in Kulapi, a well-established village immediately next to the open pit on the opposite side to Wuangima. Villagers report that the Mobile Squad police had entered fully armed, pointing their rifles directly at residents. Other witnesses and former residents indicate that on two further occasions, the police again destroyed houses in Wuangima after villagers returned to the area to reconstruct their homes. The police allegedly searched a house in the village of Mungalep and brutally beat a father and his son in front of his young children.<sup>10</sup>

The police were assisted by 23 people from the greater Porgera area, who were said to be political opponents of prominent landowners' associations of the SML area led by the Uape sub-clan. Barrick Gold and PJV deny they had any knowledge of the police actions in Wuangima and declare that they did not request the action.<sup>11</sup>

### **2.2.3 Legality of police evictions**

According to anonymous sources within the government of Papua New Guinea, a request by the commander of the Mobile Squad to distribute eviction notices was refused. This confirms residents' claims that no warning was given prior to the demolition of their homes. No resettlement plan was developed or communicated to the residents and they have not been provided with any alternative accommodation.<sup>12</sup> Under international law, governments are required to ensure that all people possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats.<sup>13</sup>

Senior police staff claim that the people were residing on those lands illegally as the company has a lease over the SML.<sup>14</sup> However, one of PJV's general managers rejects this assertion by explaining that the SML entitles PJV to the exclusive right to mine, but that acquisition and use of land must be negotiated with the people living there.<sup>15</sup>

Additionally, they claimed their searches in Wuangima were supported by search warrants. But the warrants did in no way authorize the demolition of property. Furthermore, the search was only permitted if the cooperation of village leaders was sought. No leader of the sub-clans confirmed to Amnesty International that the police had sought their cooperation. The forced evictions were carried out without adequate notice and safeguards and therefore clearly violated international law.<sup>16</sup>

### **2.2.4 Police accountability**

Although Amnesty International was unable to corroborate the reports on rape, they urge the Papua New Guinea authorities to thoroughly investigate these reports, based on the consistency of the community members' statements and a history of sexual violence by the local police.<sup>17</sup>

Amnesty International did confront senior police personnel with the allegations on violence and brutality. The police replied that no official complaints regarding the police activities in Porgera had been received, and therefore they would not investigate. However, there is no adequate system for making complaints against police in Porgera without appearing in person at the local police station and people would have to travel several hours to the closest regional police office.<sup>18</sup>

PJV and senior police personnel claim that members of the public can make a complaint by telephone. However, nobody was able to provide this telephone number. But even if community members did wish to make a complaint; members of the Mobile Squad do not wear identification, making it hard to individually target unlawful behaviour by individual officers.<sup>19</sup>

## **2.3 Barrick Gold's Corporate Responsibility**

Many questions rose upon the role of Barrick Gold's subsidiary PJV, who works closely together with the local police force since the start of what is known as Operation Ipili. PJV stated during and shortly after the raids that no forced evictions had taken place.<sup>20</sup> About seven months later, and only after significant follow-up by Amnesty International, Barrick Gold and PJV privately acknowledged that they believed the police did evict people from their homes in Porgera and that further investigation was warranted.<sup>21</sup> Barrick Gold strongly denied that the police carried out any human rights abuses as part of Operation Ipili.<sup>22</sup>

### **2.3.1 PJV's community role**

Since the start of Operation Ipili, in March 2009, PJV provides a special police squad with accommodation, food and fuel, set up to deal with a worsening law and order situation. PJV initially claimed that the support was provided conditionally on compliance with "applicable laws and regulations". It insists it had no part in requesting a police call-out and was not aware of the demolition of any building, until the fires were already burning.<sup>23</sup> The proximity of the SML to Wuangima undermines this claim and photographs prove that PJV employees must have been well aware of the burnings.<sup>24</sup>

The request for the government to respond to law and order problems in the district was made during meetings of the Porgera District Law and Order Committee, say government officials. PJV's Community Affairs Manager is an active member of the advisory committee to the Law and Order Committee and was therefore involved in this request.<sup>25</sup>

In a letter dated 20 October 2008, the Chairman of the Law and Order Committee communicated to the members that the advisory committee appointed a twenty-man mobile squad to arrest and raid. PJV claims that this letter did not concern Operation Ipili in April 2009, but a task in January 2009. However, members of both the Law and Order Committee and the government separately confirmed that Committee discussions led to the April 2009 deployment of police.<sup>26</sup>

Two senior police officers advised that deployment of the Mobile Squad has occurred on several occasions at the request of PJV, including the April 2009 deployment. Afterwards, the companies claim that PJV was merely one of several entities that requested the support of the police.<sup>27</sup>

### **2.3.2 PJV statement on compliance to Voluntary Principles**

The Voluntary Principles on Security and Human Rights are voluntary standards developed by business, governments and NGOs (including Amnesty International) as a guide to companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms.<sup>28</sup> In November 2010, Barrick Gold officially announced that it joined the Voluntary Principles.<sup>29</sup> Furthermore, since the involvement of Barrick Gold in the Porgera mine, the company has made significant contributions to police training in respect of human rights.<sup>30</sup>

Barrick Gold claims that the police actions were not evictions, were not illegal, were conducted with notice and without the use of force, and resulted only in the destruction of crude shelters that were temporarily occupied by migrants engaged in illegal activity.<sup>31</sup> However, there is significant evidence to the contrary, including testimonies, photographs and physical evidence of the remains of permanent houses with well-established gardens and even the presence of a church. At the London meeting on 3 December 2009, Barrick Gold and PJV acknowledged that some houses in Wuangima had been occupied for quite some time, and that some people were displaced.<sup>32</sup>

Barrick Gold also declares that the police actions were reported by the PJV Security Manager on 27 April 2009 at 2:30 pm and that PJV made inquiries with the commander of the Mobile Squad the next day.<sup>33</sup> Furthermore, since 14 August 2009, PJV has engaged a prominent Papua New Guinean to 'monitor' the police deployment. Documents relating to the monitor's initial inquiries indicate that there are numerous areas of concern, including police misconduct and the burning down of houses in Wuangima, which the monitor intends to take up with the Commissioner of Police.<sup>34</sup>

Barrick Gold therefore concludes that PJV did exactly what the Voluntary Principles recommend.<sup>35</sup>

### **2.3.3 Amnesty International statement on compliance with Voluntary Principles**

Between May and December 2009, Barrick Gold's response to the concerns expressed by Amnesty International about the police activity was to repeatedly and publicly defend the police action based on the company's "extensive" investigation, which included PJV making inquiries with the police. However, in a meeting with Amnesty International on 3 December 2009, PJV clarified that its "inquiries" with police involved asking them to reassure the company that the actions were legal, and that the company obtained no evidence to substantiate this.<sup>36</sup> It is apparent that PJV was or ought to have been aware that the Wuangima area had long been occupied, and that on 27 April 2009, PJV staff observed the police entering Wuangima and burning down houses.<sup>37</sup>

The police and Barrick Gold have publicly claimed that the buildings were temporary shacks inhabited by illegal workers from other parts of Papua New Guinea, who attempted to engage in illegal mining and other illicit activities.<sup>38</sup> When Amnesty International found that many of the houses were solidly structured, permanent houses, Barrick Gold and PJV told Amnesty International that they now accept that some of the buildings destroyed in Wuangima were indeed established houses.<sup>39</sup>

The Voluntary Principles on Security and Human Rights stress that where physical force is used by public security, such incidents should be reported to the company and to the appropriate authorities, that companies should record and report any credible allegations of human rights abuses by public security, and that companies should urge investigation and action to prevent any recurrence.<sup>40</sup>

In a telephone conversation on 10 December 2009 and in writing on 18 December 2009, Amnesty International asked Barrick Gold whether it or PJV had reported to the relevant authorities the information available to them regarding the forced evictions, including the information that led the companies to conclude that the police evicted people from their homes. As at 10 December 2009, neither company had urged an investigation by the Papua New Guinea authorities.<sup>41</sup>

Upon observing the activities of police in Wuangima and in responding to public complaints by landowners and NGOs, the response of PJV and Barrick Gold, in Amnesty International's view, has fallen far short of the conduct expected of companies that do not tolerate human rights violations and are a member of the Voluntary Principles.<sup>42</sup>

Amnesty International learned that PJV had attempted to acquire land from Wuangima landowners to expand their mining operations in 2007. Two years later the police destroyed landowners' houses and belongings. Although this causes many to believe there is a link between these facts, no evidence had been found yet to substantiate it. The company claims it had lost its interest in the land by the time of the raids and had no hand in the police deployment.<sup>43</sup>

## **2.4 Current situation**

International law requires the government to protect all people from forced evictions. The state of Papua New Guinea has made no efforts to provide alternative accommodation, food or other assistance to those evicted from their homes in Wuangima. Due to the demolition of their houses and gardens, residents claim they can no longer provide for their own food.<sup>44</sup>

Studies document the lack of available fertile soil for gardening within the SML area as a result of land use for mining and an increase in the SML area population. Amnesty International observed first-hand the existence of extensive garden sites in Wuangima and the lack of available land near the village of Yarik, where many of those evicted from their homes are currently staying. Women from Wuangima fear having to sell small items such as peanuts and cigarettes and withdrawing their children from school in order to earn money to buy the food that they were traditionally able to grow themselves.<sup>45</sup>

Barrick Gold and PJV claim that many of those affected by the forced evictions were from areas of some distance from Porgera and only temporarily residing there.<sup>46</sup> They dispute that people were made homeless as a result of the forced evictions, because people could either move in with family nearby or return to the areas of Papua New Guinea from which they came.<sup>47</sup> After long discussions with Amnesty International, they concluded that further investigation was desirable and promised to correct earlier statements on their website. As at 11 January 2010, nobody had replied to Amnesty's inquiry about the progress of the investigations, nor was the website updated.<sup>48</sup>

Although PJV's support to the police was conditional on compliance with international regulations regarding the use of force, there is no evidence that PJV enforced this condition after the police burned down houses in the SML area. A court order issued by the National Court of Justice dated 14 September 2009 required the police to withdraw from the SML area before 5 October 2009 and prohibited the use of the PJV accommodations by the police. The state of Papua New Guinea currently contests these rulings.<sup>49</sup>

In February 2010, Barrick Gold published a statement on its website as a reaction to the report of Amnesty International. Barrick Gold considers the police deployment an answer to the call for action of the Papua New Guinea Government. It considers its outcome a success as they state that tribal fighting and gun violence have been significantly reduced and even women's safety has improved. Barrick Gold claims it is working with local parties to improve the capacity of the law and justice sector and to advance respect for human rights. It emphasizes the claim that Amnesty International acknowledged the fact that neither Barrick Gold nor PJV was responsible for police violence or forced evictions. In conclusion, it raises questions on the quality of the investigation of Amnesty International.<sup>50</sup>

Amnesty International's struggle against Barrick Gold is ongoing, as it states that Barrick Gold and PJV continue to provide support to the police forces. In an e-mail campaign started in October 2010, Amnesty International urges the companies to withdraw their support for the police deployment and call for an investigation into the forced evictions. Barrick Gold reacted surprised to this campaign as it states that since the police operation of April 2009 it has been engaged with Amnesty International on human rights issues in Papua New Guinea.<sup>51</sup>

A report issued by Human Rights Watch in January 2011 indicates that the violence against people in the SML area continues. Barrick Gold employs nearly 450 private security personnel who are accused of gang rapes, excessive beatings and using tear-gas.<sup>52</sup>

Barrick Gold has responded with appropriate vigour to the allegations brought forward by Human Rights Watch. The company opened a major internal investigation, facilitated a criminal investigation by the Papua New Guinea police, and made a commitment to take steps that could strengthen oversight and accountability for the security force at Porgera. In a public statement, Barrick called the results of its internal investigation "disturbing" and announced the termination of several security personnel for involvement in, or failure to report, alleged incidents of sexual violence.<sup>53</sup>

## **Chapter 3 Royal Dutch Shell**

### **3.1 Introduction**

Royal Dutch Shell is a British-Dutch oil company with operations spread worldwide in ninety countries. With revenues totalling US\$ 278 billion (€ 200 billion) and a profit amounting to US\$ 12.5 billion (€ 9.0 billion) in 2009, it was the largest company in the world that year.<sup>54</sup>

The oil industry in the Niger Delta comprises both the government of Nigeria and subsidiaries of multinational companies such as Shell. The exploration and production is undertaken in joint ventures.<sup>55</sup> Shell is the main operator on land; its activities in the Niger Delta are carried out by the Shell Petroleum Development Company of Nigeria, a joint venture involving the state-owned Nigerian National Petroleum Corporation (55%), Shell (30%), Elf Petroleum Nigeria Limited – a subsidiary of Total (10%) and Agip (5%).<sup>56</sup>

Amnesty International has researched pollution and environmental damage caused by the oil industry, as well as its impacts on primary social and human rights of the people living in the Niger Delta.<sup>57</sup> Subsequently, it examined who is responsible for this situation in a context where multinational oil companies have been operating for decades.<sup>58</sup> The results of the research were summarized in a report that was published in June 2009.

### **3.2 Environmental impact of the oil industry in the Niger Delta**

Nigeria has become Africa's biggest producer of petroleum, with offshore production as well as onshore production in the Delta, Bayelsa and Rivers states. The oil and gas sector represents 97% of Nigeria's foreign exchange revenues and contributes 79.5% of government revenues.<sup>59</sup> Oil has generated an estimated US\$ 600 billion (€ 459 billion) since the 1960s. Despite this, the UN Development Programme (UNDP) describes the region as suffering from "administrative neglect, crumbling social infrastructure and services, high unemployment, social deprivation, abject poverty, filth and squalor, and endemic conflict." The poverty, and its contrast with the wealth generated by oil, has become one of the world's starkest and most disturbing examples of the 'resource curse'.<sup>60</sup>

The Niger Delta is one of the ten most important wetland and coastal marine ecosystems in the world and is home to some 31 million people.<sup>61</sup> However, the oil industry has been a major contributor of pollution in the Niger Delta for more than half a century.<sup>62</sup> The human rights implications are serious but under-reported and, despite urges by local and international NGOs, the African Commission on Human and Peoples Rights and the UN Human Rights Committee, inadequately addressed.<sup>63</sup>

Oil spills, waste dumping and gas flaring (gas is separated from oil and, in Nigeria, most of it is burnt as waste) are endemic in the Niger Delta. This pollution, which has affected the area for decades, has damaged the soil, water and air quality. As a result, hundreds of thousands of people are affected, particularly the poorest and those who rely on traditional livelihoods such as fishing and agriculture.<sup>64</sup>

#### **3.2.1 Oil spills**

Frequent oil spills are a serious problem in the Niger Delta. The failure of the oil companies and regulators to deal with them swiftly and the lack of effective clean-up greatly exacerbates the human rights and environmental impacts of such spills.<sup>65</sup> Oil spills on land destroy crops and damage the quality and productivity of soil that communities use for farming. Oil in water damages fisheries and contaminates water that people use for drinking and other domestic purposes.<sup>66</sup>

According to UNDP, more than 6,800 spills were recorded between 1976 and 2001, with a loss of approximately three million barrels of oil.<sup>67</sup> A group of independent environmental and oil experts visiting the Niger Delta in 2006 put the total figure for oil spilt at nine to thirteen million barrels of oil over the past fifty years.<sup>68</sup> Spills result from corrosion of oil pipes, poor maintenance of infrastructure, spills or leaks during processing at refineries, human error and as a consequence of deliberate vandalism or theft of oil.<sup>69</sup>

There is no doubt that sabotage, vandalism of oil infrastructure and oil thefts are serious problems in the Niger Delta, although the scale of the problem is unclear. Today companies increasingly maintain that the great majority of oil spills are caused by sabotage and not by their poor infrastructure or operational problems.<sup>70</sup> Various motivations for sabotage have been reported, including attempts to extort compensation payments or clean-up contracts from local companies.<sup>71</sup> Despite all this, neither governments nor companies have taken effective measures over the last fifty years to prevent oil spills from recurring, or to properly address the impacts of oil spills.<sup>72</sup>

### **3.2.2 Waste dumping and gas flaring**

The activities involved in petroleum exploration and production produce waste of varying chemical compositions, which are generated at each phase of the operation. The disposal of this waste in the Niger Delta has polluted land, air and water, damaging fisheries, air quality and agriculture, undermining the human right to an adequate standard of living.<sup>73</sup>

Wastewater is one of the major sources of waste material. When oil is pumped out of the ground, a mixture of oil, gas and water emerges. Hundreds of tonnes of oil and other toxic substances are released into the Niger Delta in wastewater, but there is little evidence that either the companies or the government is monitoring the impact on water quality, fisheries or human health.<sup>74</sup> Another major source of waste is drilling, which produces large amounts of mud and dry cuttings. Drilling waste has frequently been disposed of indiscriminately, often into drainage channels and waterways, which affects water quality, or onto land used for agriculture.<sup>75</sup>

When oil is pumped out of the ground, the gas produced is separated and, in Nigeria, most of it is burnt as waste in massive flares.<sup>76</sup> This has long been acknowledged as extremely wasteful and environmentally damaging, but despite regulations to outlaw this practice, it has been going on for almost five decades.<sup>77</sup>

### **3.2.3 Other environmental impact**

Activities associated with oil extraction and detection, including laying pipes, building infrastructure and making the area accessible by road and water, caused considerable damage to the Niger Delta environment.<sup>78</sup> The construction of access roads has resulted in deforestation and has frequently involved cutting through the Niger Delta's mangrove forests, which are an important fish breeding ground.<sup>79</sup> Many people in the Niger Delta depend on fish as a main source of protein. In several cases the road is constructed in such a way that it alters natural irrigation, causing asphyxiation on one side and desiccation of the forest on the other.<sup>80</sup>

Oil companies also dredge rivers to facilitate navigation and obtain sand for construction. This dredging causes serious environmental damage, with direct repercussions for human rights, since it harms fisheries and can significantly degrade water quality.<sup>81</sup> The construction of access channels through waterways and swamps is both damaging in itself, and in some cases has caused salt water to flow into freshwater systems, destroying freshwater ecosystems. The incursion of salt water into freshwater is highly damaging to fisheries, and once saltwater enters freshwater, it is no longer usable for drinking or other domestic purposes.<sup>82</sup>

### **3.3 The impact of pollution on human rights issues**

It is important that the impact of the oil industry on the ecosystem of the Niger Delta is understood in its context: where the livelihoods, health and access to food and clean water of hundreds of thousands of people are closely linked to the land and environmental quality.<sup>83</sup>

On 28 August 2008 a fault in the Trans-Niger pipeline resulted in a significant oil spill into Bodo Creek in Ogoniland. The oil poured into the swamp and creek for weeks, covering the area in a thick slick of oil and killing the fish that people depend on for food and for their livelihood. A local NGO, the Center for Environment, Human Rights and Development (CEHRD), which investigated the case, reported that the oil spill has resulted in death or damage to a number of species of fish.<sup>84</sup>

The pipe that burst is the responsibility of the Shell Petroleum Development Company of Nigeria (SPDC). The community claims that the spill began on 28 August 2008. SPDC has reportedly stated that the spill was only reported to them on 5 October of that year. Rivers State Ministry of Environment was informed of the leak and its devastating consequences one week later. However, the leak was not stopped until 7 November.<sup>85</sup>

It is not clear why SPDC failed to stop the leak and contain the spill swiftly, as required by Nigerian oil industry regulations. Nor is it clear why the federal regulators did not take action. In May 2009, the site of the spill had still not been cleaned up. Moreover, a second oil spill was reported to have occurred in the same area on 2 February 2009 further damaging the environment on which people depend for their food and livelihood.<sup>86</sup>

The African Commission on Human and Peoples Rights and the UN Human Rights Committee declared in a landmark decision in 2002 that the Government of Nigeria violated the human right to food by facilitating the destruction of the food sources of Ogoniland.<sup>87</sup> People living in the Niger Delta have to drink, cook with, and wash in polluted water; they eat fish contaminated with oil and other toxins - if they are lucky enough to still be able to find fish; the land they use for farming is being destroyed because of the lack of respect for the ecosystem necessary for their survival; after oil spills the air they breathe reeks of oil and gas and other pollutants; they complain of breathing problems, skin lesions and other health problems, but their concerns are not taken seriously and they have almost no information on the impacts of pollution.<sup>88</sup>

#### **3.3.1 Human rights and violations**

The main human rights affected by pollution of the oil industry in the Niger Delta are:<sup>89</sup>

- Violations of the right to an adequate standard of living, including the right to food as a consequence of oil-related pollution and environmental damage to agriculture and fisheries, which are the main food sources for many people in the Niger Delta.

- Violations of the right to gain a living through work, also as a consequence of widespread damage to farms, agriculture and fisheries, because these are also the main sources of livelihood for many people in the Niger Delta.
- Violations of the right to water that occur when oil spills and waste materials pollute water used for drinking and other domestic purposes.
- Violations of the right to health that arise from the failure to secure the underlying determinants of health, including a healthy environment, and the failure to enforce laws to protect the environment and prevent pollution.
- The absence of any adequate monitoring of the human impacts of oil-related pollution despite the fact that the oil industry in the Niger Delta is operating in a relatively densely populated area characterized by high levels of poverty and vulnerability.
- Failure to provide affected communities with adequate information or ensure consultation on the impact of oil operations on their human rights.
- Failure to ensure access to effective remedy for people whose human rights have been violated.

### **3.4 Accountability and responsibility of the Nigerian Government**

The Nigerian government fails to independently regulate, monitor and control the oil industry, resulting in a serious conflict of interests. Under international law, the government of Nigeria has an obligation to respect, protect and fulfil human rights. The obligation to respect rights means that states should refrain from any measures that would result in preventing or undermining the enjoyment of rights. The obligation to protect requires measures by states to ensure that other actors (such as companies) do not undermine or violate human rights.<sup>90</sup>

By actively participating in the oil operations to exploit the Niger Delta, the government undermines the enjoyment of human rights. The government has clearly failed to protect the natural resource base upon which people depend for food in the Niger Delta, and has contravened its obligation to ensure the availability of food.<sup>91</sup>

Thousands of oil spills and other environmental damage to fisheries, farmlands and crops have occurred over decades. The lack of adequate clean-up and remediation of the land, as well as the failure to assess and address the possible longer-term effects on agricultural land, crop productivity and food safety, have made food security even more precarious.<sup>92</sup> The government leaves companies to carry out most of the emergency response work. Leaving communities to negotiate with companies that have caused them harm in the first place undermines the access to effective remedy.<sup>93</sup>

The Nigerian Government's dependence on oil companies is exposed by the fact that companies that have the requisite oil processing licenses are entitled to build infrastructure and conduct surveys across large areas of the Delta. This includes land used for farming and fisheries, while communities have no means of objecting to or preventing these activities, regardless of the damage they can cause to their livelihoods and food sources.<sup>94</sup>

### **3.5 Shell's Corporate Responsibility**

The Shell Petroleum Development Company of Nigeria (SPDC) has operated in the Niger Delta for decades and is aware of the damage that oil operations have done to the environment. SPDC has failed to conduct its operations with respect for human rights.<sup>95</sup> SPDC and its parent company Shell today refuse to acknowledge most problems associated with their operations in the Niger Delta.<sup>96</sup>

The non-judicial investigation and compensation systems are deeply flawed and do not provide the due process to which residents of affected regions are entitled. Moreover, while the system disadvantages communities, it is also part of the reason for poor relationships between communities and oil companies and a source of tension and conflict in the Niger Delta.<sup>97</sup>

In a 1995 publication SPDC stated that its environmental programme aims to progressively reduce emissions of waste materials that have a negative impact on the environment.<sup>98</sup> However, the company fails to disclose basic information to local communities about the impact the oil industry has on their livelihood. A human rights impact assessment is not done, despite company awareness that oil pollution and oil industry activities may negatively impact human rights.<sup>99</sup>

Some elements of Shell's operations, such as the provision of employment and the development of projects, offer benefits to Nigeria. Moreover, companies have sought to improve their environmental practices, although assessment of change is hampered by lack of transparency and independently verified data. The oil industry frequently points to its positive contribution to Nigeria when criticisms are made of its operations. However, positive action in one area does not absolve companies – or the government – of the responsibility for the negative impacts their operations have on human rights. Companies must ensure that they take all possible action to identify and prevent human rights harms.<sup>100</sup>

Not only Amnesty International claims that Royal Dutch Shell should take its responsibility for what its subsidiaries are doing in Nigeria. In December 2009, the Dutch NGO Milieudefensie (Friends of the Earth Netherlands) started a court case against Shell together with victims of the pollution. This was the first time in history that a Dutch company has been held accountable by a Dutch judge for damage caused outside of the Netherlands. The case is still pending and the verdict is expected in 2011.<sup>101</sup>

### **3.6 Conclusion**

Not much consideration has been given to the cumulative impact of multiple sources of oil pollution that have been inflicted on the Niger Delta for half a century. However, there is a significant difference between a one-off incident of pollution or environmental damage, and continual or repeated incidents in the same area over time. The people of the Niger Delta have been living with on-going pollution and environmental damage.<sup>102</sup> This results in a structural violation of their human rights to food, clean water, health, work and an adequate standard of living.<sup>103</sup> The people have seen their human rights undermined by oil companies that their government cannot or will not hold to account. They have been systematically denied access to information about how oil exploration and production will affect them, and are repeatedly denied access to justice. The Niger Delta provides a stark case study of the lack of accountability of a government to its people, and of multinational companies' almost total lack of accountability when it comes to the impact of their operations on human rights.<sup>104</sup>

The situation in the Niger Delta is complex. While the major failures of the government and the companies are clear, they are not the only actors involved in the destruction of the environment. Communities engage in acts of vandalism and sabotage. Militant groups pose a significant threat to oil company staff safety, while communities have been known to act with aggression towards oil company staff and to prevent access to spill sites. Oil companies and the government should not use the actions of armed groups and communities to deflect attention away from their own failures and poor practices.<sup>105</sup>

While acknowledging the complexities that oil companies face in operating in the Niger Delta, Amnesty International's report underlines that much of the pollution and damage that has contributed to serious abuses of human rights is foreseeable and avoidable. Where problems do occur, timely and effective action can mitigate the consequences. The complexity of the Niger Delta is too frequently used as an excuse for failure to take action in line with international good practice and standards to prevent and address pollution and environmental damage and protect the human rights of communities affected by oil operations.<sup>106</sup>

## Chapter 4 Vedanta Resources

### 4.1 Introduction

Vedanta Resources (Vedanta) is a metals and mining group, headquartered in London, United Kingdom. The company was first listed on the London Stock Exchange in December 2003. The group has its principal operations in India and has mines and production centres in Australia and Zambia.<sup>107</sup> Vedanta Resources generated US\$ 7.9 billion (€ 5.6 billion) of revenues for the year ended 31 March 2010, and a profit of US\$ 1.5 billion (€ 1.1 billion). At this time, the company owned total assets of US\$ 24.1 billion (€ 17.9 billion).<sup>108</sup>

South-west Orissa in Eastern India comprises a key position in India's mining industry as it holds 28% of the country's iron ore and 50% of its bauxite reserves. In the last decade, the government of Orissa has tried to boost mineral exploitation and mine-based industries by offering companies mining rights and other concessions. During 2002-2008, it signed 54 agreements with different national and international companies in the extractive sector, among which Vedanta Resources.<sup>109</sup>

Vedanta Resources is active in Orissa through its subsidiaries Sterlite Industries India Ltd (Sterlite India) and Vedanta Aluminium Ltd (Vedanta Aluminium). Sterlite India, in which Vedanta Resources holds a 56.88% share, is headquartered in Mumbai and has been a publicly listed company in India since 1988. Vedanta Aluminium, of which Vedanta Resources owns 87.28%, is headquartered in Lanjigarh, Orissa.<sup>110</sup> Additionally, a new joint venture was formed in 2009, of which Sterlite India would hold 74% and Orissa Mining Corporation, owned by the local government, 26%. This new joint venture is called South-west Orissa Bauxite Mining Corporation and recently gained licences to mine bauxite in the region for the next 25 years.<sup>111</sup>

After having conducted in-depth research while visiting the area three times in 2008 and 2009, Amnesty International fears that the mining activities in Orissa have serious implications for the human rights of local communities, including their rights to water, food, health, work and an adequate standard of living. Amnesty International published a report about the activities of Vedanta Resources in Orissa in February 2010.

### 4.2 Human rights violations by Vedanta Resources

Vedanta Aluminium operates an alumina refinery in Orissa. The refinery is located in a relatively remote and predominately rural area. The river Vamsadhara, which originates in the nearby Niyamgiri hills, runs at a stone's throw from the plant. Around the refinery, there are twelve villages with an estimated population of between 4,000 and 5,000 people, mostly Majhi Kondh Adivasi and Dalit communities. As well as the local population, some 2,000 contract workers live in informal settlements adjacent to the core refining plant.<sup>112</sup> The majority of the local population rely on agriculture and forest products for their livelihoods. The river Vamsadhara and the streams flowing from Niyamgiri are the main sources of water for local people, as well as many villages downstream; people use it for drinking water, personal use, irrigation and for their cattle.<sup>113</sup>

In October 2007, Vedanta Aluminium sought environmental clearance for the six-fold expansion of the refinery's capacity. However, Vedanta Aluminium started construction work for expansion of the refinery while clearance for the expansion was still pending.<sup>114</sup>

The bauxite mining project, to be carried out by the new joint venture South-west Orissa Bauxite Mining Corporation, will cover 700 hectares of land on top of the north-western part of the Niyamgiri Hills and will involve excavation of a large section of the hill to a depth of about thirty metres. The Hills are home to the Dongria Kondh, an 8,000-strong Adivasi (Indigenous) community spread over ninety villages in and around the hills.<sup>115</sup> Plans to mine for bauxite at Niyamgiri have met with local and international opposition. Opponents of the project claim that it threatens the very existence of the local Adivasi communities and their centuries-old unique relationship with their lands.<sup>116</sup>

After publication of the Amnesty report, the Indian government rejected both the proposed mining project and the refinery expansion. In October 2010, the Environment Ministry of India rejected the expansion proposal of Vedanta Aluminium for environmental reasons and directed the State government to take legal action against the company for illegally beginning the expansion without permission.<sup>117</sup> Two months earlier the Environment Ministry rejected the proposed mining project of Vedanta Resources, after finding that the project already extensively violates forest and environmental laws and would perpetrate abuses against the Dongria Kondh Adivasi and other communities on the Hills. Amnesty International received the decision as a “landmark victory” for indigenous rights.<sup>118</sup> Vedanta Aluminium is willing to pay any fine but refuses to cancel the project. The company is hopeful that the Indian government will still grant them permission after the company has provided the certain documents.<sup>119</sup>

The existing alumina refinery of Vedanta Resources, as well as the expansion plans for the refinery and the mining plans in the area, pose serious threats to the human rights of the communities living in the area.

#### **4.2.1 Religious and traditional meaning of the Niyamgiri Hills**

The proposed mining project threatens to undermine the traditional land rights and religious beliefs of the Dongria Kondh. The Dongria Kondh’s close ties with the Niyamgiri Hills form the fundamental basis of their culture, their spiritual life, their integrity, and their economic survival.<sup>120</sup> The Niyamgiri Hills are sacred to the Dongria Kondh.<sup>121</sup> For example, they worship Niyam Raja Penu, a male deity represented in the form of a sword, believed by them to be living on top of the Niyamgiri Hills.<sup>122</sup>

#### **4.2.2 Water, food and livelihoods**

The proposed mining project also poses serious risks to the communities’ rights to water, food, work and an adequate standard of living<sup>123</sup> as the hills form a biologically rich and diverse habitat, which the Dongria Kondh rely on for food, firewood and forest produce.<sup>124</sup> They grow crops on the hills and get their water from there. The streams originating from the top of the Hills are the only source of water for communities living on top of the Hills and a major source for others living lower down the hill.<sup>125</sup>

Mining in the area will affect the water supply as the bauxite deposits on top of the hills are crucial for ensuring a perennial slow water supply in the low rainfall seasons due to the porous nature and high water-retention capacity of bauxite.<sup>126</sup> Once mining in the area proceeds, this will also very likely have an adverse effect on biodiversity as it will, among other things, reduce and alter the flow of the Vamsadhara and Nagaveli rivers. Operations would also cause increased erosion and pollution of the water systems, which in turn would result in a deteriorated water quality and damage to riverine habitats.<sup>127</sup>

The mining project also poses risks to the natural environment in the region, which the communities depend on for their own food and livelihoods. The main risks are posed by the cutting down of forests for the mine site and related infrastructure, noise, blasting and other impacts of the mining operations themselves and waste management resulting from the mining operations.<sup>128</sup>

The refinery of Vedanta Resources also pollutes the water, as its waste facilities are located close to the river and streams. Storm water drainage from the refinery also flows into the river. Proper waste management is thus critical to avoid contamination of the environment, harm to human and animal health and diminishing water resources on which people depend.<sup>129</sup> However, Vedanta Aluminium repeatedly failed to adhere to the requirements of the Orissa government in this respect. Poor waste management appears to have resulted in recurrent instances of leakages of highly alkaline wastewater into the Vamsadhara river or outside the refinery walls and to air pollution.<sup>130</sup> Instances have been reported of people suffering from skin problems or falling seriously ill after bathing in river water. Some members of local communities are concerned that these effects may have been caused by exposure to caustic water, which they allege has been discharged by the refinery.<sup>131</sup>

The main sources of air pollution from the refinery are dust from the bauxite, coal and lime handling areas, fly ash from the coal-fired boiler, particulate matter and other emissions from the calciner stack and boiler.<sup>132</sup> The effects of the dust are wide-ranging. Daily exposure to dust, which is inhaled and ingested on food and in drinking water, has caused extreme discomfort for the people around the refinery. Villagers around Lanjigarh interviewed by Amnesty International also complained of noise and air pollution due to the high volume of trucks carrying coal and bauxite.<sup>133</sup>

The increase in food prices at the local market due to the presence of a large international company is another serious concern for many local people. Local landless labourers have seen their standard of living undermined on two fronts – loss of access to natural resources on the one hand, and an increase in food prices on the other.<sup>134</sup>

#### **4.2.3 Provision of information**

International treaties to which India is a party and other standards on the rights of Indigenous Peoples require the government to seek the free, prior and informed consent of indigenous communities before the approval of any project that is likely to affect them. Free, Prior, Informed Consent (FPIC) is a core principle in the 2007 Declaration of Rights of Indigenous Peoples.<sup>135</sup>

There has however been no meaningful effort by the government of India, or the state government of Orissa or Vedanta Resources to provide information to or consult with the Dongria Kondh, let alone attempt to seek their consent for the mining project.<sup>136</sup> The failure to set up a genuine consultation process and to provide the Dongria Kondh with basic information are glaring omissions in this context.<sup>137</sup>

#### **4.2.4 Land acquisition and displacement**

59 Hectares of communal land and forestland was among the land acquired for the refinery. The loss of shared community resources has undermined livelihoods and disrupted traditional community practices. This has had a particularly negative impact on people who had no land, and who relied on other people's farmland as a source of labour, and on using communal land to graze their cattle and gather food.<sup>138</sup>

India has no national law yet in place for resettlements and rehabilitation of local communities displaced and affected by large irrigation and industrial projects. Instead, it has a number of state-level and sectorial policies and practices.<sup>139</sup> While a new policy was announced in 2006, the villagers interviewed by Amnesty International stated that this policy was not explained to them and that promises were made by the officials that “all those who lost their land would get job opportunities” in the refinery. Many promises were made regarding resettlement and compensation by the company as well as the (local) government. Instead, only few of these promises were kept, and an overwhelming majority of the landless labourers had to leave the area once lands that they were working on were acquired.<sup>140</sup>

### **4.3 The responsibilities of the Indian government**

As a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), India is under an obligation to ensure the availability of sufficient, safe, acceptable water for personal and domestic uses.<sup>141</sup> The obligation to protect requires states to prevent third parties, including companies, from interfering in any way with the enjoyment of the right to water.<sup>142</sup> The ICESCR also guarantees the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including the creation of conditions that would ensure access to all medical services and medical attention in the event of sickness.<sup>143</sup> Violations of the obligation to protect follow from the failure of a state to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties.<sup>144</sup>

Additionally, the collection, analysis and publication of information are critical to ensuring human rights are protected in many contexts. The Committee on Economic, Social and Cultural Rights of the United Nations has recognized the importance of information in relation to the rights to health and water amongst others. The Committee has affirmed that access to health-related education and information is an important component, and an underlying determinant, of the right to health. The United Nations Declaration on the Rights of Indigenous Peoples affirms the right of indigenous peoples to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired and requires that States give legal recognition and protection to these lands, territories and resources.<sup>145</sup>

However, both national and state level authorities have repeatedly failed to take adequate action to prevent corporate operations from causing harm to human rights and the environment.<sup>146</sup> Despite repeated failures by Vedanta Aluminium to comply with conditions to monitor and regulate emissions, the authorities have not enforced their own directions to the company to stop operating equipment until regulatory requirements were complied with. The government’s obligation to protect the right to health requires it to enforce pollution laws and also to investigate and monitor the possible health impacts of pollution. However, despite widespread concern among the communities about the health effects of pollution, no health monitoring of the affected villages has been carried out, which has exposed people to health risks.<sup>147</sup>

In relation to both the mining and refinery project, both state and national level authorities have failed to provide adequate information to communities, failed to adequately assess the potential impacts of the projects on the human rights of affected communities, and failed to set up a genuine process of consultation with them.<sup>148</sup> Under Indian environmental laws state-level pollution control authorities are required to set up public consultations with the local communities likely to be affected by projects that will affect the environment.<sup>149</sup>

#### **4.4 Vedanta Resources' Corporate Responsibility**

The obligation to respect and protect human rights is not limited to governments alone: companies must actively seek to understand and prevent violations of human rights that may occur as a consequence of their operations. The Sustainable Development Principles of the International Council on Mining and Metals (ICMM) is one of the commitments many of the world's major mining companies have made to pro-actively assess risk and prevent harm to human rights.<sup>150</sup>

From the preceding evidence it has become clear that Vedanta Resources and its subsidiaries have failed to respect the human rights of the people of Lanjigarh and the Niyamgiri Hills.<sup>151</sup> Pollution associated with Vedanta Aluminium's refinery has seriously undermined human rights, including the right to health and a healthy environment, and the right to water. Vedanta Aluminium has not taken adequate steps to become aware of, prevent and address the adverse human rights impact of its operations.<sup>152</sup> Vedanta Aluminium has repeatedly denied that pollution has occurred or that its operations are having a negative impact on local people. The company needs to take urgent measures to address this situation.<sup>153</sup>

## Chapter 5 Investment relationships and engagement activities of Dutch banks

### 5.1 Introduction

The following paragraphs provide an overview of the investments that each bank has made in the three different companies, for their own trading purposes or for their clients, followed by a brief description of the engagement activities.

Based on the research results and the information that was (or was not) provided by the banks, three scores were assigned for each bank, one score for each company based on the following scoring table:

1. The bank invests in the company, yet does not call the company to account regarding its involvement in or responsibility for the structural human rights violations;
2. The bank invests in the company, and calls the company to account on an incidental basis regarding its involvement in or responsibility for the structural human rights violations (for example, by voting in favour of a disapproving shareholder's motion or in a one-off meeting);
3. The bank invests in the company and calls the company to account in an intensive manner regarding its involvement in or responsibility for the structural human rights violations (for example, during an engagement project);
4. The bank invests in the company and calls the company to account in an intensive manner regarding its involvement in or responsibility for the structural human rights violations (for example, during an engagement procedure). The bank also determines that the investment relationship will only be continued if the company terminates or minimises the human rights violations within a realistic period of time;
5. Via a successful engagement procedure, the bank has made a contribution to putting an end to the structural violation of human rights OR the bank stops investing (or refrains from investing in to start with) the company on the basis of its human rights policies (or the sustainability policy which includes human rights).

If the bank does not invest (or no longer invests) in the company based on financial or other reasons (other than human rights or sustainability considerations), it will receive a score of 'N.A. (not active)'.

### 5.2 ABN AMRO Bank

#### 5.2.1 Barrick Gold Corporation

A subsidiary of ABN AMRO Bank manages various investment funds for clients who own shares in Barrick Gold as shown in Table 2.

**Table 2 Shares in Barrick Gold managed by ABN AMRO Bank**

Asset manager/fund	Value (millions of €)	Number of shares	Percentage	Report date
<b>Neuflyze Private Assets</b>				
Neuflyze Columbia Securities	1.42	53,675	0.01	29-Oct-2010
Neuflyze Ambition	11.83	?	0.04	29-Oct-2010
Neuflyze Optimum	21.25	?	0.07	29-Oct-2010

Asset manager/fund	Value (millions of €)	Number of shares	Percentage	Report date
Neuflize USA Opportunities	16.02	?	0.05	29-Oct-2010
Neuflize Global	4.80	?	0.02	29-Oct-2010
<b>Total</b>	<b>55.32</b>	<b>&gt; 53.675</b>	<b>0.19</b>	

Sources: Thomson One Database, "Share Ownership", Visited in November 2010; Reporting mensuel, Neuflize Ambition, 29 October 2010; Reporting mensuel, Neuflize Global, 29 October 2010; Reporting mensuel, Neuflize Optimum, 29 October 2010; Reporting mensuel, Neuflize USA Opportunities, 29 October 2010; Reporting mensuel, Neuflize Columbia Securities, 29 October 2010.

ABN AMRO indicates that it implements an engagement policy. With regard to the investment activities of the aforementioned ABN AMRO subsidiaries, engagement is currently being carried out with respect to companies for which ABN AMRO maintains a position that may allow it to be of influence on that company's business policies. Given ABN AMRO's relatively small interest in Barrick Gold, it does not deem engagement with this company as being useful. The engagement activities will be expanded in future.

#### Score

ABN AMRO invests in Barrick Gold, yet does not call the company to account regarding its involvement in or responsibility for the structural violations of human rights. **Score = 1.**

#### 5.2.2 Royal Dutch Shell

Two subsidiaries of ABN AMRO Bank manage various investment funds for clients who own shares in Shell as shown in Table 3.

**Table 3 Shares in Royal Dutch Shell managed by ABN AMRO Bank**

Asset manager/fund	Value (millions of €)	Number of shares	Percentage	Report date
<b>Delbrück Bethmann Maffei</b>				
Delbrück Bethmann Maffei	0.19	10,000	0.00	30-Jun-2009
<b>Neuflize OBC Investissements</b>				
ABN AMRO Multi Manager Fund of Mandates European Equities	6.66	292,554	0.00	31-Dec-2009
Neuflize Europe Opportunités	0.48	?	0.00	29-Oct-2010
<b>Total</b>	<b>7.33</b>	<b>&gt; 302,554</b>	<b>0.00</b>	

Sources: Thomson One Database, "Share Ownership", Visited in November 2010; Shell, "Jaarverslag 2009 (2009 Annual Report)", Royal Dutch Shell, 22 April 2010; Reporting mensuel, Neuflize Europe Opportunités, 29 October 2010.

ABN AMRO indicates that it implements an engagement policy. With regard to the investment activities of the aforementioned ABN AMRO subsidiaries, engagement is currently being carried out with respect to companies for which ABN AMRO maintains a position that may allow it to be of influence on that company's business policies. Given ABN AMRO's relatively small interest in Shell, it does not deem engagement with this company as being useful. The engagement activities will be expanded in future.

### Score

ABN AMRO invests in Royal Dutch Shell, yet does not call the company to account regarding its involvement in or responsibility for the structural violations of human rights. **Score = 1.**

### 5.2.3 Vedanta Resources

Two subsidiaries of ABN AMRO Bank manage various investment funds for clients who own shares in Vedanta Resources as shown in Table 4.

**Table 4 Shares in Vedanta Resources managed by ABN AMRO Bank**

Asset manager/fund	Value (millions of €)	Number of shares	Percentage	Report date
<b>ABN AMRO (Schweiz)</b>				
ABN AMRO (Schweiz)	1.52	57,000	0.02	01-Nov-2010
<b>Neuflize OBC Investissements</b>				
ABN AMRO Multi Manager Fund of Mandates European Equities	1.64	52,073	0.02	31-Dec-2009
<b>Total</b>	<b>3.16</b>	<b>109,073</b>	<b>0.04</b>	

Source: Thomson One Database, "Share Ownership", Visited in November 2010.

ABN AMRO indicates that it implements an engagement policy. With regard to the investment activities of the aforementioned ABN AMRO subsidiaries, engagement is currently being carried out with respect to companies for which ABN AMRO maintains a position that may allow it to be of influence on that company's business policies. Given ABN AMRO's relatively small interest in Vedanta, it does not deem engagement with this company as being useful. The engagement activities will be expanded in future.

### Score

ABN AMRO invests in Vedanta Resources, yet does not call the company to account regarding its involvement in or responsibility for the structural violations of human rights.

**Score = 1.**

### 5.2.4 Response from ABN AMRO Bank

*"Human rights is an important and vast topic. Within a financial institution, the issue of human rights is raised within the context of various relationships, including (1) the relationship with our employees and (2) suppliers, yet also within (3) (the chains of) our client relationships and (4) (the chains of) the companies in which we invest for our own purposes or for third parties.*

*Our human rights statement indicates that ABN AMRO places a high value on respecting these rights. In order to properly interpret and apply this statement in practice, we are working on the implementation of an extensive action plan. We are doing this in consultation with various stakeholders.*

*The research underlying this report only focuses on the investments made on behalf of third parties in three specific companies. The scope is thus very limited, even though the title may seem to indicate otherwise. Unfortunately, this does not do justice to the importance of the topic.*

## 5.3 AEGON Bank

### 5.3.1 Barrick Gold Corporation

A subsidiary of AEGON- the parent company of AEGON Bank - manages various investment funds for clients who own shares in Barrick Gold as shown in Table 5.

**Table 5 Shares in Barrick Gold managed by AEGON**

Asset manager/fund	Value (millions of €)	Number of shares	Percentage	Report date
<b>AEGON Capital Management</b>				
AEGON Canadian Balanced GIF	0.43	17,129	0.00	30-Jun-2009
AEGON Canadian Equity GIF	0.44	17,394	0.00	30-Jun-2009
AEGON Capital Canadian Equity Fund	0.12	4,665	0.00	30-Jun-2009
AEGON Capital Canadian Equity Income & Dividend Fund	0.03	1,110	0.00	30-Jun-2009
Educators Balanced Fund	0.53	17,807	0.00	31-Dec-2009
Educators Diversified Fund	0.70	23,794	0.00	31-Dec-2009
IMAXX Canadian Balanced Fund	0.04	1,084	0.00	31-Aug-2010
IMAXX Canadian Dividend Fund	0.24	6,900	0.00	31-Aug-2010
IMAXX Canadian Equity Growth Fund	0.70	19,834	0.00	31-Aug-2010
IMAXX Canadian Fixed Pay Fund	3.40	97,046	0.01	31-Aug-2010
IMS Asset Allocation Fund	0.33	9,280	0.00	31-Aug-2010
IMS Canadian Growth Fund	0.09	2,527	0.00	31-Aug-2010
IMS Canadian Resources Fund	0.08	2,412	0.00	31-Aug-2010
IMS Equity Fund	0.35	11,947	0.00	31-Dec-2009
Transamerica Agents Plan	0.03	1,121	0.00	31-Dec-2009
Transamerica Balanced Investment Growth Fund	0.09	2,460	0.00	31-Aug-2010
Transamerica GROWSafe Canadian Balanced Fund	0.50	14,340	0.00	31-Aug-2010
Transamerica Segregated Fund 1	0.01	321	0.00	31-Dec-2009
<b>Total</b>	<b>7.89</b>	<b>251,171</b>	<b>0.03</b>	

Sources: Thomson One Database, "Share Ownership", Visited in November 2010.

AEGON has indicated that an external firm has undertaken engagement activities with Barrick Gold, acting on its behalf.<sup>154</sup> The bank did not however provide any information regarding the form, topic or frequency of this engagement nor the results this led to.

#### Score

AEGON - the parent company of AEGON Bank - invests in Barrick Gold and calls the company to account on an incidental basis regarding its involvement in or responsibility for the structural violations of human rights. **Score = 2.**

### 5.3.2 Royal Dutch Shell

Two subsidiaries of AEGON- the parent company of AEGON Bank - manage various investment funds for clients who own shares in Shell as shown in Table 6.

**Table 6 Shares in Royal Dutch Shell managed by AEGON**

Asset manager/fund	Value (millions of €)	Number of shares	Percentage	Report date
<b>AEGON Asset Management UK</b>				
AEGON Asset Management UK	438.72	17,811,236	0.26	1-Nov-2010
AEGON ICVC Ethical Equity Fund	8.17	400,416	0.01	31-Jan-2010
AEGON ICVC UK Equity Fund	8.17	400,416	0.01	31-Jan-2010
AEGON ICVC UK Opportunities Fund	1.95	92,926	0.00	31-Jan-2010
AEGON ICVC - UK Equity Income Fund	1.20	59,750	0.00	31-Jan-2010
<b>AEGON Capital Management</b>				
IMS Dividend Fund	0.22	9,914	0.00	30-Sep-2010
<b>Total</b>	<b>458.44</b>	<b>18,774,658</b>	<b>0.27</b>	

Source: Thomson One Database, "Share Ownership", Visited in November 2010; Shell, "Jaarverslag 2009 (2009 Annual Report)", Royal Dutch Shell, 22 April 2010.

AEGON has indicated that it has engaged in discussions with Shell regarding its activities in Nigeria.<sup>155</sup> The bank did not however provide any information regarding the form, topic or frequency of this engagement nor the results this led to.

#### Score

AEGON - the parent company of AEGON Bank - invests in Royal Dutch Shell and calls the company to account on an incidental basis regarding its involvement in or responsibility for the structural violations of human rights. **Score = 2.**

### 5.3.3 Vedanta Resources

A subsidiary of AEGON- the parent company of AEGON Bank - manages various investment funds for clients who own shares in Vedanta as shown in Table 7.

**Table 7 Shares in Vedanta Resources managed by AEGON**

Asset manager/fund	Value (millions of €)	Number of shares	Percentage	Report date
AEGON Investment Management	1.23	56,548	0.02	26-Aug-2010
<b>Total</b>	<b>1.23</b>	<b>56,548</b>	<b>0.02</b>	

Source: Thomson One Database, "Share Ownership", Visited in November 2010.

AEGON has indicated that engagement activities have been undertaken with Vedanta Resources.<sup>156</sup> The bank did not however provide any information regarding the form, topic or frequency of this engagement nor the results this led to.

### **Score**

AEGON - the parent company of AEGON Bank - invests in Vedanta Resources and calls the company to account on an incidental basis regarding its involvement in or responsibility for the structural violations of human rights. **Score = 2.**

### **5.3.4 Response from AEGON Bank**

*“Investments are not made in the three companies on behalf AEGON Bank clients with a savings product. AEGON Bank clients with an investment product may choose from several index and in-house funds. The three companies in question are part of the most important share indices in the world. For this reason, investments are made in these companies for several of these index and in-house funds. We are currently not excluding any of the three companies from investments.*

*We are aware of the problems involving these organisations, and will continue to follow the developments closely. We will continue and possibly intensify the (collective) dialogue with them. Insufficient or a lack of progress in this regard can ultimately lead to exclusion, as expressed in our policy: <http://www.aegon.nl/particulier/fondsen2/verantwoordbeleggen>. We view exclusion as a last-resort measure. As long as we remain shareholders, we can use our influence to realise improvements in conduct, for example through our voting behaviour.”*

## **5.4 ASN Bank**

### **5.4.1 Barrick Gold Corporation**

ASN Bank does not have any investments in Barrick Gold because the company does not satisfy ASN Bank’s criteria regarding the environment and human rights.<sup>157</sup>

### **Score**

ASN Bank does not invest in Barrick Gold based on its human rights policy. **Score = 5.**

### **5.4.2 Royal Dutch Shell**

ASN Bank does not have any investments in Shell because the company does not satisfy ASN Bank’s criteria regarding the environment and human rights.<sup>158</sup>

### **Score**

ASN Bank does not invest in Royal Dutch Shell based on its human rights policy. **Score = 5.**

### **5.4.3 Vedanta Resources**

ASN Bank does not have any investments in Vedanta Resources because the company does not satisfy ASN Bank’s criteria regarding the environment and human rights.<sup>159</sup>

### **Score**

ASN Bank does not invest in Vedanta Resources based on its human rights policy. **Score = 5.**

#### **5.4.4 Response from ASN Bank**

*“ASN Bank concurs with the Fair Bank Guide’s conclusion that the companies in question have serious problems with respect to human rights. The best decision you can make as a bank is to choose between either entering into a dialogue with the company in question or deciding not to invest in that company. ASN Bank has chosen the latter since its clients do not want their savings or investments to become involved in a violation of human rights. This does not prevent ASN Bank from still actively and publicly becoming involved in discussions on human rights violations, even with companies in which it does not invest.”*

### **5.5 Friesland Bank**

#### **5.5.1 Barrick Gold Corporation**

Neither of the two Friesland Bank investment funds invests in Barrick Gold.<sup>160</sup> This company has been excluded from investments as a result of the negative consequences for mankind and the environment in the mining project in Papua New Guinea.<sup>161</sup>

#### **Score**

Friesland Bank does not invest in Barrick Gold based on its human rights policy. **Score = 5.**

#### **5.5.2 Royal Dutch Shell**

Neither of the two Friesland Bank investment funds invests in Shell.<sup>162</sup> This decision was made as a result of the negative consequences for mankind and the environment from the company’s activities in Nigeria.<sup>163</sup>

#### **Score**

Friesland Bank does not invest in Shell based on its human rights policy. **Score = 5.**

#### **5.5.3 Vedanta Resources**

Neither of the two Friesland Bank investment funds invests in Vedanta Resources.<sup>164</sup> This company has been excluded from investments as a result of the negative consequences for man and the environment in the mining project in India.<sup>165</sup>

#### **Score**

Friesland Bank does not invest in Vedanta Resources based on its human rights policy. **Score = 5.**

#### **5.5.4 Response from Friesland Bank**

*“Friesland Bank does not maintain a banking relationship with any of the companies in question since they do not fall within Friesland Bank’s target group policy. Via its asset management partner, Optimix, when it comes to investments, Friesland Bank first has those potential companies for investments screened by Sustainalytics, a research firm specialised in the field of corporate social responsibility. Barrick Gold Corporation and Vedanta Resources are on Sustainalytics’ ‘non-compliance list’, and Royal Dutch Shell is on the firm’s ‘watchlist’. For this reason, no resources are invested in these companies.”*

## 5.6 ING Bank

### 5.6.1 Barrick Gold Corporation

ING Bank and ING Group - the parent company of ING Bank - have investments in shares as well as bonds issued by Barrick Gold. Table 8 shows the number of shares of Barrick Gold which are held by investment funds which are managed by subsidiaries of ING Group. These are investments made on behalf of clients.

**Table 8 Shares in Barrick Gold managed by ING Group**

Asset manager/fund	Value (millions of €)	Number of shares	Percentage	Report date
ING International Value Portfolio	22.21	657,305	0.07	30-Sep-2010
ING Risk Managed Natural Resources Fund	7.48	225,700	0.02	30-Jun-2010
ING (L) Invest Global Opportunities	3.76	125,395	0.01	31-Jul-2010
ING Materials Basis Fonds	3.71	123,679	0.01	31-Jul-2010
ING L Invest Materials	3.58	119,413	0.01	31-Jul-2010
ING Growth Opportunities Fund	2.61	77,349	0.01	30-Sep-2010
ING Core Equity Research Fund	2.51	75,700	0.01	30-Jun-2010
ING Foreign Fund	1.78	56,117	0.01	30-Apr-2010
ING Global Growth Basis Fonds	1.49	49,741	0.01	31-Jul-2010
ING Dynamic Mix Fund IV	0.62	20,646	0.00	31-Jul-2010
ING Dynamic Mix Fund III	0.41	13,532	0.00	31-Jul-2010
ING Dynamic Mix Fund V	0.22	7,234	0.00	31-Jul-2010
ING Dynamic Mix Fund II	0.10	3,324	0.00	31-Jul-2010
ING Global Natural Resources Fund	0.04	1,200	0.00	16-Nov-2009
ING Dynamic Mix Fund I	0.01	336	0.00	31-Jul-2010
<b>Total</b>	<b>50.53</b>	<b>1,556,671</b>	<b>0.17</b>	

Source: Thomson One Database, "Share Ownership", Visited in November 2010.

Table 9 shows the bonds in Barrick Gold. These are investments made by an investment fund managed by ING Group for clients, and investments made by the insurance division of the ING Group, and thus not by ING Bank.

**Table 9 Bonds in Barrick Gold managed by ING Group**

Fund or asset manager	Value (millions of €)	Percentage	Report date
ING Life Ins & Annuity Co	36.63	0.86	1-Jun-2010
ING USA Annuity and Life Ins	9.12	0.21	1-Jun-2010
ING Leh Bros AGG Bd Indx	2.04	0.05	1-Jun-2010
<b>Total</b>	<b>47.79</b>	<b>1.12</b>	

Source: Bloomberg Database, "Bondholders", Visited in November 2010.

ING Bank has indicated that it has undertaken engagement activities with Barrick Gold. 166 The bank did not however provide any information regarding the form, topic or frequency of this engagement nor the results this led to.

### Score

ING Group - the parent company of ING Bank - invests in Barrick Gold and calls the company to account on an incidental basis regarding its involvement in or responsibility for the structural violations of human rights. **Score = 2.**

### 5.6.2 Royal Dutch Shell

ING Group - the parent company of ING Bank - has investments in shares as well as bonds issued by Royal Dutch Shell. Table 10 shows the number of shares of Shell which are held by investment funds which are managed by subsidiaries of ING Group. These are investments made on behalf of clients.

**Table 10 Shares in Royal Dutch Shell managed by ING Group**

Asset manager/fund	Value (millions of €)	Number of shares	Percentage	Report date
<b>ING Investment Management (Netherlands)</b>				
ING (L) Dynamic World Blue Chips Fix	0.01	497	0.00	31-Dec-2009
ING (L) Invest Europe Opportunities	1.46	70,822	0.00	31-Jul-2010
ING (L) Patrimonial Euro	0.56	27,060	0.00	31-Jul-2010
ING AEX Basis Fonds	1.57	69,064	0.00	31-Dec-2009
ING AEX Shadow	1.60	77,588	0.00	31-Jul-2010
ING Dynamic Mix Fund I	0.01	501	0.00	31-Jul-2010
ING Dynamic Mix Fund II	0.12	5,644	0.00	31-Jul-2010
ING Dynamic Mix Fund III	0.44	21,356	0.00	31-Jul-2010
ING Dynamic Mix Fund IV	0.67	32,605	0.00	31-Jul-2010
ING Dynamic Mix Fund V	0.27	13,106	0.00	31-Jul-2010
ING Energy Basis Fonds	0.93	45,030	0.00	31-Jul-2010
ING Europa Fonds	32.42	1,425,301	0.02	31-Dec-2009
ING Foreign Fund	2.88	122,743	0.00	30-Apr-2010
ING Global Equity Dividend Fund	1.46	70,834	0.00	31-Jul-2010
ING Global Equity Dividend and Premium Opportunity Fund	10.87	569,517	0.01	30-Jun-2010
ING Hoog Dividend Aandelen Fonds	17.14	753,649	0.01	31-Dec-2009
ING Index Plus International Equity Fund	1.87	92,883	0.00	31-Jul-2010
ING Index Plus International Equity Portfolio	3.04	161,574	0.00	30-Jun-2009
ING L Invest Dutch Equity	3.39	164,721	0.00	31-Jul-2010
ING L Invest Energy	0.61	29,741	0.00	31-Jul-2010
ING L Invest Euro High Dividend	32.28	1,566,672	0.02	31-Jul-2010
ING L Invest European Sector Allocation	2.27	110,200	0.00	31-Jul-2010
ING L Invest Global High Dividend	10.57	513,080	0.01	31-Jul-2010

Asset manager/fund	Value (millions of €)	Number of shares	Percentage	Report date
ING Nederland Basis Fonds	208.07	10,905,472	0.16	30-Jun-2010
<b>ING Investment Management Co.</b>				
ING Balanced Portfolio	2.35	128,500	0.00	30-Jun-2010
ING Core Equity Research Fund	2.99	132,400	0.00	30-Sep-2010
ING Equity Dividend Fund	0.63	28,000	0.00	30-Sep-2010
ING FTSE 100 Index Portfolio	39.39	1,763,547	0.03	30-Sep-2010
ING Foreign Stock Mother Fund	0.48	21,600	0.00	16-Nov-2009
ING Global Advantage and Premium Opportunity Fund	1.38	73,813	0.00	30-Jun-2010
ING Global Natural Resources Fund	1.57	69,546	0.00	30-Sep-2010
ING Global Resources Portfolio	13.22	585,084	0.01	30-Sep-2010
ING International High Dividend Equity Income Fund	0.74	40,669	0.00	30-Jun-2010
ING International Index Portfolio	4.64	207,664	0.00	30-Sep-2010
ING International Value Portfolio	7.99	418,800	0.01	30-Jun-2010
ING Risk Managed Natural Resources Fund	1.13	60,254	0.00	30-Jun-2010
<b>ING Investment Management Korea</b>				
ING Euro Dividend Equity Class A	0.01	278	0.00	30-Jun-2010
<b>ING Mutual Fund Management</b>				
ING Global Equity Fund	0.52	27,070	0.00	30-Jun-2010
<b>ING Securities Investment &amp; Trust</b>	<b>0.14</b>	<b>6,386</b>	<b>0.00</b>	
ING Global Balanced Fund	0.05	2,373	0.00	31-Dec-2009
ING Global Equity Fund (Taiwan)	0.09	4,013	0.00	31-Dec-2009
<b>Total ING</b>	<b>411.71</b>	<b>20,413,271</b>	<b>0.30</b>	

Sources: Thomson One Database, "Share Ownership", Visited in November 2010;  
Shell, "Jaarverslag 2009 (2009 Annual Report)", Royal Dutch Shell, 22 April 2010.

Table 11 shows the number of bonds in Shell which are held by investment funds which are managed by subsidiaries of ING Group. These are investments held by an investment fund managed by ING Group for clients and investments made by the insurance division of the ING Group, and thus not by ING Bank.

**Table 11 Bonds in Royal Dutch Shell managed by ING Group**

Fund or asset manager	Value (millions of €)	Percentage	Report Date
ING (L) Renta Fund Dollar	0.99	0.00	1-Sep-2010
ING (L) Renta Fund-Eurocredit	0.60	0.00	1-Sep-2010
ING (L) Renta Fund-World	0.22	0.00	1-Sep-2010
ING Balans Mix I	0.08	0.00	1-Aug-2010
ING Balans Mix III	0.10	0.00	1-Aug-2010

Fund or asset manager	Value (millions of €)	Percentage	Report Date
ING Dynamic Mix Fund III	0.05	0.00	1-Aug-2010
ING Eurocredit Fund	0.04	0.00	1-Aug-2010
ING First Class Obligatie Fund	0.31	0.00	1-Aug-2010
ING Gespreide Beleggingsfonds	0.04	0.00	1-Aug-2010
ING Life Insurance & Annuity Co	45.69	0.19	1-Jun-2010
ING Limited Maturity Bond Portfolio	1.66	0.01	1-Jun-2010
ING Lion Fund	0.12	0.00	1-Aug-2010
ING Obligatie Fonds	0.97	0.01	1-Aug-2010
ING Obligatie Fonds	0.06	0.00	1-Aug-2010
ING Pimco Core Bond Portfolio	1.39	0.01	1-Jun-2010
ING Pimco Total Return Portfolio	0.36	0.00	1-Jun-2010
ING Star Fund	1.15	0.00	1-Sep-2010
ING USA Annuity and Life Ins Co	43.80	0.18	1-Jun-2010
NN Europarente Fonds	0.07	0.00	1-Aug-2010
NN Interrente Fonds	0.58	0.00	1-Aug-2010
NN Mix Fonds	0.30	0.00	1-Aug-2010
NN Rente Fonds	0.17	0.00	1-Aug-2010
Postbank Euro Obligatiefonds	0.38	0.00	1-Aug-2010
<b>Total</b>	<b>99.13</b>	<b>0.40</b>	

Source: Bloomberg Database, "Bondholders", Visited in November 2010.

ING Bank has indicated that it has undertaken engagement activities with Shell.<sup>167</sup> The bank did not however provide any information regarding the form, topic or frequency of this engagement nor the results this led to.

### Score

ING Group - the parent company of ING Bank - invests in Royal Dutch Shell and calls the company to account on an incidental basis regarding its involvement in or responsibility for the structural violations of human rights. **Score = 2.**

### 5.6.3 Vedanta Resources

ING Group - the parent company of ING Bank - has investments in shares as well as bonds issued by Vedanta Resources. Table 12 shows the number of shares in Vedanta Resources managed by subsidiaries of ING Group. These are investments made on behalf of clients.

**Table 12 Shares in Vedanta Resources managed by ING Group**

Asset manager/fund	Value (millions of €)	Number of shares	Percentage	Report date
<b>ING Investment Management (Netherlands)</b>				
ING Dynamic Mix Fund I	0.00	124	0.00	31-Jul-2010

Asset manager/fund	Value (millions of €)	Number of shares	Percentage	Report date
ING Dynamic Mix Fund II	0.03	1,198	0.00	31-Jul-2010
ING Dynamic Mix Fund III	0.14	5,022	0.00	31-Jul-2010
ING Dynamic Mix Fund IV	0.22	7,580	0.00	31-Jul-2010
ING Dynamic Mix Fund V	0.07	2,603	0.00	31-Jul-2010
ING Emerging Countries Fund	1.03	36,004	0.01	31-Jul-2010
ING Emerging Markets Equity Basis Fonds	9.61	304,175	0.11	31-Dec-2009
ING Index Plus International Equity Fund	0.14	4,710	0.00	31-Jul-2010
ING L Invest Emerging Markets	3.09	107,801	0.04	31-Jul-2010
ING L Invest European Materials	0.64	22,192	0.01	31-Jul-2010
ING L Invest Materials	1.50	52,179	0.02	31-Jul-2010
ING Materials Basis Fonds	1.54	53,883	0.02	31-Jul-2010
<b>ING Investment Management Co.</b>				
ING FTSE 100 Index Portfolio	0.95	37,302	0.01	30-Sep-2010
ING International Index Portfolio	0.09	3,510	0.00	30-Sep-2010
<b>ING Investment Management Ltd.</b>				
ING Investment Management Ltd.	1.03	47,453	0.02	26-Aug-2010
<b>Total managed by ING Group</b>	<b>20.09</b>	<b>685,736</b>	<b>0.24</b>	

Source: Thomson One Database, "Share Ownership", Visited in November 2010.

Table 13 shows the number of bonds in Vedanta Resources which are held by investment funds managed by subsidiaries of ING Group.

**Table 13 Bonds in Vedanta Resources managed by ING Group**

Asset manager/fund	Value (millions of €)	Percentage	Report date
ING Oppenheimer Strategic Income	1.12	0.04	1-Jun-2010
<b>Total</b>	<b>1.12</b>	<b>0.04</b>	

Source: Bloomberg Database, "Bondholders", Visited in November 2010.

ING Bank has indicated that it has undertaken engagement activities with Vedanta Resources.<sup>168</sup> The bank did not however provide any information regarding the form, topic or frequency of this engagement nor the results this led to.

### Score

ING Bank invests in Vedanta Resources, and calls the company to account on an incidental basis regarding its involvement in or responsibility for the structural violations of human rights. **Score = 2.**

#### 5.6.4 Response from ING Bank

ING Bank has not issued an official response to the report.

## 5.7 Rabobank Groep

### 5.7.1 Barrick Gold Corporation

Table 14 shows the number of shares in Barrick Gold which are held by investment funds which are managed by subsidiaries of Rabobank Groep - the parent company of Rabobank and Robeco Direct.

**Table 14 Shares in Barrick Gold managed by Rabobank Groep**

Asset manager/fund	Value (millions of €)	Number of shares	Percentage	Report date
<b>Robeco Institutional Asset Management</b>				
Robeco Natural Resources Equities	2.83	96,000	0.01	31-Dec-2009
<b>Sarasin &amp; Partners</b>				
Sarasin Equisar Global Thematic Fund	12.01	352,847	0.04	30-Jun-2010
Sarasin Sarapro Inst Equities Global Thematic	9.54	272,200	0.03	31-Aug-2010
Sarasin Investmentfonds Sicav - Sarasin Equisar Global	7.76	251,800	0.03	31-Jul-2010
Sarasin CI Equisar Sterling Global Thematic	4.68	158,500	0.02	31-Dec-2009
Sarasin Equisar IIID	3.57	105,000	0.01	30-Jun-2010
Sarasin Investmentfonds Globalsar - IIID (CHF)	3.53	114,600	0.01	31-Jul-2010
Sarasin GlobalSar IIID Fund	3.24	109,900	0.01	31-Dec-2009
Sarasin Investmentfonds SICAV Sarasin EquiSar - IIID (EUR)	3.08	88,000	0.01	31-Aug-2010
Sarasin EquiSar Global Thematic Fund (Sterling Hedge)	2.86	84,000	0.01	30-Jun-2010
Sarasin CI Equisar Dollar Global Thematic Fund	2.77	94,000	0.01	31-Dec-2009
Sarasin Inves SICAV Sarasin Globalsar Optima	0.96	27,400	0.00	31-Aug-2010
The Dynamic Conservative Growth Fund	0.83	28,100	0.00	31-Dec-2009
Sarasin Investmentfonds Globalsar - IIID (EUR)	0.82	26,500	0.00	31-Jul-2010
Sarasin CI GlobalSar Dollar Balanced Fund	0.77	21,900	0.00	31-Aug-2010
<b>Bank Sarasin &amp; Cie AG</b>				
Sarasin Inv Fonds Global Village Opportunistic	0.15	5,000	0.00	31-Dec-2009
<b>Total</b>	<b>61.51</b>	<b>1,955,747</b>	<b>0.20</b>	

Sources: Thomson One Database, "Share Ownership", Visited in November 2010.

Robeco has recently embarked on an engagement procedure with respect to Barrick Gold with a duration of three years, within the scope of which intensive communication is being carried out regarding the company's involvement in human rights violations. The Responsible Investment division at Robeco has created a set of transparent, measurable goals which must be achieved within the context of the engagement procedure.<sup>169</sup>

#### Score

The Rabobank Groep invests in Barrick Gold and calls the company to account in an intensive manner regarding its involvement in or responsibility for the structural violations of human rights. **Score = 3.**

## 5.7.2 Royal Dutch Shell

Rabobank Groep - the holding company of Rabobank and Robeco Direct - has investments in shares as well as bonds issued by Royal Dutch Shell. Table 15 shows the number of shares in Shell which are held by investment funds managed by subsidiaries of Rabobank Groep.

**Table 15 Shares in Royal Dutch Shell managed by Rabobank Groep**

Asset manager/fund	Value (millions of €)	Number of shares	Percentage	Report date
<b>Robeco Gestions</b>				
Robeco European Dividend Extension	0.09	4,000	0.00	31-Dec-2009
<b>Robeco Institutional Asset Management</b>				
Robeco Fund N.V.	93.84	4,124,942	0.06	31-Dec-2009
Robeco Hollands Bezit	60.06	2,640,389	0.04	31-Dec-2009
Robeco Natural Resources Equities	15.92	700,000	0.01	31-Dec-2009
Robeco European Equities	8.31	371,104	0.01	31-Dec-2009
Robeco Global Equities	1.29	56,500	0.00	31-Dec-2009
Robeco European Conservative Equity	0.98	43,163	0.00	31-Dec-2009
Robeco Duurzaam Aandelen Fund	0.96	42,419	0.00	31-Dec-2009
Robeco 130/30 European Equities	0.16	7,411	0.00	30-Jun-2009
<b>Robeco Investment Management</b>				
Robeco Global Value Equities	0.54	23,779	0.00	31-Dec-2009
<b>Sarasin &amp; Partners</b>				
Unknown	27.23	1,011,047	0.01	30-Jul-2010
Alpha Common Investment Fund For Endowment	7.44	395,000	0.01	30-Jun-2009
Sarasin International Equity Income Fund	3.57	179,000	0.00	31-Aug-2010
Sarasin Global Equity Income Fund (Sterling Hedge)	1.68	88,200	0.00	30-Jun-2010
Sarasin EquiSar UK Thematic	0.83	45,600	0.00	30-Jun-2010
Sarasin CI Income Portfolio	0.50	23,000	0.00	31-Dec-2009
Alpha Common Investment Fund For Income & Reserves	0.16	8,750	0.00	30-Jun-2009
<b>Total</b>	<b>223.59</b>	<b>9,764,304</b>	<b>0.14</b>	

Sources: Thomson One Database, "Share Ownership", Visited in November 2010; Shell, "Jaarverslag 2009 (2009 Annual Report)", Royal Dutch Shell, 22 April 2010.

Table 16 shows the number of bonds in Shell which are held by investment funds managed by subsidiaries of Rabobank Groep.

**Table 16 Bonds in Royal Dutch Shell managed by Rabobank Groep**

Fund or asset manager	Value (millions of €)	Percentage	Report date
<b>Robeco Investor Services</b>			
Robeco Investment Grade Corporate	11.64	0.05	1-Aug-2010
Robeco Capital Growth – Euro Bond	7.21	0.03	1-Aug-2010
<b>Robeco Fund Management</b>			
Robeco Euro Obligaties Dividend	4.36	0.02	1-Aug-2010
<b>Total</b>	<b>23.21</b>	<b>0.10</b>	

Source: Bloomberg Database, “Bondholders”, Visited in November 2010.

Robeco has recently embarked on an engagement procedure with respect to Shell with a duration of three years, within the scope of which intensive communication is being carried out regarding the company’s involvement in human rights violations. The Responsible Investment division at Robeco has created a set of transparent, measurable goals which must be achieved within the context of the engagement procedure.<sup>170</sup>

#### Score

The Rabobank Groep invests in Shell and calls the company to account in an intensive manner regarding its involvement in or responsibility for the structural violations of human rights. **Score = 3.**

#### 5.7.3 Vedanta Resources

At present, the Rabobank Groep no longer invests in Vedanta Resources. This decision was taken primarily on the basis of financial reasons.<sup>171</sup>

#### Score

The Rabobank does not invest in Vedanta Resources for financial reasons. **Score: N/A**

#### 5.7.4 Response from Rabobank Groep and retort regarding the Fair Bank Guide

*“The Rabobank Groep has the following points of criticism regarding the research:*

- *It is unfair for banks and asset managers to be compared with one another as they have different responsibilities and engage in different activities.*
- *Rabobank is assessed together with its subsidiaries Sarasin Bank and Robeco even though each pursues its own policies. This is in effect applying a double standard, given the fact that ASN Bank is assessed separately from the SNS Reaal Groep because it pursues its own policy.*
- *The number of companies studied is too small to allow the association of credible conclusions with them. A minimum of ten companies should have been studied.*
- *It is unclear which criteria (for example, ILO standards or criteria from the Ruggie framework) were used to determine whether or not the companies violated human rights.*
- *The act of divestment or the termination of investments in a company is not deserving of the highest score, since this is counterproductive when it comes to fostering corporate social responsibility. Engagement designed to make continuous improvements in the business operations of these companies will ultimately generate the most added sustainable value. If investors do not invest in a company, they no longer have any influence at all.*

- *There is not a great enough distinction made between the various forms of engagement such as voting at annual shareholders meetings and discussions with companies, as a result of which conclusions may not be drawn regarding how effective certain forms of engagement are in achieving change.”*

Point-by-point responses to Rabobank’s criticism:

- It is true that the financial institutions compared in the study differ in terms of their activities. However, what they do have in common is that they have made the choice to offer current and savings accounts to consumers in the Netherlands. In doing so, they are inviting consumers to compare them with one another, regarding aspects such as savings interest rates and customer friendliness. The Fair Bank Guide does nothing more than help consumers add another aspect to this process of comparison: how responsible these financial institutions are investing in practice.
- ASN Bank occupies a position of its own within the banking market in the Netherlands, with a different offering for consumers. For this reason, the bank was evaluated separately. It appears as though Rabobank does not wish to be associated with its own subsidiaries: apparently the bank is not capable of encouraging these subsidiaries to commit the same norms as the bank itself employs.
- The three companies studied have been in the news for several years due to their involvement in violations of human rights. Therefore, investors have also had this time to determine their own positions. This makes a comparison of positions very possible and relevant, without the risk of generalising in an irresponsible manner.
- The primary fundamental rights at risk are those included in the UN Covenant on Economic, Social and Cultural Rights (1966).
- Chapters 2 through 4 of this report (and the Amnesty International studies that serve as their basis) discuss at length why Amnesty International believes that these companies have been involved in human rights violations.
- Engagement designed to make continuous improvements in the business operations can result in the highest score, provided certain conditions are satisfied. This may also be the case when a bank has decided, for compelling reasons, that in a particular case, engagement would not generate any (more) impact on human rights, and therefore decides to terminate the investment and/or to refrain from investing in the company at all.
- Different forms of engagement are addressed in the study. However, it does apply to all of these forms that they should not be continued indefinitely or without adjustment if improvements fail to materialise, since this would cause them to lose their effectiveness.

## 5.8 SNS Bank

### 5.8.1 Barrick Gold Corporation

SNS Reaal - the parent company of SNS Bank and RegioBank - no longer has any investments in Barrick Gold, since the company has been involved in matters which conflict with SNS Reaal's fundamental principles when it comes to human rights and the environment.<sup>172</sup> As a result of these violations, Barrick Gold is on the bank’s exclusion list.<sup>173</sup>

#### Score

SNS Reaal - the parent company of SNS Bank and RegioBank - does not invest in Barrick Gold based on its human rights policy. **Score = 5.**

### 5.8.2 Royal Dutch Shell

Table 17 shows the number of shares in Shell which are held by investment funds which are managed by subsidiaries of SNS Reaal - the parent company of SNS Bank and RegioBank.

**Table 17 Shares in Royal Dutch Shell managed by SNS Reaal**

Asset manager/fund	Value (millions of €)	Number of shares	Percentage	Report date
<b>SNS Asset Management</b>				
SNS Aandelenpool Nederland Fund	61.21	2,950,000	0.04	3-Dec-2010
SNS Euro Aandelenpool	18.87	896,079	0.01	3-Dec-2010
SNS Duurzaam Aandelenpool Europa	3.88	183,824	0.00	3-Dec-2010
SNS Hoogdividend Aandelenpool	0.74	35,000	0.00	3-Dec-2010
<b>Total</b>	<b>84.70</b>	<b>4,064,903</b>	<b>0.05</b>	

Source: Thomson One Database, "Share Ownership", Visited in November 2010; Shell, "Jaarverslag 2009 (2009 Annual Report)", Royal Dutch Shell, 22 April 2010; information submitted by SNS Reaal on 3 December 2010.

SNS Reaal has indicated that it has conducted personal discussions on numerous occasions over the past few years with Shell regarding sustainability issues, including the situation in Nigeria. In addition, SNS has taken various initiatives in calling Shell to account, including via letters and by submitting and supporting shareholders resolutions.<sup>174</sup> Furthermore, SNS has decided to exclude Shell from the *SNS Duurzaam Aandelenpool Europa* fund (sustainable shares pool). These positions are currently being cut back. This does not apply however to the other SNS funds.<sup>175</sup>

#### **Score**

SNS Reaal invests in Royal Dutch Shell and calls the company to account in an intensive manner regarding its involvement in or responsibility for the structural violations of human rights. **Score = 3.**

#### **5.8.3 Vedanta Resources**

SNS Reaal - the parent company of SNS Bank and RegioBank - no longer has any investments in Vedanta Resources, since the company has been involved in matters which conflict with SNS Reaal's fundamental principles when it comes to human rights and the environment.<sup>176</sup> As a result of these violations, Vedanta Resources is on the bank's exclusion list.<sup>177</sup>

#### **Score**

SNS Reaal - the parent company of SNS Bank and RegioBank - does not invest in Vedanta Resources based on its human rights policy. **Score = 5.**

#### **5.8.4 Response from SNS Bank**

SNS Bank has not issued an official response to the report.

### **5.9 Triodos Bank**

#### **5.9.1 Barrick Gold**

Triodos Bank does not have any investments in Barrick Gold because the company does not satisfy Triodos Bank's sustainable investment criteria.

**Score**

Triodos Bank does not invest in Barrick Gold based on its human rights policy. **Score = 5.**

**5.9.2 Royal Dutch Shell**

Triodos Bank does not have any investments in Shell because the company does not satisfy Triodos Bank's sustainable investment criteria.

**Score**

Triodos Bank does not invest in Royal Dutch Shell based on its human rights policy. **Score = 5.**

**5.9.3 Vedanta Resources**

Triodos Bank does not have any investments in Vedanta Resources because the company does not satisfy Triodos Bank's sustainable investment criteria.

**Score**

Triodos Bank does not invest in Vedanta Resources based on its human rights policy. **Score = 5.**

**5.9.4 Response from Triodos Bank**

Triodos Bank has not issued an official response to the report.

**5.10 Van Lanschot Bankiers****5.10.1 Barrick Gold Corporation**

Van Lanschot Bankiers manages investments in shares of Barrick Gold on behalf of its clients. The size of these investments is very limited. Barrick Gold is not on Van Lanschot Bankiers' suggested list, and is thus not actively recommended to clients.<sup>178</sup>

Kempen & Co., a subsidiary of Van Lanschot Bankiers, does not invest in Barrick Gold. It does however invest in external asset managers' funds on behalf of clients, and these funds do include shares in Barrick Gold.<sup>179</sup>

Kempen & Co. undertakes engagement via the specialised firm GES with regard to external asset managers. These managers are regularly encouraged to discuss the problems involving the Porgera mine in Papua New Guinea with Barrick Gold. The result of these efforts is that these external asset managers now regularly discuss this topic with Barrick Gold.<sup>180</sup>

**Score**

Van Lanschot Bankiers invests in Barrick Gold and calls the company to account in an intensive manner regarding its involvement in or responsibility for the structural violations of human rights. **Score = 3.**

**5.10.2 Royal Dutch Shell**

Table 18 shows the number of shares in Shell which are held by investment funds which are managed by Kempen Capital Management, a subsidiary of Van Lanschot Bankiers.

**Table 18 Shares in Royal Dutch Shell managed by Van Lanschot Bankiers**

<b>Asset manager/fund</b>	<b>Value (millions of €)</b>	<b>Report Date</b>
<b>Kempen Capital Management</b>		
Kempen European Dividend Fund	0.743	31-3-2010
Kempen European High Dividend Fund	2.702	31-3-2010
Kempen Global High Dividend Fund	2.590	30-6-2010
<b>Total</b>	<b>6.035</b>	

Sources: Semi-annual report dated 31 March 2010, Kempen European Dividend Fund, June 2010; Semi-annual report dated 31 March 2010, Kempen European High Dividend Fund, June 2010; Semi-annual report dated 30 June 2010, Kempen Global High Dividend Fund, August 2010.

In addition, Van Lanschot Bankiers also manages investments in shares of Shell on behalf of its clients.

Via the specialised firm GES, Kempen & Co. undertakes long-term and regular engagement with Shell regarding the problems in Nigeria.<sup>181</sup>

#### **Score**

Van Lanschot Bankiers invests in Royal Dutch Shell and calls the company to account in an intensive manner regarding its involvement in or responsibility for the structural violations of human rights. **Score = 3.**

#### **5.10.3 Vedanta Resources**

Van Lanschot Bankiers does not manage investments in shares of Vedanta Resources on behalf of its clients. Kempen & Co., a subsidiary of Van Lanschot Bankiers, does not invest in Vedanta Resources. It does however invest in external asset managers' funds on behalf of clients, and these funds do include shares in Vedanta Resources.<sup>182</sup>

Kempen & Co. undertakes engagement via the specialised firm GES with regard to external asset managers. These managers are regularly encouraged to discuss the problems in Orissa with Vedanta Resources. The result of these efforts is that these external asset managers now regularly discuss this topic with Vedanta Resources.<sup>183</sup>

#### **Score**

Van Lanschot Bankiers invests in Vedanta Resources and calls the company to account in an intensive manner regarding its involvement in or responsibility for the structural violations of human rights. **Score = 3.**

#### **5.10.4 Response from Van Lanschot Bankiers**

*"Van Lanschot has taken note of the results, and identifies with the outcome."*

## 5.11 Summary of the scores

**Table 19 Summary of the scores for all banks**

Bank	Investments		
	Barrick Gold	Shell	Vedanta Resources
ABN AMRO Bank	1	1	1
AEGON Bank	2	2	2
ASN Bank	5	5	5
Friesland Bank	5	5	5
ING Bank	2	2	2
Rabobank*	3	3	N/A
SNS Bank**	5	3	5
Triodos Bank	5	5	5
Van Lanschot Bankiers	3	3	3

\* Includes Robeco Direct

\*\* Includes RegioBank

**Key:**

1 = poor;

2 = unsatisfactory;

3 = fair;

4 = satisfactory;

5 = good.

N.A. = not active in this area

## Chapter 6 Recommendations

### 6.1 Banks and human rights

#### 6.1.1 The Ruggie framework

In addition to the Universal Declaration of Human Rights which is viewed as being the most important international standard for human rights, and international conventions such as the International Convention on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights, as well as the various regional or other human rights conventions which have been ratified over the past sixty years or more,<sup>i</sup> there are now also a number of guidelines specifically targeting companies, which indicate that they are responsible for respecting the human rights of those affected by their activities. Well-known guidelines are the *OECD Guidelines for Multinational Enterprises* and the *UN Global Compact*.

For many years now, attempts have been made within the United Nations to create a clearer description of the obligations of companies with respect to human rights; in 2003, these efforts resulted in the *UN Human Rights Norms for Business*. As a result of the great resistance to these norms on the part of business, they were not accepted, and the United Nations decided to conduct a more comprehensive, broader discussion on the topic.<sup>184</sup> To this end, in July of 2005, the American professor John Ruggie was appointed as the *UN Secretary-General's Special Representative on human rights and transnational businesses*. Ruggie's assignment was to arrive at recommendations which could also count on support from the business world.<sup>185</sup>

In June 2008, Ruggie presented a policy framework designed to improve the relationship between companies and human rights: *Protect, Respect and Remedy*. The framework is built on three pillars which reinforce one another:<sup>186</sup>

- *Protect: the obligation of the government to protect human rights through suitable policy, effective regulations and access to the legal system in situations in which companies might be contributing to violations;*
- *Respect: the responsibility of companies to respect human rights;*
- *Remedy: the improvement by government and businesses of the possibilities for victims to obtain restitution and to prevent a repeat of violations in other ways.*

Ruggie's mandate was then expanded with the additional assignment to make his framework more operational, and to promote it. This led to the publication of *Draft Guiding Principles for the Implementation of the United Nations 'Protect, Respect and Remedy' Framework*<sup>ii</sup> in November of 2010. In this document, Ruggie states that in order to identify, prevent and reduce companies' potential negative impact of their activities on human rights, they must conduct a human rights due diligence process. According to Ruggie, this is a constant process whereby companies become aware of the potentially negative effects their activities have on human rights, and attempt to prevent or, at any rate, reduce these.

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<sup>i</sup> See the extensive list of the UN Office of the High Commissioner for Human Rights ([www2.ohchr.org/english/law/index.htm](http://www2.ohchr.org/english/law/index.htm)).

<sup>ii</sup> Amnesty International has expressed criticism concerning various points in the text of the *Draft Guiding Principles*, particularly regarding the details of states' duty to protect. Amnesty is however positive about the framework as such, particularly Ruggie's attention to the responsibility of companies to respect human rights, including the *human rights due diligence* process. Amnesty International also welcomes the proposals to improve the possibilities for victims to claim redress.

### 6.1.2 Ruggie's significance for financial institutions

Although Ruggie does not specifically address the role of financial institutions, he does indicate that "the responsibility to respect human rights applies to all companies".<sup>187</sup> One may therefore assume that Ruggie's framework also applies to this group of companies. Moreover, financial institutions have a special responsibility regarding human rights since they are in a position to exert influence on the companies in which they invest, and can thus make a positive or negative contribution to the conduct of companies when it comes to human rights.<sup>188</sup>

In this chapter, we provide recommendations on how financial institutions (and specifically, banks) can assume their responsibility to respect human rights, the second pillar in Ruggie's framework, with regard to their investments in raw materials extraction companies. We first discuss the human rights due diligence process (section 6.2) and then the possibilities to practise engagement (section 6.3). The starting point remains that, in principle, financial institutions should not invest in companies which are involved in or responsible for serious violations of human rights. However, it is possible that these violations do not start occurring or come to light until this investment has already been made. When this happens, the institution may be expected to confront the company in question in this regard (engagement) and attach conditions to these discussions. If an engagement procedure does not lead to the desired result, the institution can expect the investment relationship to end.

## 6.2 Human rights due diligence

The human rights due diligence process that Ruggie recommends for companies consists of four elements:<sup>189</sup>

- *Drawing up a policy statement in which the company makes a firm commitment to respect human rights;*
- *A periodic evaluation of the current and potential impact of the company's activities and relationships on human rights;*
- *Integration of the policy and periodic evaluations in an internal system of auditing and supervision;*
- *Monitoring and reporting on what has been achieved in this regard.*

This recommendation applies to all companies, and thus also financial institutions. Due to the nature of its activities, the impact a financial institution has on human rights will however usually be an indirect one. The money that is provided to companies via credit, investments or other means is, after all, used by these companies for a diverse range of activities. The following sections detail Ruggie's recommendations for banks.

### 6.2.1 Drawing up a policy statement

The first step in the human rights due diligence process is the drawing up of a human rights policy. By doing this, the institution is demonstrating its commitment to respect human rights - and even more importantly - the employees within the organisation will always have something to fall back on. Armed with an official policy, the organisation is able to clearly communicate what it stands for and what it aims to achieve.

A human rights policy contains first and foremost a reference to all of the international standards and human rights conventions, and the eight conventions of the *International Labor Organization* (ILO). In the event they are relevant, additional conventions or UN declarations may also be included, depending on the countries or sectors in which the financial institution is active.<sup>190</sup>

Secondly, the human rights policy must set out the main points of the procedure for determining, reducing or completely eliminating the possible impact the financial institution has on human rights violations, as well as for preventing these from occurring in future. This general procedure is then detailed as it applies to each individual division within the institution. This is explained in further detail in the following sections.

Finally, the human rights policy must place attention on the way in which compensation is conferred upon the people who have become a victim of human rights violations by the companies in which the institution invests. This is why financial institutions must establish that these companies have set up an independent complaints procedure for the local communities and other interested parties which experience negative effects from the activities funded by investments, and for the social organisations that defend broader social and environmental interests. This then allows them to file a complaint with the company. Financial institutions should also have a similar complaints procedure in place, so that the broader group of interested parties is able to file a complaint with them should this group believe that an investment does not comply with the institution's policy.

Most multi-lateral development banks have such a complaints procedure in place. Examples include the World Bank Inspection Panel<sup>191</sup>, the IFC and MIGA Compliance Advisor Ombudsman<sup>192</sup>, and the ERBD Project Complaint Mechanism.<sup>193</sup> Typical of these types of procedures is that the complaint may be filed with an institution that operates independently from the bank.

## **6.2.2 Periodic evaluation of the impact**

The second step in the human rights due diligence process is a periodic evaluation of the current and potential impact of the company's activities and relationships on human rights. A so-called *human rights impacts assessment* (HRIA) should be carried out for each company activity. Since financial institutions primarily finance the activities of other companies, they should therefore ask themselves how they can carry out an HRIA to assess these companies' activities.

Carrying out a full HRIA does not have to be a standard procedure for every investment. In entering into a relationship, financial institutions will first have to evaluate whether or not an HRIA is truly necessary. An initial study should be able to reveal the type of activities involved, and whether or not the project or company being invested in will have a possible impact on human rights, and whether or not the relationship with the project or company is direct enough to allow for the determination of responsibility or impact. This depends on the service being offered, combined with the nature of the company's activities. With project financing or private equity investments for example, the direct involvement in the project or company is much higher than that involved in purchasing a bond or share. A human rights impacts assessment is then much easier to realise.

At the same time, the degree of impact - and thus the responsibility and liability - a financial institution has will then be greater. For this reason, it is important to continue to question whether or not the money that they are investing makes human rights violations possible.<sup>194</sup>

Banks can, for example, categorise different types of services as follows:<sup>195</sup>

1. The impact on human rights is evident, and there is a good chance that the bank can influence the respect of human rights (project financing, consulting services, credit facilities, business loans).
2. The impact on human rights is limited, as is the chance that the bank can influence the respect of human rights (investments).

### 3. There is no impact on human rights (private banking).

Company activities can bring with them risks of human rights violations, such as the presence in certain countries or industries, major environmental impact, intensive use of natural resources, plans for moving and relocating local populations, or extreme violence against employees and the local population by so-called security contractors.<sup>196</sup>

The combination of the type of service with an increased risk of human rights violations due to the company activities then will or will not provide a reason for requiring an HRIA to be carried out by the company in which the investments are being made. This will occur less frequently with asset managers than with banks. If the bank has not performed the HRIA itself, it will at any rate have to evaluate whether or not this has been done properly. This evaluation should contain a minimum of the following activities:

- Determining that the HRIA was performed in a demonstrably objective fashion, is credible, transparent in the description of the methodology, and verifiable.
- Evaluating whether or not the party that performed the HRIA has sufficient expertise in this regard.
- Evaluating whether or not the HRIA has been carried out completely and professionally based on the discussions with the party carrying it out, and the underlying documentation.
- Obtaining insight into the possible human rights problems that are at play with respect to the company and/or project involved, based on discussions with human rights experts, social organisations and other stakeholders.
- Evaluating whether or not the human rights problems which have emerged during the course of the institution's own research also appear in the HRIA and have been addressed satisfactorily.
- Determining whether or not a plan of action is in place which includes measures for reducing the risks of human rights violations, or eliminating these entirely.

There are currently several tools available for companies to use in carrying out a structured and complete HRIA. Examples of these are:<sup>197</sup>

- The *Guide for Conflict Sensitive Business Practice*; specifically intended for raw materials extraction companies operating in conflict regions;
- The *Human Rights Impact Assessment and Management Table*; a management tool developed by International Business Leaders Forum, International Finance Corporation and UN Global Compact.<sup>198</sup>
- The *Human Rights Compliance Assessment*; developed by the Danish Institute for Human Rights. The complete version of this contains a database of over 350 questions and more than 1000 indicators relating to human rights.<sup>199</sup> There is also an abridged version available (the 'Quick Check') which focuses solely on labour conditions, impact on the local community and supply chain management.<sup>200</sup>
- *The Eight Step Approach*; developed by the Dutch organisation Aim for Human Rights.<sup>201</sup>

Banks may use these tools to determine whether or not the company has carried out the HRIA completely, and has addressed all of the human rights.

If the activities above show that the HRIA is unsatisfactory, or lacks essential aspects, the bank can either decide not to invest, or to demand that a new HRIA be performed by a different party.

### 6.2.3 Integration in internal system of auditing and supervision

In order to guarantee that each new investment is evaluated to determine the necessity of an HRIA, this evaluation must be integrated in the financial institution's internal processes.

Every bank already has procedures in place for checking new and existing clients which are known by the name "Know Your Customer (KYC)". The *Dutch Money Laundering and Terrorist Financing (Prevention) Act* requires financial institutions to conduct a client investigation if they enter into a business relationship with a new client, within or from of the Netherlands, and for larger transactions with existing clients.<sup>202</sup> This client investigation then results in a certain risk profile that is linked to the client. In spite of the fact that the investigation focuses on preventing money laundering and the financing of terrorism, the procedure involved in this investigation may also be used to evaluate other risk factors - such as possible involvement in or responsibility for human rights violations. Questions which may be asked are:

- Is the company active in a sector in which human rights violations occur on a regular basis?
- Does the company carry out any activities in conflict areas, dictatorships or in countries in which human rights violations occur on a regular basis?
- Has the company ever been involved in or held responsible for human rights violations in the past?

If it has been established that involvement in human rights violations is a risk factor with regard to a particular company, the necessity of carrying out an HRIA must first be evaluated before the bank decides to invest in or continues any pre-existing investment relationship with the company. In practice, this evaluation will usually be performed by a different department within the bank than the one in which the account manager involved works. Logically, this is carried out by one or more people within the CSR (Corporate Social Responsibility) department or an investigative department. This department will then complete the steps as described in section 6.2.2 and will then issue a recommendation. Based on this recommendation, the decision will ultimately be made whether or not to finance and/or start an engagement procedure involving this company.

Asset managers will also have to integrate evaluations into their internal processes examining whether or not the companies they would like to invest in might be involved in violations of human rights. This means that in delineating the investment world of a specific fund or mandate, an analysis will have to be performed to determine whether or not sectors and areas/countries are included in this world where human rights violations occur on a regular basis. If this is the case, then the funds manager's "stockpicking" process will have to be set up in such a way that an actual investment may only take place after a thorough source investigation has been carried out. Sources to be used include reports from ethical rating agencies, research institutes and social organisations. Companies operating outside of the risk sectors and areas will also have to incorporate this information into the investment process. Based on the results of this investigation, the decision will ultimately be made whether or not to invest in and/or start an engagement procedure involving this company (see section 6.3).

## **6.2.4 Monitoring**

Companies for which human rights represent a risk factor, an HRIA is performed, and are evaluated and/or for which an engagement procedure is carried out, are the very companies whose activities should be closely monitored. Those carrying out engagement procedures must submit periodic reports to their bank as well as the department that has issued the recommendation. These reports may then be discussed in a meeting, after which (if applicable) another decision moment will follow determining whether or not to continue the investment.

Companies for which human rights either are not a risk factor, or are by nature companies for which an HRIA is not required should however still be monitored. The situation companies were in at the time of the client investigation can quickly change. The client investigation should therefore be carried out each year. In addition, it is advisable to regularly request information from human rights organisations regarding developments at certain companies, about their campaigns, etc. This information can be a reason to review the conclusions arrived at during the previous investigation, and to still decide to evaluate the necessity of an HRIA.

## **6.3 Engagement**

### **6.3.1 General**

If a company in which investments are made is involved in or responsible for the violation of human rights, the financial institution may be expected to call the company to account in this regard. This calling to account may be done on an incidental basis, for example through voting behaviour at a shareholders meeting, but this is preferably something that is intensive in nature, for example, in the form of a focused engagement project.

One way of active voting policy which has been applied in the United States for some time now (and which is gaining an increasingly larger following in Europe) is the submission of shareholders resolutions which relate to human rights and the environment. Banks may support these resolutions at shareholders meetings, but they can also collectively (whether or not in cooperation with social organisations) develop and submit their own resolutions.

An engagement procedure is understood to mean a series of meetings between one or more shareholders or financiers and the upper management of the company. The bank can carry out its own engagement procedure, but may also outsource this activity. If it decides to outsource engagement, this does not mean that the bank can release itself from its own responsibility. Ultimately, the bank will retain the final responsibility for its decision whether or not to keep the investment.

The party to which engagement is outsourced must first be properly and clearly instructed regarding the topics the bank would like to examine, the frequency of the engagement meetings, the goals that must be achieved, and the method of reporting back to the bank. Next, the bank will have to monitor the engagement procedure to ensure it is being done in the manner agreed. This may be done using the reports provided, but the bank will still have to conduct its own investigation into the developments in specific companies or cases related to human rights problems.

The following sections contain recommendations specifically related to engagement with the three companies discussed in this report.

### 6.3.2 Barrick Gold

With respect to Barrick Gold, Porgera Joint Venture (PJV) and the Porgera mine, banks can insist on the following in their engagement procedures:<sup>203</sup>

- Given the evidence of human rights violations committed by the police and legal orders to station the police outside of the Porgera mine area, PJV should terminate its support of the Riot Squad.
- Training programmes should be organised for the personnel of Barrick Gold and PJV which address the consequences of forced evictions for human rights. Also within this context, it should be made clear that this is prohibited under international law.
- The Voluntary Principles on Security and Human Rights adopted by Barrick Gold should also be implemented by:
  - *Recording all of the information already gathered by Barrick Gold and PJV regarding forced evictions and other acts of violence committed by the police, and to report this to the government;*
  - *Requesting that a full investigation be conducted into the forced evictions and violence, prosecuting those responsible for this, and compensating those whose rights were violated as a result of the events;*
  - *Actively monitoring the progress of this investigation and repeatedly arguing in favour of a proper solution.*
- Barrick Gold and PJV must ensure that if, in future, their personnel suspect that the police are guilty of human rights violations, that this be recorded immediately and reported to the government.
- If residents of the mining area require new housing, this must be offered immediately.

### 6.3.3 Royal Dutch Shell

When it comes to engagement for Shell, the banks can discuss several points. These issues also apply to other oil extraction companies active in Nigeria.<sup>204</sup>

- Making more information available about the impact of oil extraction on the environment and on human rights such as:
  - *All of the oil spills including quantities and locations;*
  - *Waste processing, specifically, where waste is disposed of (land, air or water);*
  - *Previously conducted studies into the impact of oil extraction;*
  - *Amounts paid for the purchase or lease of land;*
  - *Amounts paid in compensation to the local population, specified according to what has been compensated;*
  - *Lobbying activities in relation to Nigerian legislation and regulations which have a potential impact on the environment and on human rights.*
- Publicly supporting independent supervision of the oil industry in the Niger Delta, including confirmation that the company will not lobby against this.
- Permitting an independent assessment of companies' environmental management activities, including on-site inspections. The results must then be made available to the public.
- Conducting a human rights impact assessment for all oil and gas projects, after which the right actions will be taken.
- Cleaning up areas polluted by oil in consultation with the local population.
- Prior to the start of a project, the company must be certain that the local population is fully apprised of the project, and is capable of participating in a human rights impact assessment.

### 6.3.4 Vedanta Resources

In their engagement activities, banks that are involved in the financing of Vedanta Resources should insist that Vedanta Resources:<sup>205</sup>

- Acknowledge the negative effects of its activities in India on mankind and the environment and take action in this regard;
- Pro-actively make all of the information on the existing refinery, the planned expansion of this, and the proposed mining project available to the local population;
- Cooperate with an independent study on the effects of its activities on mankind and the environment;
- Issue a statement to the public in which it promises not to expand the refinery until the existing problems have been dealt with and an effective plan has been developed which guarantees respect for human rights;
- Obtain voluntary, timely and informed permission from the Dongria Kondh before plans are executed, and respect its decision if it decides not to approve this.

## 6.4 Summary

The human rights due diligence process that Ruggie recommends consists of four elements and may be applied by financial institutions as follows:

- **Drawing up a policy statement in which the institution makes a firm commitment to respect human rights.** This should also include a reference to all of the international standards on human rights, and the eight conventions of the *International Labor Organization* (ILO), the procedure used to determine the financial institution's potential impact on human rights violations and to reduce or eliminate them entirely, and to prevent them in future, and the way in which the institution makes access to compensation available to the people who have been victims of the human rights violations committed by the companies in which the institutions invest.
- **A periodic evaluation of the current and potential impact of the company's activities and relationships on human rights.** For financial institutions, this means that when entering into a relationship, they must first evaluate whether or not a human rights impact assessment is actually necessary by determining if the project or company being invested in will have a possible impact on human rights, and whether or not the relationship with the project or company is direct enough to allow for the determination of responsibility or impact. This depends on the service being offered, combined with the nature of the company's activities. If a human rights impact assessment is required, then the institution itself should not carry this out, but needs to evaluate whether or not this has been done properly. If this is not the case, then the institution must either decide not to invest, or to demand that a new human rights impact assessment be performed by a different party.
- **Integration of the policy and periodic evaluations in an internal system of auditing and supervision.** Every bank already has procedures in place for checking new and existing clients which are known by the name "Know Your Customer (KYC)". In spite of the fact that this investigation focuses on preventing money laundering and the financing of terrorism, the procedure involved in this investigation may also be used to evaluate other risk factors. For asset managers, this means that in delineating the investment world of a specific fund or mandate, an analysis must be performed to determine whether or not this world includes sectors and areas/countries where human rights violations occur on a regular basis.

- **Monitoring and reporting on what has been achieved in this regard.** If engagement is carried out with companies, a report on these activities must be issued periodically. These reports may then be discussed in a meeting, after which (if applicable) another decision moment will follow determining whether or not to continue the investment.

## Appendix 1 Questionnaire

	Questions regarding Barrick Gold	Explanation	Answer
1	Does the bank invest its own funds and/or that of third parties in Barrick Gold?  <i>If answer is no: please answer question 2. If answer is yes: please answer questions 3 through 6.</i>	See definitions in research structure.	
2	What is (are) the reason(s) that the bank does not invest in Barrick Gold?	Please state the reason(s).	
3	How has the bank voted at Barrick Gold shareholder meetings over the past three years on motions which relate to human rights?	Please state contents of the motion(s), the date, and the voting behaviour.	
4	Has the bank asked questions about how Barrick Gold handles the subject of human rights at Barrick Gold shareholder meetings over the past three years?	Please state the questions and dates.	
5	As a shareholder, does the bank conduct discussions with Barrick Gold (in the form of engagement or otherwise) with regard to human rights, or does the bank have a third party conduct these discussions?	Please state the frequency and topic of these discussions and by whom they were conducted.	
6	Has the bank formulated objectives, interim objectives and a time schedule for its discussions with Barrick Gold about human rights?	Please state the objectives, interim objectives and time schedule.	

	<b>Questions regarding Shell</b>	<b>Explanation</b>	<b>Answer</b>
1	Does the bank invest its own funds and/or that of third parties in Shell?  <i>If answer is no: please answer question 2. If answer is yes: please answer questions 3 through 6.</i>	See definitions in research structure.	
2	What is (are) the reason(s) that the bank does not invest in Shell?	Please state the reason(s).	
3	How has the bank voted at Shell shareholder meetings over the past three years on motions which relate to human rights?	Please state contents of the motion(s), the date, and the voting behaviour.	
4	Has the bank asked questions about how Shell handles the subject of human rights at Shell shareholder meetings over the past three years?	Please state the questions and dates.	
5	As a shareholder, does the bank conduct discussions with Shell (in the form of engagement or otherwise) with regard to human rights, or does the bank have a third party conduct these discussions?	Please state the frequency and topic of these discussions and by whom they were conducted.	
6	Has the bank formulated objectives, interim objectives and a time schedule for its discussions with Shell about human rights?	Please state the objectives, interim objectives and time schedule.	

	<b>Questions regarding Vedanta Resources</b>	<b>Explanation</b>	<b>Answer</b>
1	Does the bank invest its own funds and/or that of third parties in Vedanta Resources?  <i>If answer is no: please answer question 2. If answer is yes: please answer questions 3 through 6.</i>	See definitions in research structure.	
2	What is (are) the reason(s) that the bank does not invest in Vedanta Resources?	Please state the reason(s).	
3	How has the bank voted at Vedanta Resources shareholder meetings over the past three years on motions which relate to human rights?	Please state contents of the motion(s), the date, and the voting behaviour.	
4	Has the bank asked questions about how Vedanta handles the subject of human rights at Vedanta shareholder meetings over the past three years?	Please state the questions and dates.	
5	As a shareholder, does the bank conduct discussions with Vedanta (in the form of engagement or otherwise) with regard to human rights, or does the bank have a third party conduct these discussions?	Please state the frequency and topic of these discussions and by whom they were conducted.	
6	Has the bank formulated objectives, interim objectives and a time schedule for its discussions with Vedanta about human rights?	Please state the objectives, interim objectives and time schedule.	

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