

Dirty Profits 5

Report on Companies and Financial Institutions Benefiting
from Human Rights Violations and Environmental Destruction

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“Respect for human rights, respect for the dignity of every person, is at the very core of the people part of sustainable development. And as if that alone were not enough, it is also the key to ensuring a socially sustainable globalization, from which business stands to be a major beneficiary.”

— John Ruggie, November 14, 2016 to the UN Forum on Business and Human Rights in Geneva, Switzerland

“The idea that this level of fraud could take place and involve so many people at such high levels of a major international corporation is appalling.”¹

— New York Attorney General Schneidermann speaking about the Volkswagen case

“Our humanitarian and development efforts would be insignificant without the active involvement of Member States and the contributions of civil society, international financial institutions, private investors and even financial markets.”

— Secretary-General of the United Nations António Guterres’ remarks to the General Assembly on taking the oath of office

¹ Ewing, J and Tabuchi, H (2016): Volkswagen scandal reaches all the way to the top, lawsuits say, 19 July, The New York Times. www.nytimes.com (Accessed 22.09.2016)

SUMMARY

For the past four years, the Dirty Profits report has highlighted companies violating environmental and human rights norms and standards, as well as selected financial institutions which support them. The report has sought to, and continues to, advocate for stronger ethical regulations on the investment decisions made by financial institutions (FI). Each successive report makes the case clearer that despite voluntary guidance investors continue to have financial ties to harmful companies. This report is no different. The fourteen companies selected for this edition have violated human rights, directly caused environmental devastation, engaged in labour violations such as child labour practices, and have severe governance failures including corruption and embezzlement. All of which are factors that are claimed to be considered in ESG investment criteria.

In compiling this report 12 NGOs from 8 different countries including Israel, South Africa and Brazil, have contributed to both company research as well as drafting specific articles related to their expertise on human rights and environment. The financial institutions selected for this report, cover the largest banks in Europe based on the Global Financial Sectors Index 2016 – Deutsche Bank, ING, UBS, HSBC, and BNP Paribas.

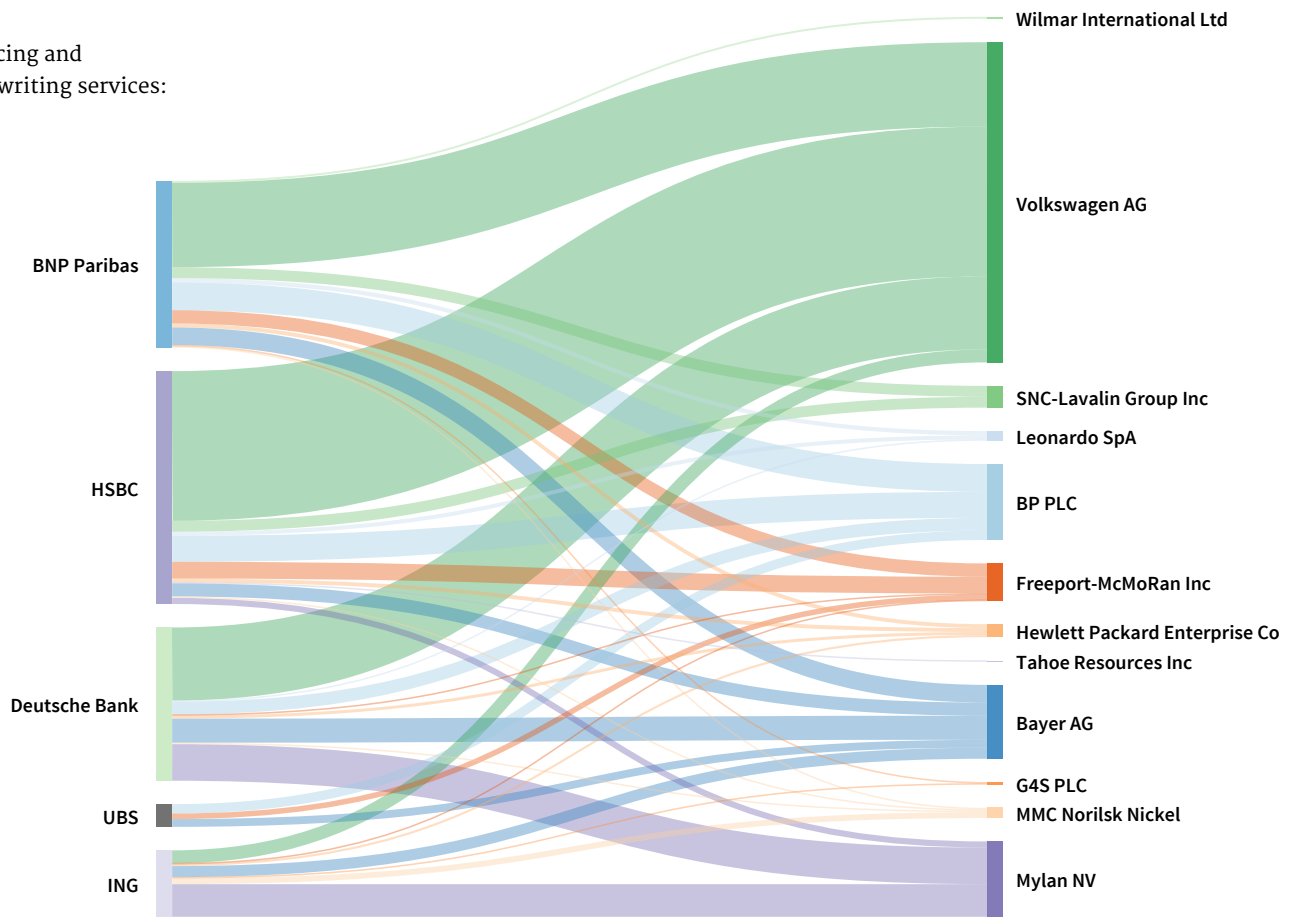
The companies in this fifth edition of Dirty Profits include not only significant recent cases such as the Volkswagen emission scandal, but also those companies that have for decades operated in violation of norms and standards. The report includes some of the most often excluded companies, by investors, pension funds, and banks. These companies can therefore be considered as some of the worst offenders in terms of human rights and environmental violations. Many of them have been excluded from investment funds for decades without changing any of their operations or behaviours, for example Freeport McMoRan and Norilsk Nickel.

6 of the 14 companies in this report have not signed the UN Global Compact¹, 8 have not shown any regard for the UN Guiding Principles on Business and Human Rights², and 4 of the companies have acknowledged neither of these – this includes, unsurprisingly, the two defence companies, Leonardo and Hanwha, the mining company Centerra Gold, and the pharma company Mylan. While this alone should signal to investors that these companies lack clear policy commitments toward defending human rights and the environment, the FIs in this report continue to invest in these companies, with Deutsche Bank for example providing a general corporate loan to Norilsk in 2013.

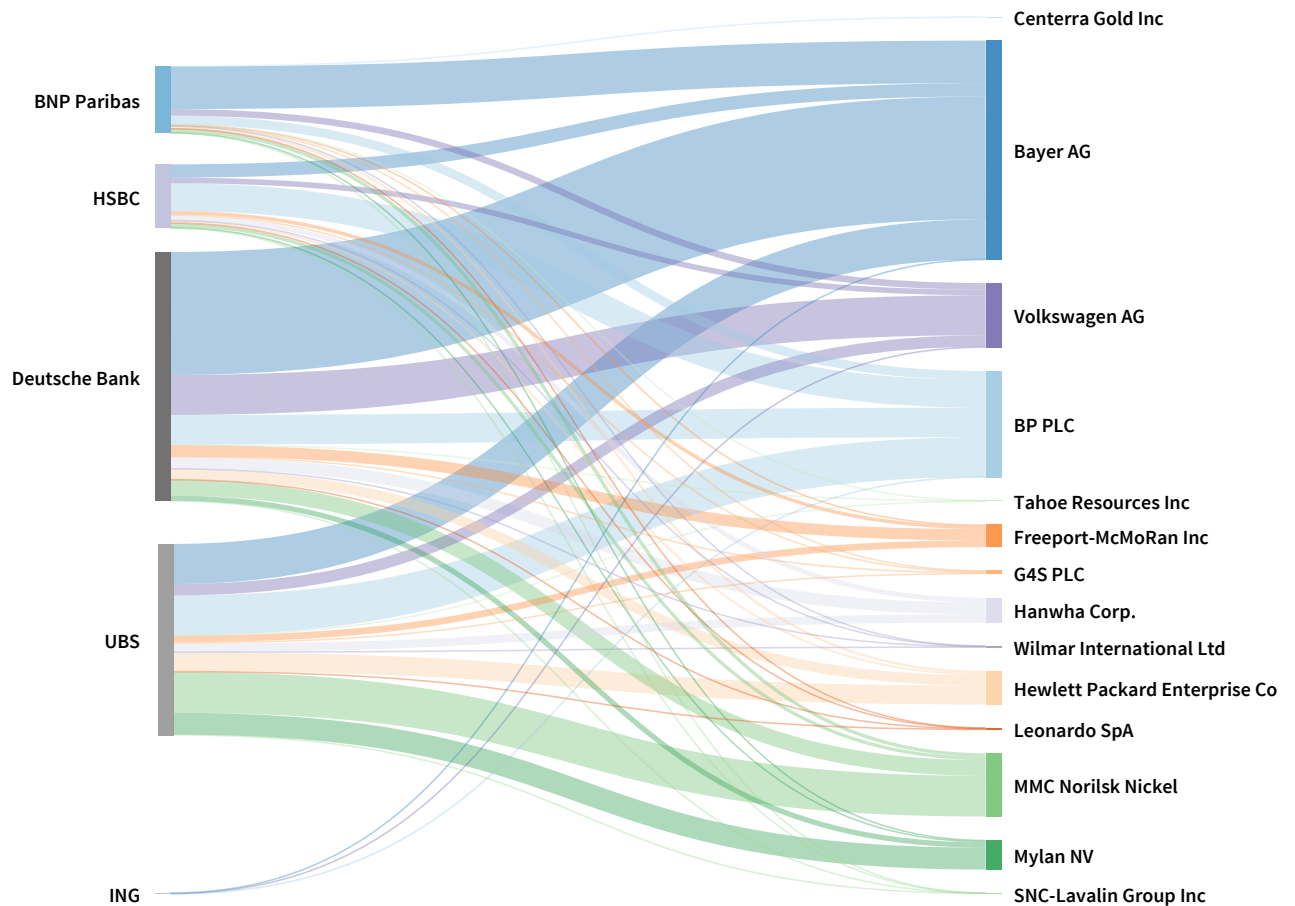
1 The UN Global Compact is a commitment towards doing business responsibly by aligning companies strategies and operations with ten principles on human and labour rights, the environment as well as anti-corruption.

2 These are grounded in the principle that the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights.

Financing and underwriting services:



Bondholdings and shareholdings:



Climate Change has again been a key focus of this Dirty Profits report, with the inclusion of the oil and gas company BP PLC. Despite a history of environmental pollution and being the third largest historical global carbon emitter listed in the carbon majors report³ released in 2013, almost all of the banks have provided financing to BP, a company with countless instances of misconduct resulting in penalties of USD 34,304.8 million in the US. With 2016 set to be the hottest year on record following record-breaking years in 2015, 2014 and 2013⁴ and with the Paris climate agreement firmly in place, the carbon policies of FIs must quickly catch up with the regulations and shift financing from oil majors to renewable energy sources.

Freeport McMoRan, excluded by the Norwegian Government Pension Fund since 2006 for severe environmental destruction, continues its environmentally destructive practices in a politically tumultuous region, yet has been funded with direct corporate loans by Deutsche Bank, BNP Paribas, UBS, HSBC and ING – all of the banks in this report.

The biotechnology sector is currently being scrutinised due to a number of controversial mergers and acquisitions, the Bayer and Monsanto merger being one of the most notable. Bayer has had its own concerns recently in relation to the production and sale of its pesticides in the developing world violating human rights and environmental norms, but the merger with the controversial Monsanto raises further, serious ethical questions. The impact of which is being questioned by investors globally. Bayer has been financed by all of the FIs in this report. The financing of this controversial merger is being facilitated through a bridge loan of USD 5.6 billion, funded in part by HSBC.⁵

Financial institutions play a pivotal role in ensuring sustainable business not only in their own operations, but also within the varied sectors they choose to finance. By providing financial resources to companies, FIs can be seen to be supporting and encouraging their activities. Where these are harmful this reflects negatively not only on the company but also the financiers. It is clear that FIs through choosing not to support harmful or socially unjust companies can set a precedent for other sectors.⁶

Although initiatives which integrate social and environmental sustainability aspects in the financial sector have grown, this report shows once again that the sector continues to invest in companies that significantly violate environmental and human rights norms and standards.

Hence this document again advocates for binding regulations on financial institutions (i.e. banks, asset managers, insurance companies, occupational and public pension funds etc.) to eliminate these harmful investments through the application of rigorous policy and due diligence (risk management) processes, as well as strong transparency and accountability commitments within FIs.

3 Carbon majors (2013): Attributing carbon emissions to extractors. www.carbonmajors.org (Accessed 11.12.2016) Note: Largest and Second largest carbon emitters were covered in Dirty Profits 3 and 4 respectively.

4 UNEPFI (2016): The Good, the Bad and the Unknown. News from climate COP22. www.unepfi.org (Accessed 11.12.2016)

5 Bayer (2016): Ad-hoc announcement according to § 15 WpHG: Bayer and Monsanto to Create a Global Leader in Agriculture, Leverkusen, September 14, 2016. www.investor.bayer.de (Accessed 11.12.2016)

6 Haskell, H and Berkowitz S (2013): 2013 Sustainability reporting of the World's Major Banks; Roberts Environmental Centre. www.claremontmckenna.edu (Accessed 11.12.2016)

METHODOLOGY

Company Selection and Research

Facing Finance and its NGO partners conduct research into multinational companies that violate human rights¹ and environmental protection norms and standards. These violations are articulated in the 'Company Profiles' section of this report. This report forms a compilation of information from news and media, industry journals, community organisations, (local) NGOs, legal records and other relevant sources. Facing Finance relies heavily on information provided by NGOs operating directly on the cases included, and for this reason many of the company profiles are authored directly by organisations most closely associated with the issues. Information in the profiles should be considered correct as at 30 November 2016.

In previous years the report has focused on violations over a three-year period as well as recent events. However, this edition also looks at cases that have been on-going over a sustained amount of time, in some cases decades, with little improvement in conditions. These make significant cases for divestment, and show that whatever engagement has happened by investors prior to this point has not been brought to fruition. The companies selected for this edition include numerous companies with some of the worst records of abuse.

Criteria for company selection:

Norms based exclusion² is a well used strategy by investors, particularly in Europe³, as a means of identifying violations of major human rights or environmental protection norms. Investors, before excluding companies alleged to have violated norms, check the reliability of the information source, assess the gravity of the violation, its systematic nature and its frequency, as well as the measures implemented by the company in order to rectify it. Through this process, proven, serious, and repeated violations are identified and the companies excluded. For this reason using exclusion lists as a basis for selecting some of the worst corporate offenders provides a systematic approach to identifying harmful companies. An evaluation of exclusion lists of substantial institutional investors has provided one element of the company selection criteria.

The majority of the 14 companies in the report have been excluded by more than 2 investment funds – most have considerably more. Mylan NV has had one divestment, but no exclusions. Only three companies (Bayer, Wilmar, Centerra Gold) of the 14 have not been blacklisted, these companies have been selected on the following grounds:

- ▶ Wilmar sources from at least three suppliers who have been blacklisted.
- ▶ Both Bayer and Centerra Gold cases are recent enough to not yet have qualified for exclusion, but provide sufficient issues for investors to be wary. For example, a major investor, Allianz Global Investors, has already announced to Facing Finance the sale of its shareholdings in Bayer after the merger with Monsanto was agreed.⁴

1 UN Human Rights: Universal Declaration of Human Rights as proclaimed on 10 December 1948 Paris. www.ohchr.org

2 A basic definition of which is given by Credit Suisse: Norm-based exclusion means investigating whether a company is involved in ongoing controversies (labor rights issues, involvement in sensitive countries, corporate scandals) that constitute material or reputational risks. These risks can have an impact on a company's business and its profitability. www.credit-suisse.com (Accessed 11.12.2016)

3 EuroSif (2016): European SRI Study 2016. www.eurosif.org (Accessed 11.12.2016)

4 Email from Allianz Global Investors to Facing Finance, 26.11.2016.

The selection criteria for companies also take into account alleged possible failures, based on an assessment of non-compliance with the 10 UN Global Compact Principles. This has been applied regardless of whether the company is a UN Global Compact signatory.

Norms and standards in the following categories have been applied:

- ▶ Human rights violations (e.g., violations of community rights, child labour, forced labour, diminished access to land and/or fresh water, involuntary resettlements, or arbitrary detentions, illegal construction of permanent infrastructure on occupied territory);
- ▶ Labour rights violations (e.g., poor/hazardous working conditions, union discrimination);
- ▶ Violation of ethical principles governing clinical trials;
- ▶ Environmental destruction and degradation;
- ▶ Significant contribution to climate change;
- ▶ The export of weapons to (non-democratic) countries disrespecting fundamental human rights wrt arms trade regulations or other relevant norms;
- ▶ The manufacturing of controversial weapons⁵ (or significant components thereof) that violate fundamental humanitarian principles (i.e. nuclear weapons and lethal autonomous weapon systems);
- ▶ Pervasive instances of corruption and tax noncompliance.

Norms and standards which cover the above categories include, for example, the International Bill of Human Rights, the ILO international labour standards, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the UN Global Compact, arms embargoes, and national laws (see appendix A).

In addition to the above assessment of UN Global Compact and exclusion lists, further information was utilised from publically available material released by reputational risk rating companies such as RepRisk, Sustainalytics and Chain Reaction Research. For example, Volkswagen appears in the RepRisk list of Most Controversial Companies of 2015⁶.

In the process of drafting these company profiles, feedback was also sought from the companies themselves. A draft of the violations was sent to each of the companies for corrections or statements. Comments were received from Centerra Gold, Hewlett Packard Enterprise, and Eletrobras.⁷ All factual corrections were included in the text of the articles, the statements received from the companies have also been published on the Facing Finance website.

This report includes an evaluation of a company's voluntary commitments, for example to the UN Global Compact.

5 For more information on investments in cluster munitions, please see IKV Pax Christi's 2013 and 2014 edition of the "World Investments in Cluster Munitions: a Shared Responsibility."

6 RepRisk (2016): Most Controversial Companies of 2015. www.reprisk.com (Accessed 11.12.2016)

7 Their comments are available on the Facing Finance website at www.facing-finance.org

Financial Institution Selection and Analysis

Where the policies of companies are not directly investigated in this document, those of Financial Institutions (FIs) are. This analysis is included in the Harmful Investments Section. This section takes into account the FIs environmental, social and governance (ESG)⁸ policies and guidelines against which the FI claims to assess their business relationships. When undertaking a policy analysis of FIs it is important to note when the policy was introduced as there may be a lag between adoption and implementation. However, the opposite also appears to be true with FIs having policies for numerous years but failing to implement them.

The FIs selected in this report include the top 5 European banks by asset based in the top five European financial centres (as defined by the Global Financial Centres Index⁹). These financial centres are London (UK), Zurich (Switzerland), Frankfurt (Germany), Paris (France), and Amsterdam (Netherlands).

The information in this report focuses on share and bond issuances and management, as well as corporate loans. Financial data for the selected companies was gathered on loans and underwritings (those from January 2013 to August 2016 were considered) as well as shareholdings from the financial database ThomsonOne, and the Bloomberg database for bondholdings. Facing Finance researchers gathered further financial data from company annual reports (including turnover and net profits), stock exchange activity analyses, financial/industry focused journals, and expert financial databases.

Lack of transparency in the financial and corporate sectors means it is impossible to determine whether the funds provided by these institutions directly contributed to the violations in question. Furthermore, not every business transaction between FIs and the controversial companies listed in this report constitutes a direct violation of international norms and standards, national laws or regulations. This report, therefore, does not provide detailed, quantitative assessments regarding financing intended specifically for controversial projects. Additionally many of the syndicated loans provided are defined as for general corporate purposes, for example they are used to fund the business operations such as capital expenditure, or working capital. This means they fund the operation as a whole and not specific projects directly.


In cases where a syndicate of banks issued loans, shares, or bonds for a single company or project, but a breakdown of each bank's specific contribution was not accessible, the amount given in the financial data was divided proportionally based on the number of FIs involved in the deal. Often, underwritings of shares and bonds were also based on this estimation due to lack of detailed data.

Please note that an accompanying consumer oriented German edition of the Dirty Profits report has also been released which exclusively looks at German banks, selected and analysed by the Facing Finance project fairfinanceguide.de.

⁸ ESG (Environmental, Social and Governance) refers to the three central factors in measuring the sustainability and ethical impact of an investment in a company or business.

⁹ Yeandle, M (2016): Global Financial Centres Index. 19 March. Z/Yen Group. www.longfinance.net (Accessed 11.12.2016)

COMPANY PROFILES



Aerial view of oil on the sea surface, originating from the leaking of the Deepwater Horizon.
© Greenpeace

Bayer's vision of 'Science for a better life' is achieved through the delivery of pharmaceuticals, crop sciences, and animal and consumer health products.¹ The Bayer Group, headquartered in Leverkusen, Germany, has companies in almost every country in the world,² with nearly 120,000 employees worldwide. Their health products include a number of everyday brands including Berocca, Rennie and Clarityn. Their range of pesticides include products such as Cropstar and Confidor.³

Bayer has faced several controversies, including the production of a type of pesticide known as neonicotinoids, which the EU linked to the large-scale die off of honeybees in Western Europe and North America.⁴ While Bayer publically denies the link, numerous studies⁵ – including private industry studies commissioned by the companies – confirm that the products cause harm to honeybees.⁶ In 2004 Bayer was accused of violating the OECD Guidelines by using child labor in India. Bayer CropScience was fined in November 2016 and forced to change their advertising practices due to misleading consumers about the risks of their pesticides in Massachusetts, USA. Bayer can no longer make claims that pesticides are a “daily vitamin” to plants, when these pesticides allegedly harm honeybees.⁷

Additionally, a coalition of NGOs in October 2016 lodged a complaint against Bayer in relation to pesticide mislabelling in India. This was based on a report that the ECCHR submitted to the UN Food and Agriculture Organisation (FAO) and the World Health Organisation in October 2015.⁸ The report alleges non-compliance by Bayer CropScience with the International Code of Conduct

on Pesticide Management. The investigation undertaken showed that farmers in India were unable to understand warning labels on products and were spraying pesticides without the correct protective equipment causing substantial health impacts.⁹ The recent complaint relates specifically to the lack of warning labels for pregnant women on Bayer's Nativo products sold in India. Two of Bayer's pesticides sold in India related to this issue are Confidor and Larvin.¹⁰

In September 2016, Monsanto agreed to merge with Bayer in a USD 66 billion deal.¹¹ This would make Bayer the largest seed and pesticide producer in the world,¹² however, the deal still needs to be approved by over 30 regulatory agencies around the world.¹³ The deal has been met with significant concern, due predominantly to the substantial market share and influence that Bayer will acquire and the resultant reduction in competition, but also as it involves the acquisition of one of the most vilified companies in the world. Monsanto is particularly criticised for its heavy-handed corporate approach, GM crops, and glyphosate pesticide Roundup – widely recognised as having adverse environmental and human health impacts, including being a probable carcinogen.¹⁴ Bayer and Monsanto both produce a version of glyphosate herbicides.¹⁵ Monsanto's reputation has not helped to convince Bayer shareholders that the merger was a good deal. Bayer's board members believed they would not get shareholder approval for the merger, with one survey indicating only 7% of Bayer shareholders would have voted for a merger at the price paid.¹⁶ Bayer then bypassed the shareholders completely, by funding the deal with a bridge loan underwritten

Loans:	
BNP Paribas	692.65
Deutsche Bank	692.65
ING	692.65
HSBC	523.90
UBS	120.69

Estimated value of underwritten shares and bonds:	
Deutsche Bank	1,067.41
BNP Paribas	600.73
UBS	452.38
HSBC	434.07
ING	116.07

Estimated value of managed shares and bonds:	
Deutsche Bank	1,440.12
BNP Paribas	499.66
UBS	469.99
HSBC	155.91
ING	1.52

Revenues: 46,324.00

Profit after tax: 4,098.00

ISIN: DE000BAY0017

All figures in € mln.

Date and currency of company report:

31.12.2015, EUR

1 Bayer (2016): Profile and Organization. www.bayer.com (Accessed 21.10.2016)

2 Bayer (2016): Bayer Worldwide. www.bayer.com (Accessed 21.10.2016)

3 Bayer (2016): Products from A to Z. www.bayer.com (Accessed 21.10.2016)

4 Hakim, D (2013): Accused of harming bees, Bayer researches a different culprit. 11 December. The New York Times. www.nytimes.com (Accessed 21.10.2016)

5 Lu, C; Warchol, K.M and Callaghan, R (2012): In situ replication of honey bee colony collapse disorder. *Bulletin of Insectology* 65 (1): 99-106, 2012. www.bulletinofinsectology.org (Accessed 12.11.2016)

6 Clarke, S (2016): Neonicotinoids: Unpublished industry studies detail harm to bee health. 22 September. Greenpeace Energy Desk. www.greenpeace.org.uk (Accessed 12.10.2016)

7 Huffman, Z (2016): Bayer must change its pesticide advertising. 2 November. Massachusetts Court House News. www.courthousenews.com (Accessed 21.11.2016)

8 European Center for Constitutional and Human Rights (2016): Press Release Complaint against Bayer: Pesticides labels for India lack important warnings for pregnant women. 19 October. www.business-humanrights.org (Accessed 12.10.2016)

9 ECCHR et al (2015): Ad hoc monitoring report: Claims of (non-) adherence by Bayer CropScience and Syngenta to the Code of Conduct Provisions on Labeling, Personal Protective Equipment, Training, and Monitoring. 1 October. www.ecchr.eu (Accessed 21.10.2016)

10 European Center for Constitutional and Human Rights (2016): Double standards in the sale of pesticides. www.ecchr.com (Accessed 21.10.2016)

11 Bunge, J (2016): Bayer-Monsanto deal faces heavy regulatory scrutiny. 14 September. The Wall Street Journal. www.wsj.com (Accessed 20.10.2016)

12 See supra note 11

13 See supra note 11

14 Pesticide Action Network (2016): Comprehensive New Review of Monsanto's Glyphosate Underscores Urgent Need for Global Action. 11 October. www.pan-europe.info (Accessed 21.10.2016)

15 Konkurrenz (2016): Bayer Monsanto Merger. www.bayermonsantomerger.com

16 Financial Times (2016): Bayer investors very critical of Monsanto deal -Bernstein. 26 May www.ft.com (Accessed 21.10.2016)

“[The deal] is a fantastic combination for modern agriculture, to cater to the needs of society by providing the tools needed to feed a rapidly growing population.”



by a number of banks, including HSBC plc.¹⁷

The merger between Bayer and Monsanto would undoubtedly restrict choice for farmers around the world, with their presence extending throughout Asia, North America and Europe.¹⁸ For instance, as mentioned previously, Bayer has a substantial market presence in India for pesticides (and are seeking to expand this market)¹⁹ and Monsanto for seeds²⁰. The concentration of political and financial power of such a large organisation would easily outcompete local organisations in the Global South, reducing choice for both seeds and pesticides, as well as decreasing biodiversity.²¹ The merger infers an increase in industrial agriculture, with Monsanto CEO, Hugh Grant, expressing that agriculture is the new industrial revolution, with big data, seeds and chemicals interlinked.²² This would push forward industrial agricultural values globally, making small-scale farming increasingly difficult.²³ The International Panel of Experts on Sustainable Food Systems has

noted the significant problems associated with the high input industrial agricultural model, both social and environmental.²⁴ According to the FAO more than 90% of farms are small scale, producing 80% of the world's food.²⁵

Monsanto and Bayer both strongly lobby for policy influence in the USA and EU respectively. Monsanto spent about USD 4.3 million on lobbying in 2015 and is the biggest spender in the agricultural sector, Bayer spent €2 million in Brussels predominantly around pharmaceutical policy.²⁶

A consolidation of goals and outcomes by the merger would lead to significant influence on policy in Europe and the US. Bayer and Monsanto are both signatories of the UN Global Compact and Bayer has also stated its support for the UN Guiding Principles on Business and Human Rights (see appendix). Monsanto has joined the recent Business and Human Rights Reporting Framework to which it reports on human rights progress.²⁷ According to information from Allianz Global Investors they have sold their shares in Bayer after the decision to merge with Monsanto.²⁸

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17 Trentman, N (2016): Bayer financed Monsanto deal with debt to avoid shareholder vote, analysts say. 14 September. The Wall Street Journal Blog. www.blogs.wsj.com (Accessed 21.10.2016)

18 Bunge, J and Mattioli, D (2016): Bayer proposes to acquire Monsanto. 19 May. The Wall Street Journal. www.wsj.com (Accessed 12.10.2016)

19 Business Standard (2016): Bayer India to set up 30 mn eur agro ingredient plant in guj. 10 November. www.business-standard.com (Accessed 11.11.2016)

20 Mazumdar, S (2016): Bayer-Monsanto deal draws criticism in India. 15 September. Deutsche Welle. www.dw.com (Accessed 21.10.2016)

21 Vidal, J (2016) Farming mega-mergers threaten food security, say campaigners. 26 September. The Guardian. www.theguardian.com (Accessed 21.10.2016)

22 Murray, A (2016): Why Bayer Wants Monsanto. 19 May. Fortune. www.fortune.com (Accessed 21.10.2016)

23 See supra note 21

24 International Panel of Experts on Sustainable Food Systems (2016): From uniformity to diversity: A paradigm shift from industrial agriculture to diversified agroecological systems. www.ipes-food.org (Accessed 21.10.2016)

25 Food and Agriculture Organisation (2014) : The State of Food and Agriculture 2014. www.fao.org (Accessed 21.10.2016)

26 Open Secrets (2015): Monsanto. www.opensecrets.org (Accessed 21.10.2016) and LobbyFacts (2016): Bayer AG. www.lobbyfacts.org (Accessed 21.10.2016)

27 Shift (2016): UN Guiding Principles Reporting Framework: Monsanto. www.ungpreporting.org (Accessed 11.12.2016)

28 Email from Allianz Global Investors to Facing Finance, 26.11.2016

29 See supra note 21

30 See supra note 21

"From Africa and Asia to Latin America and the EU, corporate control over markets and supply chains is displacing millions of small-scale farmers."

Adrian Bebb, senior food, agriculture and biodiversity campaigner for Friends of the Earth Europe³⁰



▲ Activists unfurled a banner reading 'Climate change powered by BP, Esso, Shell' on the Pasterze Glacier to protest against the climate damaging policies of the international oil companies.
© Greenpeace / Falk Heller

BP PLC

BP, headquartered in London, is one of the largest integrated oil and gas companies in the world, employing nearly 80,000 people in more than 70 countries.¹

BP has been listed in a 2013 study as the third largest² (publicly listed) historical carbon emitter, responsible for 2.47% of global carbon emissions.³ Despite claims to proactively address climate change,⁴ BP is continuing to invest in new oil and gas projects, including carbon intensive projects such those in the Canadian tar sands.^{5,6} BP is also allegedly opposing carbon reduction policies at a European level⁷, according to data

from the NGO InfluenceMap BP can be seen as Europe's fiercest opponent of action on climate change.⁸ As a participant of the UN Global Compact BP is committed to meet fundamental responsibilities in the areas of human rights, labour, anti-corruption and environment, including supporting a precautionary approach to environmental challenges. BP has also expressed support for the UN Guiding Principles on Business and Human Rights (see appendix). The US Project of Government Oversight (POGO) has documented 73 instances of misconduct by BP (including environmental violation, Clean Air Act violations, manipulation, underpayment etc.) since 1995 resulting in penalties of USD 34,304.8 million.⁹ In 2011 BP was found to be in breach of the OECD guidelines with respect to the Baku-Tbilisi-Ceyhan oil pipeline (see appendix).

BP is also infamous for the Deepwater Horizon oil spill, which has subsequently been recognised

Loans:	
HSBC	183.68
Deutsche Bank	183.68

Estimated value of underwritten bonds:	
BNP Paribas	2,031.15
HSBC	1,715.06
Deutsche Bank	747.82
UBS	686.38

Estimated value of managed shares and bonds:	
UBS	467.16
Deutsche Bank	345.57
HSBC	325.43
BNP Paribas	105.45
ING	0.45

Revenues: 206,809.69

Loss after tax: 5,857.02

ISIN: GB0007980591

All figures in € mln.
Date and currency of company report:
31.12.2015, USD (exchange rates
as of 31.12.2015, www.oanda.com)

1 BP (2016): BP at a glance. www.bp.com (Accessed 13.09.2016)

2 The top one and two placed emitters Chevron and ExxonMobil have been covered in previous Dirty Profits reports.

3 Carbon Majors (2013): Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854–2010 Executive Summary. http://carbonmajors.org (Accessed 13.09.2016)

4 Willsher, K (2015): Oil companies deny that joint climate pledge is lip service. 16 October. The Guardian. www.theguardian.com/international (Accessed 13.09.2016)

5 Biello, D (2013): How much will Tar Sands Oil add to global warming?. Scientific American, 23 January. www.scientificamerican.com (Accessed 13.09.2016)

6 Shaw, N (2014): BP Major Projects. www.bp.com (Accessed 13.09.2016)

7 InfluenceMap (2016): InfluenceMap Scoring Table: Corporations and Influencers. BP. http://influencemap.org (Accessed 13.09.2016)

8 Neslen, A (2015): BP tops the list of firms obstructing climate action in Europe. The Guardian, 21 September. www.theguardian.com/international (Accessed 13.09.2016)

9 Project of Government Oversight (2016): Contractor Misconduct Database BP PLC. www.contractormisconduct.org (Accessed 11.12.2016)

“BP’s own portfolio of businesses is balanced and diversified, with around half oil and half gas and the proportion of gas growing.”

as the largest accidental spill in world history.¹⁰ Beginning on the 20th of April 2010 and lasting 87 days, the Macondo wellhead leaked 3.19 million barrels of oil into the Gulf of Mexico. The US District Court Judge in 2014 found BP to have acted with gross negligence and willful misconduct claiming that BP made “profit-driven decisions” during the drilling of the well that led to the deadly blowout.¹¹ BP has received fines for this incident totalling over 20 billion USD¹², however some note that this only goes part of the way to paying for the ever unfolding impacts of this devastating catastrophe¹³. A 2016 report by Oceana (supported by additional work from the National Wildlife Federation)¹⁴ investigated the long-term impacts on the ocean system in the gulf. These impacts include oil and oil dispersant chemicals found in pelican eggs, bleaching and tissue loss of deepwater coral over a substantial area and a 63% decline in the reproductive ability of bottlenose dolphins in Barataria Bay as well as catastrophically damaging the long term survival possibilities of Bryde’s whale in the gulf.¹⁵ At least two investment funds that have excluded BP, have done so on the basis of the Deepwater Horizon incident (see appendix).

The wider impacts on the ocean system are also being felt outside the US, with a recent class action lawsuit being filed on behalf of a group of Mexican fishermen whose livelihoods have been negatively impacted by the spill.¹⁶ According to the lawyers in the case, several US studies have found widespread damages to the coast in the area¹⁷, supporting the claim that the accident has

adversely affected the claimants.¹⁸ Additionally the long-term damage to fish stocks will likely continue to impact those dependent on the industry. However, those in the US have had recourse to sue BP, while Mexicans have, until now, been unable.¹⁹

Looking at the impacts of the Deepwater Horizon spill, together with the pressing climate change issues, BP should reasonably resist further development in deepwater and ultra-deepwater projects, however the Carbon Tracker Initiative²⁰ shows that BP is heavily invested and exposed to financial risk in these types of high cost projects. BP is continuing to plan new long term oil projects.²¹ The development of any new oil extraction projects are inconsistent with the Paris climate agreement, i.e. in keeping with a 2°C global warming limit.²² And BP, along with other major oil and gas companies, has failed to define a path towards realigning its business with the Paris Climate Agreement.²³

Some investors have made decisions to divest from BP based on the Deepwater Horizon incident and the substantial environmental damage this caused, others have divested from oil and gas companies generally due to incompatibility with their ethical criteria in supporting climate goals (see appendix). BP, despite acknowledging climate change and purporting to reduce carbon emissions, has done little in the way of meaningful action to move towards limiting global warming to under two degrees.²⁴

→ Facing Finance

10 Moss, L (2010): The 13 largest oil spills in history. Mother Nature Network, 16 July. www.mnn.com (Accessed 13.09.2016)

11 US Environmental Protection Agency (2014): MDL 2179 Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico Phase One Trial: Findings of Fact and Conclusions of Law on Gross Negligence and Willful Misconduct. www3.epa.gov (Accessed 13.09.2016)

12 Crooks, E (2016): US court signs off on BP’s \$20bn oil spill settlement. 5 April, The Financial Times. www.ft.com (Accessed 13.09.2016)

13 Cranor, D (2015): Oceana Calls BP Settlement Proposal A Disappointment and Woefully Inadequate. Oceana, 2 July. <http://oceana.org> (Accessed 13.09.2016)

14 McCormick, L (2015): Five years after the Deepwater Horizon rig exploded, wildlife is still struggling. National Wildlife Federation, 30 March. www.nwf.org (Accessed 13.09.2016)

15 Oceana (2016): Time for Action Six Years After Deepwater Horizon. <http://oceana.org> (Accessed 13.09.2016)

16 Reuters (2015): BP faces Mexico class action lawsuit over 2010 oil spill, 11 December. www.reuters.com (Accessed 13.09.2016)

17 National Wildlife Federation (2016): The Deepwater Horizon’s Impact on Gulf Wildlife and Habitats. www.nwf.org (Accessed 13.09.2016)

18 Khan, M (2015): Mexico Files Class Action Lawsuit Against BP plc (ADR) over Deepwater Horizon Spill. BidnessEtc, 13 December. www.bidnesstc.com (Accessed 13.09.2016)

19 Jamail, D (2012): Gulf fisheries in decline after oil disaster. Al Jazeera, 19 April. www.aljazeera.com (Accessed 13.09.2016)

20 Carbon Tracker Initiative (2014): Oil & Gas Majors: Fact Sheets BP. www.carbontracker.org (Accessed 13.09.2016)

21 BP (2016): Upstream major projects. www.bp.com (Accessed 31.10.2016)

22 Hare, B, Roming, N and Schaeffer, M (2016): Implications of oil extraction from the Great Australian Bight for Paris Agreement long-term goal. Climate Analytics, April 2016. <http://climateanalytics.org> (Accessed 13.09.2016)

23 Union of Concerned Scientists (2016): The climate accountability scorecard: ranking major fossil fuel companies on climate deception, disclosure and action. www.ucsusa.org (Accessed 31.10.2016)

24 Farrell, S (2016): BP to face flak over green targets and pay at AGM. The Guardian, 10 April. www.theguardian.com/international (Accessed 13.09.2016)

25 Carbon Brief (2016): Analysis How BP’s Energy Outlook has hardly changed after Paris. 12 February. www.carbonbrief.org (Accessed 11.12.2016)

26 See supra note 24

“BP’s energy outlook to 2035 has changed little over the last year. It appears to state the COP21 international climate change agreement will make little impact in suppressing future fossil fuel demand.”

Luke Sussams, a senior analyst at the Carbon Tracker Initiative²⁵



◀ Open ice pit at Kumtor Mine, Kyrgyzstan in 2013.
© flickr 2013 Ryskeldi Satke

Centerra Gold Inc

The Canadian company Centerra Gold¹ operates the second highest gold mine in the world in Kyrgyzstan’s Tian Shan mountains, the Kumtor gold mine². Since operations began the company’s image has been tainted by a 1.94 ton cyanide spill³, reported destruction of glaciers, and alleged corruption scandals, all of which have resulted in significant opposition to the mine operations. Centerra Gold is not a signatory of the UN Global Compact and does not specifically mention the importance of human rights considerations as part of the UN Guiding Principles (see appendix).

The Kumtor open pit mine is situated atop the Davidov and Lysii glaciers, and through its operations the mine has proved a prime example of mining’s negative impacts on the sensitive system of glaciers. Glaciers are important sources of water for the region and initially when mining began at the Kumtor mine, 125 million m³ of the Davidov glacier were removed⁴. Twenty years of extraction and fifteen of dumping waste rock directly on glaciers have caused the glaciers to melt at alarming speed⁵ – this means the ice is now not only advancing into the open pit, creating great challenges to the mining operation, but also increasing the possibility of a flood of the Petrov glacial lake.⁶ The reasons for the glacial melt has been the subject of debate, with the Kyrgyz state agencies appearing to conclude that it is due to

Estimated value of managed shares and bonds:	
UBS	1.07
HSBC	0.17
BNP Paribas	0.13
<hr/>	
Revenues:	571.06
<hr/>	
Profit after tax:	38.07
<hr/>	
ISIN:	CA1520061021

All figures in € mln.
Date and currency of company report:
31.12.2015, USD (exchange rate
as of 31.12.2015, www.oanda.com)

1 Centerra Gold is 33% owned by the Kyrgyz Republic, via Kyrgyzaltyn JSC.
2 Kumtor Gold Company (2016): History. www.kumtor.kg/en (Accessed 13.09.2016)
3 Hynes, T P, Harrison, J, Bonitenko, E, Doronina, T M, Baikowitz, H, James, M and Zinck, J M (1998): The International Scientific Commission’s Assessment of the Impact of the Cyanide Spill at Barskaun, Kyrgyz Republic, May 20, 1998. www.centerragold.com (Accessed 13.10.2016)

4 Shitova, J (2015): Snow caps in Kyrgyzstan: Glacier Retreat. Komsomolskaya Pravda-Kyrgyzstan, 3 September. www.kumtor.kg/en (Accessed 19.10.2016)
5 Jamieson, S S R, Ewertowski, M W and Evans, D J A (2015): Rapid advance of two mountain glaciers in response to mine-related debris loading. Journal of Geophysical Research 120 (7) pp 1418–1435. http://onlinelibrary.wiley.com (Accessed 02.09.2016)
6 See supra note 5

“Effective stakeholder engagement is essential to managing our social responsibility.”

global warming⁷ and that effectively nothing can be done to combat this, so mining may as well continue.⁸ The company supports this view.⁹ However a study in the *Journal of Geophysical Research* identifies that mining is the cause of the most substantial damage.¹⁰

The threat of a flood of the Petrov glacial lake is of substantial concern to both Kyrgyz and international experts¹¹, warning that should this occur, it could result in a breach of the Kumtor tailings dam. The unlined tailing pit holds more than 34 million m³ of wastewater and tailings from the cyanide leachate and other chemicals¹² which would be released into the Kumtor river with possible effects being felt far downstream. Kumtor's technical reports of 2012¹³ and 2015¹⁴ acknowledge this threat, the 2015 report notes that they will raise the existing tailings dam to store a further 33 million m³ and in 2016 they received permission to do this¹⁵. In light of serious tailings dam failings recently, such as the Samarco dam in Brazil, the issues of tailings dams flooding and breakages are increasingly important when viewed in relation to the catastrophic impacts.

Nearly two decades ago, Kumtor was responsible for a cyanide spill into the Barskoon River.¹⁶ Independent assessments showed that the cyanide concentrations were low, however communities downstream from the mine, were ill-informed about the incident and risks, resulting in a large number of people seeking treatment regardless.¹⁷ This incident has created significant distrust of the mine by the community. Cyanide leaching is used in many gold mining operations, but due to its impacts has also been banned in several countries.¹⁸ As a result of spills such as this,¹⁹ the Cyanide Management Code Initiative (ICMI) was developed. The ICMI is a global, well respected and transparent voluntary set of requirements. While Centerra Gold is a signatory to the code, ICMI confirms that Kumtor is not in compliance with the cyanide code as it has failed to complete the required audits²⁰, and as of October 2016 it had still not completed the required audits.²¹

There is substantial fear by communities downstream from the mine that environmental pollution from the mine impacts their health (as many villages still use river water for drinking, washing and irrigation) and will destroy their livelihoods (as they are largely dependent on the land), with some independent specialists claiming environmental damage has already occurred.²²

7 Satke, R (2016): Mining Company Shirks Blame for Glacier Damage in Kyrgyzstan. GlacierHub, 20 April. <http://glacierhub.org> (Accessed 13.09.2016)

8 See supra note 4

9 See supra note 8. Note the company quotes Kuzmichonok's study (2007) of the Davidov Glacier and Duishonakunov's data (2010) of the Petrov Glacier to support their case.

10 See supra note 5

11 U.S. House of Representatives (2014): Hearing: Water Sharing Conflicts and the Threat to International Peace. Subcommittee on Europe, Eurasia, and Emerging Threats (Committee on Foreign Affairs), 18 November. <http://docs.house.gov> (Accessed 13.09.2016) and Janský, B, Engel, Z, Šobr, M, Česák, J and Yerokhin, S (nd): Petrov lake (Tien-Shan, Kirgizia): Danger of a large-scale ecological disaster. Länderinformationsportal, April 2015. www.liportal.de (Accessed 13.09.2016)

12 See supra note 11

13 Thalenhorst, H, Redmond, D, Raponi, T and Vdovin, V (2012): Technical Report on the Kumtor Gold Project, Kyrgyz Republic. Centerra Gold, 20 December. www.centerragold.com (Accessed 13.09.2016)

14 Reid, G, Wong, J, D'Souza, K, Landry, P, Raponi, T, Seto, J and Chance, A (2015): Technical Report on the Kumtor Mine, Kyrgyz Republic. Centerra Gold, 20 March. www.centerragold.com (Accessed 02.09.2016)

15 Kumtor (2016): Design development for tailings raise at Kumtor mine. 23 September. www.kumtor.kg (Accessed 31.10.2016)

16 Cleven R F M J, Bruggen M van (2000): The cyanide accident in Barskoon (Kyrgyzstan). Dutch National Institute of Public Health and the Environment, 28 February. www.rivm.nl/en (Accessed 12.10.2016)

17 See supra note 16

18 Laitos, J G (2012): The Current Status of Cyanide Regulations. *Engineering and Mining Journal*, 24 February. www.e-mj.com (Accessed 11.10.2016)

19 Interestingly the establishment of the Cyanide Code was prompted by the catastrophic cyanide spill from the Baie Mare mine in Romania into a tributary of the Danube impacting several countries downstream. One of Centerra Gold's directors, Mr Raphael A. Girard, was also a director of Gabriel Resources, the company that operated the Baie Mare mine, thus he would be reasonably expected to appreciate the importance of adhering to the requirements of the code.

20 International Cyanide Management Code (2015): Directory of Signatory Companies: Centerra Gold Inc., Canada. www.cyanidecode.org (Accessed 13.09.2016)

21 See supra note 20

22 EurasiaNet (2012): Kyrgyzstan: Gold Mine Could Exacerbate Central Asian Water Woes Report, 31 January. www.eurasianet.org (Accessed 20.10.2016)

This has resulted in significant opposition to the mine, including protests.²³ This fear is symptomatic of a lack of communication with communities by the mine, as well as a real risk of environmental pollution. In 2013 mass protests against the Kumtor mine resulted in violence and a mine shut down. Activists were arrested and imprisoned.²⁴ Recently NGOs trying to engage with communities and villagers around this topic have been prevented from doing so by the Kyrgyz government.²⁵

An investigation in 2012²⁶ and further evidence in 2016, alleged serious cases of corruption in relation to a 2003 restructuring of the Kumtor mine. The investigation appeared to show a network of offshore companies and illegal financial contributions. In a letter dated 6th June 2016 to Kyrgyzstan's prosecutor general, the former chair and president of Centerra wrote that senior Kyrgyzaltyn managers²⁷ and various state agencies made requests "several times per year [...] for all sorts of financial contributions for various purposes, including for political elections." As a result of these investigations ten former government officials were charged but none have been convicted.^{28 29}

At the 2016 AGM, Centerra Gold noted the opposition to Kumtor, and brought up the importance of diversification into other mines outside of Kyrgyzstan.³⁰ The company is now busy developing its assets in Mongolia, Turkey and Canada. The Gatsuurt mine, which is also facing significant opposition, is located in proximity of the Gatsuurt river in Northern Mongolia. The site was previously protected by law, but it has recently been designated a deposit of strategic importance meaning that despite its location close to headwaters it can be granted permission.³¹ Mount Noyon, near the proposed mine, is also a key battleground for the local people, a place of ancient burials of Mongol rulers and of great cultural heritage significance, proposed for inclusion in the UNESCO heritage list.³² Concerns relate to destruction of the mountain and blocked access to the mountain.³³

→ Fidanka McGrath, CEE Bankwatch

23 Gullette, D and Kalybekova, A (2014): Agreement under Pressure: Gold Mining and Protests in the Kyrgyz Republic. Friedrich-Ebert-Stiftung, Dept. of Central and Eastern Europe. www.fes.de (Accessed 20.10.2016)

24 Satke, R (2016): Conflict continues at Kyrgyzstan's massive gold mine. Al Jazeera, 19 February. www.aljazeera.com (Accessed 13.09.2016)

25 See supra note 24

26 Satke, R and Galdini, F (2014): Kumtor report raises corruption concerns. Asia Times Online, 10 September. <http://atimes.com> (Accessed 13.09.2016)

27 See supra note 1

28 Satke, R (2015): Kyrgyzstan's Controversial Gold Mine. The Diplomat, 19 February. <http://thediplomat.com> (Accessed 13.09.2016)

29 Satke, R (2016): Former Canadian mining chief tells of Kyrgyz corruption. Nikkei Asian Review, 14 June. <http://asia.nikkei.com> (Accessed 20.10.2016)

30 Centerra Gold (2016): Transcript of Centerra Gold, Inc. 2016 Annual Meeting of Shareholders, 17 May. <http://edg1.precisionir.com> (Accessed 13.09.2016)

31 Urgewald (2016): Briefing: Centerra Gold's proposed gold mine in Gatsuurt, Mongolia, and the proposed EBRD loan, 18 January. www.urgewald.org (Accessed 13.09.2016)

32 UNESCO World Heritage Centre (2014): Funeral Sites of the Xiongnu Elite. Mongolian National Commission for UNESCO, 19 December. <http://whc.unesco.org> (Accessed 13.09.2016)

33 See supra note 30

34 Centerra Gold (nd): Social Responsibility. www.kumtor.kg (Accessed 11.12.2016)

35 See supra note 7

"The destruction of glaciers has created massive waste mixed with ice, acids and heavy metals which are estimated at 2 billion tons."

Isakbek Torgoyev, director of the Geomechanics and Subsoil Resources Use Institute under the National Academy of Sciences of Kyrgyzstan³⁵

Freeport-McMoRan Inc

Loans:	
HSBC	773.49
BNP Paribas	521.60
UBS	389.54
Deutsche Bank	63.06
ING	43.24

Estimated value of underwritten shares and bonds:	
BNP Paribas	450.29
HSBC	450.29
Deutsche Bank	21.68
UBS	12.04

Estimated value of managed shares and bonds:	
Deutsche Bank	132.09
UBS	79.00
HSBC	41.15
BNP Paribas	9.65

Revenues: 14,530.00

Loss after tax: 11,063.37

ISIN: US35671D8570

All figures in € mln.

Date and currency of company report:

31.12.2015, USD (exchange rate

as of 31.12.2015, www.oanda.com)

Freeport is a natural resources company headquartered in Phoenix, Arizona, USA. Its flagship project is the Grasberg mine in Papua, Indonesia, one of the world's largest and most notorious copper and gold mines. While the mine is owned and run by Freeport, a joint venture with Rio Tinto entitles them to share in production.¹ Freeport is not a signatory of the UN Global Compact, but has signed up to the Voluntary Principles on Security and Human Rights². The company has been selected for this report due to decades of severe criticism of its Grasberg mine, related to destruction of wide swaths of habitat and funding of military-sanctioned human rights abuses and labour violations³. 23 investors have excluded Freeport from their investment portfolios for human rights violations and environmental destruction, making it the most excluded company by investors, outside of arms and tobacco companies.⁴

The Grasberg mine dumps approximately 150,000 tonnes of toxic mine waste, or tailings, into the Otomina river every day.⁵ Known in the industry as riverine tailings disposal (RTD), this practice is illegal in most countries due to the catastrophic environmental impacts caused. Grasberg is now one of only four mines worldwide

operating this system⁶. The waste that is discharged contains high concentrations of toxins such as copper, arsenic, cadmium and selenium.⁷ In addition, the mine has also caused further damage through acid rock drainage due to its disposal of 360,000-510,000 tonnes of waste rock and overburden in nearby valleys.⁸ The result of acid rock drainage is acid water containing heavy metals, which can cause considerable pollution of groundwater and river systems.⁹

As early as 1994 EnviroSearch International, an independent auditor, surveyed the mine and showed that the tailings dumped into the Otomina river would eventually reach the Arafura Sea and that the river system had been devastated through excessive discharge and deposition of tailings.¹⁰ In 2002 a company-funded unpublished study, which the NY Times accessed,¹¹ found the rivers upstream and the wetlands, inundated with waste, to be "unsuitable for aquatic life".¹²

1 Rio Tinto (2016): Operation and Financial Report: Grasberg joint venture. www.riotinto.com (Accessed 19.09.2016)

2 Voluntary Principles on Security and Human Rights (2016): For companies. www.voluntaryprinciples.org (Accessed 31.10.2016)

3 Jasmine, C (2016): Strike hits Freeport's Grasberg mine in Indonesia. Mining.com. 3 October. www.mining.com (Accessed 31.10.2016)

4 Council on Ethics for the Norwegian Government Pension Fund Global (2006): Recommendation of 15 February, 2006 on exclusion of Freeport McMoRan Copper & Gold Inc. The Government of Norway, 15 February. www.regjeringen.no (Accessed 19.09.2016)

5 Freeport McMoRan (2016): Controlled riverine tailings management. www.fcx.com (Accessed 23.08.2016)

6 International Maritime Organization (2013): International Assessment of Marine and Riverine Disposal of Mine Tailings. Study commissioned by the Office for the London Convention and Protocol and Ocean Affairs, IMO, in collaboration with the United Nations Environment Programme (UNEP) Global Programme of Action. www.imo.org (Accessed 19.09.2016)

7 Shaw, C (2016): Uncover: Rio Tinto and Grasberg mine. Fossil Free Strathclyde. 11 April. www.fossilfreestarthclyde.wordpress.com (Accessed 23.08.2016)

8 Taylor, N A J (2011): West Papua : A history of exploitation. Al Jazeera, 19 October. www.aljazeera.com (Accessed 23.08.2016)

9 See supra note 4

10 Bryce, R (2005): Freeport at Grasberg: 'Devastated the river system'. The Austin Chronicle, 23 September. www.austinchronicle.com (Accessed 31.08.2016)

11 See supra note 10

12 Perlez, J and Bonner, R (2005): Below a Mountain of Wealth, a River of Waste. The New York Times, 27 December. www.nytimes.com (Accessed 23.08.2016)

"PT Freeport Indonesia's (PT-FI) Grasberg mine is a world-class mining complex that is classified as a vital national asset and resource for the people of Indonesia and the Province of Papua."



◀ The Grasberg mine in Papua, Indonesia, photographed in 1995. © Simon Pearson

The tailings contamination, in 2005, reached not only the Arafura Sea but also a coastal estuary, an essential breeding ground for native fish, a large percentage of which have disappeared from the affected wetlands downstream from the river. Moreover, the waste rock piles have reached heights of 900 feet deep in some places.¹³ Subsequent recent studies have supported these results and ongoing impacts.¹⁴ The impact of Grasberg's tailings disposal on Papua's water, forest and estuarial ecosystems has received only minimal study, in part due to restricted access to the area. A study released in October 2016 uses satellite imagery to analyse the impacts to date. It shows 138 km² of forest have been lost (an area 42 times larger than the mine itself) and suspended material in the river has significantly increased, especially when compared to neighbouring rivers.¹⁵

Freeport continues to claim that 'controlled riverine tailings' is the best solution for the mine.¹⁶ It has not made any policy changes or commitments to stop this type of tailings disposal, despite the serious problems over a sustained length of time. Freeport has also continuously rejected shareholder resolutions to elect an environmental expert to the board.¹⁷

The Grasberg mine is expected to continue open pit mining until 2017, with its operations moving underground afterward and concluding in 2041. Freeport is currently negotiating with the Indonesian government regarding long-term

mining extension permits.¹⁸

In addition to environmental destruction, Freeport has also faced concerns in relation to poor labour conditions, particularly worker safety. In 2014 workers protested due to the death of four employees on site¹⁹, and in 2013, 28 workers died in a tunnel collapse at the mine, which could, according to the Indonesian National Human Rights Commission, have been prevented²⁰. There were two further deaths at the mine in 2015.²¹

Additionally human rights concerns have also plagued Freeport for decades, including allegations of financing the Indonesian military to protect the mine, that arrested, detained, destroyed property and even tortured residents in communities surrounding the Grasberg mine.²² A recent fact finding mission published in November 2016 has described a slow motion genocide taking place in Papua, Indonesia. This mission has also established that the tailings from the Grasberg mine are so rich with ore that people have begun to mine the tailings for gold, selling their findings to police and military. According to Dr. Agus Sumule, professor of agricultural socio-economics at the University of Papua, "The stresses [on indigenous people] are intense." They have been very negatively impacted.²³

→ Facing Finance

13 See supra note 12

14 Dold, B (2014): Submarine Tailings Disposal (STD) – A Review. Minerals 4(3) pp 642-666. www.mdpi.com/journal/minerals (Accessed 20.09.2016)

15 Alonzo, M et al (2016): Capturing coupled riparian and coastal disturbance from industrial mining using cloud-resilient satellite time series analysis. Nature. Scientific Reports 6, Article number: 35129 (2016) doi:10.1038/srep35129 www.nature.com (Accessed 31.10.2016)

16 Freeport (2016): Controlled riverine tailings management at PT Freeport Indonesia. www.fcx.com (Accessed 19.09.2016)

17 Ceres (2012): Freeport-McMoRan Board Environmental Expertise 2012. www.ceres.org (Accessed 19.09.2016)

18 Els, F (2016): More Grasberg uncertainty for Freeport. MINING.com, 3 August. www.mining.com (Accessed 17.09.2016)

19 Hill, L (2014): Freeport Copper Output Falls at Grasberg Amid Protest. Bloomberg, 28 October. www.bloomberg.com (Accessed 19.09.2016)

20 IndustriALL (2014): Grasberg – deadly accident in Rio Tinto mine could have been prevented, 19 March. www.industriall-union.org (Accessed 19.09.2016)

21 Freeport-McMoRan (2015): 2015 Annual report. www.fcx.com (Accessed 19.09.2016)

22 See supra note 12

23 Schulman S (2016): The \$100 billion gold mine and the west papuans who say they are counting the cost. 2 November. The Guardian. www.theguardian.com (Accessed 21.11.2016)

24 See supra note 23

25 See supra note 16

"Nature is a blessing from God, and we are known by the three Ss: sago [trees], sampan [canoes] and sungai [rivers]. But life is very difficult now."

Kamoro's chief, Hironimus Urmani, in Tipuka, a lowland village down-river from the Grasberg mine²⁴

Loans:	
BNP Paribas	84.72
ING	84.72
Estimated value of managed shares and bonds:	
UBS	16.84
HSBC	14.13
BNP Paribas	7.19
Deutsche Bank	6.23
Revenues:	
	8,727.07
Profit after tax:	
	337.80
ISIN:	
	GB00B01FLG62

All figures in € mln.

Date and currency of company report:

31.12.2015, GBP (exchange rate as of 31.12.2015, www.oanda.com)

G4S is a global security firm, promising to ‘secure your world’ in over a 110 countries. Its global footprint is huge; G4S employs roughly 623,000 people in services such as cash in transit, security systems, and detention services, making £3.1 billion in revenue in 2016¹.

In South Africa, in addition to cash management services, manned security services as well as flight services and valuables logistics, G4S runs Mangaung prison in Bloemfontein, the Free State.

It was awarded the contract to build, maintain and run the prison in 2000² and in 2001, Mangaung prison opened its doors. According to G4S, Mangaung is the second largest private prison in the world³, it houses about 3,000 inmates in a maximum security setting⁴.

In 2012, the Wits Justice Project⁵ in Johannesburg began receiving letters from inmates in Mangaung prison about how G4S staff would regularly shock them with electrified shields and beat them, which led to serious injuries. In following up this information a clear pattern of evidence emerged; inmates who were aggressive or perceived to be problematic, would be dealt with by the Emergency Security Team (EST), an armed riot team in the prison called to emergency situations. According to the inmates they would be taken to places in the prison where there were no cameras, such as the prison hospital and ‘Broadway’, the isolation unit of the prison. There, the inmates would be shocked, beaten and injected. After the assault, the prisoners would mostly not have access to a doctor and their attempts to file a report with the police would be stymied.⁶

In 2013, the investigators received a 2009 governmental report listing over 60 inmates who had been placed in isolation cells for up to three

years⁷, an illegal practice⁸. This information showed a history of abuse occurring within the prison. The company denies these allegations.⁹

By the end of October 2013 substantial evidence on electroshocking and forced injections in the prison had been gathered, including video footage¹⁰. One video showed an involuntary injection of an inmate, Bheki Dlamini, who clearly protested the intervention¹¹. Another showed an inmate being stitched up in the hospital, following a gang fight. In the background the dry clicking sound of the electrified shields can be heard and a male voice saying: “Hey talk man.” The dry clicking sound of the shields and the crying and shouting continues and they ask “who is the major?” and the inmate screams, “Samuel”.¹²

In response to this information the then minister of South Africa’s Correctional Services, Sbu Ndebele, announced that “the privatisation of prisons in South Africa has failed”¹³. He promised to investigate the abuse, which would lead to a report that would be released in 30 days. This report remains unpublished.¹⁴ The situation in Mangaung prison around this time spun out of control resulting in the government stepping in to run the prison for ten months, during which they claim they restored order and peace. G4S was handed back the management of the prison in August 2014.¹⁵

1 G4S (2016): G4S. www.g4s.com (Accessed 20.09.2016) and G4S (2016): G4S where we operate www.g4s.com and G4S (2016): Who we are www.g4s.com (Accessed 20.10.2016)

2 Hopkins, R (2013): G4S-run prison in South Africa investigated over abuse claims. The Guardian, 28 October. www.theguardian.com (Accessed 20.09.2016)

3 G4S (2016): Care and Justice Services. www.g4s.com (Accessed 20.09.2016)

4 G4S (n.d.): Mangaung Correctional Centre: The Inside Story. www.g4s.com (Accessed 20.09.2016)

5 Wits Justice Project (2016). www.witsjusticeproject.co.za (Accessed 20.09.2016)

6 Wits Justice Project (2014): Still no progress on Manguang Prison abuse claims. Mail and Guardian. 17 October www.witsjusticeproject.co.za (Accessed 20.10.2016)

7 Hopkins, R (2013): G4S accused of holding South African prisoners in isolation illegally. The Guardian, 28 May. www.theguardian.com international (Accessed 20.09.2016)

8 Under South African law, prison authorities may place inmates in segregation, but only for 7 days. If the Head of Prison wants to extend the segregation, he will have to report to the Area Manager and the Inspecting Judge of Correctional Services, see section 30 of the Correctional Services Act: Republic of South Africa (1998): Correctional Services Act, Act No. 111, 1998. www.dcs.gov.za (Accessed 20.09.2016)

9 G4S (2013): Response to misrepresentation regarding Manguang prison, 28 October. www.g4s.com (Accessed 20.10.2016)

10 For video footage see Supra Note 2. The Guardian, 28 October. www.theguardian.com/international (Accessed 20.09.2016)

11 See supra note 10

12 This video footage is shown to Andy Baker, G4S Africa director in this BBC news item: BBC (2013): South Africa G4S prison staff accused of abuse, 28 October. www.bbc.com (Accessed 20.09.2016)

13 Hopkins, R (2013): Privatisation of prisons has ‘failed’. Mail & Guardian Online, 8 November. http://mg.co.za (Accessed 20.09.2016)

14 Hopkins, R (2015): Manguang Prison inmate tortured to death. Mail & Guardian Online, 3 September. http://mg.co.za (Accessed 20.10.2016)

15 IOL (2014): Prison handed back to G4S, 1 August. www.iol.co.za (Accessed 20.09.2016)

“G4S staff members do not have access to, nor do they prescribe or administer any medication. The health and treatment of inmates are managed by a reputable and independent third-party medical centre.”



Manguang Prison in Bloemfontein, a G4S operated prison where alleged human rights violations have been uncovered.
© Wits Justice Project



In 2015 further evidence was uncovered which exposed that two inmates were tortured to death in the prison, in 2005 and again in 2013.¹⁶ According to a BBC article one EST staff member admitted to stripping prisoners, dousing them with water and electro-shocking him stating “I will shock him until he tells the truth”.¹⁷ G4S has denied the abuse took place in the prison¹⁸.

G4S is a signatory of the UN Global Compact and specifically mentions the importance of human rights considerations including the UN Guiding Principles. Despite these commitments G4S has faced serious criticism not just in South Africa, but in numerous other cases, including the treatment of asylum seekers in Australia in 2014¹⁹, and for its provision of prison services and

checkpoints in the occupied West Bank which violated fundamental human rights.²⁰ At least six investors have blacklisted G4S in relation to human rights concerns in their operations, although none cite the specific example given here as a reason for exclusion (see appendix). In addition the US Project of Government Oversight (POGO) has documented 29 instances of misconduct by G4S (including environmental violation, discrimination, overcharging etc.) since 1995 resulting in penalties of USD 32.4 million.²¹

→ Ruth Hopkins, investigative journalist
Wits Justice Project, South Africa

16 See supra note 14

17 Hopkins, R (2015): G4S accused of 'torturing inmates to death' in South Africa. The Telegraph, 6 September. www.telegraph.co.uk (Accessed 11.12.2016)

18 Baker, A (2013): G4S: Prison 'an excellent example' of private-public partnership. Mail & Guardian Online, 1 November. <http://mg.co.za> (Accessed 20.09.2016)

19 OECD Watch (2014): Human Rights Law Centre and Raid vs G4S, 23 September. www.oecdwatch.org (Accessed 20.09.2016)

20 Business & Human Rights Resource Centre (2016): UK NCP releases follow up on complaint against G4S alleging involvement in Israeli abuses against Palestinians. www.business-humanrights.org (Accessed 20.09.2016)

21 Project for Government Oversight (2016): Contractor misconduct database G4S. www.contractormisconduct.org (Accessed 11.12.2016)

22 See supra note 14

23 See supra note 14

“I am not a donkey, I am not an animal,” when told the injection has been approved. He yells: “No, no, no”

Bheki Dlamini, who has no record of mental illness and whose involuntary injection with anti-psychotic drugs was caught on video.²³



▲ Hanwha exhibiting autonomously activated munitions.
© Facing Finance

Hanwha Corporation

Estimated value of managed shares:	
UBS	18.60
HSBC	0.62
Deutsche Bank	0.26
Revenues:	322,735.05
Profit after tax:	940.02
ISIN:	KR7000880005

All figures in € mln.
Date and currency of company report:
31.12.2015, KRW (exchange rate
as of 31.12.2015, www.oanda.com)

Hanwha Corporation¹ was founded in 1952 and is headquartered in Seoul, South Korea. The company covers a number of sectors, including real estate, life insurance, chemicals, engineering and construction, as well as defence.² Their defence business has significantly expanded through recent acquisitions including that of Samsung Techwin and Samsung Thales in 2014³ and Doosan DST in 2016.⁴

In 2014 Hanwha Corp, prior to acquisitions bolstering its defence business, was ranked 'only' 83rd in the world with arms sales of USD 890 million, however the 2015 results show it has moved up more than ten places to 71,⁵ reflecting its substantial growth.⁶ Since the restructuring, Hanwha Corp is the largest defence company in

Korea, with annual sales over USD 2.4 billion.⁷ According to Lee Sung-soo, senior vice president at Hanwha Corp, the company aims to compete with the world's top 30 defence firms and will further increase their presence in the global defence market.⁸

Through the acquisition of Samsung Techwin, Hanwha is entering the robotic weapons market. The SGR-A1 robot for example, developed by Samsung Techwin, has been installed along the border with North Korea since 2014.⁹ It can automatically detect people crossing the border and is technically able to fire without the help of a human.¹⁰ Questions have been raised about the compliance of these weapons with international human rights and humanitarian law.¹¹

Hanwha Corp is also involved in the production of cluster munitions¹², the use of which

1 It is important to note that the financial information provided in this document refers to Hanwha Corp (parent) and Hanwha Techwin only.

2 Hanwha (2015): Annual Report. www.hanwhacorp.co.kr (Accessed 20.09.2016)

3 Jeong, D (2014): Hanwha Corp. (000880 KS/Buy) – Acquisitions to bolster competitiveness of Holding Companies flagship businesses. KDB Daewoo Securities, 27 November. https://english.miraeassetdaewoo.com (Accessed 20.09.2016)

4 Grevatt, J (2016): Hanwha completes acquisition of Doosan DST. IHS Jane's 360, 1 June. www.janes.com (Accessed 20.09.2016)

5 Fleurant, A, Perlo-Freeman, S, Wezeman, P D, Wezeman, S T and Kelly, N (2016): The SIPRI Top 100 arms-producing and military services companies, 2015. Stockholm International Peace Research Institute [SIPRI] Fact Sheet, December 2016. www.sipri.org (Accessed 20.09.2016)

6 See supra note 5

7 Hanwha (2015): Hanwha Group Becomes Korea's Defense Industry Leader with Launch of Hanwha Techwin, Hanwha Thales, 29 June. www.hanwha.com (Accessed 20.09.2016)

8 Sung-Ki, J (2015): Hanwha Emerges as South Korea's Defense Giant. DefenseNews, 26 July. www.defensenews.com (Accessed 20.09.2016)

9 Wagstaff, K (2014): Future Tech? Autonomous Killer Robots Are Already Here. NBC News, 15 May. www.nbcnews.com (Accessed 20.09.2016)

10 See supra note 7

11 Campaign To Stop Killer Robots (2016): The Problem. www.stopkillerrobots.org (Accessed 20.09.2016)

12 A conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions.

"Hanwha Corporation has four business divisions: explosives, defense, trading, and machinery. All of them are committed to helping to build a happier and healthier future for everyone."

results in severe and indiscriminate impacts on civilian populations and constitutes a violation of the human right to health and life.¹³ This includes the new “Chunmoo” artillery rocket system, also known as K-MLRS. The development of this system began in 2009.¹⁴ The rockets for the Chunmoo launcher were developed by Hanwha Corp and the launcher vehicle was developed by Doosan DST. The rocket warheads include cargo warheads (cluster munition) with anti-tank or pre-fragmented anti-personnel submunitions.¹⁵ In addition to this, after the acquisition of Samsung Techwin, the K9 Thunder howitzer is now produced by Hanwha¹⁶. It is capable of deploying cluster munitions, and can fire the South Korean K310 dual-purpose improved conventional munition (DPICM cluster munition) round to a maximum range of 36 km.¹⁷ Reportedly, Samsung Techwin has signed a contract worth USD 700 million with Larsen & Toubro from India to develop 100 K9 howitzers to be built in India.¹⁸ The K9 Thunder howitzer has also been sold to Turkey under the Firtina or T-155 designation under a licence agreement with Samsung Techwin.¹⁹ Eight of the units were built in South Korea in 2004 and the remaining 300 are to be built in Turkey. The Firtina variant is equipped with a German MTU 881 series diesel engine. The K310 DPICM projectiles are also produced under licence in Pakistan by Pakistan Ordnance Factories.²⁰ According to media reports, the Firtina has recently been used to attack targets located deep into Syrian territory, and allegedly civilians have suffered the consequences of this.²¹

Governance issues at Hanwha have also been in the spotlight. In 2012 the chairman, Kim Seung-young, was given a four-year prison sentence for illegally diverting funds between his companies (embezzlement). He did not serve the full sentence due to illness and was given a suspended sentence.²² He is now once again head of Hanwha Corp.²³ This reinstatement, despite the corruption conviction, appears to demonstrate a low commitment to implementing anti-corruption measures, despite the company having an anti-corruption policy.²⁴

Hanwha Corp is not a signatory of the UN Global Compact and has also not stated to support the UN Guiding Principles on Business and Human Rights (see appendix). At least 16 investors (see appendix), including the Norwegian Government Pension Fund, have excluded Hanwha Corp from their investment universe, due to the production of cluster munitions.²⁵

→ Facing Finance

13 Cluster Munition Coalition (nd): Campaign toolkit: Chapter 1. www.stopclustermunitions.org (Accessed 20.09.2016)

14 Military-Today.com (2016): Chunmoo. www.military-today.com (Accessed 20.09.2016)

15 See supra note 12

16 Hanwha Techwin (2016): Artillery System. www.hanwhatechwin.com (Accessed 20.09.2016)

17 Army Guide (2016): K9 Thunder. www.army-guide.com (Accessed 20.09.2016)

18 Pubby, M (2016): Defence ministry concludes deal with Larsen & Toubro, gives much needed ammunition to private sector. The Economic Times, 1 July. <http://economictimes.indiatimes.com> (Accessed 20.09.2016)

19 Army Technology (2016): K9 Thunder 155mm Self-Propelled Howitzer, South Korea. www.army-technology.com (Accessed 20.09.2016)

20 Boer, R, Brink, H, Oosterwijk, S and Riemersma, M (2016): Worldwide investments in Cluster Munitions: a shared responsibility. PAX, June 2016. www.stopexplosiveinvestments.org (Accessed 20.09.2016)

21 Aljazeera (2016): Mosul: Turkey -Iraq row over ISIL operation. 16 October. www.aljazeera.com (Accessed 11.12.2016)

22 Lee, J (2014): S. Korea's Hanwha chairman gets suspended sentence in new ruling. Reuters, 11 February. <http://in.reuters.com> (Accessed 20.09.2016)

23 Hanwha (2016): Leadership. www.hanwha.com (Accessed 20.09.2016)

24 Hanwha Techwin (2016): Company Policy for Compliance with Anti-Corruption Acts, 22 February. www.hanwhatechwin.com (Accessed 20.09.2016)

25 Norges Bank Investment Management (2016): Observation and Exclusion of Companies, 7 September. www.nbim.no (Accessed 20.09.2016)

26 See supra note 2

27 Whiting, A (2016): Financial firms invest \$28 billion in cluster bomb makers: campaigners. 16 June. Reuters www.reuters.com (Accessed 11.12.2016)

“It is an absolute outrage that financial institutions are investing billions into companies that produce weapons which are banned under international law”

Suzanne Oosterwijk, PAX²⁷

Hewlett Packard Enterprise Co

Loans:	
BNP Paribas	285.33
HSBC	285.33
Deutsche Bank	218.08
ING	159.02
Estimated value of managed shares and bonds:	
UBS	220.87
Deutsche Bank	121.70
BNP Paribas	28.63
HSBC	22.82
Revenues:	47,358.49
Profit after tax:	2,236.73
ISIN:	US42824C1099

All figures in € mln.

Date and currency of company report:
31.10.2015, USD (exchange rate
as of 31.10.2015, www.oanda.com)

Hewlett Packard (HP) is a global company operating around the world in technology, computing and IT services.¹ In November 2015 the company split into two independent companies: Hewlett Packard Enterprise Company (HPE) and Hewlett Packard Inc.² HPE works in servers, storage, networking, converged systems and software; HP Inc. with hardware, personal systems and printing.³ HPE is a signatory of the UN Global Compact and has also expressed support for the UN Guiding Principles on Business and Human Rights (see appendix).

The most important subsidiary mentioned in this article is 'HP Enterprise Services', which stems from the company EDS Israel, acquired by HP in 2008. HP Enterprise Services appears to now fall under HPE⁴ as HPE Enterprise Services, and is in the midst of a 'spin-merger' with Computer Sciences Corp (CSC). This merger would see HPE own a 50% share in the company. HPE, through its holdings is still accountable for its involvement in Israeli occupied Palestinian territory. It is unclear whether HP Inc. would also benefit, as there has been no clear announcement as to the specific structure of the two companies. There is also no indication given that HPE will operate differently in terms of its human rights policy (their policies are identical to HP Inc.) or in its approach to Israeli operations.⁵

HP has been deeply complicit in supporting the occupation of Palestinian territory, through various projects in settlements and checkpoints, generating and accumulating profit for more than twenty years. The Israeli checkpoints are part of

the control and surveillance mechanism imposed over the Palestinian population, and they are a significant element in the daily reality of the occupation.

Through EDS Israel, which later merged into HP under "HP Enterprise Services", the company has been supplying the Israeli Ministry of Defense (MoD) with its computerized systems. From 2011, for five years the company also managed the Internet server farms of both the Israeli MoD and Army⁶. Today, the company is contracted in tens of millions of Shekels to provide the Israeli Army with printers, maintenance systems, and central servers until the end of 2016.⁷

Under the tender of the Israeli MoD in October 1999, EDS has provided the Israeli MoD with the development, installation, maintenance and on-going field support of the Basel System. Financed by the US government, the Basel System is an automated biometric access control system, which includes a permit system for Palestinian workers, with hand and facial recognition. It is installed in countless checkpoints in the Occupied West Bank and Gaza. Between 2012 and 2014, the organization Who Profits Research Center received two responses from the Israeli MoD to inquiries regarding the Basel System,⁸ in which MoD confirmed the installation of the system in more than 20 checkpoints.⁹ In 2016, the Israeli MoD has also confirmed to Who Profits that HP is contracted to maintain the Basel System until December 31st, 2017.¹⁰

In addition to the above, the company has provided its services and technologies to the Israeli Army and the administration of the Israeli

1 Hewlett Packard Enterprise: Founding HP. www8.hp.com (Accessed 07.11.2016)

2 Hewlett Packard Enterprise (2014): Press release: HP To Separate Into Two New Industry-Leading Public Companies. October 06. www8.hp.com (Accessed 07.11.2016); Hewlett Packard Enterprise (2015): Annual Report. 1 July. www3.hp.com (Accessed 07.11.2016)

3 Hewlett Packard Enterprise (2015): Annual Report. 1 July. www3.hp.com. (Accessed 07.11.2016)

4 Clark, D and Stynes, T (2016): HP Enterprise to Spin Off, Merge Services Business. 24 May. The Wall Street Journal. <http://www.wsj.com> (Accessed 07.11.2016); Bort, J (2016): Hewlett Packard Enterprise employees were 'shocked' but 'glad to be rid of that boat anchor'. 26 May. Business Insider. www.businessinsider.de (Accessed 07.11.2016)

5 See supra note 3

6 Who Profits: Hewlett Packard (HP). www.whoprofits.org (Accessed 07.11.2016)

7 Hirshoga, O (2009): HP won an IDF tender for personal computers (Hebrew). 2 September. The Marker. www.themarker.com (Accessed 07.11.2016)

8 On file with Who Profits.

9 Full list of checkpoints: Jericho, Bethlehem (Ma'avar Rachel), Jenin, Nablus, Tulkarem, Hebron, Abu Dis, Tarkumia, Ephraim Gate (Sha'ar Efrain, Irtach), Jalame (Gilboa), Barta's (Rihan), Tura (Shaked), Eyal, Eliyahu, Yoav, Hashmonain (Nialin), Macabim (Beit sira), Al-Jib (Givat Ze'ev), Qualandia (Atarot), Ras Abu-Sbitan (Hazeitim), Halamed He and Sansana (Meitar).

10 On file with Who Profits.

"Respecting human rights is instinctive to Hewlett Packard Enterprise. We take an uncompromising stance on human rights in our own operations, and work to influence others to do the same."



▲ The Basel System in the Rachel (left) and Erez (right) checkpoints, photos taken by the Israeli Army, 2011. © WhoProfits

Navy, despite the fact that the latter has enforced the illegal naval blockade on the Gaza Strip since 2007. The IT infrastructure provided by HP to the Israeli navy was used by the Israeli military as a pilot for implementing the same system to the entire army, a “virtualization project” contract won by HP in 2009. In the same year, HP Global won another contract to supply all computer equipment to the Israeli Army.¹¹

An additional system that has sealed the technological Israeli hold over the Palestinian population is the HP system for the biometric ID cards. Palestinians who are permitted to enter Israel are enrolled into the system and issued a magnetic biometric card. The card holds elaborate information including biometric templates, measurements (fingerprints, retinal, and facial data), and personal data.¹² The HP biometric cards are issued together with entry permits by the Israeli Population Registry where an information storage of all applicants is held. Consequently, through HP Israel obtains further biometric information on the Palestinian population as a surveillance mechanism in the oPt.¹³

Additionally, HP’s supported control of the Palestinian population is mounted with its “Smart City” project in illegal Israeli settlements. Currently in this project, the company provides the illegal West Bank settlement of Ariel with a storage system for its municipality.¹⁴

Finally, in 2014 HP ranked 43rd on SIPRI’s Top 100 worldwide arms producers list with USD 2,700 million in arms sales.¹⁵ The US Project of Government Oversight (POGO) has documented 24 instances of misconduct by the old HP Company (including environmental violation, discrimination, overcharging etc.) since 1995 resulting in penalties of USD 1,071.6 million.¹⁶ Surprisingly the Dow Jones Sustainability Index (DJSI) listed HP Enterprise Co as industry group leader (Technology Hardware & Equipment). According to DJSI “... the company has performed exceptionally well in the areas of labor practices and human rights, as well as in privacy protection, underpinning its commitment to employee and customer welfare and human rights”.¹⁷

→ Who Profits Research Center, Israel/Palestine

11 Who Profits (2011): Technologies of Control: The case of Hewlett Packard. p. 21. December. www.whoprofits.org (Accessed 07.11.2016)

12 Israel High-Tech & Investment Report (2003): Biometrics Applied to Protect Against Unauthorized Entry at Israeli Airport and at Palestinian Border Crossing. October. www.ishitech.co.il (Accessed 16.09.2016)

13 United Nations (2007): The Humanitarian Impact of the West Bank Barrier on Palestinian Communities. p. 10–12. June. Office for the Coordination of Humanitarian Affairs. www.ochaopt.org (Accessed 07.11.2016); Zureik, E (2011): Surveillance and Control in Israel/Palestine: Population, Territory and Power. p. xv. Oxford: Taylor & Francis.

14 Who Profits (2011): Technologies of Control: The case of Hewlett Packard. p. 21. December. www.whoprofits.org (Accessed 07.11.2016)

15 Fleurant, A, Perlo-Freeman, S, Wezeman, P D, Wezeman, S T and Kelly, N (2015): The SIPRI Top 100 arms-producing and military services companies, 2014. Stockholm International Peace Research Institute [SIPRI] Fact Sheet, December 2015. www.sipri.org (Accessed 20.09.2016)

16 Project on Government Oversight (2016): Hewlett Packard Company www.contractormisconduct.org (Accessed 11.12.2016)

17 RobecoSam (2016): Group leaders. www.robecosam.com (Accessed 11.12.2016)

18 HPE (2016): Human Rights. www.hp.com (Accessed 11.12.2016)

19 WhoProfits (2016): Hewlett Packard and the Israeli Occupation. www.whoprofits.org (Accessed 11.12.2016)

“According to information received by Who Profits from the Israeli Ministry of Defense HP is contracted to continue maintaining the Basel biometric system in the checkpoints until the end of 2017.”

WhoProfits¹⁹

TRP-2 FOB is an armed “small, light, tracked Unmanned Ground Vehicle (UGV) platform for use in tactical situations where the human presence is not advisable”, according to the statement on the Leonardo website.
© Facing Finance



Leonardo SpA

Loans:	
BNP Paribas	251.37
HSBC	238.78
Deutsche Bank	28.26
Estimated value of underwritten bonds:	
BNP Paribas	58.46
HSBC	58.46
Deutsche Bank	58.46
Estimated value of managed shares and bonds:	
UBS	42.45
HSBC	8.47
Deutsche Bank	4.35
BNP Paribas	1.69
Revenues:	12,995.00
Profit after tax:	527.00
ISIN:	IT0003856405

All figures in € mln.

Date and currency of company report:
31.12.2015, EUR

Leonardo (prior to April 2016, Finmeccanica)¹ is headquartered in Italy, but has industrial plants across 15 countries.² In 2015

Finmeccanica completed the sale of its transport division in order to focus on Aerospace, Defence and Security.³ In 2015 Finmeccanica ranked 9th on SIPRI's Top 100 worldwide arms producers list with USD 10,560 million in arms sales, making up 65% of total sales.⁴

Leonardo is involved in the design, development and delivery of two Transporter Erector Replacement Vehicles to support the US Ballistic Nuclear Missile Minuteman III-fleet.⁵ MBDA-Systems, jointly held by BAE Systems (37.5%), Airbus (37.5%) and Leonardo (25%), supplied the French Airforce with the medium-range air-to-surface missile, ASMPA, operational since 2011. In July 2014, MBDA commenced work on design and development to extend the life of the ASMPA, through to 2035, in a contract valued at € 57.3

million. It is reported that MBDA is developing the ASMPA-successor ASN4G, which will be operational in 2035.⁶

Leonardo is currently involved in the development and production of unmanned/autonomous vehicles including the combat robot TRP-2⁷, the aerial robotic platform HORUS⁸, which can work in an automatic mode, and V-Fides (Wire-Guidable Underwater Vehicle).⁹ TRP-2 can be equipped with a machine gun 5,56 mm or equivalent, or a grenade launcher (40mm). V-Fides is described as being capable of working both as an Autonomous Underwater Vehicle (AUV) and as a Remote Controlled Vehicle (ROV), although it is currently not a combat robot.¹⁰ Over the past decade the development of unmanned vehicles has vastly changed warfare and further developments could bring about fully autonomous weapons, the development of which would likely not meet the requirements of international humanitarian law.¹¹

1 Early in 2016 the firm said it would call itself Leonardo until December 31, 2016, before changing to just Leonardo on January 1, 2017. Leonardo-Finmeccanica (2016): Finmeccanica: Shareholders' Meeting approves the change of the Company's name and the 2015 Financial Statements. www.leonardocompany.com/en (Accessed 20.09.2016)

2 Leonardo-Finmeccanica (2016): Profile. www.leonardocompany.com/en (Accessed 20.09.2016)

3 Finmeccanica-Leonardo (2015): Annual Financial Report 2015. 31 December. www.leonardocompany.com (Accessed 02.11.2016)

4 Fleurant, A, Perlo-Freeman, S, Wezeman, P D, Wezeman, S T and Kelly, N (2016): The SIPRI Top 100 arms-producing and military services companies, 2015. Stockholm International Peace Research Institute [SIPRI] Fact Sheet, December 2016. www.sipri.org (Accessed 20.09.2016)

5 Ariva.de (2013): DRS Technologies Awarded \$25 Million to Provide U.S. Air Force with New Minuteman III Transporter Erector Vehicle, 5 June. www.ariva.de (Accessed 20.09.2016)

6 Don't Bank on the Bomb (2016): Finmeccanica. www.dontbankonthebomb.com (Accessed 20.09.2016)

7 OTO Melara (2013): OTO TRP2 Combat. www.leonardocompany.com (Accessed 20.09.2016)

8 Leonardo-Finmeccanica (2016): Horus. www.leonardocompany.com/en (Accessed 20.09.2016)

9 Leonardo-Finmeccanica (2016): V-Fides. www.leonardocompany.com/en (Accessed 20.09.2016)

10 Leonardo-Finmeccanica (2016): V-Fides. www.leonardocompany.com/en (Accessed 20.09.2016)

11 Human Rights Watch (2012): Ban 'Killer Robots' Before It's Too Late, 19 November. www.hrw.org (Accessed 20.09.2016)

“Sustainability at Leonardo means investing in the future to contribute to more stable and stronger economic and social development over time.”

Leonardo is the Italian prime contractor of the nEUROn unmanned combat drone, successfully tested in 2012. The company provides the smart bomb bay, the electrical system and various subsystems.¹² In 2016 the UK and France agreed to the development of a prototype unmanned combat aircraft, which should be able to autonomously manage a variety of tasks. To realize the project, all the major defence companies of the two countries will be involved. This includes, with regard to electronics, Leonardo Airborne and Space Systems.¹³

Leonardo is reportedly selling military equipment to states involved in conflict and/or known for human rights violations, including violence against civilians. In April 2016 Finmeccanica signed a deal to sell 28 Eurofighter Typhoon jets to Kuwait.¹⁴ This jet is built by a consortium in which Leonardo's Aircraft Division has a 19% share and operates the final assembly line in Caselle, near Turin.¹⁵ Eurofighters have also recently been sold to Saudi Arabia and Oman.¹⁶

Leonardo and Airbus have also particularly benefited from EU contracts and programs aimed at strengthening EU borders, while simultaneously being in the top four European arms traders selling arms to countries in the Middle East and North Africa, the very regions civilians are fleeing from. Leonardo is also very active in Europe lobbying for stronger border security, with total EU funding for member state border control totalling € 4.5 billion between 2004 and 2020.¹⁷

Finally, Leonardo has faced governance issues, in relation to bribery and corruption. Most notably in April 2016 the former Finmeccanica chief executive, Giuseppe Orsi, was sentenced to four and a half years in prison for corruption and falsifying invoices related to the sale of 12 helicopters to the Indian government.¹⁸ Leonardo has also been accused of corruption in Panama surrounding a contract for coastal radar systems.¹⁹

Leonardo is not a signatory of the UN Global Compact and has also not stated its support for the UN Guiding Principles on Business and Human Rights (see appendix). At least 4 investors have excluded Leonardo from their investment universe, including Delta Lloyd Asset Management, Nordea, Actium and AP7 (see appendix).

→ Facing Finance

12 Leonardo (2016): nEUROn. www.leonardocompany.com/en (Accessed 20.09.2016)

13 Tran, P (2016): France, UK To Invest £1.5 Billion in Combat Drone. DefenseNews, 5 March. www.defensenews.com (Accessed 20.09.2016)

14 Wall, R (2016): Finmeccanica Signs Deal to Sell Kuwait 28 Eurofighter Typhoons. The Wall Street Journal, 5 April. www.wsj.com/europe (Accessed 20.09.2016)

15 Leonardo-Finmeccanica (2016): Eurofighter Typhoon. www.leonardocompany.com/en (Accessed 20.09.2016)

16 Airbus Defence & Space (2016): Eurofighter Typhoon. <https://airbusdefenceandspace.com> (Accessed 20.09.2016)

17 Akkerman, M (2016): Border Wars: The Arms Dealers Profiting from Europe's Refugee Tragedy. Transnational Institute / Stop Wapenhandel, 4 July. <http://reliefweb.int> (Accessed 20.09.2016)

18 Segreti, G (2016): Finmeccanica's ex-CEO sentenced to 4-½ years in jail in bribery case. 7 April. Reuters. www.reuters.com (Accessed 02.11.2016)

19 Moreno, E (2016): Panama cancels Finmeccanica radar contract after simmering row. Reuters, 24 February. www.reuters.com (Accessed 20.09.2016)

20 PAX (2016): City of Cambridge agrees to divest USD 1 billion. 2 April. www.nonukes.nl (Accessed 11.12.2016)

21 Leonardo (2015): Sustainability as value creation. www.leonardocompany.com (Accessed 11.12.2016)

"If you want to slow the nuclear arms race, then put your money where your mouth is and don't bank on the bomb!"

Physicist Stephen Hawking, a FLI scientific advisory board member.²⁰

Effluent from PETL Plant flowing into Iskavagu Stream, Petancheru, Hyderabad.
© Anil Cherukupalli



Mylan NV

Loans:	
Deutsche Bank	2,071.17
ING	1,780.50
Estimated value of underwritten bonds:	
Deutsche Bank	601.04
ING	601.04
HSBC	448.67
Estimated value of managed shares and bonds:	
UBS	256.68
Deutsche Bank	62.18
HSBC	16.39
BNP Paribas	12.12
Revenues:	8,629.32
Profit after tax:	775.78
ISIN:	NL0011031208

All figures in € mln.
Date and currency of company report:
31.12.2015, USD (exchange rate
as of 31.12.2015, www.oanda.com)

Mylan is a pharmaceutical company headquartered in Canonsberg, USA, but incorporated in the Netherlands, as part of a 2014 tax inversion deal.¹ The company develops, licenses and manufactures generic, branded and speciality medicines.² It has sales in approx. 165 countries and territories³ and employs 30,000 people, almost half of which are in India.⁴ In Germany, Mylan sells under the dura[®] brand.⁵ Mylan has not signed up to the Pharmaceutical Supply Chain Initiative⁶ nor the Davos Declaration⁷. Mylan is not a signatory of the UN Global Compact nor does it specifically mention the importance of human rights considerations including the UN Guiding Principles (see appendix).

In 2007 Mylan acquired Matrix Laboratories⁸, a supplier of low costs Active Pharmaceutical Ingredients (APIs) with manufacturing plants in China and India. Mylan is the third largest pharmaceutical exporter in India and all of Mylan's active ingredients are manufactured

there, with four facilities in Hyderabad, four in Vizag and one in Mumbai.⁹

Hyderabad in Telangana State, where Mylan has operations, is known as the bulk drug capital of India, and accounts for nearly one fifth of all India's pharmaceutical exports.¹⁰ The Patancheru-Bollaram cluster alone is home to about 100 pharma companies- it is also one of the most polluted places in India, listed as a critically polluted cluster with pollution levels increasing each year.^{11 12} Mylan operates sites within and adjacent to this cluster, as well as further afield, and has been listed as one of the worst polluters in Telangana State.¹³

An investigation in 2016 showed that many pharmaceutical companies operating in the Hyderabad area are repeat offenders when it comes to environmental pollution and violating pollution control norms.¹⁴ Two Mylan factories were investigated and investigators found open gullies with apparent chemical effluent running off the site, as well as a non specified manufacturing unit producing three times more hazardous waste than permitted. A further concern in relation to these units is the possibility of chemical waste being discharged directly through pipes under-

1 Pierson, R (2014): Mylan to buy Abbot generics, cut taxes in \$5.3 billion deal. 14 July. www.reuters.com (Accessed 31.10. 2016)
2 Morningstar (2016): Mylan NV. www.morningstar.com (Accessed 14.09.2016)
3 Mylan (2016): About Us. www.mylan.com (Accessed 14.09.2016)
4 Mylan (2016): Mylan in India. www.mylan.com (Accessed 14.09.2016)
5 Mylan dura (2016): Mylan Praeparate. mylan-dura-pro.de (Accessed 14.09.2016)
6 Pharmaceutical Supply Chain Initiative (2016). https://pscinitiative.org (Accessed 14.09.2016)
7 Davos Declaration (2016): Industry Roadmap for Progress on Combating Antimicrobial Resistance-September 2016. International Federation of Pharmaceutical Manufacturers. www.ifpma.org
8 See supra note 3

9 Changing Markets and Ecotorm for Nordea Asset Management (2016): Impacts of pharmaceutical pollution on communities and environment in India. p23 footnote L. www.nordea.com (Accessed 14.09.2016)
10 See supra note 9
11 Heslop, M (2014): Patancheru-Bollaram Industrial Cluster. Department of Engineering Geology and Hydrogeology of the RWTH Aachen University, 8 June. www.waterandmegacities.org (Accessed 14.09.2016)
12 ENVIS Centre on Control of Pollution Water, Air and Noise (2016): Industrial Pollution, 24 June. www.cpcbenvis.nic.in (Accessed 14.09.2016)
13 See supra note 9
14 See supra note 9

“Doing what’s right is sacred to us. We behave responsibly, even when nobody’s looking. We set high standards from which we never back down.”

ground to the valley below, without the required treatment, polluting rivers and groundwater.¹⁵

This is not the first time that Mylan has faced problems in relation to environmental pollution. In 2013 the Andhra Pradesh Pollution board (PCB) in India closed one of Mylan's factories in Hyderabad after PCB officials had conducted a raid and found the unit was directly disposing of chemical waste without any waste treatment.¹⁶

In addition to this in 2015 the US Food and Drug Administration (FDA) found that Mylan's operations in India had 'significant violations' of manufacturing quality rules. These included failure to establish procedures to prevent microbiological contamination, and poor monitoring to ensure contamination free environment.¹⁷

Pharmaceutical pollution is devastating to the communities and the area surrounding manufacturing plants, but it also poses a global concern in relation to the spread of antibiotic resistance. The rise of drug resistant bacteria is a serious threat to global public health¹⁸, and is included under the 'Spread of Infectious Diseases' at number 2¹⁹ on the World Economic Forum's list of biggest threats to the stability of the world. Polluting factories that manufacture antibiotic APIs release substantial concentrations of antibiotics, creating a breeding ground for drug resistant bacteria.²⁰ Mylan also produces antibiotic APIs in India, while the investigation did not find any direct pollution from these facilities, it does note that there is significant pollution in the vicinity.²¹ Pharmaceutical supply chains are still shrouded in mystery, and much like the supply chains of the textiles industry, increased transparency in the origin of antibiotics is essential.

In addition to egregiously flouting environmental regulations in India, Mylan has also received scathing criticism in the US for its recent 400% price hikes to its EpiPen® products, which are used to treat severe allergic reactions, especially important to young children. When Mylan bought the EpiPen® brand from Merck KGaA in 2007, the life saving allergy medicine was sold for USD 100.²² It now sells for over USD 500, far out of reach for many households. This increased Mylan's profit in this product from USD 200 million in 2007 to over USD 1 billion in 2015.²³ While Mylan has attempted to stem the tide of criticism by producing a generic version at USD 300, they will still make a profit of at least USD 200 on each sale, according to analysts.²⁴

Additionally some investors, including DJE Kapital and ABP, have chosen to divest from Mylan due to them supplying drugs for lethal injections in the US.²⁵ An OECD case was filed with the National Contact Point Netherlands in relation to this (see appendix). NY State Retirement Fund shareholders claimed in a letter to the SEC, that while other pharma companies had taken steps to prevent their products being used for lethal injections "Mylan has not taken similar preventative actions."²⁶ In October 2015 Mylan issued a statement condemning the use of their drugs in executions in response to the shareholder pressure.²⁷

→ Facing Finance

15 See supra note 9

16 Business Standard (2013): Mylan unit forced to shut for violating pollution norms, 24 October. www.business-standard.com (Accessed 14.09.2016)

17 Edney, A (2015): Mylan, Critic of Indian Drugmakers, Warned by FDA on Quality. Bloomberg, 18 August. www.bloomberg.com/europe (Accessed 14.09.2016)

18 World Health Organization (2015): Antimicrobial resistance. WHO Fact Sheet No. 194, April 2015. www.who.int/en/ (Accessed 14.09.2016)

19 Cann, O (2015): Top 10 global risks 2015. World Economic Forum, 15 January. www.weforum.org (Accessed 14.09.2016)

20 SumOfUs (2015): Bad medicine. How the pharmaceutical industry is contributing to the global rise of antibiotic-resistant superbugs. <http://sumofus.org> (Accessed 14.09.2016)

21 See supra note 9

22 Koons, C and Langreth, R (2015): How marketing turned the allergy device into a must have. 23 September. www.bloomberg.com (Accessed 31.10.2016)

23 Willingham, E (2016): Why Did Mylan Hike EpiPen Prices 400%? Because They Could. Forbes, 21 August. www.forbes.com (Accessed 14.09.2016)

24 Ramsey, L (2016): Mylan's decision to make a cheaper, generic EpiPen 'baffles' experts. Business Insider Deutschland, 31 August. www.businessinsider.de (Accessed 14.09.2016)

25 Conner, T (2014): Drug maker Mylan takes \$70 million hit in battle over lethal injection. 21 October. NBC News. www.nbcnews.com (Accessed 31.10.2016)

26 Securities and Exchange Commission (2015): Shareholder proposal to Mylan Inc and response from SEC. www.sec.gov (Accessed 1.11.2016)

27 Investment and Pensions Europe (2015) Mylan bows to pension fund pressure on use of drugs in executions. 2 October. www.ipe.com (Accessed 11.12.2016)

28 Meyer, B (2009): World's highest drug levels entering the Indian stream then the poor consume the pharma soup. www.cleveland.com (Accessed 11.12.2016)

29 See supra note 3

"I'm frustrated. We have told them so many times about this problem, but nobody does anything. The poor are helpless. What can we do?"

Syed Bashir Ahmed, 80, casting a makeshift fishing pole while crouched in tall grass along the river bank near the bulk drug factories.²⁸

MMC Norilsk Nickel PJSC

Loans:	
ING	248.52
HSBC	102.55
BNP Paribas	102.55
Deutsche Bank	102.55

Estimated value of underwritten bonds:	
ING	178.81

Estimated value of managed shares and bonds:	
Deutsche Bank	32.42
UBS	18.11
HSBC	14.38
BNP Paribas	0.75

Revenues: 7,817.30

Profit after tax: 1,570.41

ISIN: US55315J1025

All figures in € mln.

Date and currency of company report:

31.12.2015, USD (exchange rate

as of 31.12.2015, www.oanda.com)

Norilsk Nickel produces palladium, copper, nickel and platinum and is headquartered in Russia. It operates in five countries – South Africa, Botswana, Russia, Finland and Australia. Its main units in Russia include the Polar Division, located above the Polar Circle on the Taimyr Peninsula and Kola MMC on the Kola Peninsula.¹

At both of the above plants there have been serious concerns in relation to environmental pollution and health problems for the local population. In 2009 the Norwegian Government Pension Fund excluded Norilsk Nickel due to severe environmental degradation at the company's Polar Division and in particular surrounding the City of Norilsk. The Fund highlighted sulphur dioxide emissions in particular, which "caused death or significant damage to vegetation up to 200 km from the operation".²

In September 2016 the Nadezhda metallurgical plant (smelter), part of Norilsk Nickel's Polar Division had a substantial spill into the Daldykan river, turning it bright red.³ After initially denying responsibility, and claiming the river was normally that colour, a week later the company admitted that this was a tailings spill, due to heavy rains.⁴ According to NASA satellite imagery

though, this is not the first time that the river has turned red, it claims that this has been occurring each year for the last three years, and twice in 2016⁵, indicating persistent failure of the tailings dam. While the spill moved quickly downstream and it was not possible to thoroughly assess the contents of the spill, it is possible that if the spill contained traces of heavy metals it would have a substantial impact on the environment, particularly in a fragile arctic environment.⁶

In a study from 2013, the Blacksmith Institute showed that the City of Norilsk is still heavily polluted, with children and adults suffering from respiratory diseases.⁷ While air quality in the City has improved, in 2015 air pollution was still exceeding the limits for certain pollutants in 20–45% of cases.⁸

A further industrial plant in Russia owned by Norilsk is on the Kola Peninsula. This plant has faced similar issues in relation to sulphur pollution releasing over 100,000 tonnes of sulphur dioxide annually.⁹ The plant is located near to the border with Norway and has resulted in conflict regarding the impacts of the plants pollution

1 Norilsk Nickel (2016): About NorNickel. www.nornik.ru (Accessed 20.10.2016)

2 Council on Ethics (2009): To the Ministry of Finance. Recommendation of 16 February 2009. www.regjeringen.no (Accessed 20.10.2016)

3 Sandhu, S (2016): Russia's Daldykan River – turned red by Norilsk Nickel – has been polluted before, says Nasa. 16 September. inews.co.uk (Accessed 21.10.2016)

4 Norilsk Nickel (2016): Press Release: Abnormal rains became the reason for Daldykan river case, 12 September. www.nornick.ru (Accessed 21.10.2016)

5 See supra note 3

6 Kramer, A (2016): In Siberia, a 'Blood River' in a Dead Zone Twice the Size of Rhode Island. 8 September. [The New York Times](http://www.nytimes.com). www.nytimes.com (Accessed 21.10.2016)

7 Pure Earth (2013): Top Ten threats 2013. www.worstpolluted.org (Accessed 21.10.2016)

8 Luhn, A (2016): Where the river runs red: can Norilsk, Russia's most polluted city, come clean? 15 September. [The Guardian](http://www.theguardian.com). www.theguardian.com (Accessed 24.10.2016)

9 Staalesen, A (2016): Pollution must be stopped, environmental watchdog tells Norilsk Nickel. [The Barents Observer](http://www.thebarentsobserver.org). 28 April. www.thebarentsobserver.org (Accessed 21.10.2016)

"Environmental protection is one of the Company's priorities."

Nornik Environmental Protection¹⁸



▲
Daldykan River on September 7th, 2016
© Alex Kokcharov via Twitter

across the border.¹⁰ Additionally Kola MMC, the division of Norilsk Nickel operating the plant, has also been found to be bribing Russian environmental officials to turn a blind eye to exceeding pollution limits and to downgrade classifications for toxic waste.¹¹ Norilsk has stated that it seeks to reduce sulphur limits and has now appointed SNC-Lavalin (See page 32) for the sulphur dioxide mitigation project.¹²

The products Norilsk mines, particularly nickel, are important in clean energy, increasingly nickel is used by companies such as Tesla, Apple and Toyota.¹³ Tesla has noted that the batteries for their electric cars predominantly consist of nickel and graphite¹⁴ and that it will source its minerals ethically and sustainably. Norilsk Nickel too have noted the importance of their products to the electric car industry with Norilsk declaring that nickel demand from the car industry is set to

triple in the next four years.¹⁵ The importance of nickel to clean energy makes it even more significant that its production is done in a sustainable, environmentally friendly method. This is currently not being achieved by Norilsk – the largest global producer of nickel. Norilsk has been excluded by at least four investment funds due to its environmental misconduct (see appendix). However, on October 3, 2016, MMC Norilsk Nickel signed a 5 year, USD 500 million revolving credit agreement with a consortium of banks, including Commerzbank, UniCredit, and HSBC.¹⁶ Norilsk Nickel has very recently become a member of the UN Global Compact but has not stated its support for the UN Guiding Principles on Business and Human Rights (see appendix).

→ Facing Finance

10 Kireeva, A (2016): Lone Norwegian mayor accuses Russian oligarch of fouling the Arctic: When will Oslo follow?. Bellona. 23 August. www.bellona.org (Accessed 21.10.2016)

11 Kireeva, A (2016): Former eco-watchdog pleads guilty to ignoring Russian pollution for bribes. Bellona. 25 August. www.bellona.org (Accessed 21.10.2016)

12 SNC-Lavalin (2016): Press Release: SNC-Lavalin awarded contract by Norilsk Nickel for a sulphur dioxide mitigation project in Russia. 9 November. www.snclavalin.com (Accessed 21.11.2016)

13 See supra note 10

14 “Our cells should be called Nickel-Graphite, because primarily the cathode is nickel and the anode side is graphite with silicon oxide ... [there’s] a little bit of lithium in there, but it’s like the salt on the salad,” the CEO explained. Benchmark Mineral intelligence (2016): Our lithium on batteries should be called nickel-graphite. 5 June. www.benchmarkminerals.org (Accessed 21.10.2016)

15 Fedorinova, Y & Lemesko, A (2016): Norilsk sees nickel in cars tripling as Tesla drives sales. 13 April. Bloomberg. www.bloomberg.com (Accessed 21.10.2016)

16 Norilsk Nickel (2016): Press release: PJSC MMC Norilsk Nickel signed a 500 million credit facility with international banks. www.nornik.ru (Accessed 11.12.2016)

17 See supra note 10

18 Nornik (2015): Sustainable development www.nornik.ru (Accessed 11.12.2016)

“No one denies this is a problem and that it demands not only international dialogue but real action from the polluter.”

Andrei Zolotkov, an expert on Murmansk with the Environmental Rights Center Bellona¹⁷

SNC-Lavalin Group Inc

Loans:	
HSBC	796.29
BNP Paribas	796.29
Estimated value of managed shares:	
UBS	4.83
HSBC	0.80
BNP Paribas	0.37
Deutsche Bank	0.19
Revenues:	
	6,327.58
Profit after tax:	
	288.76
ISIN:	
	CA78460T1057

All figures in € mln.

Date and currency of company report:

31.12.2015, CAD (exchange rate as of 31.12.2015, www.oanda.com)

SNC-Lavalin is an engineering and construction company, headquartered in Montreal, Canada, with nearly 40,000 employees in 50 countries,¹ operating over 100 subsidiaries and affiliates. Over the last five years, numerous corruption investigations have been undertaken into their operations, by officials in Canada, Switzerland, Algeria and France, and by the World Bank and the African Development Bank- in relation to allegations in Bangladesh, Cambodia, Algeria, Libya, Tunisia, Uganda and Mozambique as well as in Canada itself. There are also serious allegations regarding the company's activities in Ghana, India, Nigeria and Zambia.² Most recently, in May 2016 the Panama Papers revealed that the company paid a secret British Virgin Islands company to help obtain Algerian contracts.³

In 2011 the World Bank provided evidence to ministers in Bangladesh and to the Royal Canadian Mounted Police (RCMP) of high-level corruption surrounding SNC-Lavalin's contract in Bangladesh's Padma Multipurpose Bridge project.⁴ RCMP investigations led to charges being brought against three individuals at SNC, including the former senior vice president, Kevin Wallace, under the Canadian *Corruption of Foreign Public Officials Act*. These are still pending, as of April 2016.⁵

In March 2012, SNC announced that an internal investigation had found CAD 56 million in improper payments made to "undisclosed foreign agents". To whom and where these improper payments were made.⁶ In the same month SNC's CEO resigned, with the company saying he had improperly authorised certain payments.⁷ A new CEO took over in October 2012, vowing zero tolerance for unethical behaviour. At around the

same time the Swiss authorities tracked additional financial flows of USD 139 million from SNC to Swiss bank accounts of British Virgin Islands registered companies⁸ of which the company said it was unaware.⁹

The World Bank blacklisted SNC-Lavalin Inc¹⁰ and over 100 affiliate companies in April 2013, for a period of 10 years, due to misconduct in the Padma Bridge project in Bangladesh and the Rural Electrification and Transmission project in Cambodia.¹¹ It is reportedly the longest bidding ban on World Bank Group-financed projects in the global agency's history.¹²

In 2013 a French prosecutor launched an investigation relating to improprieties in the accounting books of SNC-Lavalin Europe.¹³ In the same year, the company was reported to be under investigation in Algeria.¹⁴

In February 2015, the Canadian RCMP laid charges of foreign bribery and fraud against the SNC-Lavalin Group Inc., its division SNC-Lavalin Construction Inc. and its subsidiary SNC-Lavalin International Inc. in connection with business dealings in Libya.¹⁵ SNC-Lavalin allegedly won massive projects, including a controversial prison in Tripoli¹⁶ due to its close ties to the family of former dictator Moammar Gadhafi.¹⁷ According to the RCMP bribes of up to USD 47.7 million were

1 SNC-Lavalin (2016): Annual Information Form. 2 March. www.snc-lavalin.com (Accessed 02.11.2016)

2 Seglins, D (2013): 10 Countries where SNC-Lavalin contracts under scrutiny. 15 May. CBC News. www.cbc.ca (Accessed 02.11.2016)

3 Dubinsky, Z (2016): SNC-Lavalin paid \$22 million to secret offshore company to get Algeria contracts. 18 May. CBC News. www.cbc.ca (Accessed 02.11.2016)

4 Judgements of the Supreme Court of Canada (2016): World Bank Group vs Wallace. 29 April. <https://scc-csc.lexum.com> (Accessed 02.11.2016)

5 See supra note 5

6 Woods, A (2013): French probe reveals details of \$135 million payment by SNC Lavalin. 26 June. The Star. www.thestar.com (Accessed 02.11.2016)

7 Dobby, C (2012): SNC Lavalin shares spike after CEO resigns. 26 March. Financial Post. www.financialpost.com (Accessed 02.11.2016)

8 Reuters (2012): SNC-Lavalin stops payments to ex-CEO arrested for fraud. 13 December. www.reuters.com (Accessed 02.11.2016)

9 CBC News (2012): Former SNC lavalin CEO arrested on fraud charges. 28 November. www.cbc.ca (Accessed 02.11.2016)

10 SNC Lavalin Inc is among one of many subsidiaries of SNC Lavalin Group. See supra note 1.

11 World Bank (2013): World Bank debars SNC Lavalin and its affiliates for ten years. 17 April. www.worldbank.com (Accessed 16.11.2016)

12 The Canadian Press (2015): Timeline Key dates for SNC-Lavalin. 19 February. Canadian business. www.canadianbusiness.com (Accessed 02.11.2016)

13 The Canadian press (2013): SNC-Lavalin UAE project was cover for suspect payments. 27 June. CBC News. www.cbc.ca (Accessed 02.11.2016)

14 Ouali, A (2013): Algeria to blacklist corrupt foreign companies. 20 June. CNS News. www.cnsnews.com (Accessed 02.11.2016)

15 Royal Canadian Mounted Police (2015): RCMP charges SNC-Lavalin. 19 February. www.rcmp-grc.grc.ca (Accessed 12.11.2016)

16 Waldie, P (2012): SNC -Lavalin defends Libyan prison project. 24 February. The Globe and Mail. www.theglobeandmail.com (Accessed 02.11.2016)

17 Waldie, P (2012): SNC anxious to do business in Libya once again. 27 March. The Globe and Mail. www.theglobeandmail.com (Accessed 02.11.2016)

"These charges relate to alleged reprehensible deeds by former employees who left the company long ago."

SNC Lavalin statement in relation to charges in 2015²⁸



◀
 “End corruption” poster in Uganda.
 © Morten Just, Flickr

paid to public officials in Libya between 2001 and 2011.¹⁸ The date for the preliminary hearing has been set for the third quarter of 2018.¹⁹ The case against the company and subsidiaries follows on from cases in Switzerland and Canada in 2014 related to former SNC executives.²⁰

Additionally, a class action lawsuit has been filed, and certified, on behalf of investors, alleging that SNC-Lavalin misled investors by claiming that it conducted itself as a “socially responsible citizen”, and in compliance with a Code of Ethics, when in fact it was paying bribes to Libyan government officials.²¹

In two further cases, the African Development Bank (AfDB) reached a settlement in 2015 with the SNC-Lavalin Group Inc. in relation to contracts given to SNC-Lavalin International Inc in two AfDB-funded projects in Uganda and Mozambique.²² The agreement resolved allegations uncontested by the company of illicit payments to public officials. SNC executives were also involved in ‘the biggest fraud and corruption investigation in Canadian history’²³, related to the McGill University Super Hospital in Montreal for which numerous executives have been charged.

The company claims to have improved its ethics and anti-corruption processes, including a dedicated team and internal hotline for whistleblowers.²⁴ These efforts may have been reinforced by the conditions of an administrative agreement, signed in December 2015, to allow the company to continue contracting with the Canadian government.²⁵ SNC-Lavalin has suffered reputational damage from the allegations and charges relating to its activities around the world and claims that its competitiveness is suffering from the pending charges against the company in Canada.²⁶ However, apart from the World Bank blacklisting of SNC and related companies, which may have caused some pain²⁷, there have been few sanctions imposed on the company or its executives to date.

→ Gillian Dell,
 Transparency International

18 The Canadian Press (2016): SNC-Lavalin still hoping to resolve criminal charges as hearing set for 2018. 28 February. Global News. www.globalnews.ca (Accessed 02.11.2016)

19 See supra note 17

20 CBC News (2015): Criminally charged SNC executives and staff. 17 March. www.cbc.ca (Accessed 02.11.2016)

21 SNC Lavalin (2016): Interim Condensed Consolidated Financial Statements. www.snclavalin.com (Accessed 07.11.2016)

22 African Development Bank Group (2015): Integrity in Development Projects: AfDB and SNC Lavalin settle corruption allegations. 1 October. www.afdb.org (Accessed 07.11.2016)

23 Seglins, D (2014): Who’s who? McGill University hospital \$22.5M bribery case. 3 September. CBC News. www.cbc.ca (Accessed 07.11.2016)

24 See supra note 1

25 SNC Lavalin (2015): Press Release: SNC-Lavalin signs an administrative agreement under the Government of Canada’s new Integrity Regime. 10 December. www.snclavalin.com (Accessed 07.11.2016)

26 Van Praet, N and Gray, J (2015): SNC-Lavalin says corruption charges weighing on its competitiveness. 10 November. The Globe and Mail. www.theglobeandmail.com (Accessed 07.11.2016)

27 According to a 2015 article “It is hard to determine what portion of total SNC-Lavalin work is likely to be affected by the World Bank debarment, although by some estimates it is thought to be less than two percent.” www.unod.org (Accessed 11.12.2016)

28 Hamilton, G (2015): RCMP charges SNC-Lavalin with fraud and corruption linked to Libyan Projects. 19 February. The Financial Post. <http://business.financialpost.com> (Accessed 11.12.2016)

“Too often companies from developed countries engage in grand corruption in developing countries through bribery of high level foreign public officials. In doing so, they deny people their human rights and cause widespread harm. They should face severe sanctions and other special measures. There must be an end to impunity for grand corruption.”

**Transparency International Chair
 Jose Ugaz**

Local vote in the village of Los Planes
in March 2013 in the municipality of
San Rafael Las Flores
© CPR-Urbana



Tahoe Resources Inc

Loans:	
HSBC	27.36
Estimated value of underwritten shares:	
HSBC	35.59
Estimated value of managed shares:	
Deutsche Bank	7.03
UBS	2.54
BNP Paribas	0.02
Revenues:	343.03
Loss after tax:	47.46
ISIN:	CA8738681037

All figures in € mln.
Date and currency of company report:
31.12.2015, CAD (exchange rate
as of 31.12.2015, www.oanda.com)

British Columbia-registered mining company Tahoe Resources Inc. lists on the Toronto and New York stock exchanges, and has its head office in Reno, Nevada, USA. The company is focused predominantly on gold and silver extraction in Peru, Guatemala and Canada.¹ Tahoe Resources is not a signatory of the UN Global Compact but does recognise the UN Guiding Principles on Business and Human Rights (see appendix).

In 2011, local community members and Catholic Church leaders were first to express strong opposition to Tahoe Resources' silver mine, El Escobal, in Guatemala. Seven of the surrounding municipalities have since held referenda, with a majority of registered voters, totaling tens of thousands of people, opposing the project. Opposition is so strong that the company still cannot connect its mine to the main power grid, it has had to install diesel-fired generator power to allow it to operate.² Tahoe Resources has consistently tried to undermine the legitimacy of these local votes, however Guatemala's Constitutional Court has affirmed their value as "adequate means by which peoples may exercise their right to give their opinion and be consulted on topics of interest."³

- 1 Tahoe Resources Inc (2016): Mine operations. www.tahoeresources.com (Accessed 20.09.2016)
- 2 SEC (2016): Tahoe Resources, Annual Information Form for the year ended December 31, 2015, March 9, 2016. www.sec.gov (Accessed 20.09.2016)
- 3 Corte de Constitucionalidad (2013): Expedientes Acumulados 4639-2012 y 4646-2012, 4 December. www.infile.com (Accessed 20.09.2016)

Tahoe adopted a militarized security strategy to deal with growing discontent.⁴ In 2011, Tahoe contracted International Security and Defense Management, LLC (ISDM) through its wholly-owned Guatemalan subsidiary Minera San Rafael (MSR). ISDM, a company with experience in Afghanistan and Iraq, helped develop MSR's security plan.⁵ The implementation of this security plan resulted in the repression of peaceful protestors by state and private security forces, between 2011 and 2013.⁶ Dozens of community leaders and members who worked to organize referenda or who participated in protests were also the subject of unfounded legal charges. Several endured months in jail, only to be released given the lack of grounds for their arrest.⁷

In 2012, Tahoe Resources sued the Guatemalan Government for not doing enough to protect its project from local opposition.⁸ Although the case

- 4 Luis Solano (2015): Under Siege: Peaceful Resistance to Tahoe Resources and Militarization in Guatemala, 10 November. Miningwatch Canada. www.miningwatch.ca (Accessed 20.09.2016)
- 5 Affidavit, Donald Paul Gray, made on November 24, 2014, No. S-144726 Vancouver Registry, Supreme Court of British Columbia; <https://tahoeontrial.files.wordpress.com> (Accessed 20.09.2016)
- 6 Network in Solidarity with the People of Guatemala (NISGUA) (2013): Communities of Santa Rosa and Jalapa denounce criminalization of leaders opposing Tahoe Resources' Escobal mine, 5 July. www.nisgua.blogspot.ca (Accessed 19.09.2016)
- 7 Emisoras Unidas (2013): Capturados en Estado de Sitio en Jalapa aún no son escuchados, 13 May. <http://noticias.emisorasunidas.com> and Prensa Comunitaria, Nelton Rivera (2013): Sufrimos mucho, pero sabemos que pronto nos vamos a reponer, 27 November. <http://comunitariapress.wordpress.com> (Accessed 20.09.2016)
- 8 Expediente 2728-2012, Corte de Constitucionalidad, Guatemala, February 26, 2013, Apelación de Sentencia de Amparo

"We seek to create a dialogue about our responsible business operations and social investments in the communities where we operate."

was dismissed, shortly thereafter Guatemala's National Security Commission declared Tahoe's mine, 'strategic' and labelled its opponents "threats to national security".⁹ This led the government, with direct assistance from Tahoe Resources,¹⁰ to establish 'the Inter-Institutional Commission for Integrated Development' in the municipality of San Rafael Las Flores, which is believed to have increased the influence of military security and intelligence in the area.¹¹

In April 2013, the company's exploitation license was granted, disregarding over 200 individual complaints that had been submitted based on environmental concerns. As a result, the license is subject to ongoing legal challenges.¹² Furthermore, government officials responsible for approving Tahoe Resources' license resigned in mid 2015, due to serious allegations of corruption, including both the President and Vice President of Guatemala, who were arrested and are in prison awaiting trial.¹³

In late April 2013, private security guards at the Escobal mine site shot at peaceful protesters demonstrating outside the mine gates, injuring seven men. These seven men are suing Tahoe Resources in British Columbia courts for negligence and battery in the shooting.¹⁴ In May 2013, a state of siege was imposed on four municipalities in the area, during which time mine opponents were arrested, their homes raided and military outposts installed in the area.¹⁵ One military outpost remains in the area. Targeted violence has also persisted, including two attacks against Alex Reynoso, father of youth mine opposition leader Topacio Reynoso who was brutally murdered in April 2014.¹⁶

Since the mine went into operation in early 2014, water scarcity and wells drying up have

been reported in several communities closest to the mine, and early indications of metal and chemical contamination of water supplies has been documented downstream of the mine.¹⁷ Houses have cracked causing serious damage in villages near the mine, believed to be related to mine blasting and truck traffic.¹⁸ Despite Tahoe's claims of having spent USD 10 million dollars on Guatemalan corporate social responsibility programs,¹⁹ opposition to the mine and its expansion remains strong. Finally, lack of disclosure over the project's risks led to securities commission complaints and an investigation by the Norwegian pension fund. In June 2013, a complaint was filed against Tahoe Resources by the Justice and Corporate Accountability Project (JCAP) with the British Columbia Securities Commission (BCSC) for failing to fully disclose violence and lack of community support for the mine to investors.²⁰ Shortly thereafter, the BCSC ordered Tahoe to clarify poor disclosure regarding the unreliability of its mineral resources.²¹ In August 2016, a complaint was filed with the U.S. Securities and Exchange Commission alleging that the company failed to meet legal requirements for disclosing human rights abuses and lawsuits that impact the Escobal mine and related expansion plans.²² Norway's Council on Ethics also undertook its own investigation, published in January 2015, which found that the project poses "an unacceptable risk of ... contributing to serious human rights violations" and recommending against any investment in Tahoe Resources.²³

→ Ellen Moore, Progressive Leadership Alliance of Nevada (PLAN), USA
→ Jen Moore, MiningWatch Canada, Canada

9 OCMAL, Oswaldo J. Hernández (2014): El Gobierno crea en secreto un Grupo Interinstitucional de Asuntos Mineros. 16 July. www.conflictosmineros.net (Accessed 20.06.2016)

10 Tahoe Resources Inc (2014): Annual Information Form, 12 March 12. p.12. www.sec.gov (Accessed 20.09.2016)

11 See supra note 10

12 Centre for Environmental and Social Legal Action (CALAS) (2013): Guatemalan Complainants Celebrate Effective Suspension of Tahoe Resources' Licence, 25 July. Maritimes-Guatemala Breaking the Silence Network and MiningWatch Canada. www.miningwatch.ca (Accessed 20.09.2016)

13 Maritimes-Guatemala Breaking the Silence Network, MiningWatch Canada and NISGUA (2015): Crumbling Political Support for Tahoe Resources in Guatemala, 14 September. www.miningwatch.ca (Accessed 19.09.2016)

14 Canadian Centre for International Justice (CCIJ): Tahoe Resources (Canada/Guatemala). www.ccij.ca (Accessed on 20.09.2016)

15 OCMAL, S. Menchú/A. Montenegro/ O. Archila (2013): Estado de Sitio se decretó por hechos delictivos, dice Pérez. 3 May. www.conflictosmineros.net (Accessed 20.09.2016)

16 Center for International Environmental Law (CIEL) - Maritimes-Guatemala Breaking the Silence Network (BTS) - MiningWatch Canada - Network in Solidarity with the People of Guatemala (NISGUA) - Projet Accompagnement Québec Guatemala (PAQG), "Shooting attack in Mataquescuintla, Jalapa, against opponents of Tahoe Resources' Escobal mine," October 15, 2015. <https://tahoentrial.net> (Accessed 20.09.2016)

17 Madre Selva Colectivo Ecologista (2015): Monitoreo de Calidad del Agua alrededor del proyecto minero El Escobal: San Rafael Las Flores, June.

18 Panorama (2016): La Cuchilla en Peligro. May. Also, personal communications with mining engineer Rob Robinson who visited the area in April 2016.

19 See supra note 3

20 Justice and Corporate Accountability Project and MiningWatch Canada (2013): Complaint Asks Ontario Securities Commission to Investigate Tahoe Resources After Wiretap Evidence Implicates Employees in Violence at Guatemala Mine. 3 June. www.miningwatch.ca (Accessed 20.09.2016)

21 Tahoe Resources (2013): Press Release: Tahoe Resources Clarifies PEA Disclosure. 24 July. www.tahoeresources.com (Accessed 19.09.2016)

22 Justice and Corporate Accountability Project, NISGUA and the Consejo Diocesano en Defensa de la Naturaleza, "US Securities and Exchange Commission asked to investigate Tahoe Resources' failure to disclose secret lawsuits," August 11, 2016; <http://miningwatch.ca> (Accessed 20.09.2016)

23 Council on Ethics for the Government Pension Fund Global, Annual Report 2014, December 31, 2014; <http://etikkradet.no> (Accessed 20.09.2016)

24 Interview recorded by NISGUA, February 18, 2015.

25 Tahoe Resources (2016): Social Responsibility www.tahoeresources.com (Accessed 11.12.2016)

"We are exercising the rights we have as impacted communities to express our opposition to mining and we want to be heard. Instead of listening, they use the full force of the military to try to silence us."

A resident of the neighbouring municipality closest to the Escobal mine²⁴

Volkswagen AG

Loans:	
HSBC	1,892.59
BNP Paribas	1,892.59
ING	354.13
Deutsche Bank	325.40
Estimated value of underwritten shares and bonds:	
HSBC	9,042.24
Deutsche Bank	5,012.10
BNP Paribas	4,272.74
ING	593.86
Estimated value of managed shares and bonds:	
Deutsche Bank	469.43
UBS	134.43
BNP Paribas	77.58
HSBC	65.31
ING	9.41
Revenues:	213,292.00
Loss after tax:	1,361.00
ISIN:	DE0007664039

All figures in € mln.
Date and currency of company report:
31.12.2015, EUR

Volkswagen AG (VW), headquartered in Wolfsburg, Germany is an automobile manufacturer. The Group comprises twelve brands including Audi, SEAT, SKODA, Bentley, Lamborghini, Porsche, Ducati, Volkswagen commercial and passenger vehicles, Scania and MAN.¹ Its sales areas are focused on Europe, North America, South America and the Asia Pacific. In Western Europe one in four new cars is made by the Volkswagen Group.² Volkswagen was a member of the UN Global Compact from 2002 to 2015, it was delisted upon its own request.³

In 2008, Volkswagen presented its new “Clean Diesel” engine, claiming it would reduce the emissions of toxic NO_x.⁴ VW boasted about the innovation of purportedly fuel efficient, clean diesel engines with highly efficient filter technology. It took eight years to reveal that “Clean Diesel” was very dirty indeed, with unsettling impacts around the globe.

On 18th of September 2015, the US Environmental Protection Agency (EPA) accused VW of violating the Clean Air Act by installing defeat devices in its diesel light duty vehicles, for 21

models produced between 2009 and 2015.⁵ While the car showed low emissions under controlled testing conditions, special software stopped the filters when the cars were driven on the road, and emissions rose by up to 40 times the standard.⁶ In response to the EPA announcement, €15bn was wiped off VW’s market cap within minutes of the opening of the Frankfurt Stock Exchange on 21st of September.⁷

On 22nd of September, VW admitted that defeat devices had been installed in 11 million vehicles worldwide.⁸ To investigate the issue, the company hired US law firm Jones Day⁹ – the same law firm that dealt with the Deepwater Horizon disaster – consistently ranked among the “Fearsome Four-some” as the most feared law firms. They were hired to provide an independent review, however some of VWs largest shareholders claimed this was not independent, with VW having the final say on whether the report would be made public.¹⁰ On 2nd of November, the EPA brought a second case

1 Volkswagen (2016): The Group. www.volkswagenag.com (Accessed 31.10.2016)

2 Hannover Messe 2017 (nd): Company Profile Volkswagen. www.hannovermesse.de (Accessed 11.12.2016)

3 UN Global Compact: Volkswagen. www.unglobalcompact.org (Accessed 20.10.2016)

4 Smith, G and Parloff, R (2016): Hoaxwagen. 27 March. Fortune. www.fortune.com (Accessed 18.10.2016)

5 United States Environmental Protection Agency (2015): Notice of Violation to Volkswagen AG. 18 September 2015. www.eenews.net (Accessed 19.09.2016)

6 Hotten, R (2015): Volkswagen: The scandal explained. 10 December. BBC. www.bbc.com (Accessed 19.09.2016)

7 Kollwe, J (2015): Volkswagen emissions scandal timeline. 10 December. The Guardian. www.theguardian.com (Accessed 20.09.2016)

8 See supra note 7

9 Murphy, M (2015): Diese US-Anwälte sollen bei VW jeden Stein umdrehen. 25 September. Handelsblatt. www.handelsblatt.com (Accessed 20.09.2016)

10 Boston, W and Wilkes, W (2016): Investors to press for independent VW emissions probe. 23 May. The Wall Street Journal. www.wsj.com (Accessed 3.10.2016)

“Volkswagen is more than an employer. We are responsible for people, the economy, society, and the environment.”



▲ Greenpeace activists projecting: “Diesel. Das Problem.” (in English: “Say goodbye to Diesel.”) onto the Volkswagen headquarters in Wolfsburg, Germany. © Greenpeace

against Volkswagen, Audi and Porsche for similar violations with its 31 vehicles.¹¹

Investigations into the VW case are ongoing, but what is clear is the significant impact that these defeat devices have had on air pollution and human health. Nitrogen oxides and other pollutants are regulated because they have an immediate and significant impact on human health, increased NO_x-concentrations can lead to asthma, shortness of breath, bronchitis and lung infections. The European Environment Agency calculates that in Germany alone 10,000 premature deaths annually can be traced back to NO_x-emissions.¹² NO_x also fosters the development of ground-level ozone and therefore contributes to the formation of particulate matter. Every year more than 40,000 people die prematurely in the EU related to high levels of toxic gases in the air.¹³ Unicef has recently highlighted the impact of NO_x and other outdoor air pollutants on children specifically.¹⁴

The case of Volkswagen shows a deliberate deception of regulators and customers, with the EPA Notice of Violation showing that Volkswagen

denied responsibility in 2014, claiming “technical issues and unexpected in-use conditions”.¹⁵ The New York Times also claims employees were pushed to destroy evidence and requests by authorities for information were initially rejected before the scandal became public.¹⁶ On the 25th of October 2016, the EPA partially resolved allegations with Volkswagen in relation to its 21 vehicles with VW having to pay USD 14.7 billion. This does not resolve the issue with the 31 vehicles which could also come to billions.¹⁷

Since the release of the information by the EPA on Volkswagen, it has come to light that other car manufacturers such as Renault, Fiat, Nissan, Opel, and Ford produce vehicles which also emit extremely high levels of NO_x¹⁸ and that other car manufacturers are seeking questionable legal loopholes to avoid further investigations into operations that could find them violating standards.¹⁹ In November 2016 VW also admitted that some Audi cars are equipped with a further software device that can distort carbon dioxide emission tests.²⁰

11 Environmental Protection Agency (2016): Learn about Volkswagen Violations. www.epa.gov (Accessed 31.10.2016)

12 European Environment Agency (2015): Premature deaths attributable to Air pollution: Premature deaths attributable to fine particulate matter (PM2.5), ozone (O₃) and nitrogen dioxide (NO₂) exposure in 2012 in 40 European countries and the EU 28. www.eea.europa.eu (Accessed 20.09.2016)

13 Umweltbundesamt (2013): Feinstaub und Stickstoffdioxid belasten auch 2013 weiter die Gesundheit. 16. February. www.umweltbundesamt.de (Accessed 20.09.2016)

14 UNICEF (2016): Clear the air for children. 31 October. www.unicef.com (Accessed 31.10.2016)

15 UK Parliament (2015): House of Commons: The Volkswagen group emissions scandal. Nd. www.parliament.uk (Accessed 20.09.2016)

16 Ewing, J (2015): VW Manager in Germany is said to Have Pushed for Removing Evidence, 10 June, New York Times. www.nytimes.com (Accessed 19.09.2016)

17 See supra note 11

18 Hornung, P and Riedel, K (2016): Die größten Sünder kommen nicht von VW. 8 February. Tagesschau. www.tagesschau.de (Accessed 20.09.2016)

19 Breitingner, M (2016): Fast alle deutschen Hersteller starten Rückruf, 22 April. Zeit. www.zeit.de (Accessed 20.09.2016)

20 Toor, A (2016): Some Audi cars can distort CO₂ emissions VW says. 14 November. The Verge. www.theverge.com (Accessed 11.12.2016)

Additionally, Volkswagen faces significant governance issues, as investigations continue to show that knowledge of the cheat devices reached far up the management chain and was not, as claimed by VW initially, “a small group of rogue engineers”.²¹ It emerged recently that there was awareness at board level of the use of cheat devices, including Stefan Knirsch, the head of technical development at Audi, who gave a false promise under oath.²² It also emerged that the devices were initially developed by the Audi team to reduce noise in diesel engines.²³ According to some investors there have been long term concerns about Volkswagen’s governance. While the integration of ESG criteria could not have foreseen the specific emission scandal, the governance issues at Volkswagen should have provided an indication that it would cost its investors.²⁴ For example, MSCI ratings of Volkswagen since April 2015, and as far back as 2013, showed governance issues in the bottom 28th percentile.²⁵

In December 2016, South Korean authorities handed out a record criminal fine totaling USD 31.87 million for false advertising on vehicle emissions, against former and current executives at Volkswagen’s South Korean unit.²⁶

Until improved governance and accountability are clearly demonstrated, Volkswagen should be considered as unsuitable for investment, and therefore has been excluded from the investment portfolios of at least five investors (see appendix) due to governance and environmental issues. The impact of the scandal has also rocked shareholders in Volkswagen, with an investor lawsuit being brought against Volkswagen in Germany by about 80 investors including Blackrock and Norway’s Sovereign Wealth Fund. The lawsuit accuses Volkswagen of failing to disclose the scale and nature of the emissions scandal.²⁷ In September 2015, the Dow Jones Sustainability Indices (DJSI) listed Volkswagen AG (VW) as “Industry Group Leader” and world’s most sustainable automotive group. A few days later VW was removed from the DJSI because of manipulated emissions tests.²⁸ At the same time MSCI downgraded VW from “BBB” to “CCC” for MSCI ESG Ratings and from Yellow to Red Flag for MSCI ESG Impact Monitor.²⁹ In December 2015, Volkswagen was also suspended from the FTSE ‘ethical’ index and will not be eligible to re-enter the index for at least two years.³⁰

→ Daniel Moser
Greenpeace, Germany

“Recent actions demonstrate that the company’s culture that incentivizes cheating and denies accountability comes from the very top and, even now, remains unchecked.”

Complaint filed in New York against VW³²

21 Hirsh, J and Puzanghera J (2015): VW exec blames “a couple of” rogue engineers for emissions scandal. 8 October. The LA Times. www.latimes.com (Accessed 11.12.2016)

22 Bryan, V (2016): VW’s Audi R&D head to be suspended over emissions scandal, 17 September. Reuters. www.reuters.com (Accessed 11.12.2016)

23 Ewing, J and Tabuchi, H (2016): Volkswagen scandal reaches all the way to the top, lawsuits say, 19 July. The New York Times. www.newyorktimes.com (Accessed 22.09.2016)

24 Enterprising Investor (2015): Volkswagen disaster could analysts see this coming? 24 September www.cfainstitutue.org (Accessed 11.12.2016)

25 MSCI (2016): Volkswagen scandal underlines need for ESG analysis. www.msci.com (Accessed 11.12.2016)

26 Jin, Hyunjoo (2016): South Korean to slap Volkswagen with record fine, pursue executives over emission ads. 6 December. Reuters. www.reuters.com (Accessed 11.12.2016)

27 Dauer, U (2016): Norway oil fund to sue Volkswagen over Emissions Scandal. 16 May. The Wall Street Journal. www.wsj.com (Accessed 19.09.2016)

28 S&P Dow Jones Indices (2016): Volkswagen AG to be Removed from the Dow Jones Sustainability Indices. www.sustainability-indices.com (Accessed 11.12.2016)

29 See supra note 25

30 Davidson, L (2015): Volkswagen suspended from FTSE ethical index following emission scandal. 8 December. The Telegraph. www.telegraph.co.uk (Accessed 11.12.2016)

31 Volkswagen (nd): What we stand for: Our values. Responsibility and Sustainability. www.volkswagen-karriere.de (Accessed 11.12.2016)

32 See supra note 23



▲ Aerial photo showing heavy equipment working at palm oil plantation owned by PT Papua Alam Lestari, a former supplier to Wilmar. © Mighty

Wilmar International Ltd

Wilmar International Ltd, an agribusiness group, is one of the largest palm oil plantation owners and the largest palm oil refiner in Indonesia and Malaysia with a net profit in 2015 of over USD 1 billion. It works throughout the entire palm oil chain from cultivation and oilseed crushing to refining. Wilmar is headquartered in Singapore, and is a member of the Roundtable on Sustainable Palmoil (RSPO).¹ Wilmar is a signatory of the UN Global Compact but does not specifically mention the importance of the UN Guiding Principles on business and human rights (see appendix).

Wilmar sources from numerous plantations to feed its demand for palm oil. In 2013 Wilmar pledged, “No deforestation, No peat and No exploitation” and promised to implement this by 2015. Despite this, and despite some progress on reporting and transparency², Wilmar is still continuously being linked to suppliers that have

cleared primary forests and High Carbon Forest Stock³. The clearing of these forests is in conflict with global climate goals, particularly when it is done through burning. During the seasonal burning in 2015, the forest fires in Indonesia emitted more CO² per day than the daily emissions of all the countries in the EU.⁴ In addition to carbon emissions the haze causes respiratory illnesses in hundreds of thousands of people in Indonesia.⁵ Deforestation also impacts on local and indigenous people, sensitive wildlife, and ecosystems. Indonesia has the highest rate of deforestation in the world.⁶

An NGO investigation in 2016 showed that Wilmar was directly sourcing from the South Korean company Korindo, which was systemati-

Loans:	
BNP Paribas	144.22
Estimated value of managed shares:	
Deutsche Bank	6.10
UBS	5.62
HSBC	4.81
BNP Paribas	0.93
Revenues:	35,486.83
Profit after tax:	1,038.39
ISIN:	SG1T56930848

All figures in € mln.
Date and currency of company report:
31.12.2015, USD (exchange rate
as of 31.12.2015, www.oanda.com)

1 Wilmar International Ltd. (2016): Corporate Profile. www.wilmar-international.com (Accessed 20.09.2016)

2 Chain Reaction Research (2016): Wilmar update report shows mixed progress on implementation, 2 February. <https://chainreactionresearch.com> (Accessed 20.09.2016)

3 This works on the premise that tropical forests hold large stores of carbon. High Carbon Stock Approach (2016). <http://highcarbonstock.org> (Accessed 20.09.2016)

4 King’s College London (2016): Indonesian forest fires helped increase atmospheric CO₂, 3 June. www.kcl.ac.uk (Accessed 20.09.2016)

5 Lamb, K (2015): Indonesia’s fires labelled a ‘crime against humanity’ as 500,000 suffer. The Guardian. 26 October. www.theguardian.com (Accessed 20.10.2016)

6 Bradford, A (2015): Deforestation: Facts, causes and effects. Live Science. 4 March. www.livescience.com (Accessed 20.11.2016)

“We acknowledge that there are ongoing labor issues in the palm oil industry, and these issues could affect any palm company operating in Indonesia.”

cally logging and burning primary rainforest in Indonesia. Korindo has eight concessions totalling 160,000 hectares and it has cleared more than 50,000 hectares (an area the size of Seoul). Fires in Korindo's concessions made up 0.7% of all Indonesia's burns, which is a substantial number for one company.⁷ However, despite Wilmar's "No Deforestation" policy which clearly includes a no burn policy, it was not until June 2016, when the NGOs shared their findings, that Wilmar cut Korindo off as a supplier.⁸ This highlights concerns with Wilmar's due diligence process, when, as a significant purchaser of palm oil, it is unable to identify errant producers. Wilmar must adopt a more proactive approach to identifying concerns.

Wilmar also sources from Genting Plantations Berhad, accused of clearing High Carbon Stock forest and High Conservation Value stock.⁹ As part of its grievance process, Wilmar engaged with Genting¹⁰, however evidence show multiple years of violations which Genting does not acknowledge.¹¹ The Norwegian Government Pension Fund has assessed Genting and concluded there is an unacceptable risk that Genting is clearing forested

areas.¹² Wilmar has not cut Genting out as a supplier. Felda Global Ventures has withdrawn its 58 mills from RSPO certification, apparently to "address sustainability issues in their supply chain",¹³ and has also been found to be clearing areas of High Conservation Value.¹⁴ Felda is also a supplier to Wilmar.

A recent report by Amnesty International has also shown evidence of labour abuses on Wilmar plantations, with children as young as 8 years old working on the plantations on the Indonesian islands of Kalimantan and Sumatra. Additionally women work for very low wages, for long hours and with insecure employment providing no healthcare or pensions. Often labourers use toxic chemicals with limited protection.¹⁵

→ Facing Finance

"Despite promising customers that there will be no exploitation in their palm oil supply chains, big brands continue to profit from appalling abuses."

Meghna Abraham,
senior investigator at Amnesty¹⁶

7 Bellantonio, M, Stoltz, A, Lapidus, D, Maitar, B and Hurowitz, G (2016): Burning Paradise: Palm Oil in the Land of the Tree Kangaroo. Mighty / SKP-KAME / PUSAKA / KFEM / Rainforest Foundation Norway / Transport & Environment. 1 September. (Accessed 20.09.2016) The full report is available to download at the following link: <http://app.shorthand.com>

8 Neslen, A (2016): Korean palm oil firm accused of illegal forest burning in Indonesia. The Guardian. 1 September. www.theguardian.com (Accessed 20.09.2016)

9 Vit, J (2016): Is this Malaysian palm oil firm still destroying forest in Borneo - and selling to Wilmar? Eco-Business. 11 February. www.eco-business.com (Accessed 20.09.2016)

10 Wilmar International Ltd. (2015): Addressing Supply Chain Issues through Dialogue: Wilmar, Supplier and NGO meet to discuss on actions needed to move forward. www.wilmar-international.com (Accessed 20.09.2016)

11 See supra note 9

12 The Council on Ethics For the Norwegian Government Pension Fund Global (2014): Recommendation on the exclusion of Genting Berhad from the Government Pension Fund Global's investment universe. The Government of Norway. 27 March. <http://nettsteder.regjeringen.no> (Accessed 20.09.2016)

13 Felda Global Ventures [FGV] (2016): FGV withdraws RSPO Certificate. 3 May. www.feldaglobal.com (Accessed 20.09.2016)

14 Levicharova, M, Paul, S and Wakker, E (2016): Felda Global Ventures (FGV:MK): RSPO credentials at risk, immediate cash flow impacts. Chain Reaction Research. April 2016. <https://chainreactionresearch.com> (Accessed 20.09.2016)

15 Danubrata, E (2016): Labor abuses found at Indonesian palm plantations supplying global companies. 30 November. Reuters. www.reuters.com (Accessed 5.12.2016)

16 See supra note 15

17 See supra note 15

FEATURES



Tecdron and FN Herstal's robotic weapon systems at the Eurosatory, Paris - June 2016.
© Facing Finance

Features

The business of war: Why FIs must exclude producers of autonomous weapon systems – sooner rather than later.

Several of the largest arms producing countries in the world, including the United States, China, Israel, South Korea, Russia, and the United Kingdom¹ are developing weapons systems that have increasing capabilities of autonomy.² Increasing levels of autonomy reduce human involvement in decision making, with developments rapidly moving towards fully autonomous systems with no human intervention. This means that life and death decisions are made by machines, incapable of human judgment and unable to understand context. Without these qualities it is impossible for these systems to make complex ethical choices, distinguish adequately between combatants and civilians, or consider the proportionality of a military attack. Therefore in addition to being accompanied by moral and accountability risks, the development of Lethal Autonomous Weapon Systems (LAWS) also pose fundamental challenges to their compliance with international human rights and humanitarian law.³

“Autonomous technologies will also change the face of warfare, with serious ramifications for international law ... Now it is time to take the next step.”⁴

Ban Ki Moon
Former UN-Secretary-General

On 30th of May 2013, an interactive dialogue was held at the United Nations Human Rights Council in Geneva, allowing Governments for the first time to present interests and concerns surrounding fully autonomous weapons (often called ‘killer robots’).⁵ This has been followed by the topic being included in discussions at the annual Convention on Certain Conventional Weapons (CCW) in Geneva, to examine the serious ethical, moral and legal issues posed by increasing autonomy in weapons systems. Most recently, on 16th of December 2016 at the CCW’s Fifth Review Conference, states agreed to establish a Group of Governmental Experts (GGE) on Lethal Autonomous Weapons Systems (LAWS) which marks another step closer to a prohibition on these weapons.⁶ It is critical that a prohibition is agreed under international law, before investments, technological development, and a new military doctrine make it too difficult to change course.

1 Fleurant, A, Perlo-Freeman, S, Wezeman, P D, Wezeman, S T and Kelly, N (2016): The SIPRI Top 100 arms-producing and military services companies, 2014. Stockholm International Peace Research Institute [SIPRI] Fact Sheet, December 2016. www.sipri.org (Accessed 20.09.2016)

2 Human Rights Watch (2016): Killer Robots. www.hrw.org (accessed 29.12.2016)

3 Human Rights Watch (2016): The dangers of Killer Robots and the need a preemptive ban. 9 December. www.hrw.org (Accessed 29.12.2016)

4 UN (2016): Convention on Certain Conventional Weapons among Most Critical Tools for Guarding against Human Suffering, Secretary-General Tells Review Conference. www.un.org (Accessed 02.02.2017)

5 Campaign to Stop Killer Robots (2013): Consensus killer robots must be addressed. www.stopkillerrobots.org (Accessed 29.12.2016)

6 Campaign to Stop Killer Robots (2016): Formal talks should lead to killer robots being addressed. www.stopkillerrobots.org (Accessed 29.12.2016)

There is no existing political regulation specifically governing the development and production of autonomous weapon systems, and as is the normal case, regulation lags behind technological development with the development of norms and standards being, typically, a slow process.⁷ Financial institutions (FIs) must therefore acknowledge the ethical and humanitarian considerations and consequences in the current debate process on autonomous weapons and should ensure that they monitor both the progress related to norms and standards and the companies in the process of developing and producing these weapon systems. The USD 830 billion Norwegian Government Pension Fund Global (GPFG) was the first investor to react to the development of these weapon systems. According to the Fund, LAWS are “relevant since the GPFG’s ethical guidelines state that the fund shall not be invested in companies which produce weapons that violate fundamental humanitarian principles through their normal use”.⁸ The GPFG acknowledges the development of conventions by the CCW, but stresses the importance of monitoring technological developments by companies in this field on a case by case basis.

Other FIs should now follow this example and expand their weapon policies to exclude companies involved in the development / production of LAWS⁹ as these weapon systems would pose a fundamental challenge to compliance with international human rights and humanitarian law. Thus FIs need to develop policies barring investment in companies developing these controversial weapon systems. These companies may be traditional aerospace and defence companies but also newcomers in the technology industry.¹⁰ The design, development and use of these weapons pose a fundamental challenge to the protection of civilians and to compliance with international human rights and humanitarian law and should be considered unethical.¹¹ A conscious decision must be made not to take the world down this dangerous path.

→ Facing Finance

7 Financial Times (2016): Military killer robots create moral dilemma. 24 April. The Financial Times. www.ft.com (Accessed 29.12.2016)

8 Council on Ethics for the Norwegian Government Pension Fund (2016): Annual Report 2015. www.etikkradet.no (Accessed 29.12.2016)

9 Evidence gathered by Facing Finance at international arms fairs such as IDEF in Abu Dhabi shows that a number of companies, including KAI (Korea Aerospace Industries Ltd.), Samsung Techwin, IAI and Elbit Systems from Israel, BAE Systems, Rheinmetall, Leonardo, Lockheed Martin, or HDT Robotics, iRobot, QinetiQ and Northrop Grumman, are hard working to meet future military requirements – the development of (fully) autonomous weapons.

10 PWC (2106): Industry Perspectives – 2016 Aerospace and Defense Industry Trends. www.pwc.com (Accessed 29.12.2016)

11 Walsh, T (2016): Why the UN must move forward with a Killer Robots ban. 15 December. IEEE Spectrum. www.spectrum.ieee.org (Accessed 29.12.2016)

12 Interview with ZDF Frontal 21, Autonome Kampfroboter – Gefahr durch neue Waffensysteme?, 13.12.2016. www.zdf.de (Accessed 29.12.2016)



▲ Tyroc’s “Tecdrone” roboter weapon, able to operate in a fully autonomous mode, was presented at the EUROSATORY weapon show in Paris, June 2016. © Facing Finance

“Humans need to grow accustomed to their new comrades. They have to trust machines which undoubtedly have the potential for failure or accidents – a deficiency we must eliminate. Just as machines like washing machines or microwaves help to make human life much easier, machines also provide military support. Being constantly perfected, one day, armed machines might conduct war in place of human beings.”¹²

Antoine Wiedemann (Tecdrone)

Features

Child workers in danger on tobacco farms

In Indonesia – a country of more than 250 million people – nearly two-thirds of men and boys ages 15 and over smoke tobacco products daily.¹ Every pack of cigarettes sold in Indonesia, as in many countries around the world, contains a warning that the product may be harmful to human health.² These packs of cigarettes, and those sold outside of Indonesia, should contain a second warning: “This product may be made with child labour.”

Indonesia is the world’s fifth-largest tobacco producer, with more than half a million tobacco farms nationwide.³ Though national laws prohibit children from performing hazardous work, thousands of children in Indonesia, some just 8 years old, work in hazardous conditions cultivating and harvesting tobacco that goes into products sold in Indonesia and abroad. Indonesian and multinational companies purchase tobacco from Indonesia, and none of these companies do enough to ensure that the tobacco they use in their products was not produced with hazardous child labour.

Hazardous work:

While not all work is harmful to children, the International Labour Organization’s (ILO) Worst Forms of Child Labour Convention, ratified by Indonesia in 2000, defines hazardous work as “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”⁴ Human Rights Watch found that children working on tobacco farms in Indonesia perform tasks that pose serious risks to their health and safety.⁵

Tobacco in any form contains nicotine,⁶ and when workers handle tobacco plants, they can absorb nicotine through their skin. In the short term, absorption of nicotine through the skin can lead to acute nicotine poisoning, called Green Tobacco Sickness. The most common symptoms are nausea, vomiting, headaches, and dizziness.⁷

Human Rights Watch interviewed 227 people, including 132 child tobacco workers in Indonesia, ages 8 to 17, for a report published in May 2016. All children interviewed described routinely handling tobacco leaves and plants, particularly during the harvest and the curing process. Approximately half of the children said they had experienced at least one specific symptom consistent with acute nicotine poisoning while working in tobacco farming. Many reported multiple symptoms. For example, Rio, a tall 13-year-old boy, worked on tobacco farms in his village in Magelang, Central Java, in 2014. He told Human Rights Watch: “After too long working in tobacco, I get a stomach ache and feel like vomiting. It’s from when I’m near the tobacco for too long.” He likened the feeling to motion sickness, saying “It’s just like when you’re on a trip, and you’re in a car swerving back and forth.”⁸

The long-term effects of nicotine absorption through the skin have not been studied, but public health research on smoking suggests that nicotine exposure during childhood and adolescence may have lasting consequences on brain devel-

1 The World Bank (2015): Indonesia: Country at a Glance. www.worldbank.org (Accessed 19.09.2016); World Health Organization (WHO) (2015): WHO Report on the Global Tobacco Epidemic, 2015. Country Profile, Indonesia. www.who.int (Accessed 22.01.2016)

2 World Health Organization (WHO) (2015): WHO Report on the Global Tobacco Epidemic, 2015. Country Profile, Indonesia. www.who.int (Accessed 22.01.2016)

3 Food and Agriculture Organization of the United Nations, Statistics Division (FAOSTAT) (2013): Food and Agricultural Commodities Production / Countries by Commodity. <http://faostat3.fao.org> (Accessed 15.12.2015); Email from Indonesian Ministry of Agriculture, to Human Rights Watch, 19 October 2015

4 International Labor Organization Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (Worst Forms of Child Labor Convention), adopted 17 June 1999, 38 I.L.M 1207 (entered into force 19 November 2000), ratified by the United States on 2 December 1999, art. 3

5 Human Rights Watch (2016): The Harvest is in My Blood: Hazardous Child Labor in Tobacco Farming in Indonesia, 24 May. www.hrw.org (Accessed 19.09.2016)

6 Human Rights Watch telephone interview with Dr. Thomas Arcury, director, Center for Worker Health at Wake Forest School of Medicine, 24 February 2014

7 See for example, Arcury, T A, Quandt, S A and Preisser, J S (2001): Predictors of Incidence and Prevalence of Green Tobacco Sickness Among Latino Farmworkers in North Carolina, USA. *Journal of Epidemiology and Community Health* 55(11) pp 818–824; Arcury, T A, Quandt, S A, Preisser, J S and Norton, D (2001): The Incidence of Green Tobacco Sickness Among Latino Farmworkers. *Journal of Occupational and Environmental Medicine* 43(7) pp 601–609; Arcury, T A, Quandt, S A, Preisser, J S, Bernert, J T, Norton, D and Wang, J (2002): High levels of transdermal nicotine exposure produce green tobacco sickness in Latino farmworkers. *Nicotine & Tobacco Research* 5(3) pp 315–321; Gehlbach, S H, Williams, W A, Perry, L D, Freeman, J I, Langone, J J, Peta, L V and Van Vunakis, H (1975): Nicotine Absorption by Workers Harvesting Green Tobacco. *The Lancet* 305(7905) pp 478–480

8 Human Rights Watch interview with Rio, 13, Ismaya, 13, Sugi, 14, and Akmad, 14, Magelang, Central Java, 14 September 2014



▲
An 11-year-old girl ties tobacco leaves onto sticks to prepare them for curing in East Lombok, West Nusa Tenggara.
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opment.⁹ Studies have found that non-smoking adult tobacco workers have levels of nicotine in their bodies similar to those of smokers in the general population.¹⁰ Child tobacco workers in Indonesia also said they handle and apply pesticides, fertilizers, and other chemical agents used on tobacco farms. A number of children reported feeling sick immediately after handling or working in close proximity to these chemicals.

Children are particularly vulnerable to harm from exposure to toxins like nicotine and pesticides because their brains and bodies are still developing. Pesticide exposure has been associated with long-term and chronic health effects including respiratory problems, cancer, depression, neurologic deficits, and reproductive health problems.¹¹

9 Goriounova, N A and Mansvellder, H D (2012): Short- and Long-Term Consequences of Nicotine Exposure during Adolescence for Prefrontal Cortex Neuronal Network Function. *Cold Spring Harbor Perspectives in Medicine* 2(12) pp 1-14; Dwyer, J B, McQuown, S C and Leslie, F M (2009): The Dynamic Effects of Nicotine on the Developing Brain. *Pharmacology & Therapeutics* 122(2) pp 125-139; United States Department of Health and Human Services (2014): The Health Consequences of Smoking – 50 Years of Progress. A Report of the Surgeon General. www.surgeongeneral.gov (Accessed 28.09.2015)

10 Individual variation would be expected based upon the use of personal protective equipment, season, and contact with tobacco, and abrasions on the skin, as well as other factors. Schmitt, N M, Schmitt, J, Kouimintzis, D J and Kirch, W (2007): Health Risks in Tobacco Farm Workers – A Review of the Literature. *Journal of Public Health* 15(4) pp 255-264

11 McCauley, L A, et al (2006): Studying Health Outcomes in Farmworker Populations Exposed to Pesticides. *Environmental Health Perspectives* 114(6) pp 953-960; Karr, C (2012): Children's Environmental Health in Agricultural Settings. *Journal of Agromedicine* 17(2) pp 127-139

Many children also suffered pain and fatigue from carrying heavy loads or engaging in repetitive motions for prolonged periods of time. Few of the children interviewed, or their parents, understood the health risks or were trained on safety measures. Most of the children worked outside of school hours, but Human Rights Watch found that work in tobacco farming interfered with schooling for some children.

Child labour and the tobacco supply chain:

Tobacco grown by small, independent farmers in Indonesia enters the supply chains of Indonesian tobacco companies of various sizes, as well as the world's largest multinational tobacco companies. The largest tobacco product manufacturers operating in Indonesia include three Indonesian companies – PT Djarum, PT Gudang Garam Tbk, and PT Nojorono Tobacco International – and two companies owned by multinational tobacco companies – PT Bentoel Internasional Investama, owned by British American Tobacco, and PT Hanjaya Mandala Sampoerna Tbk, owned by Philip Morris International. Other Indonesian and multinational companies also purchase tobacco grown in Indonesia.

Most tobacco in Indonesia is bought and sold on the open market through traders. However, some farmers sell tobacco directly to companies under contract. Human Rights Watch shared its findings with 13 companies, and 10 responded. None of the Indonesian companies provided a detailed or comprehensive

response, and the largest two, Djarum and Gudang Garam, did not respond at all despite repeated attempts to reach them. The multinational companies that responded prioritize purchasing tobacco through direct contracts, but all purchase some tobacco on the open market, and none of them are able to trace where the open market tobacco they purchase was produced, or under what conditions.¹² When companies do not know where the tobacco they purchased was produced, they have no way of knowing whether human rights abuses, like child labour, occurred in their supply chains.

Most tobacco grown in Indonesia is used for domestic production, but a large quantity is also exported.¹³ This means that consumers in the United States, Europe, and beyond, could be purchasing tobacco products produced with child labour.

The responsibility of companies and investors:

The United Nations (UN) Guiding Principles on Business and Human Rights, which the UN Human Rights Council endorsed in 2011, recognize that all companies should respect human rights, avoid complicity in abuses, and ensure that any abuses that occur in spite of these efforts are adequately remedied. The Guiding Principles specify that businesses should exercise human rights due diligence to identify human rights risks associated with their operations, take effective steps to prevent or mitigate those risks, and ensure that the victims of any abuses that occur despite those efforts have access to remedies.¹⁴ The Guiding Principles are widely accepted as a legitimate articulation of businesses' human rights responsibilities.

Since 2009, based also on previous studies in Kazakhstan¹⁵ and the US¹⁶, Human Rights Watch has met and corresponded with multinational tobacco companies, to urge them to take

meaningful steps to eliminate hazardous child labour from their global supply chains. Some have adopted new protections for child workers, but none prohibit children from all work involving direct contact with tobacco.

To comply with the responsibilities under the UN Guiding Principles, all tobacco companies should adopt global human rights policies—or revise existing policies—to prohibit hazardous child labour anywhere in the supply chain, including any work in which children have direct contact with tobacco in any form. Companies should establish or strengthen human rights due diligence procedures with specific attention to eliminating hazardous child labour in all parts of the supply chain, and regularly and publicly issue detailed reports on their efforts to identify and address human rights problems in their supply chains.

Shareholders can play an important part in driving company practice in the right direction. They can raise concerns with other engaged investors and with the company investment relations team, or introduce a shareholder resolution calling on companies to implement clear human rights due diligence policies and procedures. Shareholders can also choose to divest from companies engaged in human rights violations.¹⁷

Given that labour violations have been documented in tobacco farming in a number of countries, financial institutions investing in tobacco companies can help ensure that effective due diligence is applied to this sector. Investors can push companies to provide information on their policy and practice regarding the elimination of child labour in their supply chains. Investors can have real leverage, using their voices to press tobacco companies to continue to develop and implement effective human rights due diligence processes.

→ Margaret Wurth
Human Rights Watch, USA

12 Copies of Human Rights Watch's correspondence with the companies is available in an online appendix to the 2016 report. www.hrw.org. Human Rights Watch (2016): *The Harvest is in My Blood: Hazardous Child Labor in Tobacco Farming in Indonesia*, 24 May. www.hrw.org (Accessed 19.09.2016)

13 Indonesian Ministry of Agriculture, Directorate General of Estate Crops (2014): *Tree Crop Estate Statistics Of Indonesia 2013–2015*. Jakarta, December 2014. <http://ditjenbun.pertanian.go.id> (Accessed 16.12.2015)

14 UN Human Rights Council (2011): *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. – The UN Human Rights Council endorsed the Guiding Principles in resolution 17/4 of 16 June 2011: UN Human Rights Council (2011): *Human Rights and Transnational Corporations and Other Business Enterprises. Resolution 17/4, A/HRC/17/L.17/Rev.1*; UN Human Rights Council (2008): *Mandate of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises. Resolution 8/7, A/HRC/RES/8/7*

15 Buchanan, J et al (2010): *Hellish Work. Exploitation of Migrant Tobacco Workers in Kazakhstan*. Human Rights Watch. July 14. www.hrw.org (Accessed 29.12.2016)

16 Human Rights Watch (2015): *Teens of the Tobacco Fields: Child Labor in United States Tobacco Farming*, 9 December. www.hrw.org (Accessed 13.10.2016); Human Rights Watch (2014): *Tobacco's Hidden Children: Hazardous Child Labor in United States Tobacco Farming*, 13 May. www.hrw.org (Accessed 13.10.2016)

17 See supra note 15

Features

Transnational pharmaceutical companies' clinical drug trials in Egypt: ethical questions in a challenging context

"A company's clinical trials should observe the highest ethical and human rights standards, including non-discrimination, equality and the requirements of informed consent. This is especially vital in those States with weak regulatory frameworks."

UN Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines¹

Over the past two decades, the location of clinical drug trials sponsored by transnational pharmaceutical companies has shifted from affluent Western countries to low- and middle-income countries. Among the top emerging pharmaceutical markets – so-called 'pharmerging countries'² – Egypt has become a popular destination for clinical trials, with the number of clinical drug trials in Egypt nearly tripling between 2008 and 2011.³ The Arab spring events of early 2011 and the subsequent political unrest had no chilling effect on the number of active international drug trials – on the contrary. A major concern is that due to the absence of a robust legislative framework for clinical trials and the subsequent absence of sufficient independent oversight and monitoring by the Egyptian authorities, there is an increased risk of vulnerable patients not being adequately protected and being exploited as trial participants.⁴ Note that all research information has been extracted from the report compiled and published by SOMO, Wemos, Public Eye in June 2016.

The attractiveness of Egypt for drug trials

Egypt, as a clinical trial location, provides distinct 'advantages' to pharmaceutical firms, similar to those in better-known offshoring destinations, such as India or China. First, patient recruitment is relatively easy and cheap. Egypt's population is growing fast and has a large pool of patients with a wide range of diseases that are attractive for drug testing: there is a high prevalence of cancer, and the prevalence of hepatitis C in Egypt is the highest in the world. Second, a large portion of the population can be described as 'treatment-naïve', i.e. individuals who have not received earlier treatment for a given illness. Finally, recruitment of trial patients is easier due to the lack of affordable treatments. Egypt also has an attractive infrastructure (e.g. hospitals and staff) required for conducting trials, and price levels for trials are far lower than in Western countries.

In February 2016 57 active drug trials were registered in Egypt, compared to 200 in South Africa (one of the most popular clinical trial locations in Africa).⁵ Twenty-one international pharmaceutical companies were running trials, however just two Swiss companies – Novartis and Roche – sponsored almost half of all trials. Trials were predominantly focused on cancer, with over half of all international active drug studies being cancer trials, followed far behind by infectious diseases (10%, mainly hepatitis C trials) and metabolic disorders (10%, mainly diabetes).

1 Published in the report to the General Assembly of the UN Special Rapporteur on the right to the highest attainable standard of health (UN document: A/63/263, dated 11 August 2008). www.who.int (Accessed 11.12.2016)

2 IMS Institute for Healthcare Informatics (2015): Global Medicines Use in 2020: Outlook and Implications. www.imshealth.com (Accessed 1.3.2016)

3 Matar A, Silverman H. (nd): Perspectives of Egyptian Research Ethics Committees Regarding Their Effective Functioning. *Journal of empirical research on human research ethics: JERHRE*. 2013;8(1):32-44. doi:10.1525/je.2013.8.1.32. www.ncbi.nlm.nih.gov (Accessed 28.2.2016)

4 All research information has been extracted from the report compiled and published by SOMO, WEMOS, Public Eye (2016): Industry Sponsored Clinical Drug trials in Egypt. June. www.somo.nl

5 US National Institute of Health (nd): Clinical Trials registry. www.clinicaltrials.gov (Accessed 11.12.2016)

Clinical trial participant
© Roger Anis



Ethical guidelines and regulations

Clinical trial participants provide a great service, putting themselves at risk to establish whether a treatment is safe and effective for others. Ethical guidelines exist to protect these people.⁶ The leading international ethical standards applicable to how pharma companies should conduct of clinical trials in low- and middle-income countries are the Declaration of Helsinki and the Council for International Organizations of Medical Sciences (CIOMS) Guidelines. These guidelines stipulate that every clinical trial participant is entitled to the highest possible standard of care, where this is not possible it is considered unethical and exploitative to run tests in that country.⁷ The guidelines refer specifically to vulnerable groups – including that specific safeguards should be in place to protect the rights and welfare of vulnerable persons; the research should be justified as responsive to the needs of this group and unable to be carried out in a non-vulnerable group, additionally this group should stand to benefit.⁸

Although Egypt lacks a robust legislative framework for clinical trials, there are some regulations that address experimenting on humans. The most relevant to mention here is the regulation that prohibits the use of foreign pharmaceutical products in clinical trials that are not approved in their country of origin (law 127/1955 of practicing pharmacy, article 59).

Unethical practices

One of the pillars of ethical clinical trials is ‘informed consent’. In Egypt, the lack of access to standard treatment – due to the high proportion of people living in poverty and a public health insurance system that covers only half of the population – means that people who are seriously ill have little choice but to participate in risky clinical trials in order to access free (but experimental) treatment. To receive treatment, participants will sign up despite the risks, making their consent neither voluntary nor informed. The Coordinator of the Commission for Defending the Right to Health goes as far as to say, that the informed consent of a volunteer is meaningless in Egypt, given the high rates of poverty. For example, one of the cancer patients in the study noted, “I was so happy to have an opportunity for treatment after having lost hope. I signed the informed consent form immediately and did not care to read it in detail.” The side effects and risks of clinical trials can also be unclear to these patients and treatment for the side effects can be costly and the pain unbearable. According to the Declaration of Helsinki, this constitutes an ethical violation. In fact, the lack of access to treatment and economic vulnerability defines these patients as vulnerable and therefore unfit for a standard informed consent process.

The cancer trials in particular (constituting the majority of the trials in Egypt), show the vulnerability of Egyptian trial participants and the dichotomy of treatment received in contrast to cancer patients in high-income countries. In affluent countries, cancer patients receive a proven standard treatment first. Experimental treatments are regarded as the last option. For some Egyptian cancer patients, the experimental treatment is their only option, which means that the best-proven treatment is denied to them. This is unethical and exploitative according to leading ethical guidelines.

6 Department of Health and Human Services (nd): Patient recruitment: Ethics in clinical research. <https://clinicalcenter.nih.gov> (Accessed 11.12.2016)

7 Ravinetto, R et al (2014): Globalisation of clinical trials and ethics of benefit sharing. *The Lancet Haematology*, Volume 1, Issue 2, e54–e56. www.thelancet.com (Accessed 31.5.2016)

8 World Medical Association (2013): Declaration of Helsinki – Ethical Principles for Medical Research Involving Human Subjects, paragraph 20. www.wma.net (Accessed 22.5.2016)

The research additionally revealed that in the case of at least three trials, foreign cancer medications were tested in Egypt despite not having approval in their country of origin. This violates the above mentioned Egyptian Regulation (127/1955). To name just a few trials: Roche tested Vemurafenib, a colectoral cancer medication that has not yet been approved in its originating country for this indication, and AbbVie sponsored a trial for cancer treatment with veliparib, a non-approved medication without a brand name so far.

Medicines: unaffordable, unavailable

One way in which companies can legitimately demonstrate that they are improving the lives of the population is through affordable access to treatment after the trial is completed. According to the ethical guidelines, the benefits of research should be shared with the population where the clinical trials are carried out – this includes the right to continued treatment once the trial is over (post-trial access), and affordability of the tested product when proven successful. No evidence was found of post-trial access to treatment mechanisms put in place in Egypt. Pharmaceutical companies undertaking clinical trials in Egypt have noted that they endeavour to ensure their products are available to the population. For example, Novartis Oncology says, “We commit to registering our new treatments in every country that has participated in the clinical trials and to making the treatments commercially available wherever feasible.” However, in Egypt not all tested medicines proved to be affordable or available for the Egyptian population. The research found that in a sample of 24 medicines tested in Egypt, 9 did not receive market approval, 15 were approved, but 75% of these were not state-subsidised, making them unaffordable to the vast majority of Egyptians. For example, one cancer treatment from Novartis costs 15 times the minimum wage.

Company responsibilities

While fulfilment of ethical guidelines is often included in clinical trial documents and corporate social responsibility policies of companies, the findings of the research clearly show that – in reality – companies do not adhere to the highest standards. Moreover, research also identified the violation of a specific

Egyptian regulation (mentioned above) that was established to protect Egyptians from being used as guinea pigs. Companies should act upon patients’ vulnerable status and take additional measures to protect the safety and rights of the participants, as stated in the Declaration of Helsinki and CIOMS Guidelines. However, pharmaceutical companies appear to be using the less stringent standard – Good Clinical Practice Guidelines (ICH GCP). In light of the increasing number of clinical trials involving vulnerable populations, companies should go beyond the corporately influenced ICH Guidelines and follow the Declaration of Helsinki and CIOMS Guidelines.

Pharmaceutical companies have to comply with the UN Guiding Principles on Business and Human Rights. These stipulate that companies have to respect human rights – and a breach of ethical standards should be considered a human rights violation.⁹ Pharmaceutical companies should carry out a thorough due diligence process to identify the risks of human rights abuses. They should oversee and report on the measures taken to protect trial participants and to prevent ethical violations when they test medications in a low- and middle-income country. For ethical purposes, they should justify the inclusion of vulnerable groups, and ensure informed consent, post-trial availability of treatments, and that patients receive the best-proven treatment. Companies can and should ensure that the wider population benefits from the clinical trial. This would mean that companies then make a lasting difference in the lives of those in low- and middle-income countries and actually work towards reducing unequal access to healthcare.

→ Pearl Heinemans (Wemos), Irene Schipper (SOMO), Patrick Durisch (Public Eye)

9 Fatma E. Marouf, Bryn S. Esplin (2015) : Setting a Minimum Standard of Care in Clinical Trials: Human Rights and Bioethics as Complementary Frameworks. *Health and Human Rights Journal*. no1 vol 17. 4 June. www.hhrjournal.org (Accessed 11.12.2016)

Features

The shadowy world of offshore companies: tax avoidance, evasion, and money laundering

The revelations in the Panama Papers have allowed a glimpse into the murky world of offshore tax havens, and made it clear that money laundering and tax evasion through the use of shell companies occurs far more frequently, and forms a larger part of the business model and services offered by banks and law firms, than the public ever understood. A data leak at the Panamanian law firm Mossack Fonseca and the resultant meticulous analysis of this information by journalists at the International Consortium of Investigative Journalists (ICIJ), show that the law firm and the banks involved unscrupulously created anonymous companies in the form of shell companies, foundations, and trusts – allowing customers to effectuate tax avoidance, or evasion.¹ The invisible thread tying together elements of the Panama Papers is anonymity and institutional secrecy. Additionally, it is not only tax evasion that is enabled through these types of structures, criminals engaging in the trafficking of drugs, weapons and people, corruption, and the financing of terrorist groups, are able to use the same opaque offshore structures as political leaders, celebrities, top athletes and businessmen.

According to the journalists at the *Süddeutsche Zeitung*, at least 14 German banks established or managed over 1,200 shell companies for their clients through Mossack Fonseca.² Six of the seven largest banks had relationships with Mossack Fonseca: the Deutsche Bank, Commerzbank, DZ Bank, HypoVereinsbank, Landesbank Baden-Württemberg and Bayern LB. This is therefore illustrative of a practice that is structurally rooted deep in the national and international banking and economic

system and Mossack Fonseca is clearly one of many businesses providing this service. The enormity of the phenomenon is difficult to grasp; a study published in 2010 by the Tax Justice Network, entitled “The Price of Offshore Revisited”, came to the conclusion that a fifth of the world’s wealth is currently hidden from countries’ tax authorities.³

The impacts of these practices can be felt close to home, and in a time of austerity policies international tax evasion and money laundering prevents the necessary spending on public services.⁴ Such a systemic problem, affecting the daily life of so many citizens, can only be resolved through a systemic overhaul. Full transparency is therefore urgently needed to disclose the identity and beneficial ownership of all shell companies, foundations, trusts and other entities, in this way ending the anonymity and institutional secrecy. The revisions to the (Fourth) EU Anti-Money Laundering Directive adopted in May 2016⁵ committed each member state to introduce a central register detailing the (ultimate beneficial) ownership of companies and businesses. In November 2014 however, the German federal government (together with for example Malta and Cyprus) opposed a mandatory provision to disclose these registers, despite the publication of these registers being allowed.⁶ The German Federal Ministry of Finance has recently

1 Obermayer B, Obermaier F (2016): Panama Papers: Die Geschichte eine weltweiten Enthüllung. KiWi, p.257. www.kiwi-verlag.de

2 Süddeutsche Zeitung (2016): Panama Papers: Eine Briefkastenfirma, bitte. panamapapers.sueddeutsche.de (Accessed 11.12.2016)

3 Henry, James S. (2012): The Price of Offshore Revisited. New Estimates for Missing Global Private Wealth, Income, Inequality and Lost Taxes. July. Tax Justice Network. www.taxjustice.net (Accessed 11.12.2016)

4 Public Services International (2016): Austerity is unjustifiable while richest are allowed to dodge taxes: Panama Papers highlight hypocrisy. 5 April. www.world-psi.org (Accessed 11.12.2016)

5 European Commission (2016): Press release: Commission strengthens transparency rules to tackle terrorism financing, tax avoidance and money laundering. 5 July. www.europa.eu (Accessed 11.12.2016)

6 Tax Justice Network (2016): As #PanamaPapers break, Europe plans to water down company ownership transparency. 8 April. www.taxjustice.net (Accessed 11.12.2016)

softened its position and, according to a November draft of the Transparency Register⁷, from 2017 onwards it will be possible to view the ownership information online for a small fee.

Many arguments clearly advocate for public registers⁸, a consideration in this regard is also the costly bureaucratic administrative expense of conducting restricted access. It is for this reason that the Dutch Ministry of Finance decided to make their information public.⁹ Additionally, a public register would improve the quality of the information provided, as, at present, it is not anticipated that the authorities would verify the information. Significantly more important is the cumulative effect that an EU-wide public register would have, allowing citizens, not only within the EU but also from the global south, to investigate illegitimate or illegal funds expropriated from their countries.

The introduction of such public registers is one of the key requirements lobbied for by the Global Alliance of Tax Justice, of which the German Netzwerk Steuergerechtigkeit is a member. A further important requirement is for public country-specific reporting for multinational companies. Multinationals use different tax avoidance methods to rich individuals, therefore they were not prevalent actors in the Panama Papers. Nevertheless, this problem is extremely virulent, as shown, for example, in the LuxLeaks scandal. Thanks to two whistleblowers, in early November 2014 it became known that the Luxembourg tax authorities agreed so called “Sweetheart deals” with many multinational companies. The tax avoidance methods of 340 international companies and the assistance provided by the auditing firm PricewaterhouseCoopers (PwC) and its three major competitors, came to light through the release of the LuxLeaks information. Apple, Amazon, Heinz, Pepsi, Ikea and Deutsche Bank drove down the tax rates on their Luxemburg profits to below one percent.¹⁰ Additionally,

recent reports regarding the German chemical company BASF, who shifted the majority of their income to the Netherlands to reduce their tax bill¹¹, make it clear that political action against corporate tax avoidance is urgently needed.

All citizens are impacted in some way by tax avoidance or evasion, however, those in the global south are the ones who suffer the consequences disproportionately. Oxfam estimates the loss by tax avoidance in developing countries to be 6–13% of the tax revenues.¹² According to the IMF, in 2015 these countries lost USD 200 billion by tax evasion, the states of the OECD USD 400 billion.¹³ Publicly accessible country-specific consolidated balance sheets would enable disclosure of where the companies are economically active, how much profit is generated, and where they pay (or do not pay) their taxes. In the EU banking sector, there are already such public country-by-country-reports. With the help of these reporting obligations, French NGOs investigated and published a report in March 2016, showing five large French banks’ activities and taxes. It was revealed that the five French banks have a total of 16 subsidiary branches in the Cayman Islands earning profits of €45 million – without employing a single person.¹⁴ In order to further these types of investigations, moreover for other economic sectors, public country-specific reporting requirements should be introduced.

Finally, any forthcoming reforms must make it clear that it is in no way legitimate for either rich individuals or multinational corporations to coopt the finances designated for public welfare. It is clear that governments must ensure information on illicit and immoral tax activities is made public and that specific measures are taken to ensure wealthy individuals and companies pay their fair share.

→ Lisa Großman, Netzwerk Steuergerechtigkeit

7 PWC (2016): Referentenentwurf zur Umsetzung der 4. EU-Geldwäscherichtlinie, zur Ausführung der EU-Geldtransferverordnung und zur Neuorganisation der Zentralstelle für Finanzsanktionsuntersuchungen. 16 December. www.blogs.pwc.de (Accessed 23.12.2016)

8 Oxfam (2016): From Poverty to Power: The Global Beneficial Ownership Register: A new approach to fighting corruption by combining political advocacy with technology. 11 May. www.oxfam.org (Accessed 11.12.2016)

9 Financial Transparency Coalition (2016): Dutch government plans to grant public access to beneficial ownership register. 12 February. www.financialtransparency.org (Accessed 11.12.2016)

10 EurActive (2015): Court finds culprit for Luxleaks scandal: The journalist who broke the story. 24 April. www.euractiv.com (Accessed 11.12.2016)

11 Auerbach, M (2016): Toxic tax deals: When BASF’s tax structure is more about style than substance. Greens in the European Parliament. www.sven-giegold.de (Accessed 11.12.2016)

12 Cobham, Alex/Gibson, Luke (2016): Ending the Era of Tax Havens. Why the UK government must lead the way (Oxfam Briefing Paper). www.oxfam.com (Accessed 11.12.2016)

13 Crivelli, E, de Mooij, R and Keen, M (2015): Base Erosion, Profit Shifting and Developing Countries IMF Working Paper 15/118. 14 June. www.imf.org (Accessed 11.12.2016)

14 Oxfam (2016): New report reveals prominent role of tax havens for banks. 16 March. www.oxfam.org (Accessed 11.12.2016)

Features

Unequal promises: The divergent definitions of coal divestment

Divestment refers to the selling of specific assets by shareholders, divestment can also, however, take the form of “shareholders intentionally selling their assets from a company to enact social change.”¹ This type of social or protest divestment began with the anti-apartheid movement in the 1970s/80s. Recently, this type of divestment pressure has once again been in the spotlight. Particularly focused on fossil fuel companies, it has successfully been utilised mainly by the climate and fossil free movement and has led to many investors announcing divestments either on the grounds of stranded assets, or for ethical reasons. This article looks at how coal divestment can work to materially affect the industry, and reduce carbon emissions. The concept of “impact divesting” will be used to distinguish between shiny divestment promises and what can be achieved when applied correctly – the financial depletion of an entire industry.

In order to keep the global temperature rise below 2°C, let alone 1.5°C, at least 80% of fossil fuels must remain in the ground.² Of all the fossil fuels, coal has the highest CO₂ emissions.³ More than 60% of the rise in global CO₂ emissions since 2000 can be attributed to the burning of coal⁴ – particularly in Asia where new coal-fired power plants enter the grid almost daily.⁵ To limit global warming, coal mining and burning must be stopped and any newly planned coal-fired power plants must not be built. Minimising financial flows into the coal sector will ensure a halt to these activities and have tangible climate change impacts.

When investors make public promises to divest from fossil fuel they usually get great marketing and PR out of their announcement. However, when comparing investors’ differing commitments, it becomes clear that they are not all equally meaningful. One example is that of the Norwegian Government Pension Fund (GPF). After the GPF was first approached by NGOs regarding its coal investments, it became clear there were divergent views of what was considered a ‘coal investment’. While the fund’s management claimed coal investments totalled €278 million, NGOs estimated that they totalled €8.8 billion.⁶ In February 2015, a few months after the estimates appeared, a Guardian article entitled: “sovereign wealth fund dumps dozens of coal companies”⁷ was released. The full story was revealed in late March, when GPF published its list of holdings⁸, showing that the pension fund had sold its assets in most US coal mining companies. However, it had replaced these by acquiring new assets in US utilities, heavily dependent on coal.⁹ Across the entire investment portfolio, the money had therefore been shifted rather than divested. In June 2015, the Norwegian parliament decided that the GPF should divest from coal mining companies and utilities where more than 30% of their business revenues are derived from coal. This clear criterion makes it possible to estimate the size of the divestment. NGOs estimate that the divestment sum could now total €7.7 billion.¹⁰ This case shows how important transparency is for monitoring the implementation of divestment announcements.

1 Gethard, G (n.d.): Protest Divestment And The End Of Apartheid. www.investopedia.com. (Accessed 31.10.2016)

2 The Rolling Stone (2012): Global Warming’s Terrifying New Math – Three simple numbers that add up to global catastrophe – and that make clear who the real enemy is. 19 July. www.rollingstone.com (Accessed 31.10.2016)

3 World Bank (2014): Understanding CO₂ Emissions from the Global Energy Sector. 24 February. documents.worldbank.org (Accessed 10.10.2016)

4 International Energy Agency (2013): Coal Medium-Term Market Report. www.iea.org (Accessed 10.10.2016)

5 Coalswarm and Sierra Club (2016) Boom and Bust – Tracking the Global Coal Plant Pipeline, March. www.sierraclub.org (Accessed 10.10.2016)

6 Aftenposten (2014): Ny rapport: Oljefondet lasser på med kull. 24 November. www.aftenposten.no (Accessed 04.10.2016)

7 The Guardian (2015): World’s biggest sovereign wealth fund dumps dozens of coal companies. 5 February. www.theguardian.com (Accessed 04.10.2016)

8 Framtiden i våre hender (2015): Kullvekst tross nedslag i Oljefondet. 10 April. www.framtiden.no (Accessed 04.10.2016)

9 urgewald (2015): Still Dirty, Still Dangerous. 21 May. www.urgewald.org (Accessed 04.10.2016)

10 Magill, B (2016): Natural Gas Poised to Surpass Coal For Electricity in U.S. 18 March. www.climatecentral.org (Accessed 04.10.2016)

Beside the GPF, coal divestment policies have been announced by pension funds, including CalSTRS (California State Teachers' Retirement System) and KLP, as well as insurance companies, for example AXA and Allianz. The second largest US public pension fund CalSTRS and Norway's largest private pension fund KLP have both issued coal divestment policies, however, despite KLP's small asset size compared to CalSTRS, its divestment sum is far greater. This is down to a more comprehensive coal divestment policy. KLP also periodically publishes a list of excluded companies and has publically stated that money from fossil fuel investments will be redirected toward renewable energies.

Two examples of insurance companies which have made promises to divest from coal include AXA and Allianz. When it comes to their own accounts AXA and Allianz are of comparable size; their divestment commitments, however, differ substantially. AXA has only divested mining companies and works with a threshold of 50%, while Allianz excludes both mining companies and utilities based on a 30% threshold. The actual divestment by Allianz will therefore be significantly higher than that of AXA.

The above examples show that the specificity of divestment criteria strongly determines the efficacy of coal divestment. A coal divestment that excludes coal-mining companies and reinvests in utilities operating coal-fired power plants is inadequate from a climate change perspective. Instead, "impact divesting" has to be the goal – the entire coal value chain (companies finding, mining, trading, transporting, burning and transforming coal into oil or gas) must be divested and the resultant funds reinvested under environmental and social criteria. The flow of new money into the entire coal sector must be stopped. In order to be able to trace the divestment progress a list of excluded companies should be published periodically.

The percentage criteria used recently by many investors to exclude companies does not yet guarantee a full coal divestment. Therefore, the divestment criteria will have to be tightened over time. Further growth of the coal sector must not take place. An exclusion of the companies most aggressively pushing forward the construction of new coal-fired power plants is therefore the next logical divestment step. A well thought out divestment approach to the entire coal sector will also provide an example upon which to model the oil and gas divestment to come.

→ Christina Beberdick, urgewald

Features

Eletrobras – Corruption, environmental destruction and human rights violations in the Amazon

Eletrobras (Centrais Elétricas Brasileiras S.A.) is a publicly traded holding company operating in the generation, transmission and distribution of electricity, whose main shareholder is the Brazilian federal government (52%). Through its subsidiary companies it controls 33% of the country's capacity for power generation.¹ Eletrobras is listed on the NYSE and IBOV stock exchanges, and due to its complicity in human rights violations in Brazil, at least six investors have blacklisted Eletrobras (see appendix). For a short time in 2016 Eletrobras had its shares suspended on the NY Stock Exchange due to ongoing corruption investigations.²

Eletrobras holds a 50% stake in Belo Monte – the world's third largest hydroelectric plant.³ Located in the heart of the Brazilian Amazon, its construction started in 2011, despite fierce opposition from environmentalists and indigenous communities that were directly affected. Among the numerous significant social and environmental impacts caused by the construction of the dam, is the flooding of vast areas of the Amazon, and the resultant displacement of tens of thousands of people.⁴ A wider impact is the flow of people into the area, construction workers, suppliers, and security guards. Eletrobras' Amazon projects were allegedly linked to serious labour and human rights violations in the operation of their construction sites.

Eletrobras' latest big project in the Amazon is the São Luiz do Tapajós Hydroelectric Plant. It is another project that, if

carried out, would displace and relocate over a thousand people, compromise traditional fishing⁵, and endanger species in an area with some of the richest diversity on earth.⁶ In addition, the proposed dam would flood vast areas of Munduruku Indian villages – despite the Brazilian Constitution prohibiting the removal of indigenous people from their traditional lands.⁷

In August 2016, Brazil's Environment Agency (IBAMA) decided to suspend the licensing process for the construction of the dam.⁸ This was due to FUNAI (the Brazilian government body relating to indigenous peoples)⁹ bringing new evidence forward in relation to indigenous areas. The initial Environmental Impact Assessment (EIA) provided by Eletrobras showed gross oversights (including lacking information on impacts to biodiversity, fish and fisheries, downstream communities and local populations)¹⁰ and substantial changes were therefore requested.¹¹ This shows that Eletrobras might be willing to repeat, now in the Tapajós river, the drastic impacts already caused by Belo Monte in the Brazilian Amazon.

IBAMA's decision does not necessarily mean an end to the project. In previous examples controversial dams have been initially ruled out just to be taken up again at a later date, in a more favourable political environment. That is what occurred

1 Eletrobras (2016): O papel da Eletrobras. www.eletrobras.com (Accessed 14.09.2016)

2 Blount, J (2016): Brazil police arrest 19 in Eletrobras nuke-plant bribe probe, 6 July. www.reuters.com (Accessed 15.09.2016)

3 Norte Energia (2016): Shareholding Structure of Norte Energia. <http://norteenergiasa.com.br> (Accessed 14.09.2016)

4 Repórter Brasil (2012): Trabalhador morre em Belo Monte e operários declaram greve geral, March 29. www.reporterbrasil.org.br (Accessed on 07.09.2016) / Repórter Brasil (2011): Operário maranhense morre na Hidrelétrica de Jirau, May 20. www.reporterbrasil.org.br (Accessed 07.09.2016)

5 Farah, T (2016): Tapajós dam puts newly discovered species, indigenous people at risk. Repórter Brasil. 7 June. <http://earthjournalism> (Accessed 14.09.2016)

6 Farah, T (2016): Animais ainda desconhecidos e espécies únicas serão colocados em risco por usinas do Tapajós. Repórter Brasil. 26 April. <http://reporterbrasil.org.br> (Accessed 14.09.2016)

7 Rosa, G (2015): A política munduruku. Repórter Brasil. 21 December. www.reporterbrasil.org.br (Accessed 14.09.2016)

8 Ibama (2016): Despacho 02001.017118/2016-68, 25 July. www.ibama.gov.br (Accessed 11.09.2016)

9 Survival International (2016): FUNAI – National Indian Foundation Brazil. www.survivalinternational.org (Accessed 02.11.2016)

10 Ibama (2016): Despacho 02001.018080/2016-41, 4 August. www.ibama.gov.br (Accessed 11.09.2016)

11 See supra note 5



▲ Indigenous leader at São Manoel dam site (April 2015)
© Midia Ninja / International Rivers

with Belo Monte, the original project was conceived in the 1980s. Additionally the Tapajos dam is just one dam among a plan for the wider area, comprising three potential dams along the river. Arnaldo Kabá Munduruku, general chief of the Munduruku indigenous group, called the halting of the Tapajos dam “important,” but added that his people would now “continue to fight against other dams in our river.”¹²

In addition to being challenged on its social and environmental practices, Eletrobras also faces numerous corruption charges in the major works managed by its subsidiaries. One of the biggest recent scandals involves Eletronuclear¹³, which controls the two nuclear power plants operating in Brazil and a third one, Angra 3, under construction. This links to the ‘Operation Carwash’ investigations in Brazil involving several criminal practices focusing on crimes committed by individuals and organisations in Brazil. Although no criminal charges have been brought against the Company as part of this, the Brazilian Federal Prosecutor’s Office has investigated irregularities involving employees of the Company, contractors and suppliers. In 2015, Eletronuclear’s president was removed from office when Federal Police revealed that he managed a scheme to receive millions in bribes from construction companies interested in participating in that project. In the following year, he was sentenced to 43 years in prison.¹⁴ The involvement of Eletrobras in this scandal has led to an investor lawsuit in the US brought by an institutional investor as Eletrobras “failed to tell investors

of a massive bribery and kickback scheme”. The case will be a class action for those who purchased shares in Eletrobras between August 17, 2010 and June 24, 2015.¹⁵

Due to the corruption issues Eletrobras’ shares were temporarily suspended on the NY Stock Exchange.¹⁶ Eletrobras’ board and senior management are now developing a wider compliance program known as the 5 dimensions program. However due to the corruption investigations, Eletrobras was unable to submit form 20-F to the SEC and therefore from the 18th May onwards, its American Deposit Shares were suspended and the delisting process began. This created a significant amount of controversy. However, while Eletrobras’ shares are available in the US, there are currently few European or US investors in these ADR shares – UBS has a small 0.02% of ADR shares.

The above information should provide a warning to European investors of the potential complicity in human rights and environmental violations should they choose to invest in Eletrobras. Due diligence around investments in hydroelectric dams must be thorough, as a poor example, UBS, despite having a policy regarding large scale dam projects, still has investments in Eletrobras. The conflict of interest in the green energy sector, especially in relation to large scale hydropower projects, is one which needs to be further investigated by investors, especially in light of increasing investment in renewable energy post the Paris Agreement. Eletrobras has signed the UN Global Compact. However as with many other renewable energy providers, it does not adequately listen to the voices of indigenous people.

→ André Campos
Repórter Brasil, Brazil

12 Walker, R (2016): Stories: To Keep a River Running. Earth Island Journal 31(3), Autumn 2016. www.earthisland.org (Accessed 14.09.2016)


13 Reuters (2016): Brazil Eletronuclear CEO gets 43-year sentence for corruption-paper, 4 August. www.reuters.com (Accessed 14.09.2016)

14 Globo Comunicação e Participações (2016): Justiça do Rio condena ex-presidente da Eletronuclear a 43 anos de prisão, 4 August. www.globo.com (Accessed 14.09.2016)

15 Van Voris, B (2015): Eletrobras sued by US City over Brazilian bribery scheme. August 17. Bloomberg. www.bloomberg.com

16 Blount, J (2016): Brazil police arrest 19 in Eletrobras nuke-plant bribe probe, 6 July. www.reuters.com (Accessed 15.09.2016)

HARMFUL INVESTMENTS



Norilsk Nickel has failed to introduce planned measures against emissions, environmental authorities say.
© Atle Staalesen Barent's observer

Harmful Investments

Financial institutions continuing to benefit from harmful investments

The sheer number of financings and issuances for the controversial companies presented in this report clearly demonstrate that FIs' voluntary policies are insufficient to prevent human rights violations or environmental destruction by their corporate clients. Also voluntary commitments to international standards such as the UN Global Compact, the UN Principles for Responsible Investment, the Equator Principles¹ or support for the Ruggie Principles (UN Guiding Principles on Business and Human Rights) which clearly outline companies' and FI's responsibilities for respecting human rights and the environment seem to be insufficient to prevent harmful business practices. In the light of the world's pressing challenges such as climate change, war and armed conflicts, migration and poverty, it is no longer feasible to let the financial sector continue their "business as usual". National and international legislators must set up a series of regulations to stop harmful investments, the likes of which are given in the Recommendations and Demands section of this report.

Between January 2013 and August 2016, loans of the 5 leading European financial institutions² for the 14 companies in this report totalled €17.2 billion, underwriting of shares and bonds around €29.7 billion and management of shares and bonds €5.8 billion.

Among the FIs analysed in this report, all are signatories of the UN Global Compact and the UN Principles for Responsible Management as Investment Managers, while only 2 have officially adopted the Equator Principles (see also table on page 80).

In 2015, the companies analysed in this report earned combined revenues of at least €932 billion, despite some of these companies booking losses in the billions. All of these companies have been cited for either human rights violations, labour rights violations, environmental destruction, the production and/or export of (controversial) weapons, and/or irresponsible business practices. FIs play a key role in supporting these companies and

their activities by providing them with corporate loans, project finance, as well as underwriting, and/or managing company shares and bonds. While many financial institutions' policies, if available, prohibit direct financing of controversial products or projects (e.g. the production of cluster munitions), most do not restrict investment in or financing of the companies that are responsible for these violations. However, by not requiring companies to adhere to international standards in order to receive financial support, FIs quietly condone and benefit from business practices that are in conflict with or breach human and/or labour rights and environmental regulations.

Among the FIs analysed, HSBC and UBS were financially connected to all 14 companies investigated in this report, while BNP Paribas and Deutsche Bank were connected to all but one. ING was found to have the fewest links, counting only 8 of the controversial companies as its clients. This report shows that all of these leading European banks have financial ties to at least one company in each of the following sectors: mining³, technology and defence⁴ and pharmaceuticals and agribusinesses⁵.

Direct Finance (corporate loans and project finance)

The easiest way for companies to obtain capital is to borrow money. In most cases, money is borrowed from commercial banks in the form of corporate loans or project financings. The proceeds of these corporate loans are usually declared for 'general corporate purposes' and can therefore be used for all activities of the company, thus also including potentially contentious business segments. The top lenders to the controversial companies in this study were HSBC and BNP Paribas with €4.8 billion each. HSBC financed the selected mining companies with €903.4 million in loans, followed by BNP Paribas with €624.2 million. Also, to the selected technology and defence companies, BNP Paribas and HSBC were both lending more than €500

1 See appendix A – Table 3 on p. 83

2 These are in order of their assets: HSBC (UK), BNP Paribas (France), Deutsche Bank (Germany), UBS (Switzerland) and ING Group (The Netherlands).

3 These are Centerra Gold, Freeport-McMoRan, Norilsk Nickel and Tahoe Resources.

4 These are Hanwha Corp. and Hanwha Techwin, Hewlett Packard Enterprise and Leonardo.

5 These are Bayer, Mylan and Wilmar.

million. The most staggering financing volumes were for the pharmaceutical and agribusiness sector, with Deutsche Bank lending €2.8 billion and ING lending €2.5 billion. The single biggest debtor is the German automotive company Volkswagen, having received financings amounting to €4.5 billion from 4 of the 5 FIs during the research period.

Underwriting of shares and bonds (issuances)

Selling shares and bonds to private and institutional investors is another important way for companies to increase their equity or loan capital. By offering underwriting services, banks ensure that there are sufficient buyers for those shares and bonds and that the companies receive the best possible return on investment. FIs initially take over part of the newly issued shares or bonds to sell them to other interested investors, thus acting as intermediaries. After the successful placement of the shares or bonds on the market, the FIs as market makers keep them tradable. This requires them to always hold a number of that particular share or bond in order to be able to react to market demands. Compared to other FIs in this analysis, HSBC leads in share and bond underwritings for the selected controversial companies with €12.2 billion. HSBC was also the top underwriter of bonds for mining companies with €485.9 million, closely followed by BNP Paribas with €450.2 million. Deutsche Bank was the top underwriter of bonds for the pharmaceutical and agribusiness companies Bayer and Mylan, totaling €1.7 billion. Also in this segment, Volkswagen has been the most active issuer of shares and bonds among the investigated companies, facilitated by 4 of the 5 FIs in raising €18.9 billion in fresh capital.

Management of shares and bonds (holdings)

While FIs emphasise that it is important to differentiate between investments they make with their own capital versus holdings that are acquired on behalf of clients, they do not provide detailed numbers regarding these transactions, making it difficult to determine their exact level of financial benefit from harmful businesses and operations. Nevertheless, FIs benefit from these investments alongside their clients, even if they don't own the investments, (i.e. through client fees). Furthermore, they facilitate the availability of capital for the companies by keeping their shares and bonds liquid on the financial markets, hence making them more attractive to potential investors. Even more importantly, FIs (can) have a significant influence on companies as large-scale shareholders, granting them the right to vote and act as socially responsible investors. Deutsche Bank controls the highest value of combined share and bond holdings in controversial companies with €2.6 billion. While the share and bond holdings researched were generally found to be comparatively low, all of the banks had holdings in German pharmaceuticals and crop science company Bayer, amounting to €2.6 billion, together these banks therefore hold substantial leverage.

Where the money comes from: Financial ties with controversial companies (€ million)

Financial Institution	Country	Bondholdings	Shareholdings	Share Issuances	Bond Issuances	Loans
BNP Paribas	France	133.9	610.2	166.7	7,246.7	4,771.3
Deutsche Bank	Germany	650.3	1,977.4	1,580.3	5,928.2	3,684.9
HSBC	UK	190.2	480.2	35.6	12,148.8	4,824.0
ING	Netherlands	11.4			1,489.8	3,362.8
UBS	Switzerland	523.6	1,214.6	166.7	984.1	510.2

Harmful Investments

BNP Paribas SA

Financial Information (in € million):

	2015	2014
Net Revenue	42,938	39,168
Profit after Tax	7,044	507
Total Assets	1,994,193	2,077,758

Date and currency of company report: 31.12.2015, EUR

The French retail and corporate bank, BNP Paribas, is active worldwide. The bank has committed itself to the UN Global Compact, the Equator Principles, the UN Principles for Responsible Investment, the Roundtable on Sustainable Palmoil and the Soft Commodities Compact, among others.¹ Furthermore, the bank commits itself to systemically integrate the management of social, environmental and governance risks in its financing and investment policies.²

In contrast to these public policies and commitments, BNP Paribas is (together with HSBC) the biggest lender for the controversial companies investigated in this report, with €4.8 billion invested. Particularly striking is the extensive participation of BNP Paribas in loans and bond issuances to Volkswagen, with investments continuing even after the “emissions scandal” revelations in late 2015. Despite the serious governance issues obvious in Volkswagen’s treatment of the scandal, and the previous deliberate deception of regulators and customers³, BNP has participated in a bridge loan to help VW cover the costs of the emissions scandal. BNP has not publically expressed concerns related to VW’s activities nor how it is engaging with VW. Additionally the bank does not have clear policies regarding good corporate governance. Good corporate governance naturally includes the prohibition of corruption and bribery – yet BNP has been found to provide loans to the engineering and construction company SNC–Lavalin. The company has a poor track-record related to corruption and bribery in global construction projects, which has resulted in several convictions.⁴ This stands in stark

contrast to the bank’s corruption policy, which states that “the mechanism for the fight against external corruption, (...) is encompassed within the regulatory mechanism for fight against money laundering”⁵. However, BNP’s continued financing of SNC–Lavalin clearly shows that the existing regulatory measures are not sufficient to prevent financial relationships between BNP and repeat offenders in violation of corruption standards. The need for increased due diligence measures in this regard by BNP is clear.

Another weak point in BNP’s policies and business practices is its conduct in the agricultural and crop sciences sector. The bank itself claims that “thanks to its new policy, BNP Paribas now addresses all the challenges facing the agricultural sector”⁶. Concurrently the policy admits that for example the “manufacturers or distributors of (...) pesticides and fertilizers”⁷ do not fall under the policy. This implies that the bank’s financial relations with Bayer, the pharmaceuticals and pesticides producer, are not covered under the policy. Despite Bayer’s pesticides and their use in agriculture having been found to have serious negative impacts on the environment and human health, showing a clear omission in BNP’s apparently thorough agricultural policy. The bank also seems to fall short of its own commitments in its specific palm oil policy. BNP Paribas has been the only bank investigated in this report to have been an arranger for loans to Wilmar. The palm oil company is, despite its no–deforestation pledge, still continuously being linked to suppliers that have cleared primary forests and High Carbon Forest Stock, demonstrating a clear

Largest financial transactions (in € mln):

Loans:	
Volkswagen	1,892.59
SNC-Lavalin	796.29
Bayer	692.65
Freeport-McMoRan	521.60
HPE	285.33

Underwritings of S/B:	
Volkswagen	4,272.74
BP	2,031.15
Bayer	600.73
Freeport-McMoRan	450.29
Leonardo	58.46

Management of S/B:	
Bayer	499.66
BP	105.45
Volkswagen	77.58
HPE	28.63
Mylan	12.12

1 BNP Paribas (2016): Corporate Social Responsibility – 2015 Report. www.bnpparibas.com (Accessed 10.12.2016)

2 See supra note 1

3 See company profile Volkswagen on p. 36

4 See company profile for SNC-Lavalin on p. 32

5 BNP Paribas (2011): BNP Paribas Anti Corruption Policy. 20 September. www.bnpparibas.com (Accessed 10.12.2016)

6 See supra note 1

7 BNP Paribas (2015): Sector Policy – Agriculture. www.bnpparibas.com (Accessed 10.12.2016)

lack of supply chain due diligence by Wilmar.⁸ Furthermore, plantations supplying to Wilmar have been found to use child labour, a practice that is strictly forbidden for upstream palm oil companies such as Wilmar according to BNP Paribas' palm oil policy for financings: "In order to avoid adverse environmental and social impacts, BNP Paribas requires that Upstream Palm Oil Companies (plantations and mills) (...) do not use child or forced labour".⁹ This 'mandatory requirement', as well as the bank's requirement for palm oil companies to protect High Conservation Value areas and implement a no-burn policy, stand in stark contrast to the practices of Wilmar. These deforestation and burning practices undertaken by companies in Wilmar's supply chain have a significant impact on climate change through their reduction of primary forests and associated carbon emissions.

Responsible agricultural practices play a part in climate change mitigation, additionally the extraction and use of fossil fuels are of major importance. However, BNP Paribas was the last major French bank to announce a coal divestment policy. Finally during the 2015 climate summit in Paris¹⁰, the bank committed to "no longer finance coal extraction, whether via mining projects or via mining companies which do not have a diversification strategy".¹¹ Having said this, it has to be noted that the bank only excludes coal-fired power generation projects in High-Income countries, lagging behind other major French banks such as Crédit Agricole and Société Générale that exclude all project financings for coal-fired power plants no matter in which country.¹² Despite its commitment to reduce finance for coal extraction and coal-fired power generation, and its aim to reduce the proportion of fossil fuels financed (as a

percentage of its energy producing clients)¹³, the bank completely fails to acknowledge the climate impacts of the extraction of oil, participating in bond issuances for the oil & gas company BP totaling a staggering € 2 billion over the research period.

Besides failing to take into account the detrimental effects of fossil fuels outside of coal, BNP has also been found to be the second-largest issuer of shares and bonds, and lender for mining companies. For instance, the bank's financial ties with the mining company Freeport-McMoRan stand in stark contrast to the 'minimum requirements' set out in its sector policy on mining. Therein, the bank states that "BNP Paribas will not provide any financial product or services to Mining Projects, [...] that use riverine or shallow marine tailings disposal"¹⁴. Freeport's Grasberg mine in Papua, Indonesia, is the world's largest gold mine and one of only four mines worldwide that operates a riverine tailings disposal system, dumping approximately 150,000 tons of toxic waste into local rivers every day.¹⁵ BNP distinguishes in its mining sector policy between minimum requirements and evaluation criteria that must be met by mining projects, and those that must be applied to the mining companies. BNP's financial links to Freeport are through loans and bond issuances for general corporate purposes (i.e. for the company as a whole), therefore the fact that Freeport continues the practice of riverine tailings disposal at the Grasberg site, despite the proven negative environmental impacts, does not impact the bank's relationship with Freeport as it is not directly funding the mining project. However, BNP also claims to assess "whether the Mining Company has been regularly and repeatedly criticized for its environmental, social, security (including use of security forces) and governance performance on material issues, and enquire about actions taken to address them"¹⁶, which would imply that BNP has been engaging with Freeport regarding its

⁸ See company profile for Wilmar on p. 39

⁹ BNP Paribas (n.d.): Sector Policy – Palm Oil. www.bnpparibas.com (Accessed 11.12.2016)

¹⁰ BankTrack et al. (2015): The Coal Test – Where banks stand on climate at COP 21. www.banktrack.org (Accessed 11.12.2016)

¹¹ See supra note 1

¹² BankTrack (2016): Crédit Agricole and Société Générale announce end to financing of coal power projects. www.banktrack.org (Accessed 11.12.2016)

¹³ See supra note 1

¹⁴ BNP Paribas (n.d.): Sector Policy – Mining. www.bnpparibas.com (Accessed 10.12.2016)

¹⁵ See company profile for Freeport on p. 18

¹⁶ See supra note 14

controversial environmental and social track-record. Currently BNP has not established a transparent reporting mechanism for its engagements with clients on the grounds of social and environmental concerns, even though the bank has been found to intermittently comment on business relationships and actions taken.¹⁷

BNP is the largest lender to the weapons and defense technology companies, Leonardo and Hewlett Packard Enterprise. The bank's defense policy covers the manufacturers of controversial weapons as well as financings directly related to arms-export transactions¹⁸, however, it does not set out criteria for assessing the general track-record of arms producers. This is a serious shortcoming, particularly considering the bank's claim that "given the sensitive nature of the defence industry, BNP Paribas is especially vigilant in its review of companies in this sector"¹⁹. Yet, Leonardo for instance has been found to provide military equipment to human rights violating countries, as well as being involved in corruption.²⁰ In addition, BNP does not take into account the potential human rights violations implicated by the provision of control and surveillance technologies to countries such as Israel, such as the information technology provided by Hewlett Packard Enterprise, which help to maintain the occupation status of the Occupied Palestine Territories (OPT).²¹ This highlights the urgent need for BNP to extend the scope of its defence sector policy to avoid being complicit in human rights violations. The security provider G4S, which faced serious allegations related to abuses of prison inmates,

is also a customer of BNP Paribas despite the bank's claim to expect clients "to manage their business in accordance with the Human Rights standards"²².

Despite the fact that BNP has committed itself to several international standards on responsible finance and investments, the bank's approach to potential social and environmental risks related to its customers is deficient. In particular its reliance on sector-specific policies proves insufficient to address potential negative impacts of clients operating in business segments that are not covered by these specialized policies. The bank does have a group-wide policy for human rights which is applicable to all its clients - but no policy on governance or environmental aspects that covers all business segments, for example pharmaceuticals, crop sciences and information technology. In addition, BNP urgently needs to improve its due-diligence measures to ensure clients comply with the 'minimum requirements' set out in its policies, as the case of Wilmar shows. Finally, the bank should extend the 'minimum requirements' set out for project financing also to the companies operating these projects, as the entire company profits from a harmful project.

17 BankTrack (2016): Human Rights Impact Briefing #2 - May 2016. www.banktrack.org (Accessed 21.12.2016)

18 BNP Paribas (n.d.): Sector Policy - Defence. www.bnpparibas.com (Accessed 10.12.2016)

19 See supra note 18

20 See company profile for Leonardo on p. 26

21 See company profile for Hewlett Packard Enterprise on p. 24

22 BNP Paribas (n.d.): BNP Paribas & Human Rights. www.bnpparibas.com (Accessed 16.12.2016)

Harmful Investments

Deutsche Bank AG

Financial Information (in € million):

	2015	2014
Net Revenue	33,525	31,949
Profit after Tax	-6,772	1,691
Total Assets	1,629,000	1,709,000

Date and currency of company report: 31.12.2015, EUR

Largest financial transactions (in € mln):

Loans:	
Mylan	2,071.17
Bayer	692.65
Volkswagen	325.40
HPE	218.08
BP	183.68

Underwritings of S/B:

Volkswagen	5,012.10
Bayer	1,067.41
BP	747.82
Mylan	601.04
Leonardo	58.46

Management of S/B:

Bayer	1,440.12
Volkswagen	469.43
BP	345.57
Freeport-McMoRan	132.09
HPE	121.70

Deutsche Bank is the largest German bank and the third-largest bank in Europe, with business representations throughout Europe and a significant presence in the Americas and Asia Pacific.¹ The bank provides investment banking services as well as retail banking, transaction banking and asset management to companies, institutional investors and private individuals.² The bank has, among other standards, subscribed to the UN Principles for Responsible Investment (as asset manager), the UN Global Compact and the OECD Guidelines and applies the IFC Performance Standards as well as the Environmental, Health and Safety Guidelines to project financing decisions. It is a leading financier of German and international companies and asset manager, rendering it a significant market player. Since the publication of the previous Dirty Profits edition, the bank has for the first time published detailed policies on the consideration of human rights, environmental and social aspects in its financing activities, considerably increasing the transparency of its environmental and social risk assessment approach. A key achievement is the establishment of a grievance mechanism for stakeholders in the event of clear evidence of failure of Deutsche Bank's responsibility to avoid any harm of human rights or its involvement in a human rights issue³, a mechanism that has not been established by any other bank investigated in this report. While the grievance mechanism does not meet all the requirements as set out in the United Nations Guiding Principles on Human Rights, it is nonetheless a step forward in the bank's approach.⁴

Yet, despite these commitments to international norms and standards as well as its self-formulated policies, Deutsche Bank has been found to be the largest holder of shares and bonds of the 14 controversial companies investigated in this report, totaling € 2.6 billion. The bank has financial affiliations with 13 of the 14 investigated companies, illustrating that the recent publications of ESG policies have not led to a change in the financing and investment practices at Deutsche Bank.

In the pharma and agribusiness sector, Deutsche Bank has been the most active provider of fresh capital to the selected companies, totaling € 1.7 billion in issuances of shares and bonds and € 2.8 billion in loans. One example is Deutsche Bank's massive involvement in the pharma and agribusiness company Bayer. The company has been criticized for its production of pesticides harming honeybees as well as the mislabeling of pesticides in India, leading to health issues among its users. Even though Deutsche Bank does mention the "responsible use of pesticides"⁵ in its Environmental and Social (ES) Policy Framework, this is only in reference to the protection of water sources, which is just one element of concern in relation to pesticide use. It is also clear that, like many banks, Deutsche Bank has not specified any potential concerns related to the pharma industry, for example access to medicine or supply chain manufacturing issues. Given Deutsche Bank's massive involvement in Mylan, it would be prudent to consider manufacturing and environmental pollution issues related in particular to this company, but also the wider pharmaceutical industry.⁶

1 Deutsche Bank (2016): Fact Sheet. www.db.com (Accessed 28.11.2016)

2 See supra note 1

3 Deutsche Bank (2016): Deutsche Bank Statement on Human Rights. www.db.com (Accessed 29.11.2016)

4 Banktrack (2016): Banking with Principles? Benchmarking banks against the UN Guiding Principles on Business and Human Rights. www.banktrack.org (Accessed 29.11.2016)

5 Deutsche Bank (2016): Environmental and Social Policy Framework. www.db.com (Accessed 28.11.2016)

6 See company profile for Mylan on p. 28

For the mining industry too, Deutsche Bank fails to address several critical issues, including failure to disclose its engagement with companies continuously in breach of the provisions set out in its ES Policy Framework. In this policy framework, the bank includes a specific mining policy in which it stresses the importance of waste management, local community engagement, and contamination concerns. Yet, the bank has financial ties to the mining companies Norilsk Nickel, Freeport-McMoRan and Tahoe Resources to varying extents. Norilsk Nickel and Freeport in particular have caused serious environmental destruction. The environmental track record of Freeport shows a decades long disregard for the potential negative impacts on local habitat and livelihoods, with the Grasberg mine in Indonesia being one of only four mines worldwide to operate a riverine tailings disposal system, dumping approximately 150,000 tons of toxic waste into local rivers every day. Norilsk also has for decades been pumping sulphur into the air and polluting the soil and water surrounding its Polar operations. Despite the ongoing contamination of water and soil, the deficient waste management processes and the proven negative impacts on local ecosystems – all factors that Deutsche Bank claims to assess for financings in the mining sector – Deutsche Bank has participated in loans for both Freeport-McMoRan and Norilsk over the past three years. Additionally Deutsche Bank, in its policy, refers to the importance of the ‘Voluntary Principles

on Security and Human Rights’ and the International Council on Mining and Metals (ICMM) Standards.⁷ However, it still manages shares for Tahoe Resources which is not a member of either of these standards and has violated human rights by disregarding local communities’ opposition to their projects in Guatemala. These controversies highlight one of the serious shortcomings of Deutsche Bank’s ES policy framework, namely that it applies only to financings, and especially for the mining sector refers mainly to standards applicable to project financings. Deutsche Bank’s financial ties with Tahoe Resources and Freeport-McMoRan are predominantly through investments, corporate loans and investment services (issuances of shares and bonds), that do not completely fall under the scope of the policy.

Also with regards to climate change, Deutsche Bank has no exclusion policy for the financing of fossil fuel companies, only criteria relating to the funding of new coal power plants and for Mountain Top Removal Mining.⁸ Hence, this report found that Deutsche Bank has been involved in the issuance of three bonds and the provision of one loan for BP in the research period, as well as managing shares and bonds in this the 3rd largest carbon major.⁹ Also the asset management entity of Deutsche Bank, Deutsche Asset Management, has been found to invest in BP, despite co-signing a recent call to governments and regulators to ensure a swift transition to a 2° economy.¹⁰ This clearly demonstrates that financiers and investors such as Deutsche Bank appear unwilling to divest from fossil fuels without a regulatory need to do so.

7 See supra note 5

8 See supra note 5

9 See company profile for BP on p. 13

10 Investor Platform for Climate Action (2016): Investors press G20 to ratify Paris Agreement swiftly. www.investorsonclimatechange.org (Accessed 29.11.2016)

Other sensitive sectors that Deutsche Bank still clearly fails to address are the development of autonomous weapons and the export of arms to human rights violating countries. For example, Leonardo is developing autonomous vehicles and potentially autonomous weapons, and providing human rights violating countries such as Oman and Saudi Arabia with military equipment.¹¹ Deutsche Bank has assisted the company in the provision of fresh capital through loans and bond issuances. Despite improvements to its exclusion policy for cluster munitions¹², this report still found shares of Hanwha Corp¹³ managed by Deutsche Bank. Hanwha Corp has been linked to the continuous production of cluster munition systems, despite a ban on the use, production, stockpiling and transfer of cluster munition prescribed in the Oslo Convention in 2008, that has also been signed by Germany.¹⁴ Yet, the policy still does not cover all external asset management activities (e.g. passively managed funds that follow an index, in which a cluster munition producing company might be contained), hence allowing for investments in companies like Hanwha.¹⁵

By far the largest volume of loan and share issuances facilitated by Deutsche Bank was for Volkswagen, the company that has become infamous for its repeated and widespread governance issues surrounding the emission scandal.¹⁶ This scandal has shown the importance of taking long term ESG issues into consideration, especially as shareholders

acknowledged governance issues at VW long before the emissions scandal, with the VW board being criticised by shareholders for denying them information and treating minority shareholders unfairly¹⁷. The substantial loan and share issuances by Deutsche Bank to VW show a superficial process by Deutsche Bank (although all of the banks in this report were invested in VW, Deutsche Bank was the largest) in taking into account governance-related issues in its risk management processes, such as corruption and bribery as well as collective bargaining issues.

The findings of this report clearly demonstrate that despite the increased transparency of the bank's financing policies regarding human rights and environmental and social aspects, there is a clear need for Deutsche Bank to further develop, implement, and monitor these policies.

11 See company profile for Leonardo on p. 26

12 PAX (2016): Worldwide Investments in Cluster Munitions – June 2016 Update. www.stopexplosiveinvestments.org (Accessed 29.11.2016)

13 See company profile for Hanwha on p. 22

14 The Convention on Cluster Munitions: The Convention on Cluster Munitions. www.clusterconvention.org (Accessed 29.11.2016)

15 See supra note 12

16 See company profile for Volkswagen on p. 36

17 Ewing, J (2016): Trial Illuminates Porsches' Rise to Power at Volkswagen. 14 February. New York Times. www.nytimes.com (Accessed 11.12.2016)

Harmful Investments

HSBC Holdings plc

Financial Information (in € million):

	2015	2014
Net Revenue	51,321	47,216
Profit after Tax	13,815	12,097
Total Assets	2,205,221	2,166,895

Date and currency of company report: 31.12.2015, USD (exchange rate as of 31.12.2014/2015, www.oanda.com)

London-based HSBC is active in commercial, private and retail banking worldwide, providing financial services to companies, governments and institutions.¹ The bank is the 6th largest bank worldwide by assets and the largest European bank presented in this report.² HSBC has made commitments to the Equator Principles, the UN Global Compact, and has subscribed through its asset management business to the UN Principles for Responsible Investment. Additionally, the bank has adopted sustainability risk policies that apply to business customers and therefore cover financing products such as loans as well as debt and equity capital market services.³

Despite these commitments, HSBC has financial relations to all of the 14 controversial companies investigated in this report, constituting the largest lender and issuer of shares and bonds for these companies.

Following COP21, in October 2016 HSBC released a climate statement declaring the bank “supports, and is building into its business, the aims of the Paris Agreement.”⁴ This includes the well below 2°C restriction in temperature rises (and 1.5°C target), and an ambition to make financial flows consistent with a pathway to reduce greenhouse gas emissions. This is a welcome development, but the real test will lie in actions rather than words. HSBC has taken initial steps to manage climate risk and harness the opportunities linked to the low carbon transition, but further progress is required for the bank to align with the Paris Agreement.

On the risk side, HSBC has updated its Mining and Metals policy to exclude the financing of new coal mine projects, as well as companies dependent on coal mining around the world.⁵ While this is positive news, it falls short of alignment with the Paris Agreement as the policy only applies to new clients. Going forward, the bank has been called upon to extend this policy and commit to completely phasing out financing for coal mining and power companies.⁶

This report shows that HSBC is considerably exposed to oil giant BP and auto-maker Volkswagen – both high carbon companies – especially in terms of loans and bond issuances. To achieve the <2°C goal set out in Paris, it is vital that companies on both the supply and demand side of the carbon chain transition to business models fit for a decarbonised world. For fossil fuel companies like BP, this means winding down exploration and production of hydrocarbon reserves inconsistent with a <2°C carbon budget. Automotive companies like Volkswagen must begin to adapt to a world where oil isn’t the dominant energy source. As a financier behind these two major companies, HSBC should play a role in engaging with clients along these lines and ensuring capital is only provided to firms that make concrete and measurable commitments regarding alignment with the <2°C goal.

Besides climate risk, there are also many opportunities for the banking sector to redirect capital and offer low carbon products and services to support the vast capital injections required by low carbon and climate resilient sectors. HSBC remains a significant player in

Largest financial transactions (in € mln):

Loans:	
Volkswagen	1,892.59
SNC-Lavalin	796.29
Freeport-McMoRan	773.49
Bayer	523.90
HPE	285.33

Underwritings of Bonds:	
Volkswagen	9,042.24
BP	1,715.06
Freeport-McMoRan	450.29
Mylan	448.67
Bayer	434.07

Management of S/B:	
BP	325.43
Bayer	155.91
Volkswagen	65.31
Freeport-McMoRan	41.15
HPE	22.82

1 HSBC (2016). About HSBC. www.hsbc.com (Accessed 19.12.2016)

2 Relbanks (2016): Top 100 banks around the world. www.relbanks.com (Accessed 19.12.2016)

3 HSBC (2014): Introduction to HSBC's Sustainability Risk Policies – March 2014. www.hsbc.com (Accessed 16.12.2016)

4 HSBC (2016): HSBC Statement on Climate Change. www.hsbc.com (Accessed 16.12.2016)

5 HSBC (2016): Mining and Metals Policy – October 2016. www.hsbc.com (Accessed 16.12.2016)

6 BankTrack (2016): HSBC dusts down its mining policy, but leaves room for more coal financing. www.banktrack.org (Accessed 16.12.2016)

the Green Bonds markets⁷, and has recently announced plans to launch a new sustainable finance unit⁸. This groundswell of activity is welcome, although to truly become a facilitator of the low carbon transition, HSBC must systematically integrate the climate agenda across all of its business divisions.

In addition to exclusions for thermal coal mining in the revised ‘Minings and Metals’ policy, the bank also states that they have “added more specific guidance on adverse human rights impacts which could arise in the mining sector”⁹. Yet HSBC’s financial relationship with Freeport–McMoRan seems to contradict many of the policy criteria. For instance, the policy states that “customers commencing the disposal of tailings in rivers or shallow sea-water in or since 2007 (when HSBC’s policy was introduced)”¹⁰ fall under ‘prohibited business’. Because Freeport–McMoRan has been operating a riverine tailings disposal system at its Grasberg mine in Papua, Indonesia, since 1996, the mining company does not fall under this prohibition despite the proven negative impacts of this technique.¹¹ Additionally the HSBC policy notes that companies using this tailings system should simply provide “evidence that alternative options are not feasible and that the benefits of the mine to local communities are significant”¹². Yet, in the case of Freeport and its Grasberg mine this seems highly questionable, with HSBC apparently relying on the company’s claims that there is no alternative disposal technique and disregarding the significant negative impacts of Freeport’s Indonesian operations on indigenous communities. In terms of safety on site, Freeport Indonesia has a poor track-record with more than 30 fatalities in the past three years. This also seems to contrast a further factor set out for restricted business, supposedly triggering additional due diligence at HSBC where customers have had “5 or more [fatalities]

in either of the last 2 years”¹³. Despite all these controversies and their apparent contradiction with the criteria set out in the ‘Mining and Metals’ policy, HSBC has provided fresh capital to Freeport amounting to more than € 1 billion through loans and bond issuances, being the biggest lender to the company investigated in this report. Conversely, this ongoing financial relationship is not accompanied by any sign of engagement regarding the company’s practices at its Indonesian gold and copper mine. This stands in stark contrast to HSBC’s claim to engage with customers or to “close banking relationships with customers where their activities in these sectors are and remain non-compliant with [our] risk policies.”¹⁴

Even though HSBC is the only bank investigated in this report to have a dedicated policy for companies manufacturing chemicals, this policy falls short of including potential negative impacts resulting from the use of such products, it also does not address pharmaceuticals.¹⁵ Illustrative of this policy gap, HSBC has participated in loans and bond issuances for pharmaceutical and crop science company Bayer amounting to almost € 1 billion in the research period. Bayer’s pesticides and the associated misleading advertising and mislabelling practices of the company have been found to adversely impact upon human health and the environment¹⁶, yet these issues are not covered under HSBC’s existing policy framework. Furthermore, Bayer has recently announced its merger with Monsanto, which would make the company the largest seed and pesticide supplier in the world.¹⁷ As the merger was likely

7 HSBC (2016): Green Bond Report. www.hsbc.com (Accessed 16.12.2016)

8 Business Green (2016): HSBC to launch new sustainable finance unit. www.businessgreen.com (Accessed 16.12.2016)

9 HSBC (2016): Sustainability – Finance. www.hsbc.com (Accessed 19.12.2016)

10 See supra note 5

11 See company profile for Freeport-McMoRan on p. 18.

12 See supra note 5

13 See supra note 5

14 HSBC (2014): Introduction to HSBC’s Sustainability Risk Policies – March 2014. www.hsbc.com (Accessed 16.12.2016)

15 HSBC (2012): Chemicals Industry Policy – December 2012. www.hsbc.com (Accessed 19.12.2016)

16 See company profile for Bayer on p. 11

17 Kresge, N et al (2016): Bayer clinches Monsanto Deal for \$66 Billion with fourth Bid. 14 September. Bloomberg. www.bloomberg.com (Accessed 01.01.2017)

to be opposed by Bayer's shareholders due to Monsanto's deficient track-record, the board bypassed the shareholder approval by obtaining a bridge loan, among others underwritten by HSBC. This clearly shows the lack of scope in HSBC's sustainability risk policies, which on the one hand only focuses on selected sectors, and on the other neglects even in these few sectors a range of environmental, social and governance issues associated with these sensitive business segments.

This lack of scope is also evident in the 'Defence Equipment Sector Policy', in which HSBC states it will "not provide financial services to customers who solely or primarily manufacture or sell other weapons"¹⁸. Obviously this policy did not prevent the bank from operating accounts for clients involved in arms trafficking and conflict¹⁹, additionally, communication and surveillance technology providers are not covered. Yet, companies such as Hewlett Packard Enterprise are instrumental in supporting the continued illegal Israeli occupation of Palestine, having extensive relations with the Israeli Ministry of Defense, Army, and Navy.²⁰ These issues highlight that modern conflict situations cannot merely be defined by the manufacture and sale of weapons, but also rely on sophisticated control and surveillance technologies. Despite HSBC's claim that they already cover "future technological advances as far as is possible"²¹, the policy urgently needs to be updated to take into account other human rights issues potentially related to high-tech defence and security services. Furthermore, even companies that should fall under the scope of the defence policy are not excluded from HSBC's financial services. Leonardo, the 9th largest arms producer worldwide (gaining 65% of its total sales from arms)²² has received loans and bond issuances from HSBC, despite a clear policy which notes

HSBC will have no relationship with a company "where the conglomerate's business relates primarily to weapons (ie more than one third of turnover)"²³. Leonardo's products apparently fall under HSBC's narrow definition of 'other weapons' (Leonardo produces 'weaponry platforms' as well as unmanned/autonomous vehicles that can be equipped with weapons).

It is evident that HSBC urgently needs to establish additional sustainability risk policies that cover more sensitive sectors and are less selective in the themes they approach. Furthermore, HSBC's significant financial relationship with the mining company Freeport-McMoRan is in contradiction to several of its self-subscribed sustainability criteria, and needs to be further scrutinized, leading to a transparent engagement process and, potentially, an end to the financial relationship. This is paramount, as HSBC has been repeatedly found to deny information requests from stakeholders raising specific issues, on the grounds of 'client confidentiality'.²⁴

18 HSBC (2010): Defence Equipment Sector Policy - February 2010. www.hsbc.com (Accessed 19.12.2016)

19 The International Consortium for Investigative Journalists (2015): Bank's Services for Arms Dealers in Conflict with Its Own Policy. 10 February. www.icij.org (accessed 01.01.2017)

20 See company profile for Hewlett Packard Enterprise on p. 24

21 See supra note 18

22 See company profile for Leonardo on p. 26

23 See supra note 18

24 BankTrack (2016): Human Rights Impact Briefing #2 - May 2016. www.banktrack.org (Accessed 19.12.2016)

Harmful Investments

ING Group NV

Financial Information (in € million):

	2015	2014
Net Revenue	16,845	15,560
Profit after Tax	4,535	2,736
Total Assets	841,769	992,856

Date and currency of company report: 31.12.2015, EUR

Largest financial transactions (in € mln):

Loans:	
Mylan	1,780.50
Bayer	692.65
Volkswagen	354.13
Norilsk Nickel	248.52
HPE	159.02

Underwritings of Bonds:	
Mylan	601.04
Volkswagen	593.86
Norilsk Nickel	178.81
Bayer	116.07

Management of Bonds:	
Volkswagen	9.41
Bayer	1.52
BP	0.45

ING is active in retail and wholesale banking worldwide, focusing on the European market.¹ The bank is a member of the Equator Principles and the UN Global Compact as well as several other sustainability and industry-led initiatives, such as the Thun Group of Banks, the Roundtable on Sustainable Palm Oil and Eurosif.² Furthermore, the bank has recently signed the Dutch Banking Covenant, committing to work on the human rights impacts of the banking sector.³ ING has published a comprehensive ‘Environmental and Social Risk Framework’, covering cross-sectoral issues, exclusions, and setting out further provisions for sensitive sectors.

This report found ING to have the fewest links to the controversial companies. Yet, despite links to only half of the 14 companies, ING has provided loans amounting to € 3.4 billion in the research period, constituting one of the largest lenders to the controversial companies. More than 70% of this money has been given to the pharmaceutical and agribusiness companies, Mylan and Bayer. These relations are covered by ING’s ‘Chemicals’ policy, which is applied to the suppliers of agrochemicals as well as manufacturing processes, including those of pharmaceutical companies.⁴ The policy however mainly focuses on so-called industry best-practices, without setting out detailed environmental and social criteria relevant to this sector. Bayer’s mislabeling of pesticides is

incompatible with ING’s requirement for clients to demonstrate compliance with policies on “community health and safety for handling”⁵. Bayer’s alleged breach of the International Code of Conduct on Pesticide Management is a concern, however this standard is conveniently not mentioned by ING.⁶ Also Bayer’s “impacts on biodiversity”⁷ can be regarded as negative, with several studies confirming the harmful impacts of their pesticides on honeybees. Similar issues apply to ING’s financial ties to Mylan. The pharmaceutical company has faced several accusations of environmental pollution at its production sites in India⁸, apparently conflicting with ING’s policy requirement to demonstrate “compliance with policies or certification that address mitigants related to pollution and contamination of water resources”⁹.

ING’s ‘Metals and Mining’ policy shows serious flaws in actual implementation. Despite the bank specifying that air emissions, such as sulphur dioxide, can constitute a ‘key concern’ for smelting and refining activities, the actual industry best-practice standards and criteria required by ING for business engagements in this sector seem to be insufficient to prevent financial relationships with industrial polluters. ING has participated in loans and one bond issuance for Norilsk Nickel in the research period, being the biggest lender for the mining and metallurgical company of all the banks investigated. All the while, the company is continuously exceeding pollution limits and is responsible for severe sulphur pollution

1 ING (2016): Profile. www.ing.com (Accessed 20.12.2016)

2 ING (2016): Stakeholder Engagement. www.ing.com (Accessed 20.12.2016)

3 SER (2016): Dutch Banking Sector Agreement on international responsible business conduct regarding human rights. www.ser.nl (Accessed 20.12.2016)

4 ING (2016): ING Environmental and Social Risk Framework. www.ing.com (Accessed 20.12.2016)

5 See supra note 4

6 See company profile for Bayer on p. 11

7 See supra note 4

8 See company profile for Mylan on p. 28

9 See supra note 4

in its Polar Division¹⁰, bringing into question ING's claims to demand compliance with environmental legislation and "mitigants related to (...) emissions"¹¹.

In terms of fossil fuel divestment, ING apparently fails to live up to its commitments. Despite introducing a new coal policy at the end of 2015, committing to reduce exposure to coal companies, ING is funding a coal-fired power plant in Indonesia, as well as a possible extension of the plant, constituting a blatant breach of its own policy.¹² However, it has to be noted that ING is the only bank investigated in this report that has participated in neither loans nor bond issuances for fossil fuel giant BP.

ING's 'Manufacturing' policy, which includes automotives, seems insufficient to grasp potential governance issues related to the manufacturing industry, as the policy is focused on supply chain due diligence and environmental and social issues. It is worth noting that nowhere in the Environmental and Social (ES) risk policy document is corporate governance considered as a factor. This could explain the roughly € 950 million in fresh capital ING provided to VW over the research period. Although as a result of the poor governance at VW, and the resultant emission scandal, ING's principle of "compliance with applicable environmental and social legislation, regulation and permit requirements"¹³ has been clearly violated.

ING's financial relations to the security firm G4S shows a breach of the bank's policy commitment and its actual practices. ING claims that "no financing will be allowed for activities that are known to have elements of human rights abuses and/or where such violations exist"¹⁴ G4S has been criticized for its treatment of inmates in one of its private prisons in South

Africa, where serious and repeated human rights violations have been documented.¹⁵ In addition, the company has been linked to human rights violations in its treatment of Australian asylum seekers and its provision of security services in the occupied West Bank. ING's loan to Hewlett Packard Enterprise also appears to contradict the above policy. The IT company is complicit in human rights violations by providing control and surveillance technology to the Israeli government, supporting the illegal, persistent occupation of Palestinian territory.¹⁶

While ING does disclose a comparatively detailed sector breakdown of its financing portfolio contrasted against the applicable sustainability policies¹⁷, it does not publish the names of clients – for confidentiality reasons.¹⁸ As a result, no engagement activities by ING with G4S, Hewlett Packard Enterprise or any of the above mentioned companies is made public. While the 'Dutch Banking Covenant' to which ING has committed might help the bank to improve its human rights understanding and due diligence process, the ambitious initiative as well fails to address "the need for banks to publicly account for how they address specific human rights impacts raised by affected stakeholders"¹⁹. This highlights the urgent need for ING to improve its environmental and social policies, integrating governance aspects into risk assessments, and establishing a transparent client engagement reporting system on the grounds of social, environmental and governance considerations.

10 See company profile for Norilsk Nickel on p. 30

11 See supra note 4

12 BankTrack (2016): Still coughing up for coal: Big banks after the Paris Agreement. www.banktrack.org (Accessed 20.12.2016)

13 See supra note 4

14 See supra note 4

15 See company profile for G4S on p. 20

16 See company profile for Hewlett Packard Enterprise on p. 24

17 ING (2016): ING Group Annual Report 2015, p. 416. www.ing.com (Accessed 21.12.2016)

18 ING (2016): Transparency. www.ing.com (Accessed 21.12.2016)

19 BankTrack (2016): Going Dutch: What's in the new Dutch banks and human rights covenant? www.banktrack.org (Accessed 20.12.2016)

Harmful Investments

UBS Group AG

Financial Information (in € million):

	2015	2014
Net Revenue	28,262	23,299
Profit after Tax	5,728	2,881
Total Assets	870,656	883,259

Date and currency of company report: 31.12.2015, CHF (exchange rate as of 31.12.2014/2015, www.oanda.com)

Largest financial transactions (in € mln):

Loans:	
Freeport-McMoRan	389.54
Bayer	120.69
Underwritings of S/B:	
BP	686.38
Bayer	452.38
Freeport-McMoRan	12.04
Management of S/B:	
Bayer	469.99
BP	467.16
Mylan	256.68
HPE	220.87
Volkswagen	134.43

UBS is the leading Swiss bank, providing services to private clients in Switzerland as well as to private, institutional and corporate clients worldwide, making it the largest global wealth manager.¹ The bank provides asset management, investment banking and lending services to companies and institutions. In 2008, as a result of the global financial crisis, Swiss authorities provided a total of 68 billion Swiss francs to save the bank from collapse and to pave the way for a further capital increase.²

Alongside formulating and publishing its own environmental and social policies for its core business, the bank is a signatory of the UN Global Compact and the UN Principles for Responsible Investment as asset manager, as well as participating in several industry-led initiatives, such as the Thun Group, the Soft Commodities Compact and the Roundtable on Sustainable Palmoil. UBS has a two-tiered approach to the management of environmental and social risks associated with its clients, which consists of defining 'Controversial Activities' where the bank will refrain from providing financial services, and defining 'Areas of Concern' where business may be undertaken following strict conditions.³ Nevertheless, despite these self-subscribed commitments, the bank has been found to invest in and/or finance all of the 14 controversial companies presented in this report.

One example is the bank's financial relationship with the mining company Freeport-McMoRan. Despite defining precious metals as an 'Area of concern' and stating in its 'Environmental & Social Risk Policy Framework' (ESR Framework) that it assesses "transactions directly related to precious metals assets that have a controversial environmental and social risk track record"⁴, the bank has been continually assisting the mining company in the acquisition of fresh capital through loans and bond issuances. Freeport-McMoRan operates one of the world's largest gold mines in Papua, Indonesia- the Grasberg mine- criticised for the continuous violation of human and labour rights as well as a poor environmental track-record.⁵ The reason the bank is able to continue funding the company without violating its own policy, is that the bank's precious metals policy only applies to direct transactions (i.e. project finance), while the proceeds of UBS' financing and investment banking services for Freeport are to be used for 'general corporate purposes'. Therefore, this ongoing financial relationship does not in and of itself constitute a direct violation of the bank's policy. Therefore, despite the client's poor track-record in dealing with human rights and environmental protection in its business operations, UBS has not directly violated its own policies, although it could be argued that it has violated the spirit of the policy.

A similar discrepancy can be seen in UBS' financial relationship with BP, whom it has supported through the issuance of three bonds over the research period of this report. UBS' policy names oil sands as an 'area of concern' but again applies the policy only to

1 UBS (2016): UBS at a glance. www.ubs.com (Accessed 07.12.2016)

2 Neue Zürcher Zeitung (2008): Die UBS beansprucht nun doch Staatshilfe. 16 October. www.nzz.ch (Accessed 01.01.2017)

3 UBS (2016): Environmental and Social Risks. www.ubs.com (Accessed 07.12.2016)

4 UBS (2016): Environmental & Social Risk Policy Framework. March 18, 2016. www.ubs.com (Accessed 07.12.2016)

5 See company profile for Freeport-McMoRan on p. 18

direct financing of oil sands projects⁶ –and of those, only projects which do not comply with specified commitments. UBS’s policy specifically notes that companies engaging in oil sands operations that have a “commitment to reducing energy use, greenhouse gas emissions and land footprint, reclamation activities, tailings management, water management and community relationships”⁷ are generally considered suitable for investment. As BP is active in the extraction of oil from tar sands⁸ and has a proven track-record of negligence in preventing environmental damage⁹, there is clearly a mismatch between UBS’ policy requirements, protecting the environment and BP’s track record. This mismatch is also visible in UBS’ general climate mitigation approach, lagging behind the other banks in this report in terms of fossil fuel divestment. As it stands, the Swiss bank neither commits to exclude financings for new coal mines or new coal-fired power plants, nor to a managed decline of existing coal financings for corporates.¹⁰

Besides limiting the scope for the applicability of some of its environmental, social and governance criteria to (direct) financings, there are several issues UBS completely falls short of addressing in the ESR Framework. One issue that has been neglected is the need for increased due diligence requirements for pharmaceutical and agribusiness companies. UBS has provided loans to the German pharmaceutical and agribusiness company Bayer, as well as assisting in the issuance of its shares and bonds. However, Bayer has been criticized for the production and sale of pesticides that are harmful to human health and the environment.¹¹ With the recently agreed merger of Bayer and Monsanto, the company will become the world’s largest seed and

6 See supra note 4

7 See supra note 4

8 BP (2017): Oil sands. www.bp.com (Accessed 11.01.2017)

9 See company profile for BP on p. 13

10 BankTrack et al. (2016): Still coughing up for coal: Big banks after the Paris Agreement. www.banktrack.org (Accessed 19.12.2016)

11 See company profile for Bayer on p. 11

pesticide producer with a substantial market dominance, highlighting the urgent need for investors to engage with the company to improve its social and environmental conduct. With recent major mergers in the agricultural sector consolidating the market, investors should seek to provide clarity through policy on expected environmental and human rights implications. This also applies to the bank’s investments in Mylan, a pharma company that has been criticized for environmental pollution at its Indian production sites, and still fails to sign up to the Pharmaceutical Supply Chain initiative.¹² While the pharma industry is widely acknowledged as an important contributor to combat diseases and improve human health, investors should take into account the, often poor, track-record of pharmaceutical companies in relation to human rights and environmental pollution. Additionally Mylan also shows substantial concerns in relation to access to medicine and drug pricing – particularly in relation to its EpiPen product. As UBS constitutes the second biggest investor in the pharma and agribusiness companies investigated in this report, the bank should start to exert its voting rights as shareholder and lender and engage with those companies on the grounds of past violations documented herein.

In addition, UBS still fails to disclose a policy governing its financial relationships with arms producing companies – apart from the exclusion of producers of cluster munitions and anti-personnel mines which fall under the bank’s definition of “controversial activities”, meaning UBS will not do business with these companies. Yet, even for those controversial weapons, UBS still fails to extend the exclusion from financings and actively managed investments to all investments (i.e. also passively managed funds and funds of third parties)¹³, this presumably accounts for its ongoing investment in shares of Hanwha Corp. In addition to producing cluster munitions and delivering those to human rights

12 See company profile for Mylan on p. 28

13 PAX (2016): Worldwide Investments in Cluster Munitions – June 2016 Update. www.stopexplosiveinvestments.org (Accessed 29.11.2016)

violating countries, Hanwha subsidiary, Hanwha Techwin, is also involved in the development and production of autonomous weapon systems.¹⁴ Furthermore, UBS also manages shares and bonds of Hewlett Packard Enterprise (supplier of IT services, communication and surveillance systems that arguably support the ongoing occupation of Palestinian territory) as well as of Leonardo (nuclear weapon producer), rendering the bank the biggest investor in technology and defense companies in this report.

It becomes clear, that UBS' existing policies fail to take into account a multitude of potentially sensitive sectors, such as pharmaceuticals, arms, and agriculture, additionally it is of substantial concern that the policies' scope is often limited to project financings. The apparent contradiction between the minimum requirements set out for excluded "controversial activities" for financings, and the investments in shares and bonds of companies that would fall under those controversial activities, is highly questionable. For example UBS manages shares in Wilmar, whose suppliers have been associated with illegal forest burning and child labour in the palm oil industry, despite UBS' policy to not knowingly provide financial or advisory services to corporate clients if associated with severe environmental or social damage to or through use of uncontrolled and / or illegal use of fire for land clearance and / or child labour.

While a recent report by Banktrack found the bank to be a "frontrunner" in terms of human rights commitments, the organisation also noted that UBS failed to adequately respond to issues raised by stakeholders, neither acknowledging links to the company in question, nor commenting on the specific

issues raised.¹⁵ Therefore, it is recommended that the bank should engage with the companies that are in breach of the environmental and social standards set out in the ESR Framework, whether the financial ties consist of project financings, corporate loans, investment banking services or the management of shares and bonds. In addition, these engagement activities should be disclosed publicly and provided with a clear time-frame and specific actions to be taken by the companies.

¹⁴ See company profile for Hanwha on p. 22

¹⁵ Banktrack (2016): *Banking with Principles? Benchmarking banks against the UN Guiding Principles on Business and Human Rights*. www.banktrack.org (Accessed 29.11.2016)

RECOMMEN- DATIONS AND DEMANDS

Recommendations and Demands



▲ Adult brown pelicans wait in a holding pen to be cleaned by volunteers after the BP leased Deepwater Horizon oil platform exploded on April 20 and sank after burning © Daniel Beltra

Financial institutions (FIs) play a pivotal role in the transformation to a sustainable economy, not only through their own operations, but also within the varied sectors they choose to finance. By providing financial resources to companies, FIs can be seen to be supporting and encouraging their activities. Where these are harmful this reflects negatively not only on the company but also the financiers. It is clear that FIs through choosing not to support harmful or socially unjust companies can set a precedent for other sectors and competitors.¹

Although initiatives which integrate social and environmental sustainability aspects in the financial sector have grown substantially, this report shows that the sector is still investing in companies that significantly violate environmental and human rights norms and standards.

Hence this document advocates for binding regulations on financial institutions to eliminate these harmful investments through the application of rigorous policy and due diligence (risk management) processes, as well as strong transparency and accountability commitments within FIs. The following section looks at what governments, regulators and FIs can do to limit investments in harmful companies.

For Financial Institutions:

FIs have habitually been called upon by governments, the public and investors to take responsibility, not only for the direct impact of their operations, but also for the indirect ones, linked to the projects and businesses they finance. It can be seen that all the FIs examined in this document have committed to voluntary principles such as the UN Principles for Responsible Investments (PRI), the UN Global Compact or the Equator Principles, while at the same time continuing to invest in companies that breach these principles or international norms and standards.

To vastly improve upon these steps and to really integrate their commitments, FIs should:

- 1) Improve transparency by making public all information related to engagement with and exclusion of companies. All engagement processes should define specific agreed actions to be taken by the company as well as a timeline for implementation. Reporting on engagement should include:
 - ▶ information pertaining to topic of discussion and outcomes of engagement with companies.
 - ▶ criteria for exclusion of companies and list of companies excluded based on sustainability considerations.
- 2) Ensure that there is a clear distinction between engagement with companies and exclusion of companies and define a clear progression between the two – at what point does engagement end and exclusion occur. It is imperative that FIs publish exactly how this line is defined and what constitutes overstepping it.
- 3) Ensure that ESG policies are transparent and valid for all business operations group-wide, i.e. investments of own assets and assets under management, underwriting services as well as all financings.
- 4) Have a proactive approach in place to identify possible non-compliant companies, and assess companies based not only on their direct operations, but also their supply chain operations. Banks must apply robust checks to ensure that companies have the correct supply chain due diligence in place. Violations identified in supply chains should be a trigger for engagement and possible exclusion.
- 5) Banks must have both cross cutting policies and sectoral policies. Crosscutting policies apply broadly to defined ESG issues, for example Human Rights, Labour Rights, and Climate Change. Sectoral policies must take into account the salient issues in each controversial sector showing where the bank will focus particular attention, as well as including specific sectors where sector-wide exclusions apply. For

¹ Haskell, H and Berkowitz S (2013): 2013 Sustainability reporting of the World's Major Banks; Roberts Environmental Centre. www.claremontmckenna.edu (Accessed 11.12.2016)

example banks must define sectors they will not invest in (e.g. cluster munitions, tobacco, or fossil fuels), and sectors where special concern should be given to identified ESG issues (e.g. palm oil, IT or textile manufacturing). These must be regularly updated to include new issues or recently discovered impacts. FIs should ensure that they engage regularly with civil society organisations.

- 6) Establish an easily accessible and effective grievance mechanism for individuals or communities who feel adversely affected by the bank's operations as defined within the UN Guiding Principles.
- 7) In addition FIs should not invest in other banks or financial institutions which do not have strong ESG policies and therefore are highly likely to be invested in harmful companies, such as those illustrated in this publication.

Advice to Regulators and Governments:

UNGP and other voluntary measures are not sufficient to assure that companies and FIs respect human rights in their business relations.

The complex nature of FIs processes require specific transparency reporting structures. As the EU commission itself admits in relation to companies: "Transparency leads to better performance"². This is remarkably true for FIs.

Because little to no information is available through traditional legal channels about negative social and environmental impacts, national and European binding regulations are considered necessary. The binding regulations³ on FIs should include the following elements:

1. ESG criteria that is applicable to companies must also apply to all financial institutions and also to their business relationships, i.e their investments in third party organisations. FIs wider operations and business relationships have a much larger impact than their direct business and should be treated accordingly. The requirements of these directives, such as the CSR Directive, put in place mechanisms to increase transparency and accountability in relation to the environmental and human rights impacts of businesses. FIs have long since protected information

in relation to their risk management process. As there is strong resistance to disclosure of risk management criteria⁴, regulation is critical. Commercial confidentiality should no longer be a universal excuse to deny stakeholders the information they require. In order for civil society and others to really engage in this matter the first step is increased transparency and reporting of the process surrounding ESG compliance within FIs. The extension of existing directives to FIs business relationships is one way to achieve this. In addition to ESG issues such as environment and human rights, FIs should also be required to report on, for example, names of companies/projects/governments they finance, company exclusion lists, detailed company engagements and at a minimum at least publish a detailed breakdown of their portfolio by region/sector.

2. The regulations implemented in France in 2015 to introduce a legal requirement for climate change reporting by institutional investors should be seen as a baseline for national and European Regulators.⁵ These regulations commit the government to undertake a climate stress test of the banks. France already has a legal requirement for companies to report on environmental and social factors. The August 2015 law now requires them to report on climate change also. Institutional investors and banks will need to report on the risks associated with climate change. Not only do institutional investors need to take climate change into account, the law also requires that they include in their annual report how they take ESG factors into account.⁶ We suggest that this forms a good starting point for regulation on climate. We consider carbon footprinting as insufficient, but a clear carbon risk assessment should be implemented at a national and EU level.⁷ German regulators should introduce a climate stress test for banks as part of the wider stress tests already implemented. This would be in line with the G7 commitment in 2015 to "continue to monitor financial market volatility in order to address any emerging systemic risk that could arise."⁸

² European Commission (2014): MEMO disclosure of non-financial information by large companies and groups –FAQ; 15 April: www.europa.eu (Accessed 11.12.2016)

³ As a point of clarification: A 'Regulation' in EU terminology means that it is a binding legislative act. It must be applied in its entirety across the EU.

⁴ KPMG (2013): Human rights in the Banking Sector; KPMG Climate Change and Sustainability Services. www.kpmg.com

⁵ Rust, S (2016): France aims high with first ever investor-reporting law. 1 February. Investment and Pensions Europe. www.ipe.com (Accessed 11.12.2016)

⁶ 2° investing initiative (2016): 2° Investing regulation in France Article 48 of the French Energy Transition Law. www.2degrees-investing.org (Accessed 11.12.2016)

⁷ Institutional Investor (2016): Goodbye carbon footprint? New climate risk tools take shape. 3 June. www.institutionalinvestor.com (Accessed 11.12.2016)

⁸ Office of the Press Secretary, The White House (2015): G7 Leaders Declaration June 2015. www.whitehouse.gov (Accessed 11.12.2016)

Recommendations and Demands

3. All state pensions should be invested ethically with clear sustainability criteria. Related tax incentives must also be linked to sustainable criteria. State pension funds should act as responsible investors and only invest ethically. The recent EU Directive⁹ which includes responsible investment criteria, only covers occupational pensions and not private or state pensions. All pension plans should also be transparent about their investment portfolio, disclosing their largest holdings. Pensions funds are key to help shift the market towards more sustainable growth, especially in terms of renewable energy. Furthermore, the certification of the private pension scheme “Riester” in Germany should be attached to ESG criteria and only be granted if the provider has clear policies in place that inhibit human rights or environmental violations. To achieve this, the process of certification must be altered (Altersvorsorgeverträge-Zertifizierungsgesetz, AltZertG). The agency PIA (Produktinformationsstelle Altersvorsorge)¹⁰ should not only classify the Riester products in regard of their risks but also of their adherence to ESG criteria.
4. National Government regulators should undertake a legal risk analysis related to new sectoral regulations as these are introduced. This legal risk analysis should look at the interactions between the introduction of the new sectoral law and the ability of the financial industry to help to implement the law, for example with an investment prohibition. As an illustration: when Germany introduces a new law which prohibits the production of cluster munitions, a related ban on investments in cluster munitions should logically follow. The same applies i.e. to the ILO Convention 182 (worst forms of child labour). This should be accompanied by clear regulatory oversight of these issues.
5. It is important that states encourage business to report on human rights, progressively integrating the human rights due diligence process. This can be successfully achieved through the development of the National Action Plans to implement the UN Guiding Principles on Business and Human Rights (refer to blue box on Germany).

The role of the National Action Plan and its implementation:

The companies represented in this publication, and many more companies investigated by NGOs globally, illustrate the human rights and environmental violations perpetrated by corporations. The UN Guiding Principles adopted by the UN Human Rights Council describe State and Corporate responsibilities towards human rights. A key practical implementation of these guiding principles is the National Action Plan on Business and Human Rights (NAP) drafted by member states. NAPs provide a good way for states to put forward clear lines of action on human rights and achieve policy coherence on the human rights agenda.

However, following a two-year consultation process, Germany adopted a rather weak National Action Plan on Business and Human Rights on 21st December 2016. Civil society organizations criticize the NAP for its significant shortcomings in demonstrating that the State values human rights over corporate profit. The NAP does not include any legal accountability mechanism for companies which violate human rights, nor does it allow for collective action in the event of human rights violations by those affected.

Therefore, the above mentioned recommendations and demands are all the more important in order to avoid harmful effects through companies’ and FIs’ business operations.

9 EU Parliament (2016): Plenary sitting: on the proposal for a directive of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision (recast) (COM(2014)0167. www.europarl.eu (Accessed 11.12.2016)

10 Produktinformationsstelle Altersvorsorge (nd): Produktinformationsstelle Altersvorsorge www.produktinformationsstelle.de (Accessed 11.12.2016)

The following environmental and human rights violations are identified in the Dirty Profits reports as being supported by FIs and therefore merit their particular concern:

<p>Manufacture of controversial weapons¹¹ and trade of weapons with conflict regions</p>	<p>Exclude Companies that violate norms and standards:</p> <ul style="list-style-type: none"> ▶ Produce key components of weapons that violate fundamental humanitarian principles (i.e. nuclear weapons and autonomous weapon systems). ▶ Are involved in Life Extension Programs (LEP) for nuclear warheads as they are contrary to government goals and conflict with state obligations. ▶ Engage in arms trade with countries in conflict or that do not recognise or effectively protect human rights.¹² <p>Exclude companies engaged in the following operations to prevent furthering the development of these businesses/activities:</p> <ul style="list-style-type: none"> ▶ Developing, producing and exporting “riot-control weapons/agents and alternative anti-personnel weapons”.
<p>Environmental destruction</p>	<p>Exclude companies that violate norms and standards:</p> <ul style="list-style-type: none"> ▶ Participate in environmental destruction, refuse to compensate for or restore resultant environmental destruction.¹³ <p>Exclude companies engaged in the following operations to prevent furthering the development of these businesses/activities:</p> <ul style="list-style-type: none"> ▶ Deep sea mining ▶ Arctic drilling¹⁴ ▶ Mountaintop Removal mining.¹⁵
<p>Disrespect for fundamental international labour and human rights</p>	<p>Exclude companies that violate norms and standards:</p> <ul style="list-style-type: none"> ▶ Evidently fail to prevent child labour, forced labour, and discrimination in their supply chains and own business operations. ▶ Deny people’s freedom of association, right to collective bargaining, rights to safe and healthy workplace, right to a living wage, equal remuneration, working hours.¹⁶ ▶ Violate fundamental humanitarian principles.¹⁷ ▶ Have projects that lead to forced displacements, or that disregard the land or human rights of local communities and/or indigenous people.¹⁸
<p>Investment in areas of conflict and occupied territories.</p>	<p>Exclude companies that violate norms and standards:</p> <ul style="list-style-type: none"> ▶ Do not fully respect the relevant international laws and standards which provide an internationally accepted agreement for upholding human rights in occupied territories.
<p>Financial Crimes</p>	<p>FIs must not engage in financial crimes or support companies which do. This includes but is not limited to corruption, tax avoidance or evasion, money laundering, bribery, price/financial manipulations, and embezzlement.</p>

11 Controversial weapons are weapons that are either illegal—as their production and use is prohibited by international legal instruments—or deemed particularly controversial because of their indiscriminate effects and the disproportionate harm they cause.

12 Countries in conflict can be found in the Heidelberg Institute for Internationale Konfliktforschung (2015): Conflict Barometer 2015, www.hiik.de/de/konfliktbarometer and also Amnesty International Country reports; www.amnesty.org (Accessed 11.12.2016)

13 Refer to the appendix A for a list of norms and standards related to environment.

14 Specific Arctic regulations have recently been approved in the US, known as the Arctic Rule; www.bsee.gov (Accessed 11.12.2016)

15 There are no specific regulations referring to MTR mining however, regulations in the US now prevent Valley Fills, www.washingtonpost.com (Accessed 11.12.2016)

16 With particular reference to the ILO Conventions, www.ilo.org (Accessed 11.12.2016)

17 These include but are not limited to The Declaration of Human Rights, International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Also see the appendix A of this document.

18 This includes but is not limited to the UN Declaration on Rights of Indigenous People, ILO Indigenous and Tribal people’s Convention, 1989 (no169) which includes references to free, prior and informed consent.

EU Regulations for Non Financial Disclosure

In the 2015 edition of Dirty Profits, the recommendations to regulators clearly stated that a significant contribution to future responsible business and financial resources could be achieved in part through the implementation of the Directive 2014/95/EU (CSR directive) of the European parliament to ensure disclosure of non-financial information by large entities. This was to be in place by 6th December 2016. While this directive is of limited use when applied directly to financial institutions (as their own procurement and employees have a far smaller impact than the impacts of their wider business relationships), these regulations can, however, provide clear information about companies' commitments to human rights and environment, both inside and outside of Europe.¹⁹ This in turn enables FIs to make more informed decisions about the companies they invest in. The CSR directive however, only applies to publically listed companies (and some other unlisted as specified by member states), sadly this excludes a large number of private companies that are arguably more in need of this regulation.

German Business was one of the strongest opponents of the CSR Directive at EU level.²⁰ The implementation of this directive has been applied in varying strengths across member states, for example in Denmark the regulations are applied to companies over 250 employees.²¹ In Germany the integration of this directive is being implemented by the Federal Ministry of Justice and Consumer protection (BMJV) through the "draft law of the reinforcement of non-financial reporting of companies in their Situation and Group reports" (english translation).^{22 23} This law has only adopted the minimum requirements of the CSR directive – applying to companies larger than 500 employees, not being extended to private companies, and only applying to ESG issues directly affecting business operations.²⁴

The Directive itself highlights the importance of business divulging non-financial information "to better identify sustainability risks and increase investor and consumer trust", and as a vital element in managing change "towards a sustainable global economy by combining long-term profitability with social justice and environmental protection".²⁵

¹⁹ European Coalition for Corporate Justice (2014): Assessment of the EU Directive on the disclosure of non-financial information by certain large companies. May. www.business-humanrights.org (Accessed 11.12.2016)

²⁰ Kinderman, Daniel P. (2015): The Struggle Over the EU Non-Financial Disclosure Directive (June 1, 2015). WSI-Mitteilungen 8/2015, pp. 613-621. <https://ssrn.com> (Accessed 11.12.2016)

²¹ Accountancy Europe (2016): EU Directive on disclosure of nonfinancial and diversity information: Achieving good quality and consistent reporting position paper. March. www.accountancyeurope.eu (Accessed 11.12.2016)

²² Freshfields Bruckhaus (2016): Global Business and Human Rights Blog. www.freshfields.com (Accessed 11.12.2016)

²³ BMJV (2016): Gesetz zur Stärkung der nichtfinanziellen Berichterstattung der Unternehmen in ihren Lage- und Konzernlageberichten (CSR-Richtlinie-Umsetzungsgesetz). 21 September. www.bmjv.de (Accessed 11.12.2016)

²⁴ Schroeder, T (nd): Who is affected by the CSR Directive Implementation Act. www.terrallex.org (Accessed 11.12.2016)

²⁵ Salazar, A (2016): Answering 10 common questions on the EU Sustainability Reporting directive. www.enablon.com (Accessed 11.12.2016)

Appendix A

Relevant international norms and standards

Frequently referenced norms and standards

Arms Trade Treaty (ATT)
CCPR General Comment No. 14: Nuclear weapons and the Right to Life
Convention on Cluster Munitions
Equator Principles III
Geneva Conventions (I-IV and additional protocols)
International Covenant on Civil and Political Rights (ICCPR)
International Covenant on Economic, Social and Cultural Rights (ICESCR)
International Labour Organization (ILO) Conventions
OECD Guidelines for Multinational Enterprises
Principles for Sustainable Insurance (PSI)
Report by the Federal Republic of Germany on its Policy on Exports of Conventional Military Equipment May 2015
Roundtable on Sustainable Palm Oil (RSPO) Principles and Criteria for the Production of Sustainable Palm Oil
UN Convention against Corruption (UNCAC)
UN Convention to combat desertification
UN Declaration on the Prohibition of the Use of Nuclear and Thermo-Nuclear Weapons
UN Declaration on the Rights of Indigenous Peoples (DRIPS)
UN Framework Convention on Climate Change
UN Global Compact
UN Guiding Principles on Business and Human Rights
UN Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines
UN Principles for Responsible Investment (PRI)
UN Sustainable Development Goals
Universal Declaration of Human Rights
Voluntary Principles on Security and Human Rights

Relevant norms and standards

Biological and Toxin Weapons Convention
CFS Principles for Responsible Investments in Agriculture and Food Systems (CFS RAI)
Chemical Weapons Convention
Children's Rights and Business Principles
Code of Conduct for Business Taxation
Convention on Biological Diversity
Convention on the Elimination of All Forms of Discrimination Against Women
Convention on the Rights of the Child (CRC)
ECOFIN Council's "Code of Conduct for Business Taxation"
IFC Sustainability Framework
Montreal Protocol on Substances that Deplete the Ozone Layer
OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000 (OPRC-HNC-Protocol)
The Principles for Responsible Agricultural Investment (PRAI)
UN Treaty on the Non-Proliferation of Nuclear Weapons
UNEP Principles for Sustainable Insurance
UNEP FI Principles for Sustainable Insurance
Vienna Convention on the Protection of the Ozone Layer
Voluntary Guidelines on the responsible Governance of Tenure of land, fisheries and forests in the Context of national food security
WMA Declaration of Helsinki – Ethical principles for medical research involving human subjects
World Commission on Dam's (WCD) report: "Dams and development: A New Framework for Decision-Making"

Descriptions and relevant clauses of these international initiatives are available at: www.facing-finance.org

Appendix A

Table 1

Divestment from companies

Company	Divesting Entity	Reasons for Exclusion
Bayer AG		
BP PLC	Ethias Belgium; AP7 (Swedish Pension Fund); Menzis; note that there are numerous fossil fuel divestments by institutions from BP Plc that we have included here.	Environmental damage in the Gulf; environmental pollution
Centerra Gold Inc		
Centrais Eletricas Brasileiras SA (Eletrobras)	Delta Lloyd Asset Management; Pensioenfonds Horeca & Catering (Netherlands); PGB (Pensioenfond); Folio Investing, AP7 (Swedish Pension Fund); PKZH (Swiss Pension Fund); BPF Schilders (Netherlands); Menzis	Violations of Human Rights, Environment; Human Rights violation; Belo Monte Dam; Nuclear Power; Violation of Human Rights in Brazil
Freeport-McMoRan Inc	KLP; Delta Lloyd Asset Management; ACTIAM; PKA (Danish Pension Fund); Pensioenfonds Horeca & Catering (Netherlands); AP 1-4 (Swedish Pension Fund); PGB (Pensioenfond); Nykredit (Denmark); FDC; Spoorwegpensioenfond; Ethical Council AP 1-4; SPOV (Stichting Pensioenfond Openbaar Vervoer); KBC; New Zealand Superannuation Fund; PKZH (Swiss Pension Fund); Folksam (Swedish Insurance); BPF Schilders (Netherlands); Menzis; NBIM	Mine waste in a natural river system, environmental damage to the ecosystems; Severe environmental pollution; Human Rights, Environment; Environmental Damage; Environmental Pollution in Indonesia; Human Rights and Environment; Association to environmental impact from mining activity (Indonesia); Environment; UNGC; Environmental damage resulting from mining operations in Indonesia; Environmental pollution; Severe environmental damage
G4S PLC	Delta Lloyd Asset Management; ACTIAM; Pensioenfonds Horeca & Catering (Netherlands); PGB (Pensioenfond); Presbyterian Church USA; BPF Schilders (Netherlands); Menzis	Human Rights violation; Human Rights; Human Rights violations in Facilities; operating for profit prisons
Hanwha Corp	Aegon; KLP; Pension Funds PNO Media (Netherlands); Delta Lloyd Asset Management; ACTIAM; Robeco Asset Management; PGGM; PFZW; PKA (Danish Pension Fund); Pensioenfonds Horeca & Catering (Netherlands); AP 1-4 + AP7 (Swedish Pension Fund); PGB (Pensioenfond); Nykredit (Denmark); National Pensions Reserve Fund; Ethias Belgium; Danske Bank; APT; FDC; PME; SEB Schroders; UWV; Spoorwegpensioenfond; Ethical Council AP 1-4; SPOV (Stichting Pensioenfond Openbaar Vervoer); APG; Future Fund Australia; Fonds de Reserve (French); Folio Investing; PFA; Aviva (British Insurance Company); KBC; Zealand Superannuation Fund; PKZH (Swiss Pension Fund); Achmea (Netherlands); BPF Schilders (Netherlands); Pensioenfond Gasunie; Pensioenfonds BOUW; MN Huisfondsen (Netherlands); Kempen & Co; Menzis; Loyalis (Netherlands); Nordea; Fonds de Réserve pour les Retraites (France); NBIM	Controversial Weapons; Production of air and surface delivered cluster munitions; Anti-personnel mines; cluster bombs and cluster ammunition; Cluster Weapons; Weapons; Cluster Munition; Anti-personnel mines and depleted uranium munitions; Anti-personnel mines and cluster bombs; Cluster munitions or anti-personnel mines; Involved in production of anti-personnel mines and cluster munitions, which is prohibited under international conventions; Anti-personnel land mines; Involved in the production of cluster weapons; Involvement in antipersonnel mines and cluster munitions; military weapons; Marketing and production of cluster munitions and landmines manufacturing; Human Rights

Company	Divesting Entity	Reasons for Exclusion
Hewlett Packard Enterprise Co	PKA (Danish Pension Fund) (“Hewlett Packard Enterprise Co”); Presbyterian Church USA (“Hewlett Packard HPQ”); AP7 (Swedish Pension Fund) (“Hewlett Packard”)	Human Rights violations; Human Rights; Violation of Human Rights in connection with the supply of technical equipment to Israel
Leonardo SpA	ACTIAM; Spoorwegpensioenfond; SPOV (Stichting Pensioenfond Openbaar Vervoer); Folio Investing; PFA; Presbyterian Church USA; AP7 (Swedish Pension Fund); Achmea (Netherlands); Folksam (Swedish Insurance); Menzis; Nordea	Weapons; Human Rights; Nuclear Weapons; Involved in the production of nuclear weapons; Military related production; Involvement in Nuclear Weapons
Mylan NV	ABP (divestment not exclusion)	
MMC Norilsk Nickel PJSC	KLP; Robeco Asset Management; FDC; NBIM	Emission of sulfur, dioxide, nickel and heavy metals, environmental damage and air pollution; Controversial Behavior; Associated to environmental and health impacts from metal extraction operations; Severe environmental damage
SNC-Lavalin Group Inc	Delta Lloyd Asset Management; Pensioenfond Horeca & Catering (Netherlands); PGB (Pensionfond); Menzis	Corruption; Business Ethics; Bribery and Corruption
Tahoe Resources Inc	PGB (Pensionfond); NBIM	Human Rights violations in Guatemala, Human Rights violation
Volkswagen AG	Delta Lloyd Asset Management; Pensioenfond Horeca & Catering (Netherlands); PGB (Pensionfond); Ethias Belgium; Triodos; UWV; PERA (Colorado Pension Fund)	Fraud and environmental misconduct; Environmental Damage; Business Ethics; Manipulation of U.S. Environmental Protection Agency’s emissions tests; Climate change (marked as “not selected”); Environment; Ethics; controversial service; As parent of MAN: Financially involved with the government of Sudan
Wilmar International Ltd		

Appendix A

Table 2

Company commitments and OECD complaints

	UN Global Compact	UN Guiding Principles on Business and Human Rights	Number of OECD Complaints
Bayer AG	✓	✓ ¹	1 Bayer's cotton seed production in India
BP PLC	✓	✓ ²	1 BTC oil pipeline in Azerbaijan, Georgia & Turkey
Centerra Gold Inc	✗	✗ ³	1 Centerra Gold's HR & environmental violations in Mongolia
Centrais Elétricas Brasileiras SA (Eletrobras)	✓	✓ ⁴	0
Freeport-McMoRan Inc	✗	✓ ⁵	0
G4S PLC	✓	✓ ⁶	3 HR abuses of asylum seekers, HR abuses at Guantánamo Bay, HR abuses by Security services
Hanwha Corp	✗ (only for "Hanwha Chemical Corporation")	✗	0
Hewlett Packard Enterprise Co	✓	✓ ⁷	0
Leonardo SpA	✗	✗ ⁸	0
Mylan NV	✗	✗ ⁹	1 Export of drugs used for death penalty in the US
MMC Norilsk Nickel PJSC	✓	✗ ¹⁰	0
SNC-Lavalin Group Inc	✓	✗ ¹¹	0
Tahoe Resources Inc	✗	✓ ¹²	0
Volkswagen AG	✓ (delisted in September 2015)	✗ ¹³	2 Indirect support of HR violations in China, Climate Change Impacts (2007)
Wilmar International Ltd	✓	✗ ¹⁴	0

1 Bayer (nd): Human Rights Policy www.bayer.com (Accessed 11.12.2016)

2 BP (nd): Human Rights www.bp.com (Accessed 11.12.2016)

3 Centerra Gold Inc (2013): Corporate Responsibility Report www.centerragold.com (Accessed 11.12.2016)

4 Eletrobras (nd): Guidelines on Social Responsibility of Eletrobras www.eletrobras.com (Accessed 11.12.2016)

5 Freeport McMoRan inc (2016): Human Rights www.fcx.com (Accessed 11.12.2016)

6 G4S (2016): Human Rights www.g4s.com

7 HPE (2016): Living progress Human Rights www.hpe.com (Accessed 11.12.2016)

8 Finmeccanica (2013): Code of Ethics www.leonardocompany.com (Accessed 11.12.2016)

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Table 3

Financial institution commitments

	HSBC (UK)	UBS (Switzerland)	Deutsche Bank (Germany)	BNP Paribas (France)	ING (Netherlands)
UN Global Compact	✓	✓	✓	✓	✓
PRI (Principles for Responsible Investment – Asset Owners) ¹	x	x	x	x	✓
PRI (Principles for Responsible Investment – Investment Managers) ²	✓ (HSBC Global Asset Management)	✓ (Mitsubishi Corp. – UBS Realty Inc. and UBS Asset Management)	✓ (Deutsche Asset and Wealth Management)	✓ (BNP Paribas Real Estate Investment Management FRANCE and BNP Paribas Investment Partners)	✓ (ING-IM)
Equator Principles	✓	x	x	✓	x
PSI (Principles for Sustainable Insurance)	✓ (HSBC Insurance)	x	x	x	x

¹ Organisations that represent the holders of long-term retirement savings, insurance and other assets. Examples include pension funds, sovereign wealth funds, foundations, endowments etc. Therefore the asset owner applies the PRI Principles to the investment of its own equities.

² Organisations that manage assets as a third-party, serving an institutional and/or retail market. Therefore the principles are only applied where the money of third parties is involved.

Appendix B

Table 4

Shares and bonds managed by selected financial institutions (€ million)

	BNP Paribas		Deutsche Bank		HSBC		ING	UBS	
	S	B	S	B	S	B	B	S	B
Bayer AG	471.97	27.70	1,327.64	112.48	93.90	62.01	1.52	423.36	46.64
BP PLC	64.35	41.10	224.30	121.27	295.02	30.40	0.45	313.62	153.54
Centerra Gold Inc	0.13				0.17			1.07	
Freeport-McMoRan Inc	9.37	0.28	49.40	82.69	6.06	35.09		39.94	39.06
G4S PLC	1.19	6.00	3.74	2.49	12.93	1.20		15.20	1.64
Hanwha Corp*			0.26		0.62			18.60	
Hewlett Packard Enterprise Co	11.60	17.04	106.05	15.65	20.43	2.39		106.25	114.62
Leonardo SpA	1.30	0.38	4.08	0.27	8.11	0.36		9.38	33.07
Mylan NV	8.31	3.81	57.64	4.55	5.53	10.86		196.31	60.37
MMC Norilsk Nickel PJSC	0.75		31.87	0.55	14.38			17.73	0.38
SNC-Lavalin Group Inc	0.37		0.19		0.80			4.83	
Tahoe Resources Inc	0.02		7.03					2.54	
Volkswagen AG	39.95	37.62	159.04	310.39	17.40	47.91	9.41	60.15	74.28
Wilmar International Ltd	0.93		6.10		4.81			5.62	
Total amount (€ million)**	610.23	133.92	1,977.37	650.33	480.18	190.21	11.37	1,214.57	523.60
Number of companies	13	8	13	9	13	8	3	14	9

* Hanwha Corp. + Hanwha Techwin

** Total amounts have been rounded (refer to methodology)

S Shares B Bonds

Table 5

Underwritings of shares and bonds by selected financial institutions (€ million)

	BNP Paribas		Deutsche Bank		HSBC		ING	UBS	
	S	B	S	B	S	B	B	S	B
Bayer AG	166.67	434.07	166.67	900.74		434.07	116.07	166.67	285.71
BP PLC		2,031.15		747.82		1,715.06			686.38
Freeport-McMoRan Inc		450.29		21.68		450.29			12.04
Leonardo SpA		58.46		58.46		58.46			
Mylan NV				601.04		448.67	601.04		
MMC Norilsk Nickel PJSC							178.81		
Tahoe Resources Inc					35.59				
Volkswagen AG*		4,272.74	1,413.63	3,598.47		9,042.24	593.86		
Total amount (€ million)**	166.67	7,246.71	1,580.30	5,928.22	35.59	12,148.79	1,489.78	166.67	984.14
Number of companies	1	5	2	6	1	6	4	1	3

* Deals were derived for Porsche Automobil Holding SE

** Total amounts have been rounded (refer to methodology)

S Shares B Bonds

Appendix B

Table 6

Loans provided by selected financial institutions (€ million)

	BNP Paribas	Deutsche Bank	HSBC	ING	UBS
Bayer AG	692.65	692.65	523.90	692.65	120.69
BP PLC		183.68	183.68		
Freeport-McMoRan Inc	521.60	63.06	773.49	43.24	389.54
G4S PLC	84.72			84.72	
Hewlett Packard Enterprise Co	285.33	218.08	285.33	159.02	
Leonardo SpA	251.37	28.26	238.78		
Mylan NV		2,071.17		1,780.50	
MMC Norilsk Nickel PJSC	102.55	102.55	102.55	248.52	
SNC-Lavalin Group Inc	796.29		796.29		
Tahoe Resources Inc			27.36		
Volkswagen AG*	1,892.59	325.40	1,892.59	354.13	
Wilmar International Ltd	144.22				
Total amount (€ million)**	4,771.32	3,684.85	4,823.97	3,362.78	510.23
Number of companies	9	8	9	7	2

* Deals were derived for Porsche Automobil Holding SE

** Total amounts have been rounded (refer to methodology)

Berlin, February 2017:

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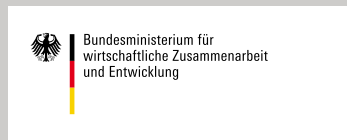
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