

Pension funds' responses to human rights abuses in the extractive industries

A case study for the Fair Pension Guide Netherlands

6 July 2022

About the Eerlijke Pensioenwijzer - Fair Pension Guide Netherlands

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Fair Finance Guide Netherlands is part of Fair Finance International (FFI), an international civil society network with over 100 CSO partners and allies in fifteen countries, that seeks to strengthen the commitment of banks and other financial institutions to social, environmental and human rights standards.

About this report

This research is commissioned by the Fair Pension Guide (FPG) and aims to assess how the Dutch pension funds deal with human rights' risks in relation to their investment relationships with extractives companies. This document presents the findings of this research project.



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Authorship

This report was researched and written by Juliette Laplane, Eline Achterberg and Jurany Ramirez, with contributions of Jeroen Walstra and Stefanie Geurts (all Profundo). Profundo developed the scoring system for the methodology, with contributions of Titus Bolten (Amnesty International Netherlands) and Cor Oudes (PAX).

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Summary

On 4 May 2022, the Business and Human Rights Resource Centre reported that the Transition Minerals Tracker, a tool monitoring the human rights policies and practices of 103 mining companies identified a total of 495 allegations of human rights abuse from 2010 to 2021. Indeed, when looking at the actual and potential adverse impacts on the human rights of local communities and on biodiversity, the extractive industries are among the riskiest. Extractive industries' projects and activities can have several adverse impacts such as: resettlement of communities without adequate consultation and compensation, negative impacts on the livelihoods of local communities and their access to secure and clean water, labour rights violations and major safety accidents. Sadly, when extractive companies cause such impacts, communities are often left behind without receiving compensations for the damages they have suffered and also without access to justice and/or remedy.

Companies active in the extractive industries are highly dependent on the provision of financial services from banks and investors to conduct their daily activities and to expand or develop new projects. Financial institutions, such as banks, pension funds and insurance companies, finance these industries by providing loans (in the case of banks) or investing in the bonds and shares of extractive companies. Financial institutions can consequently use their influence to ensure that these companies have adequate policies and processes in place to prevent, mitigate, and remediate human rights abuses.

Last year marked the tenth anniversary of the United Nations Guiding Principles on Business and Human Rights (UNGPs). Yet, in a report assessing this first decade of implementation, the Working Group on Business and Human Rights of the United Nations stressed the need to raise the ambition and increase the pace to realize business respect for human rights. The responsibility of investors to *'respect human rights by knowing the risks to people connected with their investment activities and showing how they take action to manage those risks'* was identified as one of the key goals in the *UNGPs10+ Roadmap*.

This case study focuses on the responsibility of investors, more specifically ten Dutch pension funds, to address human rights issues at companies they invest in. The ten largest Dutch pension funds investigated in this study are ABP, bpfBOUW, BPL Pensioen, Pensioenfond Detailhandel, Pensioenfond Horeca & Catering, Pensioenfond Vervoer, PFZW, PME, PMT, and StiPP. The study aims to assess whether these pension funds have effective human rights due diligence instruments in place (such as screening, engagement strategies, exclusions, processes to enable remediation) to respond to cases of severe human rights abuses committed by extractive companies in which they invest. Based on these assessments, practical recommendations are provided on what pension funds can do to respond (more) effectively to severe human rights abuses to which they are directly linked via their investee companies.

Methodology

The ten selected extractive companies and cases are reported in Table 1. They have been selected based on the following criteria:

- There is evidence available that shows that in this case the company has caused or contributed to human rights' abuses;
- The case is known to the pension fund either through the work of the Fair Pension Guide, or through one of its coalition members, or via considerable media coverage; and
- The case must be ongoing: to date it is not resolved nor remediated.

Table 1 Selected cases of human rights abuses

Company	Country	Human rights issues
China National Petroleum Corporation (CNPC)	(South) Sudan	Conflict insensitive operations / public health / pollution
Freeport-McMoRan	Indonesia	Surface water pollution / violence / indigenous land rights
Glencore	Colombia	Human rights abuses / land rights / violence
Lundin Energy (former Lundin Petroleum)	(South) Sudan	Involvement in war crimes
Newmont (former Goldcorp)	Guatemala	Indigenous land rights / pollution / violence
Rio Tinto	Myanmar	Forced evictions / environmental damage / violence
Royal Dutch Shell	Nigeria	Human rights abuses / environmental damage
Total	Uganda, Tanzania	Human rights abuses / land rights / pollution
Vale	Brazil	Life losses / environmental and social damage / health and safety
Vedanta Resources	India	Pollution of drinking water / livelihoods

This study first identified the investments of the pension funds in the selected extractive companies. Subsequently, the pension funds were contacted with the request to answer a questionnaire assessing their human rights due diligence process and the way they have been responding to the selected cases of severe human rights' abuses. More particularly, the pension funds were asked to provide evidence of screening and investigation, engagement, and monitoring of engagement for all the selected companies they are invested in.

To assess the processes investors have in place to engage with these companies, Amnesty International Netherlands, PAX and Profundo developed a methodology based on the *UN Guiding Principles on Business and Human Rights (UNGPs)*, the *OECD Due Diligence Guidance for Responsible Business Conduct* and the OECD-document *Responsible business conduct for institutional investors*.¹

The methodology is divided in four main sections, closely related to the structure of the OECD Due Diligence framework:

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

Investments

Nine of the ten biggest pension funds in the Netherlands were found to be invested in the shares or bonds of two or more of the selected extractive companies, as of 31 December 2021. The three largest investors in the selected companies are ABP (€ 1,771.7 million), PFZW (€ 894 million), and PMT (€ 585.5 million). Table 2 shows the investment relationships identified between the pension funds and the ten selected companies. The different sources used for the financial research are reported for each pension fund in chapter 3.

Only for Pensioenfond Horeca & Catering (PH&C), no investments were found because the pension fund divested from all companies involved in the production of fossil fuels as of the

second half of 2021 and had previously also already excluded PetroChina (since 2014) and Vale (since 2019) based on environmental concerns. In addition, PH&C has reduced investments in the most carbon-intensive companies, leading to divestment from Freeport-McMoRan and Rio Tinto. Because no investments in the selected companies were found for PH&C, this pension fund was not assessed further in this study.

Table 2 Investments of pension funds in the ten selected companies as of end 2021 (in € million)

Company	Country	ABP	BpfBOUW	BPL Pensioen	Pensioenfonds Detailhandel	PH&C	Pensioenfonds Vervoer	PFZW	PME	PMT	StiPP
PetroChina (CNPC)	China	-	-	-	1.0	-	-	-	-	-	-
Freeport-McMoRan	US	40.6	3.8	-	14.0	-	-	59.0	-	-	-
Glencore	Switzerland	-	-	3.0	10.0	-	Unknown	62.0	34.8	91.0	0.5
Lundin Energy	Sweden	57.8	5.4	-	4.0	-	Unknown	21.0	-	5.0	-
Newmont Corporation	US	225.3	63.7	-	13.0	-	Unknown	61.0	22.9	34.9	0.1
Rio Tinto	UK	321.0	31.7	-	7.0	-	Unknown	180.0	49.7	73.2	2.1
Royal Dutch Shell	UK	440.6	52.9	-	20.0	-	Unknown	287.0	-	219.8	-
TotalEnergies	France	506.5	84.0	47.0	36.0	-	Unknown	225.0	-	161.7	8.0
Vale	Brazil	179.9	22.5	-	16.0	-	-	-	-	-	-
Vedanta Resources	India	-	-	-	4.0	-	-	-	-	-	-
Total		1,771.7	260.2	50.0	127.0	0.0	Unknown	894.0	108.4	585.5	10.8

Responsiveness of pension funds to the questionnaire

Based on the results of the investment research, all ten pension funds were contacted with the request to comment on the investments identified and to answer a questionnaire. The responses were as follows:

- Seven of the ten pension funds commented on the findings of the investment research, either by confirming investment links identified or by sharing updated holdings. These were ABP, BpfBOUW, Pensioenfonds Detailhandel, PH&C, PME, PMT and StiPP.
- Based on comments by PH&C and the most recent investment portfolio, it was found that PH&C is no longer financially linked to any of the selected companies. For this reason, PH&C was excluded from further research.
- Four of the nine remaining pension funds responded to the questionnaire: ABP, bpfBOUW, Pensioenfonds Detailhandel, and PMT.
- Only one of these four pension funds, Pensioenfonds Detailhandel, shared internal documents and confidential information in its feedback to the questionnaire related to the engagement activities of its responsible engagement overlay manager.
- The other three of the four pension funds that responded to the questionnaire, ABP, BpfBOUW and PMT, only shared information that was already publicly available and indicated that they could not provide non-public information on individual engagement trajectories. No further justification was provided by these three pension funds why they were not able to share internal information on the selected cases.

- Two pension funds, Pensioenfond Vervoer and StiPP, choose not to participate in the study due to alleged lack of time and human resources, but did answer a couple of clarifying questions per email relating to their engagement trajectories. StiPP provided some internal documents/information to support its answers.
- Two other pension funds, BPL Pensioen and PFZW, never replied to any of the invitations to comment on the investment research and the draft findings, to fill in the questionnaire or answer clarifying questions.

Main findings

Based on public information and, where relevant, internal documents or clarifications by pension funds that responded to the questionnaire, the nine pension funds with investments in the selected companies were assessed on their engagement on human rights. The main findings are:

- **Pension funds do not account for outcomes of controversy screening and prioritisation of cases for engagement.**

All the pension funds outsource their engagement activities to fiduciary managers, which are responsible for the adequate implementation of the pension funds' responsible investment policies, including the application of exclusion criteria. Most pension funds' policies state that their managers assess human rights incidents on severity, scale and irremediable character. The outcome of this controversy screening determines the prioritisation of cases for engagement and may even lead to companies becoming excluded from the investment universe. However, this information is generally not made public for individual cases. As a result, civil society organisations, people who experience negative effects, and other stakeholders cannot access information about whether and how a pension fund, as investor in a specific company, has evaluated an identified human rights abuse.

Because of the limited public information accounting for screening methodologies and criteria, it is also difficult to explain differences between the outcomes of different pension funds' screening exercises. For instance, Vale was excluded by BPL Pensioen and Pensioenfond Vervoer based on violations of the UN Global Compact principles. On the other hand, Pensioenfond Detailhandel, BpfBOUW and ABP also report they expect investee companies to respect the UN Global Compact principles, yet the three pension funds continue to invest in Vale. These discrepancies point at differences in how screening is conducted and how international standards, including the UN Global Compact, are applied and interpreted. However, public information is too limited to understand these differences in screening outcomes.

- **There is a lack of evidence to show that pension funds' engagement on specific cases define time-bound targets and clear escalation processes in case of insufficient progress.**

All pension funds have released a detailed policy to explain their processes to implement the OECD guidelines. This effort has been reinforced by their commitment under the Dutch Agreement on International Responsible Investment by Pension Funds. However, this study could not verify if and how pension funds implement these policies by defining clear goals, intermediary targets, timelines, and milestones achieved by the companies on the selected cases. In failing to define such variables in its engagement with investee companies, a pension fund runs the risk that the engagement becomes unguided, ineffective, not measurable and unbound in time.

In some cases, pension funds have identified selected companies as laggards or as making insufficient progress within the engagement trajectory. Yet, years after, they remain invested in those companies without providing explanations for such decisions. This is the case for ABP and Pensioenfond Detailhandel's investments in Glencore, for instance.

- **Pension funds are untransparent about individual engagement trajectories.**

In most cases, public information was too limited to assess which human rights abuses were addressed in the engagement trajectories. Most pension funds report a list of companies engaged including the broad topics of engagement (e.g., just referring to ‘human rights’ or ‘labour conditions’), and only provide more details in their engagement reports on some examples that often did not cover the selected cases and companies central to this study. Because most pension funds, except for Pensioenfond Detailhandel and StiPP, did not provide supplementary internal documents about their engagement activities regarding the selected companies, it could not be ascertained whether those pension funds did or did not engage with the selected companies on the human rights abuses.

- **Pension funds generally fail to successfully address remediation processes and multistakeholder approaches.**

Overall, only few pension funds were able to share evidence that they tried to use their influence to enable access to remedy for victims of harm as part of their engagement on the selected cases of human rights abuses. For five pension funds (BPL Pensioen, PFZW, Pensioenfond Vervoer, PME and PMT), no evidence was found that they engaged with the selected companies on remediation. ABP, bpfBOUW, Pensioenfond Detailhandel and Stipp provided evidence that they have tried to use their influence on investee companies to encourage them to provide remediation for one or more of the selected cases. However, it is not clear if such attempts have actually successfully convinced the companies to accelerate the remediation process. Moreover, sometimes the evidence shared of such discussion is very outdated, such as for Pensioenfond Detailhandel with PetroChina for which the last milestones reported date from 2013.

Scores

Table 3 provides an overview of the scores granted for each specific section, including the total scores per pension fund.

Table 3 Scores per pension fund

	ABP	BpfBOUW	BPL Pensioen	Pensioenfond Detailhandel	Pensioenfond Vervoer	PFZW	PME	PMT	StiPP
A: Identification, qualification and prioritisation of human rights issue(s) and risk(s) – weight: 20%	4.4	4.4	5.6	5.6	3.3	2.8	3.3	3.3	6.7
B: Using leverage to influence investee companies – weight: 40%	2.2	2.2	2.8	5.0	2.2	0.0	1.1	0.6	3.9
C: Tracking progress and outcome by the insurance company – weight: 20%	4.4	2.8	3.3	4.4	3.9	2.8	1.7	4.4	3.3
D: Providing for or cooperating in remediation – weight: 20%	1.6	1.1	0.0	5.0	0.0	0.0	0.0	0.0	1.6
Total	3.0	2.6	2.9	5.0	2.3	1.1	1.4	1.8	3.9

General remarks regarding the scores

Overall, the pension funds score low on their engagement activities on the selected cases of human rights abuses, with seven out of nine pension funds scoring less than or equal to 3 out of 10. The highest scores were achieved by Pensioenfonds Detailhandel (5.0) and StiPP (3.9), the two pension funds which shared internal information on the selected cases. The lowest scores were obtained by PFZW (1.1), PME (1.4) and PMT (1.8). None of the pension funds provided in-depth information on engagement for all the relevant selected human rights abuses to which they are linked through their investments.

Recommendations Fair Pension Guide to pension funds

Pension funds with investments in the extractive sector are given the following recommendations, to better manage and address the human rights' risks linked to these investments.

1. Give engagement a more central role in the pension fund's strategy

At present, engagement for all pension funds is now a rarely used add-on to the normal investment process. While pension funds invest in several thousand companies, they only engage with a few dozen. As a consequence, they are not engaging with many companies which are involved in well-documented human rights' violations. The potential impact which pension funds could have through engagement is hardly exploited.

Pension funds should therefore rethink their investment processes, including their risk management approach, and give engagement a much more central role. They should radically reduce the number of companies they invest in, and they should only invest in companies they are engaging with. This frees up resources for meaningful engagement and turns investors in long-term committed shareholders, which work together with companies to identify, manage and prevent human rights, and remediate human rights violations when they occur. In terms of risk management, this means moving from a statistical way of risk management to a hands-on approach based on thoroughly knowing and influencing the strategies and activities of investee companies.

2. Adopt "SMART" (interim) goals to pressure companies to halt human rights abuses

It is crucial that pension funds set up "SMART" (interim) goals to be achieved by investees involved in human rights abuses and consider divestment where these goals are not achieved on time. An objective is SMART if it is **specific, measurable, achievable, relevant and time-bound**. Goals, timelines and intermediate steps are essential parameters which need to be monitored to ensure the credibility and success of an engagement process. The outcomes of this monitoring should determine if a pension fund should attempt to increase its leverage on the investee companies, if objectives need to be adjusted or renewed, or if exclusion or divestment needs to be considered.

3. Build internal capacity to ensure a critical review of the ESG screening, engagement, monitoring and reporting of their services providers

The research shows that the nine Dutch pension funds assessed outsource the implementation of their responsible investment policy (including controversy screening) and engagement activities to service providers such as their fiduciary managers and investment managers. As the outcome of controversy screening is usually the main variable that will trigger the decision to start engaging or not on a specific controversy, it is essential that pension funds show ability to be critical on the information reported by the organisations they mandate to implement their engagement and stewardship activities. This means that pension funds should integrate strong ESG criteria in the selection of their managers, include conditions regarding reporting in the contracts with the managers and develop clear procedures for incorporating due diligence considerations into their relationship with them. In addition, pension funds should be more proactive in raising questions when they notice strong

stakeholders' concerns or wide media coverage on a project that was not flagged in a controversy screening by their manager. This will only be possible if pension funds allocate sufficient resources to build internal capacity on human rights topics and ensure monitoring of the engagement activities of their service providers.

4. Enhance the integration of stakeholder concerns in engagement processed, including the decision to consider engagement as successful

The findings in this report show that pension funds, in line with their own policies and the OECD Guidelines, should improve the integration of stakeholders' views in their decisions whether to engage with specific companies on human rights abuses or not. There are a variety of ways in which pension funds can ensure the voices of stakeholders, especially rightsholders, are heard in engagement processes, including organising structural stakeholder consultations with civil society organisations demonstrating expertise on the risks associated with the extractive industries, or setting up a grievance mechanism to enable stakeholders to raise their concerns. Pension funds should also consider stakeholders' opinions on the progress achieved by investee companies in dealing with the case, before considering closing an engagement responsibly.

Recently, the Principles for Responsible Investments (PRI) launched a new stewardship initiative that institutional investors are called to join with the overall goals to work together to take action on human rights and social issues. The PRI released an engagement focus company list composed of 35 companies active in the metals and mining sector and renewable sector. The list includes six companies covered by this study namely Freeport-McMoRan, Glencore, Lundin Mining, Newmont, Rio Tinto and Vale. The PRI mentions that in collaboration with lead investors and with input from the technical expert group, they will identify and consult stakeholders who have or may be affected by companies (such as local communities and workers).² Participating in such an initiative is a good opportunity for the Dutch pension funds to better integrate stakeholder concerns in the various steps of their human rights due diligence.

In conflict-affected contexts, pension funds need to conduct 'heightened' human rights due diligence, based on sound conflict and context analysis. Stakeholder engagement in these contexts needs to be especially robust and broad, in order to mitigate for the lack of information, the polarization and the high level of mistrust which usually exists among groups and communities. For further guidance, see the thematic framework on investing in conflict and post-conflict areas for institutional investors, published in the context of the Dutch Agreement on International Responsible Investment by Pension Funds.

5. Ensure the integration of remediation in a more structural manner into the engagement approach

Ensuring adequate remediation is critical for human rights engagements with extractive companies. The low scores achieved by pension funds on this topic show that there is significant room to better integrate remediation in their engagement approaches. The first step to achieve this could be to ensure remediation processes are more firmly established in the general engagement policy and strategy of pension funds, in line with the OECD Guidelines. Then, it is fundamental that pension funds ensure an adequate implementation of their engagement strategy by assessing the topic of remediation in a case-specific context.

Such assessment requires a prior qualification of the pension funds' own relationship to the human rights' impacts. This research shows that pension funds do not make this qualification or just assume that they are always "*directly linked to*" human rights abuses (in terms of the UNGPs) because in most cases they are minority shareholders, while this qualification is also dependent on their own engagement efforts. If an investor continues its investment relationship with a company, despite the lack of tangible results achieved during the

engagement, it may run the risk to be in fact “*facilitating*” the lack of steps taken by the company to remedy the human rights abuses it is causing. Thereby, pension funds could become ‘contributing’ to the violation, which would open up other responsibilities under the UNGPs, such as remediation.

The pension funds’ responsibility to use their leverage to influence investee companies to enable remediation is not limited to merely discussing the topic with investee companies. Requirements made to investee companies such as providing financial compensations to the victims and their relatives, or establishing channels to ensure stakeholders can raise complaints about the impacts of the company’s activities, should be followed by systematic monitoring of the steps taken by companies.

In addition, the report shows that pension funds’ participation in dialogue or mediation processes regarding specific cases of human rights abuses remains a very little shared practice which deserves further attention.

6. Enhance transparency significantly

Transparency increases accountability of both investors and investee companies towards their stakeholders and society. Therefore, it is important that the pension funds and the investee companies are transparent about the human rights controversies in which they are involved or linked to and their responses to them. The pension funds could improve transparency by systematically publishing the details of each engagement activity with the companies, including the (interim) goals formulated, and the (interim) goals achieved, the next steps for the engagement and the overall timeline of the engagement. It is also essential that the pension funds communicate more transparently on their decisions to conclude or continue the engagement with companies, as this research shows that it was not always possible to identify (from public sources) if an engagement was still ongoing or terminated.

Transparency about prioritisation of possible engagement cases is also important. If a pension fund decides to take no action on the basis of a prioritisation, it should indicate how it prioritised, what other controversies outweighed this one, and what it will do with the non-prioritised case.

Pension funds should also promote transparency by the investee companies by requiring the companies to publish a human rights policy and to report on how the policy is implemented, the state of affairs at the sites, actions taken by the company, and progress made on remediation, in case of reported human rights breaches. Encouraging investee companies to use the UN Guiding Principles Reporting Framework can significantly contribute to increasing transparency and accountability on how they respect human rights.

For further guidance on transparency and reporting, pension funds can refer to the instrumentarium (p.39-44) published by the parties in the Dutch Agreement on International Responsible Investment by Pension Funds. In particular, the instrumentarium mentions that pension funds’ public reporting should contain *“to the extent legally possible and without prejudice to the effectiveness of engagement, a list of the activities undertaken on behalf of the participatory pension fund, consisting of companies with which a form of engagement has been pursued on behalf of the Participating Pension Fund and to what end; the results of engagement pursued on behalf of the pension fund in specific companies; and decisions taken by the pension fund when engagement has been unsuccessful”*.

7. Set up a grievance mechanism

It is essential that stakeholders can access a channel to raise concerns, and the creation of a grievance mechanism, at individual or sector level for investors, would be a good practice to further understand the adverse impacts caused by companies in portfolio, and understand what is expected from affected stakeholders as remedial actions. The establishment of a

grievance mechanism would enable pension funds to further develop their knowledge and expertise on the topic of access to remedy. This seems all the more relevant as one of the findings of the last progress report published in December 2021 by the Independent Monitoring Committee of the Dutch Agreement on International Responsible Investment by Pension Funds, is that the progress done by pension funds on recovery and remediation (step 6 of the OECD Due Diligence) lagged behind and was sometimes confused with risk mitigation.³ In addition, the report mentions that pension funds are not taking an active role in practice in enabling remediation, as they are unexperienced and confused about the responsibilities.

Recommendations of the Fair Pension Guide to the Dutch government

Governments need to show strong leadership to contribute to a better integration of human rights issues in the due diligence processes of investors. The following recommendations are made in this regard by the Fair Pension Guide to the Dutch government:

1. Adopt national human rights due diligence legislation for companies, including financial institutions, that will set binding requirements for companies to respect human rights in compliance with the UNGPs and OECD Guidelines.

A new law should cover all companies and its subsidiaries in all sectors, requiring due diligence over the entire value chain including its business relationships. It should require the implementation of gender-responsive due diligence, the involvement of stakeholder consultation, civil liability, and ensure access to justice and remedy for the victims of adverse impact of business operations. The law should contain public reporting requirements and enforcement mechanisms.

2. Advocate within the European Commission for a proper recognition and integration of the human rights responsibility of the financial sector in the EU Directive on Corporate Due Diligence, in line with the OECD sectoral Guidelines for the financial sector.

In February 2022, the European Commission released the much-anticipated proposal for the Directive on Corporate Sustainability Due Diligence (CSDD) following several delays. The proposal was expected to represent a landmark step forward in creating corporate accountability for adverse human rights and environmental impacts along supply chains and provide new avenues for justice. However, many civil society organisations, and non-profit organisations with strong expertise on business and human rights have responded critically to the proposed text of the directive as it presents a certain number of weaknesses.

One of these weaknesses lies specifically in the coverage of the financial sector, which under the current proposal is only required to undertake a due diligence prior to investment, rather than a continuous and ongoing responsibility as defined in the OECD Guidelines⁴. Moreover, the definition of 'value chain' needs to be clarified with regards to the financial sector; it should include the full range of capital market activities, including secondary market transactions. In addition, the financial sector has not been included as a high impact sector, despite the Commission's claim that high impact sectors were selected based on OECD sectoral guidance. This decision from the European Commission can legitimately be questioned considering the efforts made by the OECD over the past years to support the financial sector in the implementation of its guidelines for multinational enterprises by publishing specific due diligence guidance for investors (in 2017) and banks (2019).

Samenvatting

Op 4 mei 2022 meldde het Business and Human Rights Resource Centre dat de Transition Minerals Tracker, een instrument dat het mensenrechtenbeleid en de mensenrechtenpraktijken van 103 mijnbouwbedrijven controleert, tussen 2010 en 2021 in totaal 495 beschuldigingen van mensenrechtenschendingen heeft vastgesteld. Als wordt gekeken naar de feitelijke en potentiële negatieve effecten op de mensenrechten van lokale gemeenschappen en op de biodiversiteit, behoren de winningsindustrieën inderdaad tot de meest risicovolle. Projecten en activiteiten van winningsindustrieën kunnen uiteenlopende negatieve gevolgen hebben, zoals: hervestiging van gemeenschappen zonder adequate raadpleging en compensatie, negatieve gevolgen voor de bestaansmiddelen van lokale gemeenschappen en hun toegang tot veilig en schoon water, arbeidsrechtenschendingen en ernstige ongelukken. Wanneer winningsbedrijven dergelijke effecten veroorzaken, blijven gemeenschappen helaas vaak achter zonder compensatie voor de schade die zij hebben geleden en zonder toegang tot gerechtigheid en/of herstel.

Bedrijven die actief zijn in de winningsindustrieën zijn sterk afhankelijk van de financiële diensten van banken en investeerders om hun dagelijkse werkzaamheden uit te voeren en om nieuwe projecten uit te breiden of te ontwikkelen. Financiële instellingen, zoals banken, pensioenfondsen en verzekeringsmaatschappijen, financieren deze industrieën door leningen te verstrekken (in het geval van banken) of te investeren in de obligaties en aandelen van winningsbedrijven. Financiële instellingen kunnen daarom hun invloed aanwenden om ervoor te zorgen dat deze bedrijven een adequaat beleid en toereikende processen hebben om schendingen van de mensenrechten te voorkomen, te beperken en te verhelpen.

Vorig jaar was het tien jaar geleden dat de leidende principes van de VN Guiding Principles on Business and Human Rights (UNGP's) in werking traden. Toch heeft de Working Group on Business and Human Rights van de VN in een rapport, waarin dit eerste decennium van implementatie wordt geëvalueerd, benadrukt dat de ambitie moet worden verhoogd en het tempo moet worden opgevoerd om respect van het bedrijfsleven voor mensenrechten te realiseren. De verantwoordelijkheid van investeerders om *'mensenrechten te respecteren door de risico's voor mensen in verband met hun investeringsactiviteiten te kennen en te laten zien hoe zij actie ondernemen om die risico's te beheersen'* werd in de routekaart van de UNGP's10+ als een van de belangrijkste doelstellingen genoemd.

Dit onderzoek richt zich op de verantwoordelijkheid van beleggers, namelijk van tien Nederlandse pensioenfondsen, om mensenrechtenkwesties aan te kaarten bij bedrijven waarin zij beleggen. De tien grootste Nederlandse pensioenfondsen die in deze studie worden onderzocht zijn ABP, bpfBOUW, BPL Pensioen, Pensioenfonds Detailhandel, Pensioenfonds Horeca & Catering, Pensioenfonds Vervoer, PFZW, PME, PMT, en StiPP. Het onderzoek heeft als doel te beoordelen of deze pensioenfondsen beschikken over effectieve due diligence-instrumenten op het gebied van mensenrechten (zoals screening, engagementstrategieën, uitsluitingen, processen om herstel mogelijk te maken) om te reageren op gevallen van ernstige mensenrechtenschendingen door winningsbedrijven waarin zij beleggen. Op basis van deze beoordelingen worden praktische aanbevelingen gedaan over wat pensioenfondsen kunnen doen om (effectiever) te reageren op ernstige mensenrechtenschendingen waar zij via de ondernemingen waarin zij beleggen direct bij betrokken zijn.

Methodologie

De tien geselecteerde winningsondernemingen en casussen staan vermeld in Table 4. De casussen en betrokken bedrijven zijn geselecteerd op basis van de volgende criteria:

- Er is bewijs dat het bedrijf de mensenrechtenschending heeft veroorzaakt, or daaraan heeft bijgedragen;
- De casus is bekend bij de verzekeringsmaatschappij – ofwel via het werk van de Eerlijke Pensioenwijzer of één van haar coalitieleden, of via aanzienlijke media-aandacht; en

- De casus loopt nog steeds: tot op heden is de mensenrechtenschending nog niet volledig opgelost.

Table 4 Geselecteerde casussen van mensenrechtenschendingen

Bedrijf	Land	Impacts op mensenrechten
China National Petroleum Corporation (CNPC)	(Zuid) Sudan	Opereren in conflictgebieden / volksgezondheid / vervuiling
Freeport-McMoRan	Indonesië	Vervuiling van oppervlaktewater / geweld / landrechten van inheemse bevolkingen
Glencore	Colombia	Mensenrechtenschendingen / landrechten / geweld
Lundin Energy (former Lundin Petroleum)	(Zuid) Sudan	Betrokkenheid bij oorlogsmisdaden
Newmont (former Goldcorp)	Guatemala	Landrechten van inheemse bevolkingen / vervuiling / geweld
Rio Tinto	Myanmar	Gedwongen uitzetting / milieuvervuiling / geweld
Royal Dutch Shell	Nigeria	Mensenrechtenschendingen / milieuvervuiling
Total	Uganda, Tanzania	Mensenrechtenschendingen / landrechten / vervuiling
Vale	Brazilië	Dodelijke slachtoffers / sociale en milieuschade / veiligheid en gezondheid
Vedanta Resources	India	Drinkwatervervuiling / schade aan bestaansmiddelen

In deze studie zijn eerst de investeringen van de pensioenfondsen in de geselecteerde winningsindustrieën in kaart gebracht. Vervolgens werd contact opgenomen met de pensioenfondsen met het verzoek een vragenlijst te beantwoorden waarin werd nagegaan hoe zij de mensenrechten due diligence-procedures hanteren en hoe zij hebben gereageerd op de geselecteerde gevallen van ernstige mensenrechtenschendingen. De pensioenfondsen werden bovendien verzocht bewijsmateriaal te verstrekken over screening en onderzoek, engagement en toezicht op engagement voor alle geselecteerde ondernemingen waarin zij hebben geïnvesteerd.

Om de processen te beoordelen die institutionele beleggers hanteren om bedrijven aan te spreken die betrokken zijn bij mensenrechtenschendingen, hebben Amnesty International, PAX en Profundo een methodologie ontwikkeld op basis van de VN *Guiding Principles on Business and Human Rights (UNGPs)*, de OESO-richtlijn voor due diligence voor verantwoord ondernemen, en de OESO-richtlijn voor verantwoord ondernemen voor institutionele beleggers.⁵

De methodologie is opgedeeld in vier delen, die weer overeenkomen met de structuur van het OESO-raamwerk voor due diligence:

- Deel A: identificatie, kwalificatie en prioritering van mensenrechtenkwesties en risico's;
- Deel B: beïnvloeden van bedrijven om mensenrechtenschendingen te voorkomen en te beperken;
- Deel C: monitoren van voortgang en communicatie over de resultaten;
- Deel D: voorzien in – of medewerking aan – herstel of genoegdoening.

Beleggingen

Negen van de tien grootste pensioenfondsen in Nederland hadden op 31 december 2021 beleggingen in aandelen of obligaties van twee of meer van de geselecteerde winningsbedrijven. De drie grootste beleggers in de geselecteerde ondernemingen zijn ABP (€ 1.771,7 miljoen), PFZW

(€ 894 miljoen), en PMT (€ 585,5 miljoen). Table 5 laat de beleggingen zien van de negen pensioenfondsen in de tien geselecteerde ondernemingen. De verschillende bronnen die voor het financieel onderzoek zijn gebruikt, worden per pensioenfonds gerapporteerd in hoofdstuk 3.

Alleen voor Pensioenfonds Horeca & Catering (PH&C) werden geen beleggingen gevonden omdat het pensioenfonds vanaf de tweede helft van 2021 desinvesteerde uit alle bedrijven die betrokken zijn bij de productie van fossiele brandstoffen en daarvoor ook al PetroChina (sinds 2014) en Vale (sinds 2019) had uitgesloten op basis van milieuoverwegingen. Daarnaast heeft PH&C de beleggingen in de meest CO2-intensieve ondernemingen teruggeschroefd, wat heeft geleid tot het afstoten van Freeport-McMoRan en Rio Tinto. Omdat voor PH&C geen beleggingen in de geselecteerde bedrijven werden gevonden, is dit pensioenfonds in dit onderzoek niet verder beoordeeld.

Table 5 Beleggingen van de pensioenfondsen in tien geselecteerde bedrijven (in € miljoen)

Bedrijf	Land	ABP	BpfBOUW	BPL Pensioen	Pensioenfonds Detailhandel	PH&C	Pensioenfonds Vervoer	PFZW	PME	PMT	StiPP
PetroChina (CNPC)	China	-	-	-	1,0	-	-	-	-	-	-
Freeport-McMoRan	Verenigde Staten	40,6	3,8	-	14,0	-	-	59,0	-	-	-
Glencore	Zwitserland	-	-	3,0	10,0	-	Onbekend	62,0	34,8	91,0	0,5
Lundin Energy	Zweden	57,8	5,4	-	4,0	-	Onbekend	21,0	-	5,0	-
Newmont Corporation	Verenigde Staten	225,3	63,7	-	13,0	-	Onbekend	61,0	22,9	34,9	0,1
Rio Tinto	Verenigd Koninkrijk	321,0	31,7	-	7,0	-	Onbekend	180,0	49,7	73,2	2,1
Royal Dutch Shell	Verenigd Koninkrijk	440,6	52,9	-	20,0	-	Onbekend	287,0	-	219,8	-
TotalEnergies	Frankrijk	506,5	84,0	47,0	36,0	-	Onbekend	225,0	-	161,7	8,0
Vale	Brazilië	179,9	22,5	-	16,0	-	-	-	-	-	-
Vedanta Resources	India	-	-	-	4,0	-	-	-	-	-	-
Totaal		1.771,7	260,2	50,0	127,0	0,0	Onbekend	894,0	108,4	585,5	10,8

Beantwoording van de vragenlijst door de pensioenfondsen

Op basis van de resultaten van het financiële onderzoek zijn alle verzekeringsmaatschappijen verzocht een vragenlijst in te vullen. De verzekeraars hebben op dit verzoek op verschillende manieren op gereageerd:

- Zeven van de tien pensioenfondsen hebben gereageerd op de uitkomsten van het beleggingsonderzoek, ofwel door de geconstateerde beleggingsverbanden te bevestigen, ofwel door geactualiseerde deelnemingen te delen. Dit waren ABP, BpfBOUW, Pensioenfonds Detailhandel, PH&C, PME, PMT en StiPP.
- Op basis van verklaringen van PH&C en de meest recente investeringsportefeuille werd vastgesteld dat PH&C niet langer financieel verbonden is met een van de geselecteerde ondernemingen. Om deze reden werd PH&C van verder onderzoek uitgesloten.

- Vier van de negen resterende pensioenfondsen hebben de vragenlijst beantwoord: ABP, bpfBOUW, Pensioenfonds Detailhandel, en PMT.
- Slechts één van deze vier pensioenfondsen, Pensioenfonds Detailhandel, heeft interne documenten en vertrouwelijke informatie gedeeld in de feedback op de vragenlijst met betrekking tot de engagementactiviteiten van de verantwoordelijke engagement overlay manager.
- De andere drie van de vier pensioenfondsen die de vragenlijst hebben beantwoord, ABP, BpfBOUW en PMT, hebben alleen informatie gedeeld die al openbaar beschikbaar was en hebben aangegeven dat zij geen niet-openbare informatie over individuele engagementtrajecten konden verstrekken. Deze drie pensioenfondsen hebben niet nader toegelicht waarom zij niet in staat waren om interne informatie over de geselecteerde casussen te delen.
- Twee pensioenfondsen, Pensioenfonds Vervoer en StiPP, kozen ervoor om niet deel te nemen aan het onderzoek vanwege vermeend gebrek aan tijd en menskracht, maar hebben wel per e-mail een paar verhelderende vragen beantwoord met betrekking tot hun engagementtrajecten. StiPP verstreekte enkele interne documenten/informatie ter ondersteuning van de antwoorden.
- Twee andere pensioenfondsen, BPL Pensioen en PFZW, hebben nooit gereageerd op de uitnodigingen om te reageren op het beleggingsonderzoek en de conceptbevindingen, noch om de vragenlijst in te vullen of toelichtende vragen te beantwoorden.

Bevindingen

Op basis van openbare informatie en, waar relevant, interne documenten of toelichtingen van pensioenfondsen die de vragenlijst hebben beantwoord, zijn de negen pensioenfondsen met beleggingen in de geselecteerde bedrijven beoordeeld op hun engagement op het gebied van de mensenrechten. De belangrijkste bevindingen zijn:

- **Pensioenfondsen leggen geen verantwoording af over de uitkomsten van de screening van controverses en de prioriteitenstelling voor het aangaan van engagement.**

Alle pensioenfondsen besteden hun engagementactiviteiten uit aan fiduciaire managers, die verantwoordelijk zijn voor de adequate uitvoering van het verantwoord beleggingsbeleid van de pensioenfondsen, waaronder de toepassing van uitsluitingscriteria. In het beleid van de meeste pensioenfondsen staat dat hun vermogensbeheerders mensenrechtenincidenten beoordelen op ernst, omvang en onherstelbaar karakter. De uitkomst van deze screening op controverses bepaalt de prioriteitsstelling van casussen voor engagement en kan er zelfs toe leiden dat bedrijven worden uitgesloten van het beleggingsuniversum. Deze informatie wordt over het algemeen echter niet openbaar gemaakt voor individuele dossiers. Als gevolg daarvan hebben maatschappelijke organisaties, mensen die negatieve gevolgen ondervinden, en andere belanghebbenden geen toegang tot informatie over of en hoe een pensioenfonds, als belegger in een specifiek bedrijf, een vastgestelde schending van mensenrechten heeft beoordeeld.

Door de beperkte openbare informatieverstrekking over screeningmethodologieën en -criteria is het ook moeilijk om verschillen tussen de uitkomsten van de screening door verschillende pensioenfondsen te verklaren. Zo werd Vale door BPL Pensioen en Pensioenfonds Vervoer uitgesloten op basis van schendingen van de VN Global Compact-principes. Daar staat tegenover dat Pensioenfonds Detailhandel, BpfBOUW en ABP ook aangegeven dat zij verwachten dat bedrijven waarin wordt belegd de VN Global Compact principes respecteren, maar toch beleggen de drie pensioenfondsen nog steeds in Vale. Deze verschillen wijzen op de uiteenlopende wijze waarop de screening wordt uitgevoerd en hoe internationale standaarden, waaronder de VN Global Compact, worden toegepast en geïnterpreteerd. Openbare informatie is echter te beperkt om deze verschillen in screeningresultaten te verklaren.

- **Er is een gebrek aan bewijs waaruit blijkt dat het engagement van de pensioenfondsen in specifieke dossiers tijdgebonden doelstellingen en duidelijke escalatieprocessen omvat in geval van onvoldoende vooruitgang.**

Alle pensioenfondsen hebben een gedetailleerd beleid gepubliceerd waarin zij hun processen voor de implementatie van de OESO-richtlijnen toelichten. Deze inspanningen zijn versterkt door hun betrokkenheid bij de Nederlandse overeenkomst inzake internationaal verantwoord beleggen door pensioenfondsen. In dit onderzoek kon echter niet worden nagegaan of en hoe de pensioenfondsen dit beleid implementeren door het vaststellen van duidelijke doelstellingen, tussentijdse streefdoelen, tijdschema's en mijlpalen die door bedrijven in de geselecteerde casussen zijn bereikt. Door dergelijke factoren niet te definiëren in het engagement met bedrijven waarin wordt geïnvesteerd, loopt een pensioenfonds het risico dat het engagement ongecontroleerd, ineffectief, onmeetbaar en niet tijdgebonden wordt.

In sommige gevallen hebben pensioenfondsen bepaalde bedrijven aangewezen als achterblijvers of als bedrijven die onvoldoende vooruitgang boeken binnen het engagementstraject. Toch blijven de pensioenfondsen jaren later nog in die ondernemingen beleggen zonder dat zij een verklaring voor dergelijke keuzes geven. Dit is bijvoorbeeld het geval voor de beleggingen van ABP en Pensioenfonds Detailhandel in Glencore.

- **Pensioenfondsen zijn niet transparant over individuele engagementtrajecten.**

In de meeste gevallen was de openbare informatie te beperkt om te kunnen beoordelen welke mensenrechtenschendingen in de engagementtrajecten aan de orde kwamen. De meeste pensioenfondsen rapporteren een lijst van geëngageerde bedrijven, met vermelding van de algemene onderwerpen van engagement (bijvoorbeeld alleen een verwijzing naar 'mensenrechten' of 'arbeidsomstandigheden'), en geven alleen meer details in hun engagementverslagen over enkele voorbeelden die meestal geen betrekking hadden op de geselecteerde casussen en bedrijven die centraal staan in dit onderzoek. Omdat de meeste pensioenfondsen, met uitzondering van Pensioenfonds Detailhandel en StiPP, geen aanvullende interne documenten hebben verstrekt over hun engagementactiviteiten met de geselecteerde bedrijven, kon niet worden nagegaan of deze pensioenfondsen al dan niet engagement hebben gevoerd met de geselecteerde bedrijven over de mensenrechtenschendingen.

- **Pensioenfondsen slagen er doorgaans niet in om herstelprocessen en multi-stakeholderbenaderingen succesvol aan te kaarten.**

In het algemeen konden slechts enkele pensioenfondsen bewijzen overleggen dat zij in het kader van hun engagement inzake de geselecteerde mensenrechtenschendingen hebben geprobeerd om hun invloed aan te wenden om slachtoffers toegang tot herstel mogelijkheden te bieden. Voor vijf pensioenfondsen (BPL Pensioen, PFZW, Pensioenfonds Vervoer, PME en PMT) werd geen bewijs gevonden dat zij zich met de geselecteerde bedrijven hebben ingezet voor herstelmaatregelen. ABP, bpfBOUW, Pensioenfonds Detailhandel en Stipp leverden bewijs dat zij hebben geprobeerd hun invloed aan te wenden op bedrijven waarin wordt geïnvesteerd om hen aan te moedigen te zorgen voor herstel in een of meer van de geselecteerde dossiers. Het is echter niet duidelijk of dergelijke pogingen de bedrijven er daadwerkelijk van hebben kunnen overtuigen om het herstelproces te bespoedigen. Bovendien is het gedeelde bewijsmateriaal van dergelijke besprekingen soms sterk verouderd, zoals voor Pensioenfonds Detailhandel met PetroChina, waarvoor de laatst gerapporteerde mijlpalen dateren uit 2013.

Scores

Table 6 geeft een overzicht van de scores voor ieder onderdeel van de beoordeling, alsmede de totale score per pensioenfonds. De belangrijkste bevindingen per pensioenfonds zijn hieronder samengevat.

Table 6 Scores per pensioenfond

	ABP	BpfBOUW	BPL Pensioen	Pensioenfond Detailhandel	Pensioenfond Vervoer	PFZW	PME	PMT	StiPP
A: Identificatie, kwalificatie en prioritering van mensenrechtenkwesies en risico's – Weging: 20%	4,4	4,4	5,6	5,6	3,3	2,8	3,3	3,3	6,7
B: Beïnvloeden van bedrijven om mensenrechtenschendingen te voorkomen en te beperken – Weging: 40%	2,2	2,2	2,8	5,0	2,2	0,0	1,1	0,6	3,9
C: Monitoren van voortgang en communicatie over de resultaten – Weging: 20%	4,4	2,8	3,3	4,4	3,9	2,8	1,7	4,4	3,3
D: Voorzien in – of medewerking aan – herstel of genoegdoening – Weging: 20%	1,6	1,1	0,0	5,0	0,0	0,0	0,0	0,0	1,6
Totaal	3,0	2,6	2,9	5,0	2,3	1,1	1,4	1,8	3,9

Algemene opmerkingen over de scores

Over het geheel scoren de pensioenfondsen laag op hun engagementactiviteiten met betrekking tot de geselecteerde casussen van mensenrechtenschendingen, waarbij zeven van de negen pensioenfondsen een score van minder dan of gelijk aan 3 op 10 behalen. De hoogste scores werden behaald door Pensioenfond Detailhandel (5,0) en StiPP (3,9), de twee pensioenfondsen die interne informatie hebben gedeeld over de geselecteerde casussen. De laagste scores werden behaald door PFZW (1,1), PME (1,4) en PMT (1,8). Geen van de pensioenfondsen verschaftte diepgaande informatie over engagement voor alle relevante geselecteerde mensenrechtenschendingen waarmee zij via hun beleggingen verbonden zijn.

Aanbevelingen van de Eerlijke Pensioenwijzer voor de pensioenfondsen

Pensioenfondsen die in de winningssector beleggen, krijgen de volgende aanbevelingen om de mensenrechtenrisico's die aan deze beleggingen verbonden zijn, beter te beheren en aan te pakken.

1. Geef engagement een centralere rol in de strategie van het pensioenfond

Momenteel is engagement voor alle pensioenfondsen een nauwelijks toegepaste aanvulling op het reguliere beleggingsproces. Hoewel pensioenfondsen in duizenden bedrijven beleggen, gaan zij slechts met enkele tientallen bedrijven een dialoog aan. Als gevolg hiervan zijn zij niet geëngageerd met veel bedrijven die betrokken zijn bij welgedocumenteerde schendingen van de mensenrechten. De potentiële impact die pensioenfondsen via engagement zouden kunnen uitoefenen, wordt nauwelijks benut.

Pensioenfondsen zouden daarom hun investeringsprocessen, inclusief hun risicobeheer, moeten herzien en engagement een centralere rol moeten geven. Zij zouden het aantal bedrijven waarin zij beleggen radicaal moeten verminderen en alleen moeten beleggen in bedrijven waarmee zij een engagement aangaan. Dit maakt middelen vrij voor zinvolle betrokkenheid en verandert investeerders in geëngageerde aandeelhouders voor de lange termijn, die samenwerken met ondernemingen om mensenrechten vast te stellen, te controleren en te voorkomen, en om mensenrechtenschendingen te verhelpen wanneer deze zich voordoen. Op het gebied van risicobeheer betekent dit dat er moet worden overgestapt

van een louter statistische manier van risicobeheer naar een praktijkgerichte aanpak waarbij de strategieën en activiteiten van bedrijven waarin wordt geïnvesteerd, grondig worden doorgelicht en beïnvloed.

2. Stel 'SMART' (tussentijdse) doelstellingen vast om bedrijven onder druk te zetten schendingen van de mensenrechten een halt toe te roepen

Het is van cruciaal belang dat pensioenfondsen 'SMART' (tussentijdse) doelstellingen vaststellen die moeten worden bereikt door ondernemingen die betrokken zijn bij mensenrechtenschendingen, en desinvestering te overwegen wanneer deze doelstellingen niet op tijd worden behaald. Doelstellingen zijn SMART als ze specifiek, meetbaar, haalbaar, relevant en tijdgebonden zijn. Doelstellingen, tijdschema's en tussenstappen zijn essentiële parameters die moeten worden gemonitord om de geloofwaardigheid en het succes van een engagementproces te verzekeren. De resultaten van deze monitoring moeten bepalen of een pensioenfonds moet proberen de invloed op de bedrijven waarin wordt belegd te vergroten, of de doelstellingen aan te passen of vernieuwen, dan wel uitsluiting of desinvestering te overwegen.

3. Bouw interne capaciteit op om de ESG-screening, -betrokkenheid, -monitoring en -rapportage van dienstverleners kritisch te kunnen beoordelen

Uit dit onderzoek blijkt dat de negen beoordeelde Nederlandse pensioenfondsen de uitvoering van hun verantwoord beleggingsbeleid (inclusief controversescreening) en engagementactiviteiten uitbesteden aan dienstverleners, zoals fiduciair managers en vermogensbeheerders. Aangezien de uitkomst van controversescreening meestal de belangrijkste factor is in de beslissing om al dan niet te beginnen met engagement, is het essentieel dat pensioenfondsen laten zien dat zij kritisch kunnen zijn op de informatie die wordt gerapporteerd door de organisaties die zij machtigen voor de uitvoering van hun engagement en stewardship activiteiten. Dit betekent dat pensioenfondsen sterke ESG-criteria moeten integreren in de selectie van hun managers, voorwaarden over rapportage moeten opnemen in de contracten met de managers en duidelijke procedures moeten ontwikkelen voor het opnemen van due diligence-overwegingen in hun relatie met deze beheerders. Bovendien moeten pensioenfondsen proactiever zijn in het stellen van vragen wanneer zij sterke bezorgdheid van belanghebbenden of brede media-aandacht voor een project constateren dat niet in een controversiële screening door hun manager is gesignaleerd. Dit zal alleen mogelijk zijn als de pensioenfondsen voldoende middelen uittrekken voor de opbouw van interne capaciteit op het gebied van mensenrechtenkwesties en voor het toezicht op de engagementactiviteiten van hun dienstverleners.

4. Verbeter de betrokkenheid van belanghebbenden in het engagementproces, waaronder ook beslissingen om engagement al dan niet als succesvol te beschouwen

De bevindingen in dit rapport tonen aan dat pensioenfondsen, in overeenstemming met hun eigen beleid en de OESO-richtlijnen, de betrokkenheid van belanghebbenden beter moeten integreren in hun beslissingen om al dan niet met specifieke bedrijven in dialoog te treden over mensenrechtenschendingen. Er zijn verschillende manieren waarop pensioenfondsen ervoor kunnen zorgen dat de stem van belanghebbenden, met name rechthebbenden, wordt gehoord in engagementprocessen, zoals het organiseren van structureel stakeholdersoverleg met maatschappelijke organisaties die expertise hebben over de risico's rond de winningsindustrieën, of het opzetten van een klachtenmechanisme om belanghebbenden in staat te stellen hun zorgen kenbaar te maken. Pensioenfondsen moeten ook rekening houden met de mening van belanghebbenden over de vooruitgang die bedrijven hebben geboekt bij de aanpak van de klacht, voordat zij overwegen een engagement op verantwoorde wijze af te sluiten.

Onlangs hebben de Principles for Responsible Investments (PRI) een nieuw stewardship-initiatief gelanceerd waarbij institutionele beleggers worden opgeroepen zich aan te sluiten, met als algemeen doel gezamenlijk actie te ondernemen op het gebied van mensenrechten en sociale kwesties. De PRI heeft een lijst van geëngageerde bedrijven gepubliceerd, bestaande uit 35 bedrijven die actief zijn in de metaal- en mijnbouwsector en de sector hernieuwbare energie. Op de lijst staan zes ondernemingen die in deze studie aan bod komen, namelijk Freeport-McMoRan, Glencore, Lundin Mining, Newmont, Rio Tinto en Vale. De PRI vermeldt dat zij in samenwerking met de hoofdinvesteerders en met input van de groep van technische deskundigen, de belanghebbenden zullen identificeren en raadplegen die door de bedrijven worden of kunnen worden beïnvloed (zoals plaatselijke gemeenschappen en werknemers).⁶ Deelname aan een dergelijk initiatief is een goede gelegenheid voor de Nederlandse pensioenfondsen om de belangen van belanghebbenden beter te integreren in de verschillende stappen van hun due diligence op het gebied van mensenrechten.

In conflictgebieden moeten pensioenfondsen een 'verscherpte' mensenrechtentoetsing uitvoeren, op basis van een gedegen conflict- en contextanalyse. De betrokkenheid van belanghebbenden in deze contexten moet zeer robuust en grootschalig zijn, om het gebrek aan informatie, de polarisatie en het grote wantrouwen tussen groepen en gemeenschappen te ondervangen. Zie voor verdere richtsnoeren het thematisch kader inzake beleggen in conflict- en post-conflictgebieden voor institutionele beleggers, gepubliceerd in het kader van het Convenant International Maatschappelijk Verantwoord Beleggen Pensioenfondsen.

5. Zorg voor een meer structurele integratie van herstelmaatregelen in het engagement

Het waarborgen van adequate herstelmaatregelen is van cruciaal belang voor engagementen over mensenrechten met winningsondernemingen. De lage scores van pensioenfondsen op dit onderwerp laten zien dat er nog veel ruimte is om herstel- en genoegdoeningsmaatregelen beter te integreren in hun engagementbenadering. De eerste stap om dit te bereiken zou kunnen zijn om ervoor te zorgen dat herstelprocessen steviger verankerd worden in het algemene engagementbeleid en de strategie van pensioenfondsen, in overeenstemming met de OESO-richtlijnen. Vervolgens is het van fundamenteel belang dat pensioenfondsen zorgen voor een adequate uitvoering van hun engagementstrategie door het onderwerp van herstel in een casusspecifieke context te beoordelen.

Een dergelijke beoordeling vereist een voorafgaande kwalificatie van de eigen relatie van pensioenfondsen ten opzichte van de mensenrechtenimpact. Uit dit onderzoek blijkt dat pensioenfondsen deze kwalificatie niet maken of simpelweg aannemen dat ze altijd "direct gelinkt zijn aan" mensenrechtenschendingen (in termen van de UNGP's) omdat ze in de meeste gevallen een minderheidsaandeelhouder zijn. Echter, deze kwalificatie is ook afhankelijk van hun eigen engagement inspanningen. Als een investeerder zijn investeringsrelatie met een bedrijf voortzet, ondanks het gebrek aan concrete resultaten tijdens het engagement, kan een investeerder het risico lopen dat het in feite faciliteert dat het bedrijf onvoldoende stappen neemt om de mensenrechtenschendingen te verhelpen. Op die manier zouden pensioenfondsen kunnen gaan "bijdragen" tot de schending, wat andere verantwoordelijkheden met zich meebrengt in het kader van de UNGP's, zoals het faciliteren van herstelmaatregelen.

De verantwoordelijkheid van pensioenfondsen om hun invloed aan te wenden om bedrijven waarin wordt belegd te beïnvloeden zodat herstel mogelijk wordt, beperkt zich niet tot het bespreken van het onderwerp met deze bedrijven. Eisen die aan bedrijven worden gesteld, zoals het verstrekken van financiële compensaties aan de slachtoffers en hun familieleden, of het opzetten van kanalen om ervoor te zorgen dat belanghebbenden klachten kunnen indienen over de consequenties van de activiteiten van het bedrijf, moeten worden gecontroleerd door systematisch toezicht op de stappen die door bedrijven worden genomen.

Bovendien blijkt uit het onderzoek dat de deelname van pensioenfondsen aan dialoog- of bemiddelingsprocessen over specifieke gevallen van mensenrechtenschendingen een nauwelijks voorkomende praktijk is die verdere aandacht verdient.

6. Vergroot de transparantie aanzienlijk

Transparantie vergroot de controleerbaarheid van zowel beleggers als bedrijven waarin wordt belegd, ten overstaan van hun belanghebbenden en de samenleving. Daarom is het belangrijk dat de pensioenfondsen en de bedrijven waarin wordt belegd transparant zijn over de mensenrechtencontroverses waarbij zij betrokken zijn en over hun aanpak daarvan. De pensioenfondsen zouden de transparantie kunnen verbeteren door systematisch de details van iedere engagementactiviteit met de bedrijven te publiceren, inclusief de geformuleerde (tussentijdse) doelen en de behaalde (tussentijdse) resultaten, de vervolgstappen voor het engagement en het totale tijdschema van het engagement. Het is ook essentieel dat de pensioenfondsen transparanter communiceren over hun beslissingen om de engagement met bedrijven af te ronden of voort te zetten, aangezien uit dit onderzoek blijkt dat het niet altijd mogelijk was om (uit openbare bronnen) op te maken of een engagement nog gaande was of was beëindigd.

Transparantie over de prioritering van mogelijke gevallen van engagement is ook belangrijk. Als een pensioenfonds besluit geen actie te ondernemen op basis van een prioritering, dient het aan te geven hoe de prioritering heeft plaatsgevonden, welke andere controverses zwaarder wegen dan deze controversen, en wat wordt gedaan met de niet-prioritaire gevallen.

Pensioenfondsen moeten ook de transparantie van de bedrijven waarin wordt belegd bevorderen door van de bedrijven te eisen dat zij een mensenrechtenbeleid publiceren en bij gerapporteerde schendingen verslag uitbrengen over de wijze waarop het beleid wordt uitgevoerd, de stand van zaken op de locaties, de door het bedrijf ondernomen acties en de geboekte vooruitgang bij het herstel. Bedrijven waarin wordt belegd aanmoedigen om het rapportagekader van de VN-richtlijnen te gebruiken, kan aanzienlijk bijdragen tot meer transparantie en verantwoording over de manier waarop zij de mensenrechten naleven.

Voor verdere richtlijnen over transparantie en rapportage kunnen pensioenfondsen verwijzen naar het instrumentarium (p. 44-54) dat door de partijen is gepubliceerd in het Convenant International Maatschappelijk Verantwoord Beleggen Pensioenfondsen. Het instrumentarium vermeldt met name dat de publieke verslaglegging van pensioenfondsen moet bevatten "*voor zover wettelijk mogelijk en dit geen afbreuk doet aan de effectiviteit van engagement, de activiteiten die namens het Pensioenfonds ondernomen zijn: Ondernemingen waarmee namens het deelnemende Pensioenfonds engagement wordt gevoerd en waarover de resultaten van engagement namens het deelnemende Pensioenfonds bij specifieke ondernemingen; en beslissingen die het deelnemende Pensioenfonds genomen heeft wanneer engagement niet succesvol blijkt.*"

7. Richt een klachtenmechanisme op

It is essential that stakeholders can access a channel to raise concerns, and the creation of a grievance mechanism, at individual or sector level for investors, would be a good practice to further understand the adverse impacts caused by companies in portfolio, and understand what is expected from affected stakeholders as remedial actions. The establishment of a grievance mechanism would enable pension funds to further develop their knowledge and expertise on the topic of access to remedy. This seems all the more relevant as one of the findings of the last progress report published in December 2021 by the Independent Monitoring Committee of the Dutch Agreement on International Responsible Investment by Pension Funds, is that the progress done by pension funds on recovery and remediation (step 6 of the OECD Due Diligence) lagged behind and was sometimes confused with risk mitigation.⁷ In

addition, the report mentions that pension funds are not taking an active role in practice in enabling remediation, as they are unexperienced and confused about the responsibilities.

Het is van essentieel belang dat belanghebbenden toegang hebben tot een kanaal om hun bezorgdheid te uiten. De invoering van een klachtenmechanisme, op individueel of sectorniveau voor beleggers, zou een positieve stap zijn om meer inzicht te krijgen in de negatieve gevolgen van bedrijven in portefeuille, en om te begrijpen wat getroffen belanghebbenden verwachten omtrent herstelmaatregelen. De oprichting van een klachtenmechanisme zou pensioenfondsen in staat stellen hun kennis en deskundigheid op het gebied van toegang tot herstelmaatregelen verder te ontwikkelen. Dit is des te relevanter omdat in het laatste voortgangsrapport dat in december 2021 is gepubliceerd door de Onafhankelijke Monitoringcommissie van het Convenant Maatschappelijk Verantwoord Beleggen Pensioenfondsen, een van de bevindingen was dat de vooruitgang die pensioenfondsen boeken op het gebied van herstel en genoegdoening (stap 6 van de OESO Due Diligence) achterbleef en soms werd verward met risicobeperking.⁸ Daarnaast vermeldt het rapport dat pensioenfondsen in de praktijk geen actieve rol spelen bij het mogelijk maken van herstel, omdat ze onervaren zijn en niet goed weten wat de verantwoordelijkheden zijn.

Aanbevelingen van de Eerlijke Pensioenwijzer aan de Nederlandse overheid

Overheden moeten sterk leiderschap tonen om bij te dragen aan een betere integratie van mensenrechtenkwesties in de due diligence processen van beleggers. De volgende aanbevelingen doet de Eerlijke Pensioenwijzer in dit verband aan de Nederlandse overheid:

- 1. Neem nationale wetgeving aan met verplichte mensenrechten due diligence op voor bedrijven, inclusief financiële instellingen,** waarin bindende eisen worden gesteld aan bedrijven om de mensenrechten te respecteren in overeenstemming met de UNGP's en de OESO-richtsnoeren.

Een nieuwe wet moet van toepassing zijn op alle bedrijven en hun dochterondernemingen in alle sectoren, en due diligence voorschrijven over de gehele waardeketen, met inbegrip van commerciële relaties. De wet moet de toepassing van gender-responsive due diligence, engagement en consultatie met belanghebbenden, wettelijke aansprakelijkheid, en toegang tot de re en rechtsmiddchtspraak en herstel voor slachtoffers van nadelige gevolgen van bedrijfsactiviteiten voorschrijven. De wet moet ook publieke rapportagevoorschriften en handhavingsmechanismen bevatten.

- 2. Pleit binnen de Europese Commissie voor een gedegen erkenning en integratie van de mensenrechtenverantwoordelijkheid van de financiële sector in de EU Directive on Corporate Due Diligence, in lijn met de sectorale OESO-richtlijnen voor de financiële sector.**

In februari 2022 heeft de Europese Commissie het langverwachte voorstel voor de EU Directive on Corporate Due Diligence (CSDD) vrijgegeven, na verschillende vertragingen. Verwacht werd dat het voorstel een mijlpaal zou betekenen in het aansprakelijk stellen van bedrijven voor negatieve gevolgen voor de mensenrechten en het milieu in de toeleveringsketens en dat het nieuwe wegen voor gerechtigheid zou bieden. Veel organisaties uit het maatschappelijk middenveld en non-profitorganisaties met veel expertise op het gebied van bedrijfsleven en mensenrechten hebben echter kritisch gereageerd op de voorgestelde tekst van de richtlijn, omdat deze een aantal zwakke punten bevat.

Een van deze zwakke punten is met name de dekking van de financiële sector, die volgens het huidige voorstel alleen verplicht is een zorgvuldige afweging te maken voordat een investering wordt gedaan, in plaats van een continue en voortdurende verantwoordelijkheid zoals gedefinieerd in de OESO-richtlijnen. Bovendien moet de definitie van "waardeketen" met betrekking tot de financiële sector worden verduidelijkt; deze moet het volledige scala van kapitaalmarktactiviteiten omvatten, met inbegrip van transacties op de secundaire markt. Bovendien is de financiële sector niet opgenomen als sector met een grote impact, ondanks de

stelling van de Commissie dat sectoren met een grote impact werden geselecteerd op basis van sectorale OESO-richtlijnen. Dit besluit van de Europese Commissie kan met recht in twijfel worden getrokken gezien de inspanningen die de OESO de afgelopen jaren heeft geleverd om de financiële sector te ondersteunen bij de uitvoering van de richtlijnen voor multinationale ondernemingen door specifieke due diligence-richtsnoeren te publiceren voor beleggers (in 2017) en banken (2019).

Abbreviations

ABP	Algemeen Burgerlijk Pensioenfonds
BMO GAM	BMO Global Asset Management
BpfBOUW	Stichting Bedrijfstakpensioenfonds voor de Bouwnijverheid
CNPC	China National Petroleum Corporation
DPOC	Dar Petroleum Operating Co
ESG	Environmental, social and governance
FIG	Fair Insurance Guide
FPG	Fair Pension Guide
FPIC	Free, Prior and Informed Consent
FPIC	Free, Prior and Informed Consent
ICC	International Criminal Court
IMVB	Dutch Agreement on International Responsible Investment by Pension Funds
OECD	Organisation for Economic Co-operation and Development
PFZW	Pensioenfonds Zorg en Welzijn
PH&C	Pensioenfonds Horeca & Catering
PH&C	Pensioenfonds Horeca & Catering
PME	Pensioenfonds voor de Metalektro
PMT	Pensioenfonds Metaal en Techniek
PRI	Principles for Responsible Investment
PV	Pensioenfonds Vervoer
SRI	Socially Responsible Investment
StiPP	Stichting Pensioenfonds voor Personeelsdiensten
UNEP	The UN Environmental Program
UNGPs	United Nations Guiding Principles on Business and Human Rights

Introduction

This research aims to evaluate the response of the ten largest pension funds active in the Netherlands to cases of severe human rights abuses by companies active in the extractives sector across the globe. The study assesses whether the pension funds have effective human rights due diligence instruments in place, and whether they have used these instruments to adequately address the selected cases of severe human rights abuses, in which investee companies were involved.

To understand how Dutch pension funds engage with investee companies on identified human rights abuses, ten extractive companies were selected because of their involvement in major human rights abuses. As all human rights abuses took place in conflict-affected and high-risk areas, they would require enhanced human rights due diligence to address the adverse human rights impacts.⁹ The selected companies and cases are:

- CNPC in South Sudan
- Freeport-McMoRan in Papua (Indonesia)
- Glencore in Colombia
- Lundin Energy in South Sudan
- Newmont Corporation in Guatemala
- Rio Tinto in Myanmar
- Royal Dutch Shell in Nigeria
- TotalEnergies in Uganda and Tanzania
- Vale in Brazil
- Vedanta Resources in India

The extractives sector is a risky sector for involvement in human rights abuses. Extractives industries' projects and activities can have several adverse impacts such as: resettlement of communities without adequate consultation and compensation, negative impacts on the livelihoods of local communities and their access to water, labour rights abuses and major safety accidents. Companies in this sector should have ongoing due diligence processes in place to prevent, mitigate, and remediate human rights abuses. International standards such as the United Nations Guiding Principles on Business and Human Rights (UNGPs) state that all business enterprises regardless of their size, sector, location, ownership and structure, have the responsibility to respect human rights.¹⁰ In the context of institutional investments, this means that investors' responsibility to respect human rights encompasses not only their own operations (with their employees, suppliers, clients) but also the actual or potential impacts they are connected to through their investments.

Last year marked the tenth anniversary of the UNGPs. Yet, in a report assessing this first decade of implementation, the Working Group on Business and Human Rights¹¹ stressed the need to raise the ambition and increase the pace to realize business respect for human rights. Investor's responsibility to *"respect human rights by knowing the risks to people connected with their investment activities and showing how they take action to manage those risks"* was identified as one of a key goal in the UNGPs10+ Roadmap.¹²

Investors should seek to prevent and mitigate human rights abuses of their investee companies and also encourage them to provide remedy where they have caused or contributed to the abuses. These responsibilities in practice take shape in processes of engagement with the investees.

The objective of this research is twofold. First of all, the study aims at evaluating if and how pension funds engage with extractive companies in their portfolio which are involved in severe human rights abuses. Then, it provides practical recommendations regarding what pension funds can do to (more) effectively respond to these abuses.

This study builds on a 2021 case study by the Fair Insurance Guide (FIG)¹³, which evaluated the response of the nine largest insurance companies active in the Netherlands to a selection of eleven cases of severe human rights abuses in which extractive companies are involved. The same methodology was used in the current report to assess pension funds. The methodology is based on the UN Guiding Principles on Business and Human Rights, the OECD Due Diligence Guidance for Responsible Business Conduct and the OECD-document Responsible Business Conduct for Institutional Investors, and assesses pension funds on their engagement with the selected companies in accordance with these international standards and best practices.

The report is structured as follows. Chapter 1 elaborates on the methodology, including the background of this study, the research design, the indicators used for the assessment and scoring. Chapter 2 provides a description of the ten selected cases of human rights abuses. Subsequently, Chapter 3 discusses the details of the assessment per pension fund. Finally, conclusions and recommendations are provided in Chapter 4.

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

1

Methodology

This chapter describes the methodology for this case study. It first describes the methodological design of the research including an overview of the selected cases of human rights abuses, and the assessment approach (section 1.1). Then, it presents the indicators and assessment guidance (section 1.2), the scoring model used to assess the pension funds (section 1.3), and finally a disclaimer (section 1.4).

1.1 Research design

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

1.1.1 Methodology development

This case study uses the same methodology as the methodology used for the case study for the Dutch Fair Insurance Guide in 2021. This methodology assesses the engagement approaches of the pension funds, based on the *UN Guiding Principles on Business and Human Rights*, the *OECD Due Diligence Guidance for Responsible Business Conduct* and the OECD-document *Responsible business conduct for institutional investors*. It includes nine indicators to be assessed.

This evaluation framework sets the basis for the assessment and rating of the response of pension funds to the human rights violations and/or abuses.

1.1.2 Selected cases of human rights abuses

This research focuses on the same cases as those selected for the 2021 report for the Fair Insurance Guide. To make the research better manageable, the case related to Coal India Limited was left out of this research, bringing the total number of selected cases to ten. The cases were selected based on the following criteria:

- The case shows evidence that the company has caused or contributed to human rights abuses;
- The case is known to the pension funds, either through the work of the FPG, or through the work of one of its member organizations, or via considerable media coverage; and
- The case must be ongoing (so far not resolved/remediated).

Since the 2021 report, the description of the ten selected cases has been updated (when relevant) with most recent developments, including for instance advancements in the remediation process, new legal cases, complaints etc.

A description for each of the cases is provided in chapter 2. The case descriptions should be read as summary of the human rights violations/abuses, and not as an exhaustive report of all facts.

Table 7 List of selected case studies

Short description	Country	Company
Conflict insensitive operations / public health / pollution	(South) Sudan	China National Petroleum Corporation (CNPC)
Surface water pollution / violence / indigenous land rights	Indonesia	Freeport-McMoRan
Human rights abuses / land rights / violence	Colombia	Glencore
Involvement in war crimes	(South) Sudan	Lundin Energy (former Lundin Petroleum)
Indigenous land rights / pollution / violence	Guatemala	Newmont (former Goldcorp)
Forced evictions / environmental damage / violence	Myanmar	Rio Tinto
Human Rights abuses / environmental damage	Nigeria	Royal Dutch Shell
Human rights violation / land rights / pollution	Uganda, Tanzania	Total
Life losses / environmental and social damage / health and safety	Brazil	Vale
Pollution of drinking water / livelihoods	India	Vedanta Resources

In addition, if a pension fund provides evidence of engagement with one of the selected companies on human rights topics which takes a more general approach, but not on the specific cases described in chapter 2, this is considered in the scoring and if applicable, scored with full points. This flexibility in scoring assumes that a more general engagement on human rights topics with a company can have a positive impact on the specific cases too. However, if a pension fund provides evidence of engagement on another case of human rights abuses related to one of the selected companies, it is scored with half a point.

1.1.3 Financial research

Profundo conducted financial research to determine whether there are financial relationships between the selected pension funds and the ten selected companies. To this end, Profundo collected data on the investments by these pension funds in shares and corporate bonds.

Source data were retrieved from investment portfolios which are publicly disclosed by the pension funds at the latest publication date, as of January 2022. Pension funds were given the opportunity to comment on the outcomes of the financial research and to submit some adjustments in case of identified errors.

The establishment of financial links determined that a pension fund is connected to the selected cases via its investments, and therefore it was assessed and scored according to the nine indicators.

For the pension funds for which no financial links have been found in all the selected companies, or for which divestment from those companies cannot be explained by sustainability-related reasons, no further assessment through a questionnaire was conducted. This was the case with Pensioenfond Horeca&Catering.

1.1.4 Assessment and rating of pension funds

To assess how the pension funds selected in this study have responded to the selected cases of severe human rights abuses, the pension funds were asked to provide answers to a questionnaire. Together with the questionnaire, Profundo shared the results of the financial research with the pension funds. They were requested to fill in the questionnaire and to provide written evidence to support all their answers (such as internal-use documents, public evidence or other documents).

The pension funds' responses to the questionnaire formed the basis for the assessment. When further clarification was needed on the answers of a particular pension fund to the questionnaires, Profundo reached out to the pension fund to collect further explanations.

Subsequently, Profundo aggregated the information into scores and gave a final judgement or qualification to the results of each pension fund. After finalization of the draft assessments, Profundo shared with each pension fund its assessment for feedback.

1.2 Indicators and criteria

1.2.1 Overview of the indicators

This section presents the indicators that were used for the assessment. The indicators have been designed considering the normative framework included in the UNGPs and the OECD guidelines which highlights the responsibility of businesses to conduct a due diligence to prevent, mitigate and remedy human rights abuses. Although remediation is not a formal component of due diligence under the OECD Guidelines, it represents a supporting element necessary to enable and complement due diligence. In addition, the indicators strongly rely on the OECD sector guidelines for institutional investors, which state that an effective due diligence is composed of the following essential steps including:

3. Embedding RBC into relevant policies and management systems for investors
4. Identifying actual and potential adverse impacts within investment portfolios and potential investments
5. As appropriate, using leverage to influence investee companies causing an adverse impact to prevent or mitigate that impact
6. Tracking performance of the investor's own performance in managing RBC risks and impacts in its portfolio
7. Communicating results
8. Providing for or cooperating in remediation where appropriate

Considering that the Fair Pension Guide conducts a detailed policy assessment of the Dutch pension funds once every two years, which results in a dedicated publication, the indicators designed for this case study focus on the steps 2-6 which are more operational.

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

Consequently, the indicators are divided in the four following sections:

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

These indicators are written for pension funds that have investments, on own accounts and on behalf of clients, in shares and bonds in the companies involved in severe human rights abuses.

Table 8 Overview of sections and indicators

Section		Indicator	
A	Identification, qualification and prioritisation of human rights issue(s) and risk(s)	A1	The pension fund identifies actual and potential adverse human rights impacts
		A2	The pension fund adopts a risk-based approach to further investigate facts and their human rights impacts
B	Using leverage to influence investee companies	B1	The pension fund sets goals, a strategy and timeline(s) for engagement
		B2	The pension fund requires the investee company to involve multiple stakeholders when addressing its human rights impacts
		B3	Additional (engagement) steps of the pension fund
C	Tracking progress and outcome by the pension fund	C1	The pension fund monitors the engagement progress
		C2	The pension fund publishes relevant information, when available
D	Providing for or cooperating in remediation	D1	Where the pension fund is directly linked to the adverse impacts that investee companies have caused or contributed to, it uses its leverage to encourage the investee company to provide remedy
		D2	Where the pension fund has contributed to the adverse human rights impacts it provides for, or cooperates through legitimate processes in, the remediation of adverse impacts

For each of the four sections a score was calculated and normalised on a scale from 0 to 10. Each section score was attributed a weight to calculate a consolidated weighted average score per pension fund. The consolidated score was normalised to a scale from 0 to 10. For additional information on the scoring model please read the section 1.3.

In the following sub-sections, the different indicators and the scoring criteria was discussed further.

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

Two indicators were assessed under *Section A: Identification, qualification and prioritisation of human rights issue(s) and risk(s)*. These are:

- **A1: The pension fund identifies actual and potential adverse human rights impacts**

If the pension fund has effective instruments in place, to enable a proper identification of human rights risks among investee companies, also taking into consideration the type of asset class.

1. The pension fund screens its investment portfolio on human rights issue (including passive investment)
2. The screening methodology includes assessment of high-risk variables: geography, sectors, products, governance context (including weak rule of law, or conflict zones), stages of the supply chain
3. The screening of investee companies is done before and at regular intervals after the investment is done

This indicator sets up an expectation from pension funds to have systems in place enabling a continuous identification of human rights risks amongst their investee companies. These

systems should enable investors to apply a risk-based approach meaning “that investors with large portfolios may identify general areas where the risk of adverse impacts is most significant and, based on this assessment, prioritise investee companies for further assessment where appropriate”.¹⁴ Consequently, the screening methodology adopted by pension funds should take into account variables that might be related to high human rights risks such as the sector concerned/ nature of activities, the risks related to the home country of investee companies or the countries of their operations (including relevant socio-economic factors, or governance context in which investee companies operates).

As highlighted in the OECD guidelines, the due diligence “is an on-going, proactive and reactive, and process-oriented activity; it is to be carried out throughout the entire life-cycle of operations, products and services because circumstances change and so will adverse impacts.” This means that due diligence should not be limited to an initial investigation prior a potential investment but be renewed at regular intervals to identify general RBC issues that have emerged and prioritise for follow up.¹⁵

- **A2: The pension fund adopts a risk-based approach to further investigate facts and their human rights impacts**

If through its own screening processes or by an external party, the pension fund has become aware of the (alleged) human rights abuse(s) selected for this research to which it is directly linked via the investee company, the pension fund:

1. Starts an investigation into the allegations (alone or in cooperation with others);
2. As part of the investigation, looks into the severity of the (alleged) human rights abuses, including the scale, scope and irremediable character.
3. As part of the investigation, makes a qualification of how the investee company is involved in the abuse(s) – cause, contribute or directly linked.
4. As part of the investigation, makes a qualification on its relationship as investor to the impacts (contribute or directly linked).

This indicator expands on A1 and sets up an expectation from pension funds to conduct detailed investigations on the selected cases of human rights abuses as part of their due diligence when an investee company is associated with severe human rights risks/abuses (UNGP 17, 18).

Follow up and additional fact-finding may be done through the pension fund’s own desk-based research, using specialised research services, collaborative databases, and engagement techniques, as well as direct engagement with the investee company concerned, to obtain additional information on their approach to the human rights abuse(s) e.g. by requesting to provide certain information, questionnaires, site visits etc. Pension funds can work collaboratively to approach investee companies in these situations or to collect more information about them.¹⁶

Where (potential) severe adverse impacts are identified, pension funds may consult additional sources to verify or triangulate claims, e.g. reports from national authorities, international organisations, NGOs, media coverage, industry literature, statements from National Contact Points.¹⁷

The investigation needs to assess the severity of the abuse, as the more severe an abuse is, the higher the pension fund should prioritize their due diligence efforts (UNGP 19). To determine the severity, the pension fund needs to look at the ‘scale, scope and irremediable character’. Both the gravity of the impact and the number of individuals that are affected (for instance, from the delayed effects of environmental harm) are relevant considerations. Irremediability means any limits on the ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the impact. It is often the case that the greater the scale or the scope of an impact, the less it can be remedied. (UNGP 14).

It is important to assess how the investee company is involved in the human rights abuse(s). If the investee company is causing or contributing to the abuse(s), its responsibility to respect human rights requires active engagement in remediation, by itself or in cooperation with other actors (UNGP 22).

It is also important for the pension funds to assess their relationship to the human rights impacts to understand their responsibility. While investors will in most instances not cause or contribute to, but only be directly linked to the adverse impact. In some instances, investors may be contributing to impacts caused by their investee companies and may be responsible for remediation.¹⁸ As a result, investors are expected to provide remedy.

Consultation with stakeholders might be helpful in assessing harm and developing appropriate responses. Who the stakeholders are will depend on the adverse impact in question.¹⁹

Table 9 Scoring table for Section A

Indicator	Criteria	Scoring guidance	Points
A1	The pension fund identifies actual and potential adverse human rights impacts	Never	0
		The screening is applied only to a limited part of its investments in corporate shares and bonds	1
		The screening is applied to all its investments in corporate shares and bonds whatever the active or passive investment strategy	2
	The screening methodology includes assessment of high-risk variables such as: geography, sectors, products, governance context, and an analysis of track record of some investee companies related to HRT controversies when relevant	None of the variables are assessed	0
		Some of the variables related to the sector and countries of operations of the investee companies are assessed	1
		Some of the variables related to the sector and countries of operations of the investee companies are assessed as well as the human rights risks related to the investee companies themselves	2
	The screening of investee companies is done before investing and at regular intervals after the investment is done	Never	0
		Screening is done prior to investment only	1
		Screening is done at regular intervals	2
A2	The pension fund adopts a risk-based approach to further	never	0
		for less than half of the selected cases	1

Indicator	Criteria	Scoring guidance	Points	
investigate facts and their human rights impacts	case(s) of human rights abuses.	for half or more than half of the selected cases	2	
		for all the selected cases	3	
	The investigation looks into the severity of the (alleged) human rights abuses, including the scale, scope and irremediable character.	never	0	
		for less than half of the selected cases	1	
		for half or more than half of the selected cases	2	
		for all the selected cases	3	
	The investigation makes a qualification of how the investee company is involved in the abuse(s) – cause, contribute or directly linked	never	0	
		for less than half of the selected cases	1	
		for half or more than half of the selected cases	2	
		for all the selected cases	3	
	The investigation makes a qualification of the pension fund's relationship to the human rights impacts	never	0	
		for less than half of the selected cases	1	
		for half or more than half of the selected cases	2	
		for all the selected cases	3	
	Maximum score for Section A			18

As shown in Table 9, the maximum score for *Section A: Identification, qualification and prioritisation of human rights issue(s) and risk(s)* is 18 points. This score is normalised to a 10-point scale. For example: pension fund X obtains a score of 6 points for A1 and a score of 8 points for A2. The total score for section A is equal to 14 (6+8) points. The score is then normalised to a 10-point scale which mean $(14*10)/18 = 7.8$ out of 10.

1.2.3 Section B: Using leverage to influence investee companies

Two indicators were assessed under *Section B: Using leverage to influence investee companies*. These are:

- **B1: The pension fund sets goals, a strategy and timeline(s) for engagement**

After the identification and assessment of the human rights issues and risks, if the pension fund has decided to engage on this specific incident with the investee company, it sets (alone or in cooperation with others, for example an external asset manager):

1. Specific goals to be achieved by its engagement;
2. an engagement strategy with the investee companies;
3. a timeline, or timelines for its engagement activities and goals to be achieved;
4. concrete intermediary steps, for example in the form of an action plan, from the investee company;

This indicator is applicable where the pension fund has decided to start to conduct engagement activities with the investee company. The formulation of specific goals, a strategy

and timeline(s) is key, as without specific and written goals, the engagement process runs a risk to become unguided, unrealistic, not measurable and unbound in time.

Among the factors that determine the appropriate strategy are the pension fund's leverage over the entity concerned, how crucial the relationship is to the pension fund, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights impact (UNGP 19). Other factors to be considered could be for example whether the engagement efforts are already underway by other investors, or possible leverage limitations due to applicable corporate governance rules and practices in some countries and characteristics of an asset class.²⁰

The pension fund is expected to build and exert its leverage to the extent possible in order to influence the investee company to take action to prevent and mitigate the human rights abuse(s). Concrete steps of the investee company will enable the pension fund to assess whether the goals the pension fund has set for the engagement process will actually be achieved. The investee company should be able to demonstrate to the pension fund that it is able to respond adequately and timely to the abuses, provide remediation and learn from mistakes.²¹ Concrete steps might include measures to terminate the ongoing human rights abuses or to prevent new human rights abuses.

- **B2: The pension fund requires the investee company to involve multiple stakeholders when addressing its human rights impacts**

5. The pension fund requires from the investee company that it involves multiple stakeholders when formulating the concrete steps to address the human rights abuse(s).

Multi-stakeholder engagement is an important means of implementing due diligence. Stakeholders can provide important knowledge to help identify potential or actual impacts on themselves or their surroundings. The values and priorities of impacted stakeholders are vital considerations in evaluating impacts and identifying appropriate avoidance or mitigation steps.²²

Engagement needs to happen as a continuing, two-way process and to be moulded by local context. [...] in particular, embedding grievance mechanisms in community engagement will help build relationships of trust with local stakeholders in the mechanism.²³

In situations where direct consultation with (potentially) affected stakeholders is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders, women rights organizations, and others from civil society (UNGP 18).

- **B3: Additional (engagement) steps of the pension fund**

6. If the engagement goals are not fully met, but the pension fund sees sufficient reason(s) to continue engagement instead of ending the relationship, the pension fund exerts additional forms of leverage to mitigate the human rights abuse(s), for example:²⁴

- Attending and speaking at the Annual General Meetings to express views on the human rights abuse(s);
- Using voting rights to express views on the human rights abuse(s);
- Collaboration with other investors to increase leverage on the human rights abuse(s) (for instance within the PRI network);
- Engagement with regulators and policymakers on the human rights abuse(s);
- Joining geographic or issue-specific initiatives that seek to prevent and mitigate the human rights abuse(s) in the areas identified;
- Reduction of the investment position and clearly communicating the reason for the reduction;

- Increase intensity of engagement actions if the company does not respond positively in the first instance;
- For active strategies, temporary divestment while pursuing mitigation efforts
- For active strategies, divestment either after failed attempts at mitigation or where the investor deems mitigation not feasible, or due to the severity of the human rights abuse(s);
- For passive strategies, where possible and in compliance with regulatory obligations, redesign of investment strategy to avoid investments with highly severe impacts (e.g. exiting a passive index and investing in an adjusted or tailored index which excludes severe risks identified by the investor.

Engagement is ongoing process, which can take time but eventually must bring concrete solutions to prevent and mitigate adverse human rights impacts. Considering the timeline and objective set as part of their engagement strategy, investors should take appropriate actions if progresses to mitigate the adverse impacts caused or contributed by their investee companies are too slow, or if they face persistent failed attempts at mitigation. The following points of departure, derived from international standards, need to be taken into consideration:

- If the pension fund remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial, or legal – of the continuing connection;
- When there is a lack of leverage, the pension fund should try to increase it.

If the situation is such that the pension fund lacks the leverage to mitigate adverse impacts and is unable to increase its leverage, it should consider ending the relationship, considering credible assessments of potential adverse human rights impacts of doing so. Generally, the more severe the impact is, the quicker the pension fund will need to see the change before it takes a decision on whether it should end the relationship (UNGP 19).

Bonus: since the assessment of each pension fund is done on the selected companies for which financial relationships have been found as of December 2021, under indicator B3.1, exclusions of companies by the pension funds because of ESG reasons which occurred before the last publication of their investments are not taken into account. To integrate this information in the scoring, bonus points were granted based on the number of excluded companies for ESG reasons for those exclusions that occurred before the financial research, with a maximum of three points.

Table 10 Scoring table for Section B

Indicator		Criteria	Scoring guidance	Points
B1	The pension fund sets goals, a strategy and timeline(s) for engagement	The pension fund has formulated written goals to be achieved.	Never	0
			The pension fund provides examples for less than half of the relevant selected cases	1
			The pension fund provides examples for half or more of the relevant selected cases	2
			The pension fund provides examples for all of the relevant selected cases	3
			Never	0

Indicator		Criteria	Scoring guidance	Points
		<p>The pension fund explains the main features of its engagement strategy.</p> <p>The pension fund has set timelines for its engagement activities and goals to be achieved.</p> <p>As a part of its engagement goals, the pension fund has required concrete intermediary steps (for example in the form of an action plan) from the investee company.</p>	<p>The pension fund provides information for less than half of the relevant selected cases</p> <p>The pension fund provides information for half or more of the relevant selected cases</p> <p>The pension fund provides information for all of the relevant selected cases</p> <p>Never</p> <p>The pension fund has set timelines and goals for less than half of the relevant selected cases</p> <p>The pension fund has set timelines and goals for half or more of the relevant selected cases</p> <p>The pension fund has set timelines and goals for all of the relevant selected cases</p> <p>Never</p> <p>The pension fund provides information on required intermediary steps from the investee company for less than half of the relevant selected cases</p> <p>The pension fund provides information on required intermediary steps from the investee company for half or more of the relevant selected cases</p> <p>The pension fund provides information on required intermediary steps from the investee company for all of the relevant selected cases</p>	<p>1</p> <p>2</p> <p>3</p> <p>0</p> <p>1</p> <p>2</p> <p>3</p> <p>0</p> <p>1</p> <p>2</p> <p>3</p>
B2	The pension fund requires the investee company to involve multiple stakeholders when addressing its human rights impacts	The pension fund demonstrates that it required that the company follows a multi-stakeholder approach before finalising the action plan.	<p>Never</p> <p>The pension fund provides examples for less than half of the relevant cases</p> <p>The pension fund provides examples for half or more of the relevant cases</p>	<p>0</p> <p>1</p> <p>2</p>

Indicator		Criteria	Scoring guidance	Points
B3	Additional (engagement) steps of the pension fund	If the engagement goals are not met, the pension fund has tried different options to increase its leverage to address the human rights abuse(s) or in case of persisting unsuccessful engagement, has decided to suspend or end the business relationship	The pension fund provides examples for all of the relevant cases	3
	Bonus		Extractive companies covered by this research have already been excluded before the financial research	Never Incidentally: ad-hoc examples Frequently: shows sufficient evidence Systematically: evidence for all the relevant selected cases
Maximum score for Section B				18

As shown in Table 10, the maximum score for *Section B: Using leverage to influence investee companies* is 18 points (excluding bonus point). This score is normalised to a 10-point scale.

1.2.4 Section C: Tracking progress and outcome by the pension fund

Two indicators were assessed under *Section C: Tracking progress and outcome by the pension fund*. These are:

- **C1: The pension fund monitors the engagement progress**

1. The pension fund (alone or in cooperation with others) actively monitors and measures the outcome of its engagement to prevent and mitigate human rights adverse impacts, including execution of the concrete steps the investee company has committed itself to and achievement of the goals set.

The pension fund's role as the monitor of the investee company's concrete steps to address the human rights abuse(s) is central. Tracking is part of the "know" of "knowing and showing" how the investor is managing adverse human rights impacts throughout its operations and with its business relationships.²⁵

Monitoring the ongoing processes signals to all stakeholders involved in the incident, including the adversely impacted communities, that the pension fund is committed to its resolution. Monitoring the activities taking place to address the abuse(s) will help the pension fund to manage expectations. When other stakeholders communicate about the incident, it is important that the pension fund is aware of the current status to be able to communicate in ways that restore trust.

For the verification whether the human rights abuse(s) are addressed, the effectiveness of the response (concrete steps) should be tracked. Tracking should amongst others draw on feedback from both internal and external sources, including adversely impacted individuals or communities (UNGP 20).

- **C2: The pension fund publishes relevant information, when available**

In order to account for how the pension fund has addressed the human rights abuse(s), including the incidents in this report, the pension fund publishes, when available:

2. Its human rights policy, including human rights due diligence approaches;
3. Names of companies with which it has formally engaged;
4. Formal (intermediate and final) decisions on concluding or continuing the engagement with specific companies, including the investee companies that form part of this research;
5. Results of the (intermediate and final) engagement processes with specific companies, including the investee companies that form part of this study.

The pension fund requires the investee company to publicly provide:

6. Updates on the circumstances of the human rights abuse(s);
7. Concrete steps taken to address the human rights abuse(s).

This indicator is related to the overall transparency of pension funds and not limited to the selected cases. Transparency is important for a number of reasons. First, it makes public accountability possible. Second, it helps adversely impacted individuals and communities to follow the actions of the pension fund and the investee company. And third, it makes it possible for investors and consumers of the pension fund (and the investee company) to follow its action towards a specific incident. As such, it is important that the pension fund publishes both its general procedures and as much relevant information regarding specific abuses as possible.

The UNGPs require business enterprises to be prepared to communicate externally how they address their human rights impacts, particularly when concerns are raised by or on behalf of affected stakeholders. In case the operations or operating contexts pose risks of severe human rights impacts, formal reporting on how business enterprises address them is expected and should (a) be of a form and frequency that reflects the enterprise’s impacts and be accessible to its intended audience, (b) provide sufficient information to evaluate the adequacy of the response to a particular impact and (c) not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality (UNGP 21).

These expectations apply to both the pension fund and the investee company.

Domestic law may sometimes prevent certain disclosures, or outline areas of protected commercial information for the pension fund. Nonetheless, the pension fund should do what is possible within the legal context to maximise transparency and act in the spirit of the UNGPs.²⁶

Table 11 Scoring table for Section C

Indicator		Criteria	Scoring guidance	Points
C1	The pension fund monitors the engagement progress	The pension fund monitors the company’s progress on the implementation of the concrete steps the company has committed itself to and the achievement of engagement goals.	Never	0
			The pension fund provides examples for less than half of the relevant cases	1
			The pension fund provides examples for half or more of the relevant cases	2
			The pension fund provides examples for all of the relevant cases	3

Indicator		Criteria	Scoring guidance	Points
C2	The pension fund publishes relevant information, when available	The pension fund ensures transparency by publishing its human rights policy and the due-diligence process.	No reporting	0
			The policy is published but not the due- diligence process	1
			Human rights policy and due-diligence processes are published	2
		The pension fund ensures transparency by disclosing names of the companies it has formally engaged.	No reporting	0
			Less than half of the engagement cases are mentioned	1
			Half or more of the engagement cases are mentioned	2
			All engagement cases are reported	3
		The pension fund ensures transparency by publishing formal (intermediate and final) decisions on concluding or continuing the engagement with specific companies, including the investee companies that form part of this research.	No reporting	0
			Reporting for less than half of all engagement cases	1
			Reporting for half or more of the engagement cases	2
			Reporting for all engagement cases	3
		The pension fund ensures transparency by publishing results of the (intermediate and final) engagement process with specific companies, including the investee companies that form part of this study.	No reporting	0
			Reporting for less than half of all engagement cases	1
			Reporting for half or more of the engagement cases	2
			Reporting for all engagement cases	3
		The pension fund ensures transparency by requiring investee companies to publicly report on the circumstances of the human rights abuse(s).	Never	0
The pension fund requires some investee companies to publicly report	1			
The pension fund requires all investee companies to publicly report	2			
The pension fund ensures transparency by requiring investee companies to publicly report on the concrete steps	Never	0		
	The pension fund requires some investee	1		

Indicator	Criteria	Scoring guidance	Points
	taken to address the human rights abuse(s).	companies to publicly report The pension fund requires all investee companies to publicly report	2
Maximum score for Section C			18

As shown in Table 11, the maximum score for *Section C: Tracking progress and outcome by the pension fund* is 18 points. This score is normalised to a 10-point scale.

1.2.5 Section D: Providing for or cooperating in remediation

Two indicators were assessed under *Section D: Providing for or cooperating in remediation*. These are:

- **D1: Where the pension fund is directly linked to the adverse impacts that investee companies have caused or contributed to, it uses its leverage to encourage the investee company to provide remedy**

If the pension fund has established that its connection to the adverse human rights impacts for the relevant selected cases is a direct linkage, the pension fund:

1. Has tried to use its leverage to influence investee companies to enable remediation, including ensuring the investee companies have set up a grievance mechanism which meets the effectiveness criteria described in the UNGPs
2. Has participated in dialogue or mediation processes regarding the adverse impacts in question

In most instances, investors are directly linked to the adverse human rights impacts of their investee companies. As a result, investors are not expected to remediate, but may apply efforts to persuade the investee company to do so as a component of their responsibility to seek to prevent and mitigate.²⁷ The investee company should be able to demonstrate to the pension fund that it is able to respond adequately and timely to the abuses, provide remediation and learn from mistakes.²⁸

When an investee company has caused or contributed to adverse impacts, it should provide for or cooperate in their remediation through legitimate processes. On the basis of the international business and human rights standards, the investee company should establish or participate in effective operational-level grievance mechanisms for individuals and communities adversely impacted to make it possible for grievances to be addressed early and remediated directly. In order to ensure their effectiveness, non-judicial grievance mechanisms should be: legitimate, accessible, predictable, equitable, transparent, rights-compatible, source of continuous learning and based on engagement and dialogue (consulting the stakeholder groups for whose use they are intended on their design and performance and focusing on dialogue as the means to address and resolve grievances). (UNGP 22, 29, 31).

In addition, the investor can also participate in dialogue or mediation processes with affected stakeholders/rightsholders to strengthen its management system or due diligence processes.²⁹

- **D2: Where the pension fund has contributed to the adverse human rights impacts it provides for, or cooperates through legitimate processes in, the remediation of adverse impacts**

3. If the pension fund has established that it has contributed to the adverse human rights impacts, the pension fund provides evidence that it has provided for, or co-operated through legitimate processes in, the remediation of adverse impacts.

Remediation is an expectation in situations where an enterprise causes or contributes to adverse impacts. In some instances, investors may be contributing to impacts caused by their investee companies and may be responsible for remediation. Remediation processes can include cooperation with judicial or state-based non-judicial mechanisms or establishment of operational-level grievance mechanisms.³⁰ In its comments on the work of the Thun Group of Banks³¹, John G. Ruggie states:

“there is a continuum between contribution and linkage. A variety of factors can determine where on that continuum a particular instance may sit. They include the extent to which a business enabled, encouraged, or motivated human rights harm by another; the extent to which it could or should have known about such harm; and the quality of any mitigating steps it has taken to address it. Asserting that only a bank’s own activities can constitute “contributing to” harm, as the paper does, bypasses these critical questions entirely.”

The UN PRI also highlight that an investor’s connection to an actual or potential outcome will change over time, In particular the PRI identifies three factors that will determine whether an investor can be said to have “contributed to” or be “directly linked to” a negative outcome: the extent to which an investor facilitated or incentivised human rights harm by another; the extent to which it could or should have known about such harm; the quality of any mitigating steps it has taken to address it.³²

When it was evaluated that the pension fund never contributed to the adverse impacts for all the relevant selected cases, this indicator was deactivated and set to n.a.

Table 12 Scoring table for Section D

Indicator	Criteria	Scoring guidance	Points
D1	Where the pension fund is directly linked to the adverse impacts that investee companies have caused or contributed to, it uses its leverage to encourage the investee company to provide remedy	Never	0
		For less than half of the relevant selected cases	1
		For half or more than half of the relevant selected cases	2
	The pension fund has participated in dialogue or mediation processes regarding the adverse impacts in question	For all the relevant selected cases	3
		Never	0
		For less than half of the relevant selected cases	1
		For half or more than half of the relevant selected cases	2
		For all the relevant selected cases	3
D2		Never	0

Indicator	Criteria	Scoring guidance	Points
Where the pension fund has contributed to the adverse human rights impacts it provides for, or co-operate through legitimate processes in, the remediation of adverse impacts	The pension fund has provided for, or cooperated through legitimate processes in, the remediation of adverse impacts	For less than half of the selected cases	1
		For half or more than half of the selected cases	2
		For all the selected cases	3
Maximum score for Section D			9

*If for one relevant selected case the evidence does not include an effective operational-level grievance mechanism, but other interesting measures to enable remediation, only half of the score can be attributed for this selected case.

As shown in Table 12, the maximum score for *Section D: Providing for or cooperating in remediation* is 9 points. This score is normalised to a 10-point scale.

1.3 Final scoring

As explained in the previous sub-sections, for each of the four sections a score on a 10-points scale was calculated. These four scores were combined into a final score by using the weights as shown in Table 13.

Table 13 Overview of sections and indicators

Section	Weight
A Identification, qualification and prioritisation of human rights issue(s) and risk(s)	20%
B Using leverage to influence investee companies	40%
C Tracking progress and outcome by the Pension fund	20%
D Providing for or cooperating in remediation	20%
Total	100%

Considering that this research focuses primarily on engagement, section B was weighted double compared to section A, C and D. Consequently, sections A, C and D account each for 20% of the total score, while section B accounts for 40% of the total score.

Example: Pension fund X obtains a 10-point scale score of 7 points for section A, 6 points for section B, 7 points for section C and 3 points for section D. Total consolidated score for Pension fund X: $(7*20\% + 6*40\% + 7*20\% + 3*20\%)/100\% = 5.8$

1.4 Disclaimer

Not all coalition members of the Eerlijke Pensioenwijzer (the Dutch Fair Pension Guide) work on all themes and/or sectors on which the research of the Eerlijke Pensioenwijzer focuses. Reports on specific themes therefore do not necessarily reflect the opinion of all coalition members of the Eerlijke Pensioenwijzer.

2

Selected cases

This chapter elaborates about the ten selected cases of human rights abuses and companies associated with them. It also highlights the main human rights breaches related to the cases and recommendations of the Fair Pension Guide to the companies involved in the human rights abuses through their operations.

2.1 CNPC in South Sudan

China National Petroleum Corporation (CNPC) is the government-owned parent company of publicly listed Petro China as well as the world's 3rd largest oil company.

CNPC owns 41% of the jointly operated consortium Dar Petroleum Operating Co. (DPOC), that exploits the oil deposits in Blocks 3 and 7 in South Sudan (former Sudan), the so-called Melut basin. The Melut Basin in South Sudan, one of the major sources of crude oil in Africa, is located about 700 miles south of Khartoum and east of the river Nile. Oil-rich areas in the Melut Basin have suffered the same pattern of oil-related death, destruction and displacement as the Muglad Basin fields in Western Upper Nile, though on a smaller scale. Well over a hundred villages have been emptied and the natural environment has been severely damaged, and the population has never received any substantial benefits or compensation.

The oil fields have been developed against the background of a war in which the Petrodar consortium acted as a loyal partner of one of the warring sides, the Government of Sudan. The Consortium has shown no due regard for the natural environment or concern for the rights of the population. Serious environmental damages have been reported and documented, that have not adequately been addressed by the Consortium.³³

Oil exploitation has coincided with a decline in the rural population in parts of Melut and Maban Counties. This is mostly due to violent forced displacement of the Dinka and Maban Populations between 1999-2002, and partially to the effects of cheap and environmentally harmful engineering. The total number of people that has been forcibly displaced can be safely estimated at well above 15.000 minimum; the true number could however also easily be double that figure. Several hundreds of people have reportedly been killed. In 2014, the Geneva-based Small Arms Survey project reported direct DPOC financing of Padang Dinka militia's, who have, according to UN reports, allegedly committed war crimes. DPOC stands also accused of hiring helicopter gunships that are reported to have arbitrarily attacked civilian targets.

Petrodar and DPOC have never in any way accounted for their social and environmental impacts, and have never defended themselves against the accusations of complicity in war crimes, falling short of the most elementary requirement to know and show one's impact on society.

CNPC owns 40% of the jointly operated consortium Greater Nile Petroleum Operating Company (GNPOC) that stands credibly accused of complicity in war crimes committed between 1995 and 2003. In 1999, a civil lawsuit in the US against fellow consortium member Talisman Energy presented strong evidence of direct links between the Consortium and large-scale war crimes and forces displacements. The US District Court did not rule on the merit of the case but rejected the civil claim because it believed that 'intent' was required in civil war crimes proceedings in the US

(contrary to the ICC Statute), and it was not shown that Talisman, when contributing to war crimes, did so with the intention that they were committed.

GNPOC operated in the oil sector in Sudan in a time when the country was torn up by civil war. This war centered partly around control over the oil fields in CNPC's concession area. During this war, atrocities took place that qualify as human rights abuses, including abuses of International Humanitarian Law. Successive UN Rapporteurs reported killings, rape, child abduction, torture, looting, arson, destruction of schools, markets and clinics and deliberate destruction of food stocks, villages, and means to of existence. Many thousands of people died and tens of thousands were deliberately and violently displaced. There is no reason to believe that CNPC executives have acted any differently from the Lundin executives who have been charged with war crimes (see 2.4), as war crimes were equally systematically reported in their areas of operation, they had similar security needs, they received protection from the same military forces and allied militias, their companies reported material support to abusive forces, and they also employed government military and intelligence officers.

CNPC never accounted for its role in Sudan and South Sudan. The company is not known to have made any effort to know or show its impact on society.

In February 2020, a Transitional Government of National Unity (TGoNU) was established in South Sudan, formed by former political rivals Salva Kiir and vice president Riek Machar. The peace agreement provides for the implementation of reforms related to the management of oil revenues and the transparency of their use, as well as economic measures aimed at creating opportunities for displaced South Sudanese who have decided to return home. The continued lack of transparency from the oil sector in South Sudan was also highlighted in a report from the United Nations Security Council.³⁴

Aside from CNPC's contributions to gross and systematic human rights abuses, the company is also causing severe environmental and social damage through its activities in South Sudan. A report of June 2020 by an independent research organization, The Sudd Institute, revealed the strong adverse environmental and social impacts caused by oil companies, including CNCP, in South Sudan. In particular, the study states that the high concentrations of salt and heavy metals related to oil exploration, development and production was responsible for birth defects, miscarriages, infertility, and cancers in the affected areas.³⁵

In October 2020, populations of the former Unity State in South Sudan have gathered to demonstrate against the non-respect of social commitments by oil companies in the region.³⁶ The protesters want oil companies to stop discharges of chemicals that reportedly contaminate agricultural land and groundwater and to respect the commitments made a few weeks earlier to provide drinking water for the region, build medical centres and compensating victims of pollution of agricultural land, water and air. The peaceful protest was forcibly broken up by large number of security forces, resulting in the serious injury of a number of the youthful protesters.³⁷

The US Department of Commerce's states that CNPC and other oil companies are "contributing to the ongoing crisis in South Sudan because they are a source of substantial revenue that, through public corruption, is used to fund the purchase of weapons and other material that undermine the peace, security, and stability of South Sudan rather than support the welfare of the South Sudanese people" which in effect means that CNCP is contributing to the on-going conflict and the deterioration of the human rights situation.³⁸

2.1.1 Main human rights violations/abuses

- Murder
- Assault
- Abductions
- Torture

- Rape
- Displacing individuals/communities
- Violent practices from security forces
- Arbitrary detention
- Harms to public health
- Violation of the right of freedom of expression
- Air, soil and water pollution

2.1.2 Recommendations to the company

The major recommendations to the company are:

- Acknowledge that CNPC has contributed to the harms suffered by the communities in Upper Nile through its relationship with the Sudanese government;
- Acknowledge that CNPC activities are still causing serious environmental and social impacts, and does not demonstrate any efforts to prevent the use of security forces for the government (contributing then to violent repression);
- As stipulated by the Petroleum Act, art. 100, “carry out and pay for an independent social and environmental audit, in compliance with international standards to determine any present environmental and social damage, establish the costs of repair and compensation and determine any other areas of concern.”
- In addition, carry out an enhanced human rights due diligence process in line with the highest international and industry standards.
- Address any adverse impacts in respect of South Sudanese law and the highest international and industry standards.

2.2 Freeport-McMoRan in Papua (Indonesia)

2.2.1 Short case description

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

In Indonesia, Freeport-McMoRan’s portfolio of assets includes the Grasberg minerals district in Indonesia, one of the world’s largest copper and gold deposits located in the Indonesian province of Papua.³⁹ Freeport-McMoRan operates through its subsidiary, PT Freeport Indonesia (PTFI), which used to be 90.64% owned by Freeport-McMoRan. However, in August 2017, Freeport agreed to divest a 51 percent stake in its Indonesian subsidiary, following sustained pressure by the government to reform a mining sector long seen as not doing enough to benefit local communities or contribute to the national economy. In return, Freeport’s contract, originally set to expire in 2021, is extended to 2041 under new terms.⁴⁰

Since the start of its operations in Papua in 1967, this mine was associated with severe environmental and human rights adverse impacts. Freeport-McMoRan dumped toxic waste in the Otomina and Ajkwa Rivers, which is extremely harmful to the river and surrounding ecosystems. In both valleys in the area the rivers and adjacent areas are seriously polluted, which resulted in abuses of various socio-economic rights: the right to an adequate standard of living, the right to food and the right to clean drinking water.⁴¹

Next to this, violations of civil and political rights are caused by national security forces, hired and paid by Freeport-McMoRan, to guard their mining operations, which is seen by parts of the local people as an infringement on their right to self-determination.⁴² The behaviour of the armed forces (and sometimes police) leads to numerous violent and sometimes deadly confrontations with residents, employees, and rights groups⁴³. Many of the abuses continue with impunity:

perpetrators are not brought to justice, nor do victims receive any form of remedy. With respect to its relations with public security personnel, the company fails in securing adequate respect for the security and fundamental freedoms of workers and the local population.⁴⁴

In addition, the PTFI project is located in an area where Indigenous peoples of Papua hold customary land rights. Specifically, the Amungme in the highlands and the Kamoro in the coastal lowlands are considered traditional landowners of the area, along with the Dani, Damal, Moni, Mee, and Nduga.

In 2017, Indonesia's National Commission on Human Rights (Komnas HAM), a state-funded body, said that PTFI had never compensated the Amungme and the Kamoro as the original stewards of the land where it operates. The BPK, Indonesia's Supreme Audit Agency, also found that Freeport had used 4,536 hectares (11,208 acres) of protected forest area without obtaining the proper permits, costing the government \$20 million in lost fees between 2008 and 2015.⁴⁵ Freeport McMoRan responded that all land used by its subsidiary PTFI has been legally and formally released by customary landowners through a contract with the government.⁴⁶

In July 2020, The Federation of Chemical, Energy and Mining Workers of the Indonesian Labour Union (PC FSP KEP SPSI) in Mimika regency filed a lawsuit against PTFI and the Indonesian Department of Manpower and Transmigration (Disnakertrans). The lawsuit is one of multiple initiatives of former Freeport workers who were dismissed by PTFI after the company introduced a "furlough program" in February 2017. According to a report by the Indonesian NGO Lokataru, approximately 12,000 permanent workers and 20,000 contract workers were laid off.⁴⁷ A few months later, PTFI reportedly fired around 4,200 workers participating in a strike against the furlough program, a strike that was indicated legal by the Supreme Court.⁴⁸ Among the other initiatives conducted by workers to defend their rights, the workers of PTFI supported by the human rights organisation LOKATARU reported the Minister for Employment Hanif Dhakiri to the Ombudsman national office in Jakarta in August 2018. The executive director of LOKATARU, Haris Azhar, stated in a public interview that the complaint was filed on the grounds of maladministration and that the minister had not taken a neutral position in the conflict between the workers and PTFI.⁴⁹

On May 2020, an article from the environmental science and conservation news platform Mongabay reports that Freeport McMoRan was continuing operations at its Grasberg mine, despite 56 of its employees testing positive for COVID-19. Workers leaving the company's premises over health concerns risk being furloughed without pay.⁵⁰

The Grasberg mine is assessed in the Responsible Mining Index 2020 and obtains weak scores on most environmental and social issues. The mine site obtains a score of zero on the following topics: worker grievances, air quality, water quality, water quantity and emergency preparedness.⁵¹

2.2.2 Main human rights violations/abuses

The main human rights violations/abuses in this case are:

- Violations of the right to an adequate standard of living, including the right to food;
- Violations of the right to access to secure and clean water;
- Violation of the land rights of Indigenous people;
- Violation of the right to life and the prohibition of excessive use of force, torture and other forms of cruel or degrading treatment or punishment; rape and other forms of sexual violence; arbitrary detention;
- Violation of the right to freedom of speech and thought, and of assembly (including the right to peacefully demonstrate and strike);
- Violation of the right to (access to) remedy for people whose rights have been violated or abused.

2.2.3 Recommendations to the company

The major recommendations to the company are:

- Stop the internationally unacceptable negative impact on the environment;
- Contribute to the restoration of the impacted areas;
- Ensure that adequate compensation is provided to Indigenous people affected by the company's activities;
- To address the human rights violations of the security forces that (potentially) secure its operations; and
- To protect the rights of health and safety of workers according to internationally accepted rules and regulations.

2.3 Glencore in Colombia

2.3.1 Short description

In the mid-1990s mining companies Prodeco/Glencore and Drummond started to operate in Cesar, Colombia, which was effectively a war zone. Between 1996 and 2006, paramilitaries waged a terror campaign in this region, killing more than 3,100 people and forcibly displacing over 55,000 from their villages. The paramilitaries also made at least 240 people disappear; their bodies have yet to be found. Community organizations and labour unions were being severely repressed.

The paramilitary group responsible for these atrocities arrived roughly at the same time that mining multinationals started their operations in the area.⁵² However, mining companies have so far failed to address the human rights impact in the mining zone, while at the same time they have benefited from the abuses, for example by obtaining land in zones where communities had previously been forcibly displaced. While victims have been waiting for recognition, truth and reparations for a long time, threats and assaults by paramilitary successor groups have recently increased again.⁵³

The victims of violence in the mining region suffer to date. They still do not know the truth behind what happened to their loved ones, the land has not been returned (restituted) to displaced families, and the leaders continue to be targeted by new illegal armed groups when they try to claim their rights. The recent decision by parent company Glencore to end Prodeco's mining operations in Cesar has raised concerns among the population and other stakeholders that Prodeco-Glencore may avoid its responsibility towards the victims of violence in the Cesar mining region.

2.3.2 Main human rights violations/abuses

- Murder;
- Assault;
- Rape;
- Forced displacement.

2.3.3 Recommendations to the company

The major recommendations to the company are:

- Take an active, cooperative role in ensuring access to effective remedy for the victims of gross human rights violations committed by the paramilitaries in Cesar between 1996 and 2006 through initiating a direct dialogue with victim organizations on truth and peacebuilding.
- Cooperate fully with official, non-judicial, truth-seeking mechanisms (i.e. Colombian Truth Commission) relating to the events described above.
- Cooperate fully with official, restorative justice mechanisms (i.e. Colombian Special Jurisdiction for Peace) relating to the events described above

- Publish, besides the already published summary, the set-up and findings of the Human Rights Impact Assessment commissioned in 2018 in full and comprehensively indicate how adverse impacts will be addressed.
- Take adequate measures for the prevention of human rights violations against employees, members of communities, and other vulnerable stakeholders in the Cesar mining region. These violations include, in particular, recent threats against trade union leaders, members of the victims' movement, human rights lawyers, and participants in the land restitution movement.
- Do not profit, or seem to be profiting, from human rights violations by others. This relates particularly, but not exclusively, to the acquisition or use of lands that have been illegally or forcibly taken from the original owners (or holders).
- Promptly and without reservation comply with the spirit and letter of all court orders and decisions of legal authorities (e.g., Attorney-General's Office, Land Restitution Tribunal) relating to issues listed above, including land restitution orders.⁵⁴

2.4 Lundin Energy in South Sudan

2.4.1 Short description

From 1983 to 2005, Sudan was torn apart by a civil war between the government and Southern armed groups. In 1997, the Swedish oil company Lundin Oil signed a contract with the government of Sudan for the exploitation of oil in the concession area called Block 5A in the southern part of the country, that was not at that time under full government control. The company decided to operate without any guarantees that human rights and international law would be respected in the middle of a civil war and despite the government's record of committing international crimes. The start of oil exploitation set off a vicious war in their area. Between 1997 and 2003, international crimes were committed on a large scale in what was essentially a military campaign by the government of Sudan to secure and take control of the oil fields in Block 5A. Thousands of people died and almost two hundred thousand were violently displaced. Lundin's activities coincided with a spectacular drop in agricultural land use.⁵⁵

The actual perpetrators of the reported crimes were the armed forces of the government of Sudan and a variety of local armed groups. The 2010 report 'Unpaid Debt' by the European Coalition on Oil in Sudan argued extensively why Lundin, Petronas and OMV, as a matter of international law, may have been complicit in the commission of war crimes and crimes against humanity. Subsequently, the Swedish Prosecution Authority opened an investigation between the reported crimes and Sweden. On 11 November 2021, Ian Lundin, the Chairman of the Board of Lundin, and the CEO Alex Schneiter were indicted for complicity in international atrocity crimes. The prosecutor has requested the Court to declare Lundin's Sudanese operation a criminal enterprise and forfeit all enjoyed benefits for a total of SEK139 billion (13,2 billion euro). This decision indirectly implicates a legal entity in a war crimes trial, a novelty and a potentially significant legal development. Hearings are expected to start in 2022.⁵⁶⁵⁷

According to the Swedish Prosecution Authority, Lundin intentionally and repeatedly requested government military interventions that involved systematic attacks of civilians, recruitment and use of child soldiers, pillage, the use of hunger as a weapon of war and other war crimes. The company worked alongside perpetrators of crimes and provided them with material support. Its infrastructure enabled the commission of crimes by others. Mass forced displacement of significant parts of the population enabled the exploitation of its concession and the company benefitted from these crimes.⁵⁸

Lundin denies any wrongdoing and is firmly convinced that it was a force for peace and development in Sudan. Its legal defence strategy has allegedly been intended to delay the course

of justice, and of denying the victims of war crimes the right to access to justice and prompt redress.⁵⁹

2.4.2 Recent developments

In December 2021, Lundin Energy and Aker BP, one of the largest independent oil companies in Europe, announced that they will combine their exploration and production businesses through a statutory merger⁶⁰. In March 2022, 26 humanitarian and human rights organisations including PAX and Amnesty International called upon Aker BP and its main shareholder Aker ASA to support victims of war crimes and not buy Lundin Energy's assets under the agreed terms⁶¹. They stated that 'according to the Swedish public prosecutor, Lundin Energy has been complicit in systematic attacks on civilians with ground and air forces, massive destruction of property, and the use of hunger as a weapon of war. An estimated 12,000 people died as a result. Lundin Energy made a fortune in South Sudan and did not pay attention to the survivors. Aker BP's acquisition will strip Lundin Energy of the means to come clear with its South Sudanese legacy'⁶².

In March and May 2022, the shareholders of both Lundin and Aker voted to accept the merger (99.94% of Lundin's shareholders voted in favour) and the Norwegian Ministry of Petroleum and Energy, the Norwegian Ministry of Finance, and the Norwegian competition authority approved it.⁶³ After the transaction, Lundin Energy will be worth \$161 million only, while continuing to shoulder all responsibilities and liabilities related to the criminal case. The company will then barely be able to pay the costs of legal defence and the requested forfeiture of criminal benefits. The transaction will delay and potentially obstruct victims of war crimes in getting access to justice and/or remedy.

2.4.3 Main human rights violations/abuses

- Systematic attacks on civilians;
- Disproportional violence against civilians;
- Intentional attacks against injured persons and their property;
- Unlawful killing of civilians;
- Recruitment of child soldiers and using them in combat;
- Deliberate destruction of essential supplies and means necessary for survival;
- Pillage;
- Forced displacement.

2.4.4 Recommendations to the company

- Request an authoritative entity, in agreement with victim communities, to conduct a comprehensive and independent assessment of adverse human rights impacts of its operations in what is now South Sudan.
- Demonstrate commitment to the UNGP and OECD Guidelines duty to contribute to remedy of adverse human rights impact by allocating \$700 million for this purpose.
- Adopt a human rights oriented legal strategy, that balances the right to a fair trial of the suspects with the right to full and prompt access to justice of victims of crimes.
- Remove from the Board of Directors and the senior management all individuals who, through their unswerving support for a policy that flouts basic human rights duties and commitments, have shown to be misplaced to steer the company into compliance with fundamental international standards.

2.5 Newmont Corporation (former Goldcorp) in Guatemala

2.5.1 Short description

Newmont Corporation (formerly: Goldcorp Inc.) is one of the world's largest gold companies and a producer of copper, silver, zinc and lead, mining in North America, South America, Australia and

Africa. Its headquarters are based in Canada and the US. In 2019, Goldcorp Inc. and Newmont Mining Corp. have merged to form Newmont Goldcorp Corp., today renamed Newmont Corporation.⁶⁴

The Marlin gold mine in Guatemala spans the boundary of two municipalities in Guatemala, San Miguel and Sipacapa, both within the San Marcos Department. The mining activities from October 2005 until May 2017, were operated by Goldcorp's subsidiary, Montana Exploradora. The mine was closed in June 2017.^{65 66}

Mining activities in Guatemala have been marked by protests and controversies. Guatemala is still struggling with the legacy of past human rights violations by the internal armed conflict (1960-1996), when over 200,000 people were killed, including an estimated 40 000 people who disappeared.⁶⁷ Indigenous communities remain economically and socially marginalized. Their loss of land is a particular problem.

Goldcorp's gold mine in Guatemala is placed in a rural area in the department of San Marcos. The area has around 52,000 residents, a majority of whom are Mayan Indigenous peoples. Since the mine began operating in 2003 there have been on-going tensions around its presence. The root causes of the protest are described by community members and local NGOs as a lack of consultation before the mine began operating, disagreements over land acquisition and the failure of the company to address risks associated with the mine.⁶⁸ Tensions have been exacerbated by the way in which the security forces have dealt with protests and by attacks, carried out by unknown persons, on anti-mining activists. In January 2005, Raúl Castro Bocel was fatally shot when police and soldiers broke up a protest against the transportation of heavy equipment to the mine site. One of the local activists who opposed Goldcorp's mine, Diodora Hernández, was shot in her home on the evening of 7 July 2010. She survived, but lost the sight in her right eye and the hearing in her right ear. She believes she was attacked for speaking out against the mine. Many more were injured. No one has been arrested or brought to justice for either of these events.

In 2007, the Government of Guatemala was subject to a petition with the Inter-American Commission on Human Rights (IACHR) about the permitting process for the mine.

In 2010, the Inter-American Commission on Human Rights ordered precautionary measures for eighteen Mayan Indigenous communities, requesting that the Guatemalan government suspend Canada-based Goldcorp's controversial Marlin Mine and address issues of water contamination, illness and other measures necessary to guarantee the life and wellbeing of the communities while an assessment was carried out of the complaint from affected communities, who asserted that they never gave their consent for the controversial mine.⁶⁹ The Ministry of Energy and Mines initiated the administrative process in July 2010 but determined that there was no cause to suspend the Marlin Mine operations.⁷⁰

The UN Special Rapporteur on the rights of Indigenous peoples reported in June 2011 that there had been no consultation process around the Marlin mine that was consistent with the United Nations Declaration on the Rights of Indigenous Peoples.⁷¹

A 2010 Human Rights Assessment, commissioned by the company, concluded that consultation was largely inadequate and often confusing for community members⁷². Protests erupted in December 2013 when local communities set up roadblocks on a major highway to oppose new exploration activities in the nearby area of Sipacapa. Since 2011, Goldcorp says it has sought the approval of municipal mayors and councils, auxiliary Indigenous mayors, and local development councils in carrying out its operations.

However, former UN Special Rapporteur on the rights of Indigenous Peoples, James Anaya, stated that this form of consultation is insufficient as it does not take sufficiently into account the complexity of internal indigenous organisation, including of their traditional leaders. He advised the State to enact a Consultation law that would bring the country in line with its international obligations regarding the right to consultation under ILO convention 169 and the UNDRIP.⁷³

In 2017, Goldcorp announced the mine was entering into the closure and reclamation phase. The operations at the Marlin Mine ceased on May 31, 2017, and a formal list of grievances was presented to the company in June 2017.

In 2019, Mining Watch Canada, the Institute for Policy Studies and the Center for International Environmental Law (CIEL) released a report exposing 38 cases of mining companies that have been filing dozens of multi-million dollar claims against Latin American countries before supranational arbitration panels, demanding compensation for court decisions, public policies and other government measures that they claim reduce the value of their investments. One of the key findings is that *“Guatemala and Ecuador have been threatened with tens or hundreds of millions of dollars in suits related to gold and silver projects that communities have spent many years fighting, facing criminalization and threats to defend their water, health, and livelihoods”*⁷⁴.

In January 2020, Newmont provided a summary of the status of the grievances addressed by a government convened dialogue process.⁷⁵ Most of the grievances were solved, some actions still need to be resolved.

2.5.2 Main human rights violations/abuses

The main human rights violations/abuses in this case are:

- Violation of the right to security of the person;
- Violation of the right to a healthy environment and clean water;
- Violation of the right of freedom of expression;
- Violation of the rights of indigenous communities;
- Failure to address grievance in the affected communities; and
- Failure to protect the right of human rights defenders.

2.5.3 Recommendations to the company

The major recommendations to the company are:

- Remediate any damage inflicted on communities and individuals that its mining activities contributed to or caused;
- Ensure meaningful stakeholder engagement is integrated in the Human Rights Due Diligence of all projects, taking into consideration the language, values and customs of local communities;
- Ensure a responsible long-term closure of the mining site.
- Stop with Strategic Lawsuits Against Public Participation (SLAPPs). These are lawsuits filed by a private party with the intention to silence or intimidate another private party engaging in public participation, including criticism or opposition. For investors, SLAPPs should be a red flag: investors should communicate that they expect investee companies not to bring lawsuits with the intention of silencing critics and to continuously monitor their use.

2.6 Rio Tinto in Myanmar

2.6.1 Short case description

Rio Tinto is an Anglo-Australian multinational mining and metals company. The company's segments include iron ore, aluminium, copper & diamonds, energy & minerals and other operations. The multinational has operations and projects in 60 countries.

Rio Tinto is the majority shareholder of Turquoise Hill Resources, a Canadian mineral exploration and development company. The latter was active in Myanmar under the name Ivanhoe Mines. Its activities in Myanmar are tainted by human rights abuses, such as forced evictions and violence against villagers and monks opposing mining activities. These were detailed in the 2015 report 'Open for Business? Corporate Crime and Abuses at Myanmar Copper Mine', by Amnesty International.⁷⁶ This case focuses on copper mining activities in Myanmar and more particularly on

the Monywa project. Rio Tinto is involved in the abuses surrounding these activities through its steering share in Turquoise Hill Resources. This project consisted of two copper mining sites: Sabetaung and Kyisintaung (S&K) and Letpadaung. Ivanhoe mines became involved in these mines in 1996, for a share of 50%. The other half of the share was in the hands of a Myanmar government owned mining company.

The violations initially included forced evictions for the Sabetaung and Kyisintaung mines, mostly in 1996 and 1997, and later again between 2011 and 2014 for the Letpadaung mine. The evictions took place without compensation for local villagers and were based on legal procedures that are in violation of international laws to which Myanmar is party as well.

Pollution and waste dumping took place in 1995 and 1996 by the Sabetaung and Kyisintaung mine, with consequences long after. The government violently repressed peaceful protests related to the forced evictions. In one instance in 2012, the Myanmar police used white phosphorus to break up a protestors' camp. The use of this type of incendiary munition constitutes to torture, a crime under international law.

To date, no actions on this case have been reported showing that Rio Tinto takes or has taken responsibility for any of the human rights violations/abuses.⁷⁷

On 1 February 2021 the military seized control of the civilian government and declared a state of emergency. The coup was led by Commander-in-Chief general Min Aung Hlaing, a shareholder of the military conglomerate Myanmar Economic Holdings Ltd. (MEHL). A UN fact finding mission in 2018 has called for general Min Aung Hlaing to be investigated and prosecuted for genocide, crimes against humanity and war crimes for his involvement in widespread and systematic attacks against the Rohingya population in the Northern Rakhine state.⁷⁸ At the behest of the military at least 1,400 people have been killed since the coup, 11,000 arrested of which over 8,000 remain in prison after arbitrary arrests and with no access to fair trials. A number of governments, including the EU increased their sanction policies and many international civil organisations like Amnesty International appeal to local and foreign companies in business partnerships with the military or military owned businesses to disengage responsibly, cutting the flow of funds that the military uses or may use to prop up its lethal operations.⁷⁹

Like other similar companies active in the extractive sector, Rio Tinto has been involved in more cases of human rights violations. In April 2020, the company was accused of leaving people in Bougainville, Papua New Guinea, with polluted land, water and a destroyed river valley, after operations of its Panguna mine.⁸⁰ Subsequently, in May 2020, the company detonated explosives at an Aboriginal site in Western Australia⁸¹. This case received much international attention, including investors publicly raising concerns and stating to strengthen engagement efforts with the company.⁸²

The Rio Tinto Chief Executive, Jean-Sébastien Jacques, and two other senior executives resigned after its board bowed to intense investor pressure.⁸³ However, although a number of climate and governance related shareholder resolutions have been proposed at Rio Tinto's Annual General Meetings during 2018-2020, no such resolutions on human rights issues have been brought in.⁸⁴

2.6.2 Main human rights violations/abuses

The main human rights violations/abuses in this case are:

- Forced evictions;
- Extrajudicial executions;
- Pollution of living environments;
- The Right to Freedom of Expression and peaceful assembly, including demonstration;
- Violation of the right of (access to) effective remedy for people whose human rights have been abused.

2.6.3 Recommendations to the company

Rio Tinto, as current majority shareholder of Turquoise Hill Resources, the successor of Ivanhoe Mining, has a responsibility to ensure compensation for people negatively affected by business operations of Turquoise Hill Resources. In its 2015 report, Amnesty International specifically recommended the company:

- “Turquoise Hill Resources (Ivanhoe Mines) should disclose all the information it holds on pollution from the S&K mine and clean-up undertaken by MICCL. It is responsible for compensating people for environmental damage and forced evictions linked to its joint venture and should put aside funds for such compensation and engage with the government of Myanmar to ensure that compensation is paid.”⁸⁵

Like any other company doing business in Myanmar since the military takeover on 1 February 2021 and the gross human rights violations since (and before against the Rohingyas): Rio Tinto should disengage responsibly from business partnerships with the military and military owned businesses, cutting the flow of funds that the military uses or may use to prop up its lethal operations. Since the Myanmar government is 50% shareholder in Turquoise (formerly Ivanhoe), it is the army that now holds 50% of its shares.

2.7 Shell plc (formerly: Royal Dutch Shell) in Nigeria

2.7.1 Short description

Shell plc is an international oil company that explores for crude oil and natural gas around the world, both in conventional fields and from sources, such as tight rock, shale and coal formations. It was a Dutch, and later on an Anglo-Dutch company based in the Netherlands (The Hague) known as Royal Dutch Shell, but moved its headquarters to the UK and became a British company in January 2022.

Following the discovery of crude oil in the Niger Delta, Royal Dutch Shell (then known as Shell British Petroleum) was the first multinational company to start exploitation in the area in 1958. To date, Shell remains the biggest oil company active in the area, though now joined by other subsidiaries of multinational companies including Eni, Chevron, Total and ExxonMobil as well as some Nigerian companies.

Oil exploration and production in Nigeria must be undertaken in joint ventures involving the state owned Nigerian National Petroleum Corporation (NNPC) and one or more oil companies within production sharing contracts. The NNPC is the majority shareholder in all these joint ventures, while the non-state companies act as the operators, managing daily business activities.

Shell Petroleum Development Company of Nigeria Limited (SPDC) is Shell’s main operator in the Niger Delta as part of a joint venture with NNPC (which holds 55 percent), Shell (30 percent), Total Exploration and Production Nigeria Limited (TEPNG) (10 percent) and Eni (Nigerian Agip Oil Company Limited - NAOC) (5 percent).⁸⁶ SPDC alone operates over 31,000 square kilometres, an area crisscrossed by over 6,000 kilometres of pipelines and flowlines, punctuated by wells and plants. With this massive infrastructure, most of which is located close to homes, farms and water sources, Shell produces 39 percent of Nigeria’s oil.⁸⁷

However, in the last six decades of oil exploration, frequent oil leaks have heavily polluted the Niger Delta. Every year, about 40 million litres of oil are spilled, with nearly daily reports of new leaks and spillages.⁸⁸ These include hundreds of leaks along pipelines owned by Shell, who claims that the majority of leaks are caused by local criminal groups that sabotage the pipes to steal the crude oil.

A 2020 report by Friends of the Earth Netherlands (Milieudefensie) revealed that in addition to negligence and a failure to properly maintain the dated pipes and to secure them against sabotage,

employees of Shell Nigeria have also actively contributed to the leaks incentivised by the payments for cleaning operations following a spillage.⁸⁹

The consequences for the communities living in the Niger Delta are severe. The UN Environmental Program, UNEP, conducted an independent assessment of the environment and public health impacts of oil contamination in Ogoniland, one of the regions most affected in the Niger Delta, showing that the oil pollution has caused ‘an appalling level of pollution’, including the contamination of agricultural land and fisheries and drinking water, and exposing hundreds of thousands of people to serious health risks. The UNEP report concluded that: “The Ogoni people live with this pollution every minute of every day, 365 days a year. Since average life expectancy in Nigeria is less than 50 years, it is a fair assumption that most members of the current Ogoniland community have lived with chronic oil pollution throughout their lives. Children born in Ogoniland soon sense oil pollution as the odour of hydrocarbons pervades the air day in, day out.”⁹⁰

In addition, with little employment opportunities in the region, three quarters of the local population depend on fishing and farming to survive, but the polluted waterways and contaminated farmland now hardly yield food. In December 2020, 9 years after the UNEP-report, an investigation by Amnesty International, Friends of the Earth Europe, ERA/Friends of the Earth Nigeria and Milieudefensie/Friends of the Earth Netherlands showed that Shell and the Nigerian government did not properly implement the “emergency measures” proposed by UNEP. The affected communities are still suffering health risks, struggling to access safe drinking water, and unable to earn a living due to the contamination of waterways.⁹¹

Holding Shell accountable for the human rights abuses and pollution has been a major obstacle for the affected communities, who have been fighting for decades to get the company to clean up the mess and provide redress. In 2011, the UN Environment Programme (UNEP) documented the devastating impact of the oil leaks in the region and urged Shell to clean up the pollution. Nearly 10 years later in June 2020, Amnesty International reported that Shell started cleaning works on only 11 percent of planned sites, leaving vast areas contaminated. The researchers in fact found that even areas declared clean by the government regulator were still contaminated with crude oil, with black encrusted soil and oily sheens on waterways in multiple locations.⁹²

Recent legal proceedings against Shell have been promising for the affected communities. In November 2020, a Nigerian court ruled that Shell has to pay USD 467 million in damages for a 1970 oil spill that severely affected the Ejama-Ebubu community after the polluted waterways destroyed their livelihoods and caused numerous diseases.⁹³ In February 2021, the UK Supreme Court ruled that two Nigerian communities can bring claims against the company and its Nigerian subsidiary in an English court, which was seen as a landmark decision allowing for transnational corporate accountability.⁹⁴

Just a month earlier, in January 2021, a Dutch court ruled in favour of four Nigerian farmers in a case started in 2008. The judges ruled that Shell’s Nigerian subsidiary is responsible for four out of the six pipeline leaks covered by the lawsuit and that the mother company Royal Dutch Shell had neglected its duty of care to prevent these leaks. As a result, Shell needs to install leak detection equipment in its pipelines and pay damages to the four farmers, which brings hope for other farmers and affected individuals to claim redress from the company as well. Shell has decided to lodge an appeal in cassation in May 2021.⁹⁵

In addition, on May 26, Shell has lost a landmark legal case in the Netherlands brought by Milieudefensie, the Dutch wing of Friends of the Earth and over 17,000 co-plaintiffs, on the company’s failure to cut carbon emissions as a human rights violation.⁹⁶ The Dutch Court has ordered Shell to cut carbon emissions with 45% by 2030, compared to 2019 levels. Shell appealed the decision in July 2021.⁹⁷

2.7.2 Main human rights violations/abuses

The main human rights violations/abuses in this case are:

- Violations of the right to water – oil spills pollute water used for drinking and other domestic purposes as well as farming;
- Violations of the right to health – which arise from failure to secure the underlying determinants of health, including a healthy environment, and failure to enforce laws to protect the environment and prevent pollution;
- Violations of the right to an adequate standard of living, including the right to food – because of damage on agriculture and fisheries;
- Failure to ensure access to effective remedy for people whose human rights have been violated;
- Failure to provide affected communities with information relating to oil spills and clean-up. The government of Nigeria is failing to fulfil its duty to protect the human rights of people living in the Niger Delta, including by ensuring that they enjoy their human right to a remedy and proper clean-up. However, the fact of government failure to protect rights does not absolve the non-state actor from responsibility for their actions and the impact of them on human rights. Shell has a responsibility to ensure that its actions do not cause or contribute to human rights violations, and to cease and redress when abuses occur.

2.7.3 Recommendations to the company

The major recommendations to the company are:

- Urgently carry out effective clean-up and remediation operations at oil spill sites in consultation with the local communities;
- Uphold the duty of care to prevent oil leaks, going beyond installing a leak detection system and ensuring that regular maintenance, security and internal company policies are geared towards diminishing to the maximum extent possible the risk of spillages;
- Cooperate in remediation processes, both legal and otherwise, to ensure that all affected communities have access to redress and extend damage payments to individuals beyond those included in lawsuits;
- Ensure that the cleaning process is more transparent and thorough, ensuring that clean-up is conducted properly, and that Shell employees or other actors are not incentivised to intentionally cause leaks by separating Shell employees from the cleaning contracts or by conducting cleaning operations internally;
- Provide the affected communities with clean drinking water, for free;
- Consult and cooperate with the community how livelihoods can be restored, and help impoverished families to access meaningful ways to earn an honest income.

2.8 TotalEnergies in Uganda and Tanzania

2.8.1 Short description

TotalEnergies (“Total”) is a French multinational integrated oil and gas company founded in 1924 and one of the seven “supermajor” oil companies. The company operates in more than 130 countries and its businesses cover the entire oil and gas chain, from crude oil and natural gas exploration and production to power generation, transportation, refining, petroleum product marketing, and international crude oil and product trading.

Total operates in Uganda through its wholly owned subsidiary, Total E&P Uganda. Total has been present in upstream oil exploration in Uganda since 2011, after acquiring an initial 33.33% interest

from Tullow Oil plc (“Tullow”). It obtained approval to operate oil exploration and production activities in the Tilenga area in August 2016. Tullow sold its last shares to Total in November 2020, China National Offshore Oil Corporation (“CNOOC”) declining to exercise its right to acquire 50% of them. Currently, Total is the majority owner with 66.66% of the shares, the rest of the interests is held by CNOOC.⁹⁸

Since 2006, a series of oil discoveries under and around Lake Albert in the West of Uganda have led to investment by a consortium of multinational companies, in particular Total, CNOOC and Tullow, as well as by the Ugandan Government.⁹⁹ The Lake Albert oil extraction and development project entails concessions for exploration and extraction to the Joint Venture Partners, with Total operating the oil fields in the northern part of the lake, the Tilenga area, while CNOOC operates those in the southern part, the Kingfisher area – and for a consortium to build a refinery in the Hoima district, where some of the oil will be refined for national and regional markets. A total of about 400 wells will be drilled from over 30 well pads in Tilenga, while 20 production wells and 11 water injection wells will be drilled under the lake from four well pads in Kingfisher.

A pipeline of 1443 km, passing mostly through Tanzanian territory (79% of the pipeline located Tanzania and 21% in Uganda), will take the oil for export to the Indian Ocean port of Tanga on the Tanzanian coast.¹⁰⁰ The pipeline, which still needs to be constructed is called the East African Crude Oil Pipeline (EACOP), and will be the longest heated pipeline in the world. The construction which did not start is planned to last for about 36 months¹⁰¹. The pipeline will traverse 231 villages in Tanzania and 178 in Uganda¹⁰².

In September 2020, two research reports “New Oil, Same Business?”¹⁰³ by the International Federation for Human Rights (FIDH) and the Foundation for Human Rights Initiative (FHRI), and “Empty Promises down the Line?”¹⁰⁴ researched by Oxfam, highlight major risks of oil projects by French energy company in Uganda and Tanzania. According to the reports, at least 12,000 families in Tanzania and Uganda have lost land. The reports, which are both community-based human rights assessments, document a number of actual and potential human rights violations and abuses resulting from the activities of the State of Uganda and the companies developing the oil projects in the Tilenga and Kingfisher areas. They include testimonies of community members who have been harassed, intimidated, and forced to leave their lands without receiving adequate compensations. The testimonies also mention that local communities are never involved in the decision-making or consulted about adequate compensation contrary to Uganda law.

In June 2019, six NGOs, Friends of the Earth France, Survie, AFIEGO, CRED, NAPE/Friends of the Earth Uganda and NAVODA presented Total with a formal demand to revise its vigilance plan and the implementation of that plan for the oil project in Uganda. Among other, the organisations want the oil company to include risk prevention measures for human rights defenders, and better mitigation measures to address adverse effects. After an unsatisfactory response to the formal request by Total, legal action was launched on October 23, 2019. The complainants argued that the company had failed to comply with its obligations under the French duty of vigilance law. This was the first ever legal action of its kind - seeking emergency proceedings against Total for non-compliance with its legal obligations under the 2017 French duty of vigilance law, which aims to address corporate negligence.¹⁰⁵

The summary hearing took place on 12 December 2019 before the High Court of Nanterre. To the dismay of the plaintiffs, on 30 January 2020, the court in Nanterre declared itself incompetent to rule on the case involving Total’s activities in Uganda and instead referred the matter to the Commercial court (Tribunal de Commerce).¹⁰⁶ The plaintiffs filed an appeal which was heard by the court on October 29, 2020. They were supported on this point by two “voluntary interventions” (amicus) filed by three civil society organisations (ActionAid France, CCFD-Terre Solidaire and collectif Éthique sur l’étiquette) and by the main French trade union, CFDT.

In December 2020, the Court of Appeal of Versailles ruled in favour of Total, confirming the judgment of the first instance court which considered that this dispute fell within the jurisdiction of

the commercial court. Civil society organizations (CSOs) believe that this decision is contrary to the spirit of this law, which aims at making companies liable for the impacts of their activities on third parties, such as employees of subsidiaries, suppliers and subcontractors, local communities and the environment. Therefore, Friends of the Earth France, Survie and their Ugandan partners filed an appeal before the Cour de Cassation (French Supreme Court), which issued its ruling on 15 December 2021, in favour of the CSOs. the Court of Cassation recognized that they have a right to choose litigation in a civil or commercial court because they are non-commercial claimants. The case will return to the civil court of first instance, the High Court of Nanterre.¹⁰⁷

For years, there have been ongoing threats, intimidations and arrests of human rights defenders with the Ugandan CSO's involved in the case against Total Energies. In May 2021 Maxwell Utuhara, human and environmental rights defender and lawyer at NAVODA, was arrested while accompanying a journalist to a meeting with members of communities affected by Total's oil projects. Utuhara had been receiving countless threats for months and publicly denounced the intimidation of land, environmental and human rights defenders for their activism against forced evictions and environmental harms related to Total's activities. He was released on bonds but still faces charges for "unlawful assembly". Total claimed not to be involved. In August 2021, more than 50 Ugandan NGOs were shut down by Ugandan authorities for alleged regulatory breaches, amongst which AFIEGO. The organisations called it a "coordinated effort to silence critical voices" speaking up for communities threatened by the oil project". In October 2021, 6 members of AFIEGO were detained without charge.^{108 109}

Sixteen years after oil was discovered in the region, TotalEnergies and its partners CNOOC and the Uganda National Oil Company officially announced the final investment decision for the multibillion-dollar project in February 2022. They expect to reach a production of 230.000 barrels a day by 2025.^{110 111}

2.8.2 Main human rights violations/abuses

The main human rights violations/abuses in this case are:

- Violation of human rights defenders' right to be free from intimidation, harassment and violence;
- Violation of the right to freedom of expression;
- Violation of the right to land, including the social and cultural dimensions of the use of land, and of women's equal rights to land and property;
- Potential violation of the right of indigenous and vulnerable ethnic communities;
- Denial of the right to an adequate standard of living;
- Negative impacts on the right to water and health;
- Negative impacts on the right to a healthy environment;
- Impunity for perpetrators of human rights violations.

2.8.3 Recommendations to the company

The major recommendations to the company are:

- Take steps to go beyond the standards set forth in Ugandan and Tanzanian law, especially in relation to improving opportunities for participation and inclusion in the land acquisition process with a particular attention to the participation of women and the respect of their rights to equal treatment in resettlement schemes as mentioned in the Convention on the Elimination of All Forms of Discrimination against Women;¹¹²
- Undertake a Free, Prior and Informed Consent (FPIC) process for the use of indigenous peoples and other vulnerable communities' lands, resources and traditional knowledge;

- Provide adequate compensation to affected communities and account for the way compensation was conducted; compensation should also take into account the customary land rights of affected communities, including women;
- Monitor and disclose the effectiveness of measures implemented to mitigate the human rights risks related to the project.
- Conduct a proper Gender Impact assessment. Although the project is already quite advanced, there are still major impacts to come with the construction phase.
- Develop a properly functioning grievance mechanism. Since the current one does not fulfill the UNGP effectiveness criteria (issues with accessibility, predictability, and transparency).

2.9 Vale in Brazil

2.9.1 Short description

Vale is the world's largest producer of iron ore, pellets, and nickel. Originally established in 1942 as the state-owned Companhia Vale do Rio Doce, Vale became a private company ranking among the largest miners in the world. The company's operations abroad cover approximately 30 countries.¹¹³

On 25th January 2019, the tailings dam of the Brumadinho iron mine, in the state of Minas Gerais in south-eastern Brazil, operated by Vale SA, collapsed and unleashed a tidal wave of waste and mud (11.7 million cubic meters) that engulfed homes, businesses and residents in its path. In this tragedy, 270 lives were lost. It was one of the deadliest mining accidents in Brazil history.¹¹⁴

The sirens that would have alerted workers if the dam burst, were destroyed by the mud flow before anyone could sound the alarm.¹¹⁵ After flowing more than five miles downhill, the mud reached the Paraopeba River, polluting areas downstream with toxic substances.

According to an investigation from the New York Times, some experts reported that all the elements of a potential catastrophe had been present, and warning signs of structural problem that could lead to a collapse have been overlooked, for years.¹¹⁶ The investigation also reveals that questions about the safety of the dam had been brushed aside for years. Despite them, Vale managed to get its plan to expand the mining complex in Brumadinho fast-tracked for approval by local officials. Beyond the enormous number of victims from this accident, the environmental and social impacts are disastrous including water pollution and biodiversity loss, soil contamination, loss of livelihood for villagers.¹¹⁷

Vale expects to spend about 9 billion reais (\$1.65 billion) in 2022 on reparations related to the Brumadinho dam burst, apart from individual compensations. One of the priorities will be to find missing bodies of victims. In an effort 'to regain the trust of society', Vale also said it wants to participate in the construction of improvements in the development of the regions where it operates.¹¹⁸ Vale is the main source of income for the 37,000 people living in Brumadinho, but as the death toll rose, public anger boiled over at the company.

The deadly disaster led to the formation of the Investor Mining & Tailings Safety Initiative spearheaded by the Church of England and the Swedish AP funds with the support of other investors such as APG, Robeco, New Zealand Super, LGPS Central and BMO Global Asset Management.¹¹⁹ In addition, Vale was suspended from the Corporate Human Rights Benchmark in February 2019.¹²⁰

In January 2020, the Brazilian state prosecutors charged Vale's former chief executive, Fabio Schvartsman, and 15 other people with homicide. After a superior court ruled the case should proceed through federal rather than state court, the state of Minas Gerais appealed to the country's Supreme Court (STF) in January 2022.¹²¹ In addition to homicide charges, Vale and TÜV Süd, a German safety auditing firm, were indicted for environmental crimes in the deadly dam collapse in November 2021,¹²² and a civil action case was brought against TÜV SÜD by victims of

the Brazilian dam disaster in Germany. The first hearing in this 'class-action lawsuit' took place in Munich, Germany, in September 2021.¹²³

In May 2020, Norges Bank Investment Management which manages the Norwegian Government Pension Fund Global, decided to exclude the Brazilian mining firm Vale from its investments. The decision came after a recommendation from its ethics panel and an assessment of the risk of contribution to severe environmental damage and focuses on the environmental damage caused by the Brumadinho disaster and the earlier Samarco accident, another dam collapse which occurred in 2015.¹²⁴

In February 2021, Vale has agreed a \$7 bn settlement with the Brazilian government. The Minas Gerais Court of Justice, which acted as a mediator, described the agreement as "historic and with global repercussions". 1.68 billion dollars should be paid as a direct compensation to bereaved families, 1.2 billion will go to "environmental rehabilitation projects" and 868 million in "socio economic rehabilitation projects".¹²⁵ However, campaign groups criticised the figure, which was lower than the \$10bn which the authorities were initially seeking, claiming that "Vale comes out winning" in the agreement and that affected stakeholders did not participate to the conversations that resulted in the agreement.

The government of Minas Gerais, where the disaster occurred, said the agreement does not set a ceiling on potential costs associated with the environmental clean-up, which Vale will have to cover. It also does not interfere with any criminal cases against Vale personnel, the government said.¹²⁶

On 28 April 2022 the US Securities and Exchange Commission (SEC) charged Vale in the federal court of New York with violating anti-fraud and reporting provisions of US securities laws. The company is alleged of making false and misleading disclosures about the safety of its dams ahead of the 2019 disaster, having manipulated dam safety audits and obtaining fraudulent stability certificates.

There are 87 mining dams in Brazil built like the one that failed – enormous reservoirs of mining waste held back by little more than walls of sand and silt. And all but four of the dams have been rated by the government as equally vulnerable, or worse. At least 27 sit directly uphill from cities or towns, with more than 100,000 people living in especially risky areas if the dams fail, an estimate by The New York Times found.¹²⁷ Vale promised in 2019 to close all of its other 'upstream' dams that have a similar structure as the Brumadinho dam, but does not seem to meet the Brazilian governments' demand that all upstream dams be closed by mid-August 2023.

This is not the first catastrophe caused by Vale' activities, as in November 2015 a similar dam burst in the city of Mariana, killing 19 people and unleashing one of the worst environmental disasters in Brazilian history. That dam was jointly owned by Vale and the Anglo-Australian mining company BHP. 200,000 Brazilians filed an English lawsuit against BHP. Which is still ongoing. In July 2021, the English court granted permission to the claimants to reopen the case. They will now be heard by the Court of Appeal.¹²⁸

2.9.2 Main human rights violations/abuses

The main human rights violations/abuses in this case are:

- Irreversible negative impacts on the life of people: 270 deaths;
- Irreversible impacts on the biodiversity and the environment;
- Violation of the health and safety rights of individuals (including workers and local communities affected by the dam collapse), failure to implement an Emergency Action Plan for Mining Dams;
- Serious adverse impacts on the affected communities;
- Negative impacts on the right to water;
- Negative impacts on the right to a healthy environment

The irreversible impacts caused by the Brumadinho disaster evidence Vale's failure to comply with the UN Guiding Principles, and implement an adequate due diligence to identify, prevent, and mitigate actual and potential adverse impacts. In this case, Vale is considered to have caused adverse human rights impacts of high severity and is consequently held accountable for taking the necessary steps to cease or prevent the impact.

2.9.3 Recommendations to the company

The major recommendations to the company are:

- Provide for remediation through legitimate processes, including fair level of compensation for all the victims of the dam collapse;
- Review its policies and processes to prevent such accident to happen again and be transparent on the correction actions it has taken to do so;
- Ensure that human rights due diligence is integrated to its risk management systems, and take into consideration risk to right-holders and not only the material risks to the company itself. To identify the potential human rights risks to all right-holders, Vale should ensure that meaningful consultation with potentially affected groups and other relevant stakeholders are part of its policies and processes;
- Review and strengthen health and safety processes, including its Emergency Action Plan for Mining Dams; and
- Monitor and evaluate stakeholder engagement activities, also through the support of independent external experts.

2.10 Vedanta Resources in India

2.10.1 Short description

Vedanta Resources Limited is a globally diversified metals and mining company headquartered in London, England. It extracts and processes minerals, oil and gas and operates primarily in India, Africa, Ireland and Australia.¹²⁹ In south-west Odisha in eastern India, one of the poorest areas of the country, communities are at a continued risk of bauxite mining activities and an alumina refinery. Between 4,000 and 5,000 people who live in the 12 villages that surround the Lanjigarh refinery, including the Indigenous Majhi Kondh Adivasi, Dalit and other marginalised communities, have been affected by the refinery's operations, including its impact on water and air, which has compromised community access to water for drinking and domestic use, and has placed their health and livelihoods at risk. In addition, the thousands of people surrounding the bauxite mines have faced similar issues relating to land grabbing, environmental destruction and pollution, and harassment of human rights defenders.¹³⁰

Vedanta Aluminium Limited – a subsidiary of Vedanta Resources Plc group – owns an alumina refinery at Lanjigarh. Through a joint venture between the State of Orissa and another subsidiary of Vedanta, the South-west Orissa Bauxite Mining Company formed in 2009 to mine bauxite in the region to supply the Vedanta refinery. In 2008, India's Ministry of Environment and Forests (MoEF) approved bauxite mining projects in this region and granted environmental clearance to the Orissa Bauxite Mining Corporation to cut down 435 hectares of forest land in the Niyamgiri Hills. The Niyamgiri Hills are considered sacred by the Dongria Kondh, an Adivasi (Indigenous) community that for centuries has depended entirely on the area for its economic, physical and cultural survival.¹³¹

In addition, in February 2018 the Odisha Mining Corporation signed a Memorandum of Understanding with Vedanta to supply the refinery with 70 percent of the bauxite obtained from mines around the Kodingamali hill. For this purpose, the Odisha Mining Corporation received clearance to develop the mining in 435 hectares of forest land in the Kodingamali hill region.

Villagers assert that once again, they have not been consulted on the project, and the clearance and construction activities are already destroying local farming fields and polluting waterways.¹³²

Not only the mining activities, but also the alumina refinery itself is abusing the human rights of the surrounding communities. In 2010, the Vedanta refinery was planning a six-fold expansion of its capacity, which included land grabbing and forced displacement of hundreds of families that depended on the lands for farming. In addition, the construction of the refinery as well as its regular operations have polluted the environment, including the water on which communities depend for drinking, domestic use and for farming and livestock. Vedanta also failed to adequately consult the communities and provided misleading and too limited information on the negative impacts of the refinery and the scope of the expansion.¹³³ Vedanta currently plans again to further expand its refinery, after the board of directors announced in February 2021 an expansion that more than doubles its production capacity, raising renewed concerns for the communities surrounding the refinery.¹³⁴

Although at several points, the government halted expansion activities or placed further conditions on the company due to violations of environmental laws, the government has failed to stop Vedanta's harmful business activities and continues to condone its expansions by granting clearances for further development without following due processes. In addition, other governmental policies such as India's new coal policies further aggravate the conflicts, and continuous refusal of the government and the publicly owned Odisha Mining Corporation to cooperate in due hearings and consultations pose systematic setbacks that repress community input and their rights to Free, Prior and Informed Consent (FPIC).¹³⁵

Human rights defenders and local communities protesting the companies' activities have systematically faced intimidation, police violence and harassment. Due to the government's involvement in the mining activities, activists assert that the local government is trying to subvert and repress the movement.¹³⁶ In a similar struggle against another subsidiary of Vedanta, the copper smelter Sterlite Industries, thirteen people were killed by the police during a protest the company in 2018, which further raises significant concerns about the safety of those opposing Vedanta and its subsidiaries.¹³⁷

2.10.2 Main human rights violations/abuses

The main human rights violations/abuses in this case are:

- Violation of the rights to water, food, health – including a health environment, and an adequate standard of living due to the environmental pollution of water and air, and the destruction of forests and farmland surrounding the mines and refinery;
- Violation of the rights to freedom of expression and information and participation through failure to adequately inform and consult local communities on expansion activities;
- Violations of the rights of Indigenous peoples, including land rights and their right to Free, Prior and Informed Consent;
- Land grabbing;
- Violation of the right to organise and peacefully demonstrate, and
- Failure to protect the rights of human rights defenders.

2.10.3 Recommendations to the company

The major recommendations to the company are:

- Urgently and fully address the existing negative environmental, health, social and human rights impact of the Vedanta Aluminium refinery at Lanjigarh: this should be done in genuine and open consultation with the affected communities and through cooperating in legitimate remediation processes;

- Proactively disclose to the affected communities all information on the existing refinery, the proposed expansion and the mining project; ensure that this is done in a manner that is accessible to them and cooperate fully with any state process on such disclosure;
- Cooperate with an independent and impartial human rights and environmental impact assessment of the proposal for expansion of the refinery as well as the mining activities;
- Make a public commitment to halt expansions of the refinery and mining until existing problems are addressed; full, impartial, and adequate assessments of the human rights implications of the proposed projects are carried out; and effective plans are developed, and action taken to ensure that human rights are respected and protected;
- Respect the decision taken by the Dongria Kondh communities in July 2013 as well as subsequent decisions to not give consent to mining bauxite from their sacred lands; a decision taken after exercising their right to Free, Prior and informed Consent. It is clear that the Niyamgiri Hills are of vital importance to the Dongria Kondh, and essential to their survival as a distinct people, and maintenance of their livelihood, culture, and way of live.

3

Profiles and assessment of pension funds

This chapter presents the results of this case study per pension fund. For each pension fund, an overview is provided that includes a company profile, an overview of the financial relationships with the ten selected companies (in the form of shares and/or bondholdings), and the scores it has received in this case study, including justifications.

3.1 Algemeen Burgerlijk Pensioenfonds (ABP)

3.1.1 Profile

ABP is a pension fund for 3.1 million employees/employers who work in the government and education sectors, it is the largest pension fund in the Netherlands. As of 31 December 2021, ABP's total invested assets amounted to € 550 billion. APG is the fiduciary manager of ABP, it is in charge of ensuring the adequate implementation of ABP's investment policy.

3.1.2 Financial relationships with selected companies

As of 31 December 2021, ABP held shares with a total value of € 1,459 million and/or bonds with a total value of € 313 million, in seven of the ten selected companies for this research (see Table 14), namely:

- Freeport-McMoRan;
- Lundin Energy;
- Newmont Corporation;
- Rio Tinto;
- Shell;
- TotalEnergies; and
- Vale.

Among those companies, ABP's largest shares is in Shell (€ 382 million), while its largest bondholding is in TotalEnergies (€ 254 million).

Table 14 Overview of ABP's share and bond holdings in the selected companies

Company	Country of origin	Investment type	Value (in € mln)	Reporting date
Freeport-McMoRan	United States	Shares	40.6	31 Dec 2021
Lundin Energy	Sweden	Shares	57.8	31 Dec 2021
Newmont Corporation	United States	Shares	225.3	31 Dec 2021
Rio Tinto	United Kingdom	Shares	321.0	31 Dec 2021
Royal Dutch Shell	United Kingdom	Shares	381.9	31 Dec 2021
		Bonds	58.7	31 Dec 2021
TotalEnergies	France	Shares	252.4	31 Dec 2021
		Bonds	254.1	31 Dec 2021

Company	Country of origin	Investment type	Value (in € mln)	Reporting date
Vale	Brazil	Shares	179.9	31 Dec 2021
Total			1,771.7	

Source: ABP (2021), *Beursgenoteerde beleggingen per 30 september 2021*, retrieved in January 2022; ABP (2021), *Overzicht bedrijfsobligaties ABP per 30 september 2021*, retrieved in January 2022; ABP (2022), 'ABP Asset under management as of 31-12-2021', Email sent by Patrick Koimans on 11 March 2022.

3.1.3 Assessment and score overview

ABP achieved a total score of 3 out of 10. Within the scope of this research, ABP had financial links with seven out of ten selected companies. In addition, Glencore was also considered as a relevant case because ABP reported some information related to engagement on human rights topics with the company. ABP sold its interests in the company in October 2021¹³⁸ due to insufficient progress made by Glencore. In addition, in October 2021, ABP announced it will stop investing in producers of fossil fuels (oil, gas and coal) following reports from the International Energy Agency (IEA) and the UN Climate Panel (IPCC). ABP said it will divest from the fossil fuel producers in phases; the majority of which is expected to be sold by the first quarter of 2023.¹³⁹

As of 1 December 2021, none of the ten selected companies for this study were on the exclusion list of ABP.¹⁴⁰

ABP provided comments and adjustments on the results of the financial research which have been integrated. ABP answered Profundo's questionnaire with public information only (already available on their website or other public documents). As publicly disclosed information is not very specific compared to the questions included in the survey, insight into the details of the engagement processes with the companies it is financially linked was quite limited. When contacted again by Profundo to provide clarification on the public information available, ABP answered that "it could not provide non-public information on individual engagement trajectories"¹⁴¹.

Based on the answers provided by ABP and the supporting evidence, Table 15 presents the scores per section (A, B, C, D) as well as the consolidated score of the pension fund. Explanations related to the evaluation of each section are provided in the following paragraphs.

Table 15 Overview of ABP's scores

Section		Score (/10)	Weight
A	Identification, qualification and prioritisation of human rights issue(s) and risk(s)	4.4	20%
B	Using leverage to influence investee companies	2.2	40%
C	Tracking progress and outcome by the Pension fund	4.4	20%
D	Providing for or cooperating in remediation	1.6	20%
Total		3.0	100%

3.1.4 Section A: Identification, qualification and prioritization of human rights issues and risks

ABP's actual investments are made by APG Asset Management (APG) and the parties contracted by them. APG is responsible to ensure the adequate implementation of ABP's SRI policy' and to coordinate engagement activities. Of note, APG Asset Management also outsources some asset management to external managers. These external mandates area managed in compliance with ABP's SRI policy.

All companies in which ABP invests in shares and bonds are screened on ESG criteria outlined in ABP's inclusion policy. Companies need to meet minimum sustainability standards before being considered for investments. Among these standards, ABP expects companies to adhere to the UN Guiding Principles and the OECD Guidelines. In specific circumstances, ABP invests in companies it classifies as "laggards" because it identifies opportunities to support them to improve their sustainability practices. ABP's screening also takes into consideration high-risk variables including sectors (ABP has published various factsheet related to its investment in high-risk sectors such as the mining sector), geography and governance context. ABP reports that its approach to risk assessment not only analyses the risks for the pension fund, but also the risks for the society and the environment. Those risks were assessed in its 2020-2025 policy based on inhouse research and stakeholders' consultations.

ABP also applies exclusion criteria applicable to companies and countries, and regularly updates the composition of its exclusion list on its website.¹⁴²

ABP receives quarterly reports from its investment manager, these reports contain information on the integration of SRI policy into investment practice and the identification and limitation of potential and actual negative impacts. Every year ABP's fiduciary manager evaluates the implementation, execution, and results of the investment policy on SRI criteria.

Regarding the selected cases of human rights abuses, information was found evidencing that ABP has started an investigation on Glencore and Vale. In its Annual Report 2020, ABP identifies both companies as "laggards" and reports it has been conducting close dialogues with the companies to help them improving their practices.¹⁴³ In addition, regarding the Brumadinho dam case, ABP reports it has received the visit of a delegation from Brazil including people directly impacted by the disaster, to listen to their story and better understand what went wrong and how further incidents could be avoided.

No information has been found on the selected cases related to Freeport-McMoRan, Lundin Energy, Newmont Corporation, Rio Tinto, Shell and TotalEnergies. However, the 2020 engagement list of ABP on human rights and labour rights topics includes the name of Rio Tinto, Shell, Vedanta (beside Glencore and Vale). Total SE was included as well in the list but on environmental topics only. The 2021 engagement list of ABP¹⁴⁴ includes the same selected companies except Vedanta for which no investments were found during the financial research. However, it is not clear if Vedanta was divested for human rights concerns, and ABP did not provide explanations about it when Profundo raised the question. In addition, the 2021 list mentions that engagement with TotalEnergies also dealt with human rights topics, however further information is not disclosed.

It is interesting to note that in its Sustainable and responsible investment report 2019, ABP reported "mining company Freeport-McMoRan is one of the world's biggest producers of copper. It is involved in waste discharge with potentially damaging consequences for the environment. In view of these environmental and socio-economic risks we have sold our interest in Freeport-McMoRan"¹⁴⁵. However, the financial research shows that as of 31 December 2021, ABP invested in shares of the company. When Profundo asked ABP to explain the rationale behind this decision to resume investing in Freeport-McMoRan, the pension fund did not provide explanations.

ABP mentions in its due diligence processes, that for all specific risks across asset classes and sectors, it identifies the negative impacts and prioritizes risk management based on their severity, scale, and irreversibility. However, this information is not disclosed for the selected cases Glencore and Vale. Public information does not evidence either that the pension fund had made a qualification of its relationship to the human rights impacts (contributed to or directly linked).

3.1.5 Section B: Using leverage to influence investee companies to prevent and mitigate adverse human rights impacts

Following the Brumadinho dam's collapse which killed 270 people, ABP released a public statement expressing its dissatisfaction about the measures taken by Vale and the lack of progress made by the company.¹⁴⁶ In the statement, ABP committed to review carefully the ESG roadmap proposed by Vale to structurally improve its management systems related to energy consumption, climate, availability of raw materials, health, safety and good corporate governance. In the same statement in 2019, ABP also explained it decided to not divest from the company but to use the opportunity to exert its leverage as shareholder to improve the company's policies and processes, specifying that it "will not remain in conversation indefinitely" if no progress is observed. ABP engaged with the company directly and collectively by participating in collaborative engagement with other investors. Together with 300 other investors, ABP voted against the board or directors of Vale at the 2019 shareholders' meeting to pressure the company to adopt concrete changes.

In its Annual Report 2020, ABP mentioned that Vale was still classified as a "laggard" according to its internal ESG assessment process, because it was lagging in the area of sustainability and responsible business practices. In December 2021, two years after its public statement mentioning that the continuation of the business relationship will be conditioned to tangible results achieved by the company, ABP still invests in the company. However, ABP does not report about the intermediary targets and the milestones achieved by the company, more particularly about the implementation of the 51 measures announced by Vale in its ESG roadmap to take greater account of people, the environment and good governance in its business operations¹⁴⁷.

On the other hand, the example of Glencore shows that in case of persisting unsuccessful engagement, ABP can suspend the business relationship. Indeed, in October 2021, ABP explained that it sold its interest in Glencore because the mining company faces major sustainability risks, including in the area of human rights and that in the short term, ABP does not expect the company to be able to sufficiently mitigate these risks.¹⁴⁸

Overall, ABP's low score in this section can be explained by the fact that information related to engagements on human rights topics is missing for six of the selected companies (Freeport-McMoRan, Lundin Energy, Newmont Corporation, Rio Tinto, Shell and TotalEnergies). Even if ABP indicated in its 2021 engagement list that Rio Tinto, Shell and TotalEnergies have been engaged on human rights issues, no details were provided on the content of the engagement (issues discussed, goals, timeline).

3.1.6 Section C: Tracking progress and outcome and communicating about the results

ABP discloses its Sustainable and Responsible Investment Policy 2020-2025, which mentions the responsibility of investees to respect human rights¹⁴⁹.

Moreover, ABP also discloses a specific document explaining how the six due diligence steps of the OECD Guidelines are implemented into the investment process the various asset classes.

ABP discloses the list of companies with which it has engaged in 2021. This list includes five out of the 10 companies selected for this research: Rio Tinto (on various topics including human rights), Shell (on various topics including human rights), TotalEnergies (on various topics including human rights), Vale (on various topics including human rights), Glencore (on various topics including human rights). However, details about the progress and results of the engagement are disclosed only for a few specific examples, which explains why information about the features of the engagement with Rio Tinto, Shell and TotalEnergies is missing in this report. This lack of transparency for the three companies has negatively impacted the score in this section.

For one of the selected cases, namely Vale in 2019, evidence has been found that ABP called the company to publicly report on the concrete steps taken to address the human rights abuse.¹⁵⁰

3.1.7 Section D: Providing for or cooperating in remediation

Overall, ABP explains that the topic of “access to remedy” is part of its due diligence process, and clearly states that it expects companies to set up a mechanism to remedy negative human rights impacts they have caused or contributed to.

For the engagement on human rights with Glencore, Rio Tinto, Shell and Vedanta however, no information was found to conclude that remedy was discussed with the companies. For Vale, ABP reports that it has consulted local stakeholders from Brazil to better understand the impacts of the Brumadinho dam’s collapse and used this information to exert pressure on Vale (along with other investors) to compensate the victims.

Freeport-McMoRan, Lundin Energy and Newmont Corporation are not included in the list of companies engaged on human rights. By not engaging, however, ABP runs the risk to be in fact facilitating the lack of steps taken by these companies to remedy the human rights harms they have caused.

The fact that information about the topic of “access to remedy” was found only for one of the selected companies (Vale) explains the low score in this section. ABP has significant room for improvement to demonstrate that access to remedy is part of its due diligence process. This should be a specific point of attention if ABP wants to achieve its 2025 goals to align its portfolio further with the UN Guiding Principles for Business and Human Rights, and to engage meaningfully companies in order to improve their respect for human rights.¹⁵¹

3.2 Stichting Bedrijfstakpensioenfondsvoor de Bouwnijverheid (BpfBOUW)

3.2.1 Profile

Stichting Bedrijfstakpensioenfondsvoor de Bouwnijverheid (bpfBOUW) was founded by the organizations of employers and employees in the construction industry. As of 31 December 2020, bpfBOUW’s total invested assets amounted to €102.2 billion and the pension fund had more than 776 thousand participants. The administration of the fund is outsourced to its fiduciary manager APG. The fund is managed by APG Asset Management, except for its real estate assets which are managed by Bouwinvest.

3.2.2 Financial relationships with selected companies

As of 31 December 2021, bpfBOUW held shares with a total value of € 176 million and bonds with a total value of € 84 million, in seven of the ten selected companies for this research (see Table 16), namely:

- Freeport-McMoRan;
- Lundin Energy;
- Newmont Corporation;
- Rio Tinto;
- Shell;
- TotalEnergies; and
- Vale

Among those companies, bpfBOUW’s largest shares is in Newmont Corporation (€ 59 million), while its largest bondholding is in TotalEnergies (€ 58 million).

Table 16 Overview of bpfBOUW's share and bondholdings in the selected companies

Company	Country of origin	Investment type	Value (in € mln)	Reporting date
Freeport-McMoRan	United States	Shares	3.8	31 Dec 2021
Lundin Energy	Sweden	Shares	5.4	31 Dec 2021
Newmont Corporation	United States	Shares	59.3	31 Dec 2021
		Bonds	4.4	31 Dec 2021
Rio Tinto	United Kingdom	Shares	31.7	31 Dec 2021
Shell	Netherlands	Shares	36.0	31 Dec 2021
		Bonds	16.9	31 Dec 2021
TotalEnergies	France	Shares	26.0	31 Dec 2021
		Bonds	58.0	31 Dec 2021
Vale	Brazil	Shares	17.9	31 Dec 2021
		Bonds	4.6	31 Dec 2021
Total			260.2	

Source: BpfBOUW (2021), Aandelenportefeuille bpfBOUW per 30 september 2021, viewed in January 2022;
 BpfBOUW (2021), Bedrijfsobligaties bpfBOUW per 30 september 2021, viewed in January 2022;
 BpfBOUW (2022), 'Feedback on your questions', Email sent by BpfBOUW on 20 April 2022.

3.2.3 Assessment and score overview

BpfBOUW achieved a total score of 2.6 out of 10. Within the scope of this research, bpfBOUW had financial links with seven out of ten selected companies. In addition, Glencore was also considered as a relevant case because bpfBOUW reported it engaged on human rights topics with the company in 2021. It is interesting to note that, as of December 2021, the pension fund has no investments in the company anymore, however unlike ABP¹⁵², the reasons behind this divestment are not disclosed.

As of 1 December 2021, one of the ten selected companies for this study, namely PetroChina, was on the exclusion list of bpfBOUW for non-compliance with the principles of the UN Global Compact.¹⁵³

BpfBOUW provided comments and adjustments on the results of the financial research which have been integrated. The pension fund answered Profundo's questionnaire with public information only (already available on their website or other public documents). As the publicly disclosed information is not very specific compared to the questions included in the survey, insight into the details of the engagement processes with the companies it is financially linked was quite limited. When contacted again by Profundo to provide clarification, bpfBOUW answered that it could not provide non-public information on individual engagement trajectories¹⁵⁴.

Based on the answers provided by bpfBOUW and the supporting evidence, Table 17 presents the scores per section (A, B, C, D) as well as the consolidated score of the pension fund. Explanations related to the evaluation of each section are provided in the following paragraphs.

Table 17 Overview of bpfBOUW's scores

Section	Score (/10)	Weight
A Identification, qualification and prioritisation of human rights issue(s) and risk(s)	4.4	20%
B Using leverage to influence investee companies	2.2	40%

Section		Score (/10)	Weight
C	Tracking progress and outcome by the Pension fund	2.8	20%
D	Providing for or cooperating in remediation	1.1	20%
Total		2.6	100%

3.2.4 Section A: Identification, qualification and prioritization of human rights issues and risks

BpfBOUW's investments in shares and bonds are managed by APG Asset Management (APG) and the parties contracted by them. The investment managers' mandate includes the implementation of bpfBOUW responsible investment policy and APG provides quarterly reports to bpfBOUW about the developments and results of the investments and engagement activities. All shares and bonds investments are screened on environmental, social and governance criteria. The pension fund expects its external service providers (fiduciary manager and investment managers) and companies in which it invests to act in line with international sustainability standards including the UN Guiding Principles, the OECD Guidelines, the ten principles of the UN Global Compact, the Paris Agreement and European Union's regulations on non-financial information.

In its inclusion policy bpfBOUW identified high-risk sectors and associated risks on various topics including human rights and labour rights. Then it assesses if companies meet its minimum ESG criteria and if the companies are involved in controversies. For 38 different sectors, an overview has been developed that shows the actual and potential negative impacts to which the companies in the sector are exposed, either from a business risk perspective or due to public concerns (e.g. from civil society organizations). In addition to the above methodology, bpfBOUW asset managers apply a controversy indicator based on news monitoring, incident research and other relevant sources and references. The controversy indicator is based on the scale, scope and degree of irreversibility of negative impacts. It is used by the pension fund to prioritize the companies for engagement.

The pension fund made the commitment to only invest in companies meeting its ESG criteria (frontrunners) or companies that pledged to improve. Companies linked to social controversies must show sufficient prospect of becoming more sustainable before they can be considered for investment.

Looking at the ten selected companies, the engagement list shows that Glencore, Rio Tinto, Shell TotalEnergies and Vale have been engaged on human rights topics. However, except for Vale for which bpfBOUW provides a short summary of the engagement activities, referring to the Brumadinho case, and for Glencore engaged on the human rights impacts of cobalt mining, information pertaining to the engagements with the other companies is missing. Although, bpfBOUW explains that its asset managers assess controversies by using a framework which rates incidents based on their severity, scale and irreversibility, it is not clear how this analysis was made for the selected cases.

Except for the case about Vale, public information does not show that as part of its investigation, a qualification of how the investees were involved in the abuse(s) (cause, contribute or directly linked) was made by bpfBOUW's asset managers. Public information does not evidence either that the pension fund had made a qualification of its own relationship to the human rights impacts (contributed to or directly linked).

3.2.5 Section B: Using leverage to influence investee companies to prevent and mitigate adverse human rights impacts

Overall, information explaining how the pension fund has been using its leverage to engage with companies on the selected cases is very limited and regards mainly Vale. In its Responsible Investment report 2019, bpfBOUW mentioned that following the dam collapse, it urged the

management of the company to take drastic measures to improve safety. Engagement activities were undertaken via written communication, conference calls and face-to-face digital meetings. Unsatisfied with the company's response, bpfBOUW voted against the board members at the company shareholders' meeting. The pension fund also mentions that it required Vale to provide financial compensations to the victims' relatives. However, it does not report about the intermediary targets and the milestones achieved by the company. More particularly it is not clear if the pension fund has monitored the implementation of the 50 measures announced by Vale in 2019 to take greater account of people, the environment and good governance in its business operations.

No information about the overall goals, intermediary targets, timeline and milestones achieved was found about the other selected cases in which the pension fund invests.

3.2.6 Section C: Tracking progress and outcome and communicating about the results

BpfBOUW discloses its 2020-2025 Responsible Investment Policy¹⁵⁵ and a separate document explaining its processes to implement the OECD Guidelines.¹⁵⁶

BpfBOUW publishes the name of all companies it has engaged with in 2021¹⁵⁷. The list indicates that (among other companies) engagement on human rights topics have been conducted with Glencore, Rio Tinto, Shell, TotalEnergies and Vale. However, the list does not include information about the status of the engagement, the results achieved and the rationale to conclude or continue engagement with the companies.

The pension funds reports that in line with its inclusion policy it required companies engaged to publish an action plan about the way they deal with the human rights abuses, including their approach to remediation. However, no evidence is provided on the selected cases.

In its Responsible Investment Policy, the pension fund explains that it wants to be able to take faster decision to divest companies for which insufficient progress has been observed during the engagement. Without information related to specific cases about the results (or lack of sufficient progress of its engagements), it is not possible to assess whether this commitment has been effectively implemented.

Due to the lack of information disclosed on the selected cases, bpfBOUW scores low in this section.

3.2.7 Section D: Providing for or cooperating in remediation

In the document explaining its due diligence processes to implement the OECD Guidelines, bpfBOUW mentions that the engagement plans with companies should always include objectives and requests aimed at ceasing, preventing or mitigating negative impacts which have been identified in the assessment made by its asset manager. In addition, the document mentions that "where possible, the engagement plan will also include objectives and requests aimed at taking, or cooperating in, remedial action."¹⁵⁸

For Vale, bpfBOUW reports it has urged the company to provide compensation for the victims and their relatives following the dam collapse. However, for all the other cases under the scope of this study, public information analysed does not evidence that the pension fund has provided for, or cooperated through legitimate processes in the remediation of adverse impacts.

3.3 BPL Pensioen

3.3.1 Profile

BPL Pensioen is a pension fund for 680.2 thousand employees and retirees of approximately 14.9 thousand employers, who work at a company in the agricultural and green sector in the Netherlands. As of 31 December 2020, BPL Pensioen's total invested assets amounted to € 23

billion.¹⁵⁹ Achmea Investment Management performs the fiduciary management. BPL Pensioen invests part of its money through of mandates at Achmea IM. The majority of the funds are invested with external asset managers, such as BlackRock.¹⁶⁰

3.3.2 Financial relationships with selected companies

As of 30 June 2021, BPL Pensioen held investments in shares with a total value of € 20 million and in bonds with a total value of € 30 million in two of the ten selected companies (see Table 18), namely:

- Glencore, and
- TotalEnergies

BPL Pensioen largest holdings is in TotalEnergies with € 20 million in shares and € 27 million in bonds.

Table 18 Overview of BPL Pensioen’s share- and bondholdings in the selected companies

Company	Country of origin	Investment type	Value (in € mln)	Reporting date
Glencore	Switzerland	Bonds	3	30 June 2021
		Shares	20	30 June 2021
TotalEnergies	France	Bonds	27	30 June 2021
Total			50	

Source: BPL Pensioenfonds (2021), Overzicht beleggingen per 30 juni 2021, retrieved in January 2022.

3.3.3 Assessment and score overview

BPL Pensioen achieved a total score of 2.9 out of 10. Within the scope of this research, BPL Pensioen had financial links with two out of ten selected companies for this case study. As of 1 July 2021, four of the ten selected companies for this study were on the exclusion lists of PBL Pensioen. The reasons for these exclusions were not provided. PetroChina is in the exclusion list of state companies, Royal Dutch Shell, and Vale are in the exclusion list of structural standard violations, and Vedanta is in the exclusion list for thermal coal and tar sands.¹⁶¹

BPL Pensioen did not provide comments and adjustments on the results of the financial research presented in this report. Moreover, BPL Pensioen did not answer Profundo’s questionnaire. Profundo then used publicly disclosed information available online to assess BPL Pensioen. As the information collected was not very specific compared to the questions included in the questionnaire, the insight into the details of the engagement processes with the companies was quite limited. When contacted again by Profundo to provide clarification on the public information available, BPL Pensioen did not answer.

Based on the publicly disclosed information available online, Table 19 presents the scores per section (A, B, C, D) as well as the consolidated score of BPL Pensioen. Explanations related to the evaluation of each section are provided in the following paragraphs.

Table 19 Overview of BPL Pensioen’s scores

Section	Score (/10)	Weight
A Identification, qualification and prioritisation of human rights issue(s) and risk(s)	5.6	20%
B Using leverage to influence investee companies	2.8	40%
C Tracking progress and outcome by the Pension fund	3.3	20%

Section		Score (/10)	Weight
D	Providing for or cooperating in remediation	0	20%
Total		2.9	100%

3.3.4 Section A: Identification, qualification and prioritization of human rights issues and risks

BPL Pensioen invests part of its money through of mandates at Achmea IM. The majority of the funds are invested with external asset managers, such as BlackRock.¹⁶² Achmea IM is responsible to ensure the adequate implementation of BPL Pensioen 's SRI policy' and to coordinate engagement activities.

All companies in which BPL Pensioen 's invests in shares and bonds are screened on ESG criteria. BPL Pensioen applies the ESG due diligence steps in accordance with the OECD guidelines.¹⁶³

Companies need to meet minimum sustainability standards before being considered for investments. In order to identify, prevent and reduce the actual and possible main adverse effects of investment decisions on sustainability factors and to account for how the identified adverse effects have been dealt with, BPL Pension periodically goes through a due diligence cycle.

BPL Pensioen sets minimum requirements for countries with regard to the protection of human rights, the protection of labour rights, compliance with environmental agreements and the fight against corruption. BPL Pensioen uses a generic approach for its responsible investment policy, using the following instruments: engagement, voting, exclusion policy and country policy.

To date, no evidence was found showing that BPL Pensioen has investigated the two selected cases in which it is involved. BPL Pensioen, however, has ongoing engagements with Glencore and TotalEnergies for other ESG issues. Glencore is under engagement due to four violations related to the themes labour standards, corruption, human rights, and environment,¹⁶⁴ while TotalEnergies is listed two times for violations of labour standards and environment.¹⁶⁵ Although BPL Pensioen does not engage on the specific cases under review, the pension fund has a general approach of research and investigation that looks into the severity of the violations, including the scale, scope and irremediable character, as well as makes a qualification of its relationship to the human rights impacts. For this the pension fund receive only a portion of the scores.¹⁶⁶

For section A, the pension fund received a total score of 5.6. The pension fund did not receive full scores in any of the elements since no engagement was found of the specific cases under review. However, partial scores were given in several elements for having a research approach that allows to identify actual and potential adverse human rights impacts and to make decisions accordingly.

3.3.5 Section B: Using leverage to influence investee companies to prevent and mitigate adverse human rights impacts

BPL Pensioen has not reported any engagement with Glencore and TotalEnergies on any of the relevant cases of human rights violations under review. BPL has different types of engagements, including normative engagements, which are outsourced to the research agency ISS ESG, and thematic engagements which are managed by Achmea IM. Human rights issues are covered by the normative engagements. Under the normative engagements, BPL Pensioen engage on other cases of violations related to labour standards, corruption, human rights, and environment with Glencore and TotalEnergies. For those other cases, the engagement process describes a methodology base on milestones.¹⁶⁷ The milestones are tested against four values, namely: (1) an independent party has approved the measures, (2) measures have been initiated, (3) a commitment has been made and (4) no measures have been taken.

BPL Pensioen already excludes four of the ten companies, and for that the pension fund received a bonus score. The reasons for these exclusions were not provided. PetroChina is in the exclusion

list of state companies, Royal Dutch Shell, and Vale are in the exclusion list of structural standard violations, and Vedanta is in the exclusion list for thermal coal and tar sands.¹⁶⁸

For section B, the pension fund received a total score of 2.8. The pension fund does not engage with any of the cases under review. The pension fund received partial scores in some elements because of presenting and engagement methodology applied to a list of companies in which objectives, timelines and goals are defined. The fund received a bonus scored for having exclude, previous to this study, four companies that were under review.

3.3.6 Section C: Tracking progress and outcome and communicating about the results

BPL Pensioen has not reported any engagement with Glencore and TotalEnergies on the relevant cases of human rights violations under review. BPL Pensioen, however, has ongoing engagements with Glencore and TotalEnergies for other cases related to the themes labour standards, corruption, human rights, and environment. These other cases evidence the existence of a methodology of research and engagement, although there is no evidence that this is applied to the specific cases under review.

BPL Pensioen discloses a clear methodology of engagement based on milestones and progressive phases of assessment.¹⁶⁹ Human rights issues are covered by the normative engagements which are outsourced to the research agency ISS ESG.¹⁷⁰ The process starts by sending an initiation letter marking the start of the dialogue. During the dialogue, the company is presented with the violation and the opportunity to separate its position. This dialogue will continue if ISS ESG keeps the company under investigation. Milestones are used in all dialogues for measuring and reporting on progress. These milestones indicate the progress per theme and per case. The milestones include setting measures, initiation of measures, setting commitments without measures, or no measures taken.

Human rights are one of the specific themes of screening and engagement for BPL Pensioen. "Human rights are one of the four main themes of the Global Compact and are addressed by the first two principles. However, these principles do not stand alone and are linked to and elaborated upon in various guidelines and treaties...These guidelines and treaties are therefore included by ISS ESG when screening companies for possible violations of human rights."¹⁷¹

For section C, the pension fund received a total score of 3.3. BPL Pensioen has not reported any engagement with Glencore and TotalEnergies on the relevant cases of human rights violations under review. However, the pension fund received partial score in some elements for reporting on its methodology of engagement and in the way the engagement process is applied to human right issues to the current list of engaged companies.

3.3.7 Section D: Providing for or cooperating in remediation

BPL Pensioen has not reported any engagement with Glencore and TotalEnergies on the relevant cases of human rights violations under review. Because PBL did not participate in the research, nor has sufficient public information available, Profundo could not assess how this policy has been applied on remediating victims on the specific human rights violations under review.

In the case of Glencore and TotalEnergies by not engaging on human rights issues, BPL Pensioen runs the risk to be in fact facilitating the lack of steps taken by the companies to remedy the human rights harms they have caused.

3.4 Pensioenfonds Detailhandel

3.4.1 Profile

Pensioenfonds Detailhandel (Detailhandel) was founded to manage the pensions of employees and employers working in the retail sector, as of 31 December 2021, the fund counted 1,240

participants. The portfolio of Pensioenfonds Detailhandel consists of government bonds, corporate bonds, shares, real estate and mortgages. Detailhandel outsources the management of the fund to BlackRock and the engagement activities to BMO Global Asset Management (BMO GAM). As of 31 December 2021, Detailhandel's total invested assets amounted to € 37.0 billion.

3.4.2 Financial relationships with selected companies

As of 31 December 2021, Pensioenfonds Detailhandel held investments in all the ten selected companies (see Table 20). Investments in shares represented a total value of € 99 million and bondholdings a total value of € 28 million.

Among the ten selected companies, Pensioenfonds Detailhandel's largest shares is in TotalEnergies (€11 million), while its largest bondholding is also in TotalEnergies (€ 14 million).

Table 20 Overview of Pensioenfonds Detailhandel's share and bondholdings in the selected companies

Company	Country of origin	Investment type	Value (in € mln)	Reporting date
PetroChina (CNPC)	China	Shares	1	31 Dec 2021
Freeport-McMoRan	United States	Shares	14	31 Dec 2021
		Bonds	7	31 Dec 2021
Glencore	Switzerland	Shares	3	31 Dec 2021
		Bonds	4	31 Dec 2021
Lundin Energy	Sweden	Shares	1	31 Dec 2021
Newmont Corporation	United States	Shares	13	31 Dec 2021
Rio Tinto	United Kingdom	Shares	7	31 Dec 2021
Royal Dutch Shell	United Kingdom	Shares	20	31 Dec 2021
TotalEnergies	France	Shares	22	31 Dec 2021
		Bonds	14	31 Dec 2021
Vale	Brazil	Shares	16	31 Dec 2021
Vedanta	India	Shares	1	31 Dec 2021
		Bonds	3	31 Dec 2021
Total			127	

Source: Pensioenfonds Detailhandel (2021), *Beleggingen per 31 december 2021*, retrieved on 5 May 2022.

3.4.3 Assessment and score overview

Pensioenfonds Detailhandel achieved a total score of 5 out of 10, which is the highest score among the pension funds assessed. Within the scope of this research, Pensioenfonds Detailhandel had financial links with the ten selected companies.

Pensioenfonds Detailhandel provided comments and adjustments on the results of the financial research which have been integrated. Moreover, Pensioenfonds Detailhandel is the only pension funds that accepted to share some internal-use documents to support its answers to Profundo's questionnaire. After analysing these documents, Profundo contacted again the pension fund with follow-up questions, however Pensioenfonds Detailhandel explained that due to time-constraints it could not answer.

Based on the answers provided by Pensioenfonds Detailhandel and the supporting evidence, Table 21 presents the scores per section (A, B, C, D) as well as the consolidated score of the pension

fund. Explanations related to the evaluation of each section are provided in the following paragraphs.

Table 21 Overview of Pensioenfonds Detailhandel's scores

Section		Score (/10)	Weight
A	Identification, qualification and prioritisation of human rights issue(s) and risk(s)	5.6	20%
B	Using leverage to influence investee companies	5.0	40%
C	Tracking progress and outcome by the Pension fund	4.4	20%
D	Providing for or cooperating in remediation	5.0	20%
Total		5.0	100%

3.4.4 Section A: Identification, qualification and prioritization of human rights issues and risks

Pensioenfonds Detailhandel developed a Responsible Investment¹⁷² policy which covers its entire portfolio. Of note, 95% of the pension fund's portfolio is composed of liquid asset categories (listed equity and fixed income). The pension fund's responsible engagement overlay manager, BMO GAM, performs due diligence by reviewing the equity and bond portfolios. The screening methodology consists in assessing high-risk variables such as the geography or the sector, monitoring controversies and conducting norm-based screening on violation of international standards such as the UN Global Compact. Based on Pensioenfonds Detailhandel's exclusion policy, BMO GAM updates the exclusion list on a quarterly basis and sends it to Pensioenfonds Detailhandel's investment managers who are responsible for its implementation in the investment portfolio.

Pensioenfonds Detailhandel shared some evidence showing that the selected cases were investigated for PetroChina, Freeport-McMoRan, Glencore, Shell, Vale and Vedanta. For TotalEnergies, the pension fund reports that the case in Uganda and Tanzania was "briefly touched upon". For Rio Tinto and Newmont, the involvement of the companies in controversial cases was also investigated but with a focus on other cases. No information was provided about Lundin Energy.

Following the controversies screening, the pension fund provides evidence that it has engaged on human rights for six of the selected cases (PetroChina, Freeport-McMoRan, Glencore, Shell, Vale and Vedanta) and more generally on human rights topic for three other selected companies namely Total and Rio Tinto, and Newmont. The pension fund reports that it did not engage with Lundin Energy.

Overall, no evidence about how the scale, scope, and irremediable character of the controversies were assessed by BMO GAM has been shared. It is also not always clear if the investigation of the cases qualified the type of involvement of the investee companies in the controversies (caused, contributed to). As regard the qualification of its own relationship to the cases of human rights abuses, Pensioenfonds Detailhandel reported to Profundo: "We view all our relationships with the companies as directly linked to. We have shareholdings and/or credit positions in these companies but these are relatively small in comparison to the market cap. This view is backed by the explanation of responsibilities in the OECD guidelines and its guidance for institutional investors and thus in line with the PRI report *Why and how investors should act on human rights*¹⁷³. While the OECD Guidelines for institutional investors state that "investors will in most instances not cause or contribute to, but only be directly linked to the adverse impact"¹⁷⁴, they also mention that "in some instances, investors may be contributing to impacts caused by their investee companies and may be responsible for remediation". More particularly, the Principles for

Responsible Investment highlight that an investor's connection to an actual or potential outcome will change over time, and identifies three factors that will determine whether an investor can be said to have "contributed to" or be "directly linked to" a negative outcome. These factors are the extent to which an investor facilitated or incentivised human rights harm by another; the extent to which it could or should have known about such harm; the quality of any mitigating steps it has taken to address it.

Pensioenfonds Detailhandel achieved the highest score among the pension funds in this section (5.6 out of 10). Information analysed shows that Pensioenfonds Detailhandel has developed processes to identify potential and actual human rights impacts related to its investment activities. Moreover, the pension fund has identified six of the selected cases (PetroChina, Freeport-McMoRan, Glencore, Shell, Vale and Vedanta) and more generally it also identified human rights risks for three other selected companies (TotalEnergies, Rio Tinto, and Newmont). However, information analysed does not evidence that the pension fund had made a qualification of its relationship to the human rights impacts based on a case-level approach (contributed to or directly linked), neither that it systematically qualifies how the investee company is involved in the abuses (cause, contribute or directly linked).

3.4.5 Section B: Using leverage to influence investee companies to prevent and mitigate adverse human rights impacts

Overall, the pension fund shares evidence that written goals were formulated on human rights topics during engagement with PetroChina, Freeport-McMoRan, Glencore, Newmont, Rio Tinto, Shell, TotalEnergies, Vale, and Vedanta. Some of these goals are related to the cases described in this report, others are more general about the companies' human rights policies, risk management framework, and due diligence.

For instance, for Shell in Nigeria, the pension fund (though its engagement manager) asked the company (among other measures) to provide additional disclosure on remediation outcomes for all spills across the Delta and to strengthen internal processes to combat corruption. For Vale, the pension fund required the company to take radical action to swiftly remediate the consequences of the Brumadinho dam collapse, and generously compensate affected communities. Among examples of engagements covering general human rights practices, in 2015, BMO GAM sent a letter to Total (now TotalEnergies) as part of a PRI collaborative engagement project, asking the company to enhance the implementation of the UN Guiding Principles on Business and Human Rights and address the lack of consistent disclosure with regards to human rights. For Rio Tinto and Glencore, BMO sent a letter to the companies' board of directors in 2021, asking the companies to provide regular updates on the ongoing negative impacts from their operations and on the way they are dealing with grievance cases filed by indigenous and/or local community(-ies), to develop advisory councils to assist the board in understanding the indigenous matters and remediation options, to respect land titles, and to regularly renew free, prior and informed consent (FPIC) across their assets.

The pension fund explains the different engagement strategies it used with the selected companies, it includes meeting with the board of directors and senior management, participation in collaborative engagement initiatives with other investors, sending letters to the board and calls with the companies.

Overall, while the pension fund shared information about the general goals of its engagements, it is not clear from the documents we analysed if a clear timeline was associated to these goals. In addition, it is important to note that for some companies, information about the engagement activities is quite dated. For instance, for PetroChina, the last information summarising the requests made to the company date back to 2011, and for Vedanta the most recent information disclosed by the pension fund was in 2013. Note that investments in these companies by the fund are from a recent date.

For most of the cases, the pension fund demonstrates that it required companies to follow a multi-stakeholder approach before finalising their action plan. For instance, in 2011 it asked PetroChina to develop a specific strategy for engaging indigenous communities, including a clear, group-wide policy, transparent compensation arrangements, tailored community investment programmes, and engagement with local and national governments. For Glencore and Newmont, the pension fund asked the companies to develop advisory councils to assist the board in understanding the indigenous matters and remediation options, to respect land titles and to regularly renew Free, Prior and Informed Consent across their assets.

Moreover, the pension fund demonstrates that it has tried different options to increase its leverage on the companies. For instance, it joined the Sudan Engagement group to engage with PetroChina, it worked with collaborative initiatives such as the Corporate Human Rights Benchmark and PRI working groups on Human Rights to engage with Freeport-McMoRan, Glencore and Newmont. For Shell, Pensioenfonds Detailhandel mentioned that BMO GAM has repeatedly contacted Shell senior executives to discuss the cases in Nigeria, and it has spoken publicly on the issues at Shell SRI events. However, the pension fund did not suspend the business relationships with any of these companies.

The score for section B is 5.0, the highest among the pension funds assessed in this survey as Pensioenfonds Detailhandel shared evidence that written goals were formulated on human rights topics during engagement with nine of the selected companies (PetroChina, Freeport-McMoRan, Glencore, Newmont, Rio Tinto, Shell, TotalEnergies, Vale, and Vedanta). In addition, for most of the cases, the pension fund demonstrates that it required companies to follow a multi-stakeholder approach before finalising their action plan. However, the score was negatively impacted by the absence of clear timeline associated to the engagement goals and for some companies by the fact that information about the engagement activities was quite outdated.

3.4.6 Section C: Tracking progress and outcome and communicating about the results

The pension fund shared some internal documents evidencing that its engagement manager monitors and measures the outcome of its engagement, including the milestones achieved for eight companies (Freeport-McMoRan, Glencore, Newmont, Rio Tinto, Shell, TotalEnergies, Vedanta). However, for some companies the last milestones reported are quite dated and it is not always clear if all the requirements made by the pension fund have been achieved. For instance, for TotalEnergies, the last milestone reported dates back 2013 when Total joined the Voluntary Principles on Security and Human Rights, committing to a more consistent risk assessment process when using public or private security forces. However, the current activities of the company in Uganda and Tanzania around the EACOP pipeline shows that strong human rights concerns are expressed by local communities which do not seem to be monitored by the pension fund.

The pension fund discloses its due diligence processes in a note explaining how the OECD guidelines are implemented.¹⁷⁵ Pensioenfonds Detailhandel also publishes quarterly engagement reports, which include examples of engagement initiatives but does not report the full list of company engaged. Consequently, it was not possible to check the status of the engagements conducted with the selected companies. Considering that some of the engagement goals and milestones shared by the pension fund are quite dated (like for Vedanta and PetroChina), Profundo asked the pension fund to clarify the status of the engagement (ongoing, concluded). However, Pensioenfonds Detailhandel did not provide any answer to this question.

Overall, the pension fund's public disclosure about the results of the engagements and the subsequent decisions to conclude or continue the engagement with the selected companies is very limited. In 2019, the second quarterly engagement report of BMO GAM included a case study about Glencore.¹⁷⁶ Some information was summarized including the theme (human rights), the issue (community relations), ESG risk of the company, background on the case, actions taken to

engage with the companies, and verdict on the engagement. In the “verdict”, BMO reported the following statement *“We welcome the publication of the human rights report and appreciate that this is an important step Glencore is taking to address these long-running issues. This, however, doesn’t change our view that there need to be more preventive measures in the future. This would translate into stronger commitments, higher standards, and more stringent monitoring and compliance audits by Glencore’s headquarters on all its subsidiaries and joint ventures on all material ESG issues. We also expect to see more active communication with a wider stakeholder group in the future. Expanding their outreach to cover more civil society groups would ensure comprehensiveness of any grievance mechanisms or compensation and remediation plans”*. However, since then, it is not clear if these steps have been implemented by Glencore, and if progress has been assessed as “sufficient” by BMO GAM to justify the continuation of the business relationship.

For PetroChina, Freeport-McMoRan, Glencore, Rio Tinto and Vale, the pension fund could demonstrate that it required the companies to publicly report on the circumstances of the human rights abuses and the concrete steps taken to address the adverse impacts. However, it was not always for the specific cases described in this study, and some of the pension fund’s requirements are quite dated, which raises the question of what has been done since then. In addition, the fact that the pension fund does not publish the list of all companies engaged has lowered the score in this section (4.0 out of 10).

3.4.7 Section D: Providing for or cooperating in remediation

The pension fund provided evidence that it has tried to use its leverage to influence Freeport-McMoRan, Glencore, Newmont, Rio Tinto, Shell and Vale and Vedanta to enable remediation (including the establishment or participation in effective operational-level grievance mechanism). For instance, the way Glencore, Newmont and Rio Tinto integrate remediation in their general processes was discussed during the engagement. More specifically, the pension fund reports that, in 2021, it sent a letter to the board of the companies asking the company to provide regular updates on the ongoing negative impact from its operations and grievance cases filed by indigenous and/or local community(-ies) and to develop advisory councils to assist the board in understanding the indigenous matters and remediation options.

For Vale, BMO GAM participated in dialogue and mediation processes with affected communities, as part of its membership in the Investor Mining and Tailings Safety Initiative, which was founded in 2019 after the disaster at Brumadinho.

Overall, as discussed in section 3.4.5, the pension fund shared only limited evidence related to clear timelines and intermediate steps on the selected cases. By not defining such variables in its engagement with investee companies, it runs the risk that the engagement becomes unguided, not measurable and unbound in time. For instance, last milestones reported for Shell about the case in the Niger Delta dates back 2011. This raises concerns considering that in June 2020, Amnesty International reported that Shell started cleaning works on only 11 percent of planned sites, leaving vast areas contaminated.¹⁷⁷

For PetroChina, no milestones have been reported since 2013, and the milestones achieved by the company only met some of the initial requirements made by BMO GAM during the engagement. In 2011, BMO GAM requested PetroChina to develop a specific strategy for engaging indigenous communities, including a clear, group-wide policy, transparent compensation arrangements, tailored community investment programmes, and engagement with local and national governments. In 2013, BMO GAM reported as a milestone that PetroChina disclosed for the first time its human rights policy, covering among other topics, engagement with local communities. However, there was no update about the company’s efforts to develop compensation arrangements. In addition, as Pensioenfonds Detailhandel does not disclose the list of the companies it engaged with, it might be that the engagement with PetroChina has been concluded

and considered successful since no recent information was shared and the pension fund still invests in the company.

For Lundin Energy and TotalEnergies by not engaging on human rights issues, Pensioenfonds Detailhandel runs the risk to be in fact facilitating the lack of steps taken by the companies to remedy the human rights harms they have caused.

3.5 Pensioenfonds Vervoer

3.5.1 Profile

Pensioenfonds Vervoer (PV) is a collective pension fund for employees in the sectors professional goods transport, private bus and taxi transport, the inland waterway transport company, crane rental, and industrial cleaning and maintenance of ships and ports. At the start of 2022, PV had 687,784 participants and an invested capital of € 39,336 million.¹⁷⁸

PV's assets are managed by Achmea Investment Management (Achmea IM), which oversees selecting and monitoring the external asset managers as well as advising the strategic and operational design of the asset management structure.¹⁷⁹

3.5.2 Financial relationships with selected companies

As of 31 December 2020, PV held shares and bonds in six of the ten selected companies for this research (Table 22), namely:

- Glencore;
- Lundin Energy;
- Newmont Corporation;
- Rio Tinto;
- Shell; and
- TotalEnergies.

However, although investments were found, the value of those share and bonds was not disclosed.

Table 22 Overview of Pensioenfonds Vervoer share- and bondholdings in the selected companies

Company	Country of origin	Investment type	Value (in € mln)	Reporting date
Glencore	Switzerland	Bonds	Investment found but value not disclosed	31 Dec 2020
		Shares	Investment found but value not disclosed	31 Dec 2020
Lundin Energy	Sweden	Bonds	Investment found but value not disclosed	31 Dec 2020
Newmont Corporation	United States	Bonds	Investment found but value not disclosed	31 Dec 2020
		Shares	Investment found but value not disclosed	31 Dec 2020
Rio Tinto	United Kingdom	Bonds	Investment found but value not disclosed	31 Dec 2020
		Shares	Investment found but value not disclosed	31 Dec 2020
Royal Dutch Shell	United Kingdom	Bonds	Investment found but value not disclosed	31 Dec 2020

Company	Country of origin	Investment type	Value (in € mln)	Reporting date
TotalEnergies	France	Shares	Investment found but value not disclosed	31 Dec 2020
		Bonds	Investment found but value not disclosed	31 Dec 2020
		Shares	Investment found but value not disclosed	31 Dec 2020
Total			Unknown	

Source: Pf Vervoer (2020), *Overzicht beleggingen 31 december 2020*, retrieved in January 2022.

3.5.3 Assessment and score overview

Pensioenfonds Vervoer received a total score of 2.3 out of 10. Within the scope of this research, PV had financial links with six out of ten selected companies. PV has excluded two of the ten companies, Vale and Vedanta Resources, from its investment portfolio. Vale was excluded based on violations of the UN Global Compact principles, whereas Vedanta is excluded as part of PV's sector-wide exclusion of coal mining.¹⁸⁰

PV choose not to participate in the study and did not respond to the financial research or the questionnaire. However, PV did answer a couple of clarifying questions per email on ongoing engagement with Glencore, Rio Tinto and TotalEnergies. These clarifications did not impact the scores. The assessment was therefore based solely on publicly disclosed information found on PV's own website as well as additional sources found on the website of Achmea IM. As a result of limited publicly disclosed information, insight into the details of the engagement processes with the selected companies was very limited.

Based on public information by PV, Table 23 presents the scores per section (A, B, C, D) as well as the consolidated score of the pension fund. Explanations related to the evaluation of each section are provided in the following paragraphs.

Table 23 Overview of Pensioenfonds Vervoer's scores

Section		Score (/10)	Weight
A	Identification, qualification and prioritisation of human rights issue(s) and risk(s)	3.3	20%
B	Using leverage to influence investee companies	2.2	40%
C	Tracking progress and outcome by the Pension fund	3.9	20%
D	Providing for or cooperating in remediation	0.0	20%
Total		2.3	100%

3.5.4 Section A: Identification, qualification and prioritization of human rights issues and risks

PV has outsourced the implementation of their Socially Responsible Investment (SRI) policy to integral asset manager, Achmea IM, which reports to the board of Pensioenfonds Vervoer about the implementation. Achmea IM is also responsible for screening the investment portfolio on a quarterly basis to monitor if investee companies are respecting international standards, including the UN Global Compact, OECD Guidelines and the UNGPs. In addition, external asset managers are screened annually on ESG integration. This screening covers the entire investment portfolio, except for index funds and index mandates.

The screening aims to flag the involvement of investee companies in incidents that (potentially) violate human rights, labour rights, environmental norms and anti-corruption principles. Identified incidents are consequently assessed based on the impact of the company's behaviour on society and the environment, as well as the severity, scale, scope and irremediable character of the violation. Though the screening may consider other high-risk factors, such as geography or size of the pension funds' investment in that company, PV makes no further prioritisation of cases based on those factors. Instead, PV prioritises the actual and potential incidents on the basis of the severity and likelihood and aims to use its influence for all identified cases to prevent and/or mitigate the negative impact.¹⁸¹

Achmea IM reports quarterly on the screening results to PV, which in turn reports on its SRI implementation on a bi-annual basis. These bi-annual SRI reports also include an overview of engagement activities by PV. In the past years, PV has engaged with a number of the selected companies on human rights through Achmea IM, including Glencore, Rio Tinto, and TotalEnergies. Although these engagements were focused on human rights violations, none of the activities concerned the selected controversies central to this study. PV also engaged with Shell on climate change, but no evidence of engagement with Shell on human rights could be identified, nor any engagement with Lundin Energy or Newmont Corporation.¹⁸²

Although PV publicly discloses a complete list of all engaged companies, it only shares detailed progress updates, including timelines, written goals and action plans, for a small number of engagements, which did not include the selected companies. As a result, Profundo could not assess whether PV has taken the necessary steps in relation to the identified human rights abuses central to this study. PV's policy states that it identifies the negative impacts and prioritizes risk management based on their severity, scope and irremediable character, but the actual assessments of incidents have not been disclosed. Public information also does not evidence that the pension fund had made a qualification of its relationship to the human rights impacts (contributed to or directly linked).

3.5.5 Section B: Using leverage to influence investee companies to prevent and mitigate adverse human rights impacts

In PV's SRI policy, the pension funds states that they "*address companies about their behaviour in order to prevent or reduce the (potential) negative impact*", which PV seeks to do in a positive, constructive manner through dialogue and voting in shareholder meetings. PV categorizes this engagement into two categories: normative engagement and thematic engagement. Within the normative engagement programme, PV focuses on preventing structural violations of international standards through collective efforts focusing on Dutch companies, whereas the thematic programme is focused on improving general performance on social, environmental and government practices within sectors, supply chains or among specific investee companies.¹⁸³

In case of an identified incident, PV aims to engage the company to improve its policies and practices. In the event that engaged companies do not make sufficient progress, PV has an escalation strategy to increase its leverage. As a first step, PV tries to increase leverage through other, more influential contacts or by sending an urgency letter to the company's board, often jointly with other investors. If this has no effect, PV tries to use shareholder rights, including voting against certain agenda items, asking questions at shareholders' meetings, and placing shareholder resolutions on the agenda. If none of these efforts to increase leverage are effective, PV will consider divestment and exclusion of the investee company.¹⁸⁴

PV publicly discloses a list of exclusions, which is regularly updated and includes details for the reason of exclusion, including sectoral exclusions and exclusions based on structural violations of human rights, labour rights, environmental standards, or corruption. From the selected companies in this study, PV has excluded two companies: Vale was excluded based on violations of the UN

Global Compact principles, whereas Vedanta is excluded as part of PV's sector-wide exclusion of coal mining.¹⁸⁵

Progress of engagement programmes is reported in PV's bi-annual SRI reports. In some selected cases, PV reports on written goals and timelines, but this seems to be on an ad-hoc basis and does not cover all companies which have been engaged. PV also does not publicly report these details for the selected companies in this study. Although PV's policy and reporting suggests that the pension fund attempts to use leverage to influence investee companies on human rights, significant gaps exist, including in a failure to engage with the selected companies on the human rights abuses identified in this study.

3.5.6 Section C: Tracking progress and outcome and communicating about the results

In the SRI policy, PV commits to international standards on human rights, including the OECD Guidelines and the UNGPs, and expects both asset managers and investee companies to respect these international standards. In addition, PV describes its due diligence procedures in line with the six steps of the OECD Guidelines.¹⁸⁶

PV also provides transparency by reporting bi-annually on all engagement conducted with investee companies, including the topic of engagement and formal decisions on concluding or continuing the engagement. However, the public reporting only provides ad-hoc details for a select number of engagements, whereas for other cases no detailed information on the engagement strategy, written goals, intermediary steps and other crucial information has been disclosed. PV also has not publicly reported details about engagement strategies and activities with the selected companies.¹⁸⁷

Because PV does not structurally disclose these details for all engagements, this limits the ability of civil society actors, victims and other stakeholders to evaluate how PV has used its leverage to prevent, mitigate and remediate human rights abuses linked to investee companies when public reporting for a specific case is lacking.

3.5.7 Section D: Providing for or cooperating in remediation

PV's SRI policy states that *"if a company has caused damage to society or the environment, the Pensioenfonds Vervoer will explicitly call on the company to facilitate remedy for those who have suffered damage."*¹⁸⁸ PV further clarifies that companies that caused or contributed to adverse impacts are expected to compensate victims and carry out restitution efforts, and will increase leverage through dialogue and voting if companies fail to facilitate redress, or even divest and exclude companies in 'extreme cases'.¹⁸⁹

However, because PV did not participate in the research, nor has sufficient public information available, Profundo could not assess how this policy has been applied in relation to the selected companies and case studies central to this study, and whether PV has engaged Glencore, Lundin Energy, Newmont Corporation, Rio Tinto, Shell, or TotalEnergies to provide remedy to victims.

3.6 Pensioenfonds Zorg en Welzijn (PFZW)

3.6.1 Profile

Stitching Pensioenfonds Zorg en Welzijn (PFZW) is the mandatory collective pension fund for nearly 3 million (ex-)employees in the healthcare and wellbeing sector. PFZW manages € 277.5 billion of invested assets as of December 2021.¹⁹⁰

PFZW's investments are managed by PGGM Vermogensbeheer B.V. (PGGM), which is a cooperative pension fund investor that conducts fiduciary and asset management on behalf of PFZW and five other, smaller pension funds. Because PFZW, as the second largest pension fund in

the Netherlands, is by far PGGM's biggest client, PGGM states that "PFZW's investment policy largely determines how we invest."¹⁹¹

3.6.2 Financial relationships with selected companies

As of 31 December 2021, PFZW held shares with a total value of € 673 million and bonds with a total value of € 221 million in seven of the ten selected companies for this research (0), namely:

- Freeport-McMoRan;
- Glencore;
- Lundin Energy;
- Newmont Corporation;
- Rio Tinto;
- Shell; and
- TotalEnergies.

Among those companies, PFZW's largest shareholding is in Shell (€ 196 million), while its largest bondholding is in TotalEnergies (€ 98 million).

Table 24 Overview of PFZW's share- and bondholdings in the selected companies

Company	Country of origin	Investment type	Value (in € mln)	Reporting date
Freeport-McMoRan	United States	Shares	40	31 Dec 2021
		Bonds	19	31 Dec 2021
Glencore	Switzerland	Shares	49	31 Dec 2021
		Bonds	13	31 Dec 2021
Lundin Energy	Sweden	Shares	21	31 Dec 2021
Newmont Corporation	United States	Shares	61	31 Dec 2021
Rio Tinto	United Kingdom	Shares	180	31 Dec 2021
Royal Dutch Shell	United Kingdom	Shares	196	31 Dec 2021
		Bonds	91	31 Dec 2021
TotalEnergies	France	Shares	127	31 Dec 2021
		Bonds	98	31 Dec 2021
Total			894	

Sources: PFZW (2022), *Overzicht aandelen per 31-12-2021*, retrieved on 5 May 2022;
PFZW (2022), *Overzicht obligaties per 31-12-2021*, retrieved on 5 May 2022.

3.6.3 Assessment and score overview

PFZW received a total score of 1.1 out of 10 (Table 25). Within the scope of this research, PFZW had financial links with seven out of ten selected companies.

It could not be determined whether PFZW has excluded any of the ten selected companies based on ESG criteria. PFZW excludes companies based on products and behaviour, but only discloses a list of companies that are excluded based on involvement in certain product sectors, including coal mining, tobacco and controversial weapons. None of the selected companies appear on this sectoral exclusion list. In addition, PFZW excludes companies based on structural violations of international sustainability and human rights standards, but states: "In these cases, however, we choose not to publish the names of the companies and countries concerned externally."¹⁹²

PFZW did not respond to invitations to provide comments and feedback to any parts of the research, including the financial research and Profundo’s questionnaire. As a result, the assessment of PFZW has been based solely on publicly disclosed information found on PFZW’s website. As publicly disclosed information is not very specific compared to the questions included in the survey, insight into the details of the engagement processes with the selected companies was very limited.

Based on public information by PFZW, Table 25 presents the scores per section (A, B, C, D) as well as the consolidated score of the pension fund. Explanations related to the evaluation of each section are provided in the following paragraphs.

Table 25 Overview of PFZW’s scores

Section		Score (/10)	Weight
A	Identification, qualification and prioritisation of human rights issue(s) and risk(s)	2.8	20%
B	Using leverage to influence investee companies	0.0	40%
C	Tracking progress and outcome by the Pension fund	2.8	20%
D	Providing for or cooperating in remediation	0.0	20%
Total		1.1	100%

3.6.4 Section A: Identification, qualification and prioritization of human rights issues and risks

PFZW’s investments are managed by PGGM, which follows PFZW’s Sustainable Investment Policy and maintains close contact with PFZW on implementation, including through periodical reporting.¹⁹³

According to their SRI policy, all companies in which PFZW holds shares are screened periodically through a methodology based on the OECD Guidelines. Companies are scored based on incidents within their own production sites and incidents in the supply chain. These incidents are scored on severity, scale and irremediability, in line with the OECD Guidelines. PFZW then uses these scores to determine whether incidents are 'very serious or 'serious incidents'. Companies with the score 'very serious' will be excluded from the share portfolio, while companies with the score 'serious' enter an engagement trajectory to seek improvement.¹⁹⁴

However, PFZW does not apply this screening methodology structurally to the entire investment portfolio, since they state: *"In addition to implementation in the share portfolio, we also apply this screen to all other investment categories where possible. The method of implementation may differ per investment category."*¹⁹⁵ It is therefore not clear if the screening methodology is also applied to bondholdings.

The screening is conducted by PGGM in collaboration with Sustainalytics through a methodology based on the OECD Guidelines. The screening includes risks related to the investee company on human rights, labour conditions, environment, corruption, consumer interest, science and technology, and tax. There is also evidence that this screening includes some variables on high-risk sectors, since PFZW has a sectoral exclusion policy. However, PFZW does not disclose which high-risk variables are considered in the screening methodology, and it is not clear if factors such as geography, governance context or stages of the supply chains are considered.¹⁹⁶

PGGM reports quarterly on the screening results to PFZW, who in turn determines action points, which may include starting an engagement process with flagged companies or divesting from companies when the incident leads to an exclusion. PFZW discloses a regularly updated exclusion

list on its website, but this list only contains sectoral exclusions and does not include companies excluded as a result of the screening.¹⁹⁷

PFZW disclosed a list of companies with which engagement was conducted during 2020. No disclosure for other years could be identified. In 2020, PFZW engaged with Glencore, Rio Tinto and Shell on human rights issues and with TotalEnergies on climate change, but PFZW has not disclosed details about the exact topic of this engagement. As a result, it could not be determined whether this engagement covered the selected controversies. No evidence of engagement with Freeport-McMoRan, Lundin Energy, and Newmont Corporation could be found.¹⁹⁸

Because of the limited information publicly available, Profundo could not assess whether PFZW has started investigations on the selected cases of human rights abuses. Although PFZW mentions in its due diligence processes that for all specific risks across asset classes and sectors, it identifies the negative impacts and prioritizes risk management based on their severity, scale, and irremediability, this information is not disclosed for specific cases. Public information also does not evidence that the pension fund had made a qualification of its relationship to the human rights impacts (contributed to or directly linked).

3.6.5 Section B: Using leverage to influence investee companies to prevent and mitigate adverse human rights impacts

In their SRI policy, PFZW indicates that they choose “to improve the behaviour of (large) companies through engagement”, which may include dialogue, voting in shareholder meetings, and legal proceedings. PFZW sees engagement through constructive dialogue as an important instrument to contribute to sustainable development, and claims that through dialogue it seeks to support companies to improve their sustainability performance, to prevent and mitigate negative impacts on human rights and the environment, and to urge for remediation processes where necessary. PFZW further states that when a company is associated with very serious incidents, or when engagement has proved insufficient to improve the company’s behaviour, the pension fund may opt to divest.¹⁹⁹

However, PFZW does not provide details on these engagement activities in practice. Although in 2020, PFZW disclosed a list of companies with which engagement was conducted, including the broad topic of the engagement (good governance, climate change, health, water scarcity, human rights), the pension fund provided no further detail on the concerned incidents and strategy of the engagement. As a result, Profundo could not assess whether PFZW has engaged the selected companies on the human rights abuses identified in the case studies, nor whether within this engagement PFZW has formulated written goals to be achieved, set timelines and (intermediary) steps, nor whether the pension fund requires investee companies to follow a multi-stakeholder approach. Because PFZW also does not disclose a list of excluded companies other than sectoral exclusions, it could not be ascertained whether the pension fund has divested from or excluded any of the selected companies on the basis of adverse human rights impacts.²⁰⁰

3.6.6 Section C: Tracking progress and outcome and communicating about the results

In its Human Rights Policy Paper, PFZW outlines its own human rights responsibility as well as the responsibility of investee companies: “As an organisation, it is our duty to respect human rights. Hence, human rights has been a key focus area for responsible investment for many years. [...] We ask the companies that operate in high risk sectors to implement the UNGPs in their own business, but also to improve labour practices in their supply chains.”²⁰¹

In addition, PFZW discloses its Sustainable Investment Policy 2020-2025, in which the pension claims to follow the OECD Guidelines for Institutional Investors and outlines how its screening policy is based on the six steps of due diligence in accordance with the OECD Guidelines. In addition, PFZW provides transparency on the complete list companies with which engagement has taken place, although this information is only publicly available for the year 2020.²⁰²

In contrast, the lack of PFZW’s disclosure of engagement activities as described in the previous sections limits the ability of civil society actors, victims and other stakeholders to understand if and how the pension fund attempts to improve investee company’s human rights practices. In addition, no evidence could be found that PFZW requires investee companies to be transparent about human rights abuses by requiring them to publicly report on incidents or concrete steps taken to address the human rights abuse as part of the engagement process.

3.6.7 Section D: Providing for or cooperating in remediation

The Human Rights Policy states that “PFZW will demand from the company to stop the violation, make sure that there is improvement in the management systems and provide remedy.”²⁰³ In addition, PFZW also claims that through dialogue, PFZW aims to “insist on compensation and/or redress for victims where necessary” in line with the OECD Guidelines.²⁰⁴

However, because PFZW did not respond to invitations to participate in the research, nor has sufficient public information available on engagement activities, Profundo could not assess whether this policy has been implemented in practice and specifically in the selected case studies. It could also not be assessed whether the pension fund has provided for, or cooperated through legitimate processes in, the remediation of adverse impacts.

3.7 Pensioenfonds voor de Metalektro (PME)

3.7.1 Profile

PME is a pension fund in the metal and technology sector in the Netherlands serving 1,432 employees, 166,000 active participants and 167,000 pensioners. As of 31 December 2021, PME’s total invested amounted €64 billion.²⁰⁵ The Asset manager MN give advice to PME about the investment policy and about outsourcing investments to other asset managers. MN also makes some of the investments itself, such as hedging interest and managing the cash flow. PME has signed a contract with MN and with the external asset managers. As commissioning party, PME is always in charge and lays down its own investment policy. PME evaluates the outsourcing of asset management annually, based on performance agreements, and reports about it in the annual report.²⁰⁶

3.7.2 Financial relationships with selected companies

As of 2 September 2021, PME held investments in shares represented a total value of € 82 million and bonds for a total value of € 26 million in three of the ten selected companies (see Table 26), namely:

- Glencore;
- Newmont Corporation, and;
- Rio Tinto.

PME’s largest holdings is in Rio Tinto with € 43.2 million in shares, and Glencore with €19.7 million in bonds.

Table 26 Overview of PME’s share- and bondholdings in the selected companies

Company	Country of origin	Investment type	Value (in € mln)	Reporting date
Glencore	Switzerland	Shares	15.1	2 Sept 2021
		Bonds	19.7	2 Sept 2021
Newmont Corporation	United States	Shares	29.9	2 Sept 2021
Rio Tinto	United Kingdom	Shares	43.2	2 Sept 2021

Company	Country of origin	Investment type	Value (in € mln)	Reporting date
Rio Tinto	United Kingdom	Bonds	6.5	2 Sept 2021
Total			108.4	

Source: PME (2021, September 2), "Waarin beleggen wij?", online: <https://www.pmepensioen.nl/over-pme/beleggen/waarin-beleggen/>, viewed on November 2021.

3.7.3 Assessment and score overview

PME achieved a total score of 1.3 out of 10. Within the scope of this research, PME had financial links with three out of ten selected companies for this case study: Glencore, Newmont Corporation, and Rio Tinto. To date, four of the ten selected companies for this study were on the exclusion list of PME, namely PetroChina, Lundin, Shell, and TotalEnergies. The reason for these exclusions is that PME is leaving the sector oil and gas.²⁰⁷

PME confirmed on an email that the results of the financial research presented in this report were correct and up to date.²⁰⁸ PME did not answer Profundo's questionnaire and did not provide comments on the results of the policy research. Profundo then used publicly disclosed information available online to assess PME. As the information collected was not very specific compared to the questions included in the questionnaire, the insight into the details of the engagement processes with the companies was quite limited. When contacted again by Profundo to provide clarification on the public information available, PME did not answer.

Based on the publicly disclosed information available online, Table 27 presents the scores per section (A, B, C, D) as well as the consolidated score of PME. Explanations related to the evaluation of each section are provided in the following paragraphs.

Table 27 Overview of PME scores

Section	Score (/10)	Weight
A Identification, qualification and prioritisation of human rights issue(s) and risk(s)	3.3	20%
B Using leverage to influence investee companies	1.1	40%
C Tracking progress and outcome by the Pension fund	1.7	20%
D Providing for or cooperating in remediation	0	20%
Total	1.4	100%

3.7.4 Section A: Identification, qualification and prioritization of human rights issues and risks

The Asset manager MN give advice to PME about the investment policy and about outsourcing investments to other asset managers. As commissioning party, PME is always in charge and lays down its own investment policy.

As a policy, all companies in which PME invests in shares and bonds are screened on ESG criteria.²⁰⁹ PME uses data from the research agency MSCI to screen all investments for ESG factors including indicators associated with human rights. PME also uses data from Sustainalytics for the implementation of its exclusion policy. For the execution of voting at general meetings, PME uses the services of voting consultancy ISS. Data from the Economist Intelligent Unit helps PME assess countries on issues such as corruption, democracy, vulnerability to climate risks and social development.

For PME, the UNGPs and the OECD guidelines are the starting point of screening and due diligence with regard to human rights. “We ask the companies we speak to about human and labour rights and serious controversies to set up a thorough process in which they also account for the impact of their business operations on human rights according to the UNGPs. Based on the Corporate Human Rights Benchmark (CHRB), PME enters a dialogue with companies that do not do enough justice to the UNGPs.”²¹⁰ PME also checks whether companies keep meeting The ESG criteria during the investment period.

For section A, PME scores 3.3 in total. To date, PME has not publicly reported any research or investigation on any of the relevant cases of human rights violations related to the three relevant companies it has financial links with: Glencore, Newmont Corporation, and Rio Tinto. PME received partial scores in some elements for having a methodology of research that allows to identify actual and potential adverse human rights impacts.

3.7.5 Section B: Using leverage to influence investee companies to prevent and mitigate adverse human rights impacts

PME has not publicly disclosed any research or engagement with Glencore, Newmont Corporation, or Rio Tinto. Profundo did not find evidence or details of other engagements associated with these companies or other companies on issues of human rights. In its website, PME provides the list of companies under engagement; none of the companies appeared in the list at the time of this research.²¹¹

For section B, PME scored 1.1 in total. PME acknowledges the influence that the pension fund can exercise on the behaviour of companies in general.²¹² PME says that the fund exercises this influence by for example casting a vote during the shareholders' meeting of a listed company, and by entering into a dialogue with companies in which it holds shares and bonds. To date, four of the ten selected companies for this study were on the exclusion list of PME, namely PetroChina, Lundin, Shell, and TotalEnergies.²¹³ PME received a bonus scored for having these exclusions.

3.7.6 Section C: Tracking progress and outcome and communicating about the results

PME has not publicly disclosed any research or engagement with Glencore, Newmont Corporation, or Rio Tinto. Profundo did not find evidence or details of other engagements associated with these companies or other companies on issues of human rights.

Although PME reports to use engagement as a tool to exercise influence in companies in which it holds shares and bonds, there is no reporting on the details of the approach. This research did not find details of PME's engagement process such as setting goals or monitoring and measurement of outcomes.

For section C, PME scored 1.7 in total. PME discloses its human rights policy and the due-diligence process. For PME, the UNGPs and the OECD guidelines are the starting point of screening and due diligence with regard to human rights. As a policy, all companies in which PME invests in shares and bonds are screened on ESG criteria. This research did not find further information of the implementation process of PME's human rights policy and due diligence process. PME discloses the name of companies that it has formally engaged and the theme, but it does not disclose any information of intermediate and final steps of the past and existing engagements.²¹⁴ There is no public statements or explicit positions from PME regarding the relevant cases or similar cases in which PME requested the investee companies to publicly report on the circumstances of the human rights abuse(s) or on the concrete steps taken to address the human rights abuse(s).

3.7.7 Section D: Providing for or cooperating in remediation

For section C, PME scored 0 in total. PME has not publicly disclosed any research or engagement with Glencore, Newmont Corporation, or Rio Tinto. Therefore, Profundo couldn't assess the extend in which PME contribute to the reparation of victims in the specific cases under review. For these

cases, PME runs the risk to be in fact facilitating the lack of steps taken by the companies to remedy the human rights harms they have caused.

3.8 Pensioenfonds Metaal en Techniek (PMT)

3.8.1 Profile

Pensioenfonds Metaal & Techniek (PMT) is a pension fund for 1,432 employees, 166,000 active participants and 167,000 pensioners in the metal and technology sector in the Netherlands. As of May 2022, the invested capital amounts to € 97 billion.²¹⁵ The asset manager MN give advice and carries out the investments on the basis of the investment principles. MN takes care of some of the investments itself and outsources the rest to external asset managers. As a client, PMT is always in control and determines the investment policy and outsourcing policy.²¹⁶

3.8.2 Financial relationships with selected companies

As of 31 December 2021, PMT held investments in shares represented a total value of € 358 million and bonds for a total value of € 227 million in five of the ten selected companies (Table 28), namely:

- Glencore;
- Lundin Energy;
- Newmont Corporation;
- Rio Tinto;
- Shell, and;
- TotalEnergies.

PME's largest holding is in Shell with € 121.8 million in shares and € 98 million in bonds.

Table 28 Overview of PMT's share- and bondholdings in the selected companies

Company	Country of origin	Investment type	Value (in € mln)	Reporting date
Glencore	Switzerland	Shares	35.7	31 Dec 2021
		Bondholdings	55.3	31 Dec 2021
Lundin Energy	Sweden	Shares	5	31 Dec 2021
Newmont Corporation	United States	Shares	34.9	31 Dec 2021
Rio Tinto	United Kingdom	Shares	71.6	31 Dec 2021
		Bondholdings	1.6	31 Dec 2021
Royal Dutch Shell	United Kingdom	Shares	121.8	31 Dec 2021
		Bondholdings	98	31 Dec 2021
TotalEnergies	France	Shares	89.3	31 Dec 2021
		Bondholdings	72.4	31 Dec 2021
Total			585.5	

Source: Pensioenfonds Metaal en Techniek (2020), *Beleggingen per 31-12-2020*, retrieved in January 2021; Pensioenfonds Metaal en Techniek (2022), 'Shares and bondholdings per 31/12/2021', Emails sent by Rebecca Wörner, 8 March 2022.

3.8.3 Assessment and score overview

PMT achieved a total score of 1.8 out of 10. Within the scope of this research, PMT had financial links with six out of ten selected companies: Glencore, Lundin Energy, Newmont Corporation, Rio

Tinto, Shell and Total Energies. Although, to date, PMT does not invest in the other four companies, namely PetroChina, Freeport-McMoRan, Vale, and Vedanta Resources, there is also no exclusion on these companies.²¹⁷

PMT provided the financial data presented in this report.²¹⁸ PM provided comments and resources to Profundo's questionnaire and provided comments on the results of the policy research. Profundo also used publicly disclosed information available online to assess PMT.

Based on the publicly disclosed information available online, Table 29 presents the scores per section (A, B, C, D) as well as the consolidated score of PMT. Explanations related to the evaluation of each section are provided in the following paragraphs.

Table 29 Overview of PMT scores

Section		Score (/10)	Weight
A	Identification, qualification and prioritisation of human rights issue(s) and risk(s)	3.3	20%
B	Using leverage to influence investee companies	0.6	40%
C	Tracking progress and outcome by the Pension fund	4.4	20%
D	Providing for or cooperating in remediation	0	20%
Total		1.8	100%

3.8.4 Section A: Identification, qualification and prioritization of human rights issues and risks

The Asset manager MN give advice to PMT about the investment policy and about outsourcing investments to other asset managers. As commissioning party, PMT is always in charge and lays down its own investment policy.

PMT uses MSCI ESG screening to map human rights issues in its portfolio. Companies and countries that do not perform according to the ESG criteria and principles on human rights are not desired in PMT's portfolio. The OECD Guidelines and the UNGPs provide guidance on how PMT considers environmental, human rights and good corporate governance (ESG factors) factors when making an investment decision.²¹⁹

The screening approach is based on 3 pillars (E, S, G), ten themes distributed among the pillars, and 35 ESG key issues. The social pillar addresses critical issues related to human rights such as labour management, controversial sourcing, health and demographic risks, among others. The MSCI methodology takes into account the specific risk associated with different industries, geographies and sectors. The companies that meet PMT's ESG criteria are continuously evaluated and monitored.

For section A, PMT scored 3.3 in total. To date, PMT did not report any research or investigation on any of the relevant cases of human rights violations related to the six relevant companies it has financial links with: Lundin Energy, Newmont Corporation, Rio Tinto, Shell, and TotalEnergies. The pension fund received partial scores in some elements for having a research approach that allows to identify actual and potential adverse human rights impacts.

3.8.5 Section B: Using leverage to influence investee companies to prevent and mitigate adverse human rights impacts

PMT has not reported any research or engagement on the relevant cases of human rights abuses case(s). PMT mentioned that Lundin and Shell are part of PMT's thematic climate engagement program. These engagements were not related to human rights, and PMT did not provide additional information on how these engagements are carried.

For section B, PMT scored 0.6 in total. Engagement is an instrument of PMT's responsible investment policy. PMT engages with companies and governments on various topics such as strategy, financial and non-financial performance and risks, capital structure, social and environmental effects, and corporate governance. The dialogue program of PMT is made up of four types of dialogue, each consisting of one or more underlying programs: Incidents and controversies, Supervision of Dutch listed companies, Thematic Dialogue (ESG), and the IMVB.²²⁰ Although, to date, PMT does not invest in the other four companies, namely PetroChina, Freeport-McMoRan, Vale, and Vedanta Resources, there is also no exclusion on these companies.²²¹

3.8.6 Section C: Tracking progress and outcome and communicating about the results

PMT has not reported any investigation or engagement on the six relevant cases associated with the companies: Glencore, Lundin Energy, Newmont Corporation, Rio Tinto, Shell and Total Energies.

PMT discloses a list of companies it has carry engagement with and provides some details on the process, such as the topic of engagement, the goals, and the progress.²²² The list of engagement stands as evidence that PMT's has a clear goal-oriented tool and monitors the progress of its engagements. The list of engagements is also evidence that PMT's has a transparent approach towards reporting of its engagements.

There is no statements or explicit positions from PMT regarding the relevant cases in which PMT requested the investee companies to publicly report on the circumstances of the human rights abuse(s) or on the concrete steps taken to address the human rights abuse(s).

For section C, PMT scored 4.4 in total. Although the pension fund does not engage in any of the cases under review, it discloses information of its current engagements such as names of companies, topics, and other relevant details.

3.8.7 Section D: Providing for or cooperating in remediation

For section D, PMT scored 0 in total. PMT has not disclosed any relevant research or engagement with Glencore, Lundin Energy, Newmont Corporation, Rio Tinto, Shell and Total Energies. Therefore, Profundo couldn't assess the extend in which PMT contribute to the reparation of victims in the specific cases under review. For these companies, by not engaging on human rights issues, PMT runs the risk to be in fact facilitating the lack of steps taken by the companies to remedy the human rights harms they have caused.

3.9 Stichting Pensioenfonds voor Personeelsdiensten (StiPP)

3.9.1 Profile

Stichting Pensioenfonds voor Personeelsdiensten (StiPP) administers the pension schemes in the flexible employment sector for temporary workers and seconded employees. As of 31 December 2020, StiPP managed the pension of almost 1.2 million people and had 2,267 million of assets under management.²²³ StiPP's fiduciary asset manager is Kempen Capital Management.

3.9.2 Financial relationships with selected companies

As of 31 December 2021, StiPP held shares with a total value of € 5.4 million and/or bonds with a total value of € 5.4 million, in four of the ten selected companies for this research (see Table 30), namely:

- Glencore;
- Newmont Corporation;
- Rio Tinto; and
- TotalEnergies;

StiPP explained to Profundo that these financial links are indirect holdings in company shares and bonds because StiPP invests in these companies via fund managers. Among those companies, StiPP's largest shares and bondholding were in TotalEnergies (almost € 3 million invested in shares and € 5 million in bonds).

Table 30 Overview of StiPP's share and bondholdings in the selected companies

Company	Country of origin	Investment type	Value (in € mln)	Reporting date
Glencore	Switzerland	Shares	0.2	31 Dec 2021
		Bonds	0.3	31 Dec 2021
Newmont Corporation	United States	Shares	0.1	31 Dec 2021
Rio Tinto	United Kingdom	Shares	2.1	31 Dec 2021
		Bonds	0.04	31 Dec 2021
TotalEnergies	France	Shares	3.0	31 Dec 2021
		Bonds	5.0	31 Dec 2021
Total			10.8	

Source: StiPP (2022), 'Stichting Pensioenfonds voor Personeelsdiensten (StiPP) - OMS 12/31/2021', received 15 February 2022

3.9.3 Assessment and score overview

StiPP achieved a total score of 3.9 out of 10. Within the scope of this research, StiPP had financial links with four out of ten selected companies.

Freeport-McMoRan and Vale have been excluded based on violations of the UN Global Compact principles.

StiPP accepted to share the composition of its portfolio with chooses not to fill in the questionnaire. Mentioning the following explanation "The reason is that StiPP as a relatively small Pension Fund is compelled to allocate its resources extremely efficiently and consequently make conscious choices whether or not to fill in a questionnaire for EPL".²²⁴

As publicly disclosed information is not very specific compared to the questions included in the survey, insight into the details of the engagement processes with the companies it is financially linked was quite limited. When contacted again by Profundo to provide clarification on the public information available, StiPP provided clarification on its investment managers and on certain questions and shared some internal information related to Newmont. All these new elements were taken into account in the analysis.

Based on the answers provided by StiPP and the supporting evidence, Table 31 presents the scores per section (A, B, C, D) as well as the consolidated score of the pension fund. Explanations related to the evaluation of each section are provided in the following paragraphs.

Table 31 Overview of StiPP's scores

Section	Score (/10)	Weight
A Identification, qualification and prioritisation of human rights issue(s) and risk(s)	6.7	20%
B Using leverage to influence investee companies	3.9	40%
C Tracking progress and outcome by the Pension fund	3.3	20%
D Providing for or cooperating in remediation	1.6	20%

Section	Score (/10)	Weight
Total	3.9	100%

3.9.4 Section A: Identification, qualification and prioritization of human rights issues and risks

StiPP discloses its Sustainable Responsible Investment policy²²⁵, which was lastly updated in December 2021. A board member has been given the responsibility to monitor its overall implementation and the policy is evaluated by the board every three years and updated if necessary. At operational level, StiPP mandates its fiduciary managers, including Kempen Capital Management (KCM), to coordinate the policy's implementation. Engagement activities on behalf of StiPP are conducted via coordinated actions by the fiduciary manager (Kempen) and its investment managers for the operational execution (including Northern Trust Asset Management, Blackrock and Kempen). The fiduciary and investment managers report on all engagement activities on a quarterly basis.

Screening of StiPP's investment universe on human rights issues is done by applying the United Nation Global Compact principles. The screening also integrates the assessment of potential high-risk variables such as the sector, geography, rule of law, political stability, respect of citizens' human rights and labour rights.

In addition, StiPP uses MSCI ESG rating to perform a screening at issuers' level. Among the social criteria included in MSCI methodology to assess companies there are human capital (staff policy, health and safety, workforce development, working conditions in the supply chain), product liability (safety and quality, chemical safety, financial products, privacy and data security), stakeholder opposition, and social opportunities. MSCI ESG rating methodology take into consideration the controversies track record of companies over the past three years.

More specifically on its approach to exclusion, StiPP excludes companies active in the production of controversial weapons, companies that are breaching UN Global Compacts and are involved in serious labour rights and human rights controversies. The exclusion list applies to all the investment universe of StiPP and is updated on a quarterly basis.

Out of the four selected companies in which StiPP has investments, we found evidence that the pension fund has identified cases of human rights abuses for Glencore, Newmont and Rio Tinto.

StiPP shared internal documents about Newmont, evidencing that the controversy related to the Marlin Mine as well as other controversies impacting among other local communities were identified by its ESG research provider and that their severity was assessed. While the type of variables taken into account to assess the severity are mentioned and includes the scale of impact, the nature of harm, explanations to justify this assessment were not detailed in the document shared. In addition, the assessment of the severity of the Marlin Mine case has decreased between 2019 and 2021 in the analysis of the research provider, and the controversy's status was classified as "concluded" in 2020. Documents explaining this change of analysis have not been shared. For Glencore, StiPP reports in its engagement report 2016, that the company was assessed as violating the principle 2 ("Ensure that business practices are not complicit in human rights abuses") and principle 3 ("Uphold the freedom of association and the effective recognition of the right to collective bargaining") of the UN Global Compact and consequently put on its ESG research provider Watch List.²²⁶ Various human rights controversies have been identified including labour disputes and opposition from local communities in South Africa, Australia, Peru and Colombia.

As regard Rio Tinto, StiPP provided evidence that human rights controversies were identified by its fiduciary manager, although not on the selected case in Myanmar but on the destruction in May 2020 by the company of two ancient rock shelters in Juukan Gorge, Western Australia.²²⁷ Such destruction created irreversible impacts on indigenous Puutu Kunti Kurrama and Pinikura (PKKP)

peoples, since the sites were sacred to the Aboriginal traditional owners and had significant archaeological value. The analysis makes it clear that Rio Tinto caused the human rights adverse impacts and is consequently responsible to provide for remediation to affected people.

StiPP does not assess its own relationship to the human rights impacts on a case-by-case basis using the UNGPs terminology "cause", "contribute to" or "directly linked to". StiPP only reported to Profundo that as it invests primarily in commingled investment funds, it had indirect positions in the companies mentioned. The voting and engagement activities with respect to the four companies included in the scope of this study (Glencore, Newmont Corporation, Rio Tinto, and TotalEnergies) have to be executed by the manager of the specific funds, applying the ESG policy of the funds. StiPP takes into account these policies in its fund selection and monitoring efforts, but does not have full control on its content being a participant in the funds.²²⁸

Overall, information analysed shows that StiPP has developed processes to identify potential and actual human rights impacts related to its investment activities and that it has identified cases of human rights abuses for three of the four selected companies in which investments were found (namely Glencore, Newmont and Rio Tinto). However, information analysed does not evidence that the pension fund had made a qualification of its relationship to the human rights impacts (contributed to or directly linked), neither that it systematically qualifies how the investee company is involved in the abuses (cause, contribute or directly linked).

3.9.5 Section B: Using leverage to influence investee companies to prevent and mitigate adverse human rights impacts

Overall, StiPP provides evidence about its engagement on human rights topics with two companies falling under the scope of this study namely Glencore and Rio Tinto. Regarding Newmont, Stipp explains that it decided to not engage on human rights, as the outcome of the screening by its research provider did not conclude to a breach of Global Compact principles. StiPP engages with TotalEnergies on climate topics, but no information was found related to engagement with the company on the ongoing protests around its oil projects in Uganda and Tanzania.

Regarding its engagement activities with Glencore, StiPP reported it has started to engage with the company, via Kempen Capital Management (KCM), in 2015²²⁹. While the engagement was not specifically focused on the selected case for this study, it tackles the persistent failure of the company to manage labour unrest and maintain good relations with local communities. The overall objective of the engagement was to influence Glencore to improve its processes. Among the goals formulated by Stipp, Glencore was asked to review its human rights policies in regions where there is a high risk of labour unrest. The company had to explain how with the rights of workers are handled in regions with low wages and low occupational health and safety legislation. More specifically, Glencore had to explain the procedures to face strikes. In addition, Glencore was asked to provide explanations on some specific controversial projects against which local communities were demonstrating. Overall, these goals remain very general, and it is not clear if StiPP has defined a clear timeline and intermediary steps to be achieved by Glencore. Moreover, we did not find evidence that the pension fund required Glencore to follow a multi-stakeholder approach to improve its human rights policies and process, which raises concern considering that StiPP wrote in its engagement report 2016²³⁰ that Glencore still lags behind its sector peers on its policies and processes to deal with resettlement and Indigenous people.

While in 2016, StiPP was writing that it will continue to engage with Glencore, milestones achieved since then, and information about the current status of the engagement have not been disclosed. In addition, Glencore was not mentioned in the last stewardship and sustainable investment report of KCM, which could mean that the engagement on human rights has been concluded or interrupted²³¹. Northern Trust Asset Management (NTAM) which manages some equity investments in Glencore reported in its Stewardship Report 2020 it voted against the chair of the

company's health, safety, environment and communities committee because it "did not see their goals and progress as sufficient".²³²

As regard Rio Tinto, some information related to engagement on human rights are disclosed by Northern Trust Asset Management (NTAM) which manages the equity fund in which Stipp invests and includes Rio Tinto's stocks. NTAM engagement is mainly related to the destruction by Rio Tinto in May 2020 of two ancient rock shelters in Juukan Gorge, Western Australia. On 9 December, an Australian parliamentary committee inquiry determined that the destruction of the caves by Rio Tinto was "inexcusable" and recommended that the company negotiate a restitution package with the PKKP peoples, including a full reconstruction of the rock shelters, at its own expense.²³³ NTAM reports it has worked with its Australian stewardship partner, the Australian Council of Superannuation Investors (ACSI) to investigate the case. As part of its investigation, the ACSI convened meeting with the company's manager, board members and community groups. Various requirements have been made to Rio Tinto including independent reviews on the agreement made with affected stakeholders, the internal practices, culture and external relations policy of the group. NTAM also asked the company to establish a stakeholder advisory panel to advise the board and support its ability to understand and oversee stakeholder interests. However, information about the timeline associated with this engagement goals is not disclosed. In its 2021, Annual Review NTAM reports that it has, along with 60% of the company's shareholders, voted against the remuneration report of the company due to the heavy focus on shareholder returns in its pay schemes, with limited consideration of other, important strategic and stakeholder factors.²³⁴ Voting against the remuneration report of executives can be seen as way to increase its leverage in case of insufficient progress from the company.

StiPP provided evidence about its engagement on human rights topics with two of the of the four selected companies in which it has investments namely Glencore and Rio Tinto. Regarding Newmont, for which some controversies were identified (see section 3.9.4) Stipp did not engage on human rights, as the outcome of the screening by its research provider did not conclude to a breach of Global Compact principles. Overall, the score in this section is low because the goals defined during engagement activities are not very specific for Glencore, and no evidence was found about the fact that, as part of its engagements with Glencore and Rio Tinto, StiPP has defined clear timeline.

3.9.6 Section C: Tracking progress and outcome and communicating about the results

StiPP discloses a detailed Socially Responsible Investment policy²³⁵ which outlines its due diligence processes, including general approach on how it conducts engagement. The pension fund also publishes some examples of companies it engaged with in its Socially Responsible Investment report²³⁶ but the comprehensive list is not disclosed and the companies selected for are not part of this reporting. StiPP's fiduciary and investment managers (Kempen, NTAM and Blackrock) disclose a comprehensive list of companies engaged. Kempen has the most extensive reporting as it discloses for some companies engaged (including Royal Dutch Shell and TotalEnergies about climate topics) a factsheet summarizing the engagement rationale, background, engagement theme, objectives, results and subsequent steps.²³⁷ Information is disclosed about engagement with Rio Tinto in NTAM 2020 engagement highlights.²³⁸

Overall, StiPP fiduciary and investment managers report that their general monitoring process relies on clear milestones. However, recent information on the selected cases related to human rights abuses, including milestones achieved and action plans to be undertaken by the companies is not disclosed. For instance, NTAM mentions that it voted against the chair of the Glencore's health, safety, environment and communities committee because progress observed were insufficient, but the investment manager does not explain what the next short-term targets for the company will be. Instead, NTAM statement is quite general and concrete timeline is missing "we will continue to urge Glencore to enhance their targets and look into other elements of the transition plan such as executive remuneration, positive policy lobbying and just transition"²³⁹.

Considering that StiPP started to report about concerns related to Glencore human rights and labour rights' practices its 2016 Engagement report, it is not clear if the decision to keep investing in the company is justified by significant progress achieved by the company.

As regard Rio Tinto, Hermes EOS, which provides engagement services to NTAM (StiPP's investment manager) reports about the steps Rio Tinto has taken to reform its practices following the destruction of two ancient rock shelters in Western Australia.

While StiPP is transparent about its due diligence processes, there is significant room for improvement as regards the disclosure of its engagement activities. More specifically, StiPP could disclose the list of companies engaged through its fiduciary and investment managers and specific case-related information such as milestones achieved and the decisions on concluding or continuing the engagement. In addition, efforts can be done by the pension fund to encourage investee companies to publicly report on the way they manage human rights controversies in which they are involved.

3.9.7 Section D: Providing for or cooperating in remediation

In general, the evidence provided by StiPP fiduciary managers regarding engagements with Glencore and Rio Tinto shows some efforts to influence the companies to improve their responsible conduct and respect human rights of their stakeholders, including local communities.

For Glencore, it is not clear if and how StiPP has tried (via its fiduciary and investment managers) to use its leverage to influence investee companies to enable remediation, which raise concern because progresses achieved by Glencore during the engagement have not been disclosed.

As regard Rio Tinto, StiPP (via NTAM) has raised concerns about the company's ability to dialogue with affected stakeholders including local communities and indigenous people. In addition, it has suggested the company to establish a stakeholder advisory panel, to advise the board and support its ability to understand and oversee stakeholder interests. In 2021, Rio Tinto announced that an Australian Advisory Group (AAG) will be established during the first quarter 2022 to ensure Rio Tinto has a better understanding of Indigenous culture and issues in Australia.²⁴⁰ The advisory group was established in 2022.²⁴¹ However it is not clear if these steps have been triggered by investors' pressure on the company.

Regarding the cases involving Newmont Corporation and TotalEnergies, no evidence was provided for engagement activities on human rights. Of note, StiPP indicated to Profundo that it has recently completed a major restructuring of its equity portfolio developed markets, to fully align with its SRI policy, based on ESG best in class selection; SDG, 3, 7 and 13 and; climate action EU CTB benchmark for CO2 reduction goals aligned with Paris 2015. As a result of this restructuring, Newmont was divested. By not engaging with Newmont Corporation and TotalEnergies, however, StiPP runs the risk to be in fact facilitating the lack of steps taken by the two companies to remedy the human rights harms they have caused.

4

Conclusions and recommendations

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

4.1 Conclusions

This case study investigated the responsibility of ten Dutch pension funds, to respond to ten selected cases of severe human rights abuses committed by extractive companies in which they invest. Nine of the ten biggest pension funds in the Netherlands were found to be invested in the shares or bonds of two or more of the selected extractive companies, as of 31 December 2021. The three largest investors in the selected companies are ABP (€ 1,771.7 million), PFZW (€ 894 million), and PMT (€ 585.5 million). Only for Pensioenfond Horeca & Catering (PH&C), no investments were found.

Table 32 provides an overview of the scores granted for each specific section, including the total scores per pension fund for which investments were found.

Table 32 Scores per pension fund

	ABP	BpfBOUW	BPL Pensioen	Pensioenfond Detailhandel	Pensioenfond Vervoer	PFZW	PME	PMT	StiPP
A: Identification, qualification and prioritisation of human rights issue(s) and risk(s) – weight: 20%	4.4	4.4	5.6	5.6	3.3	2.8	3.3	3.3	6.7
B: Using leverage to influence investee companies – weight: 40%	2.2	2.2	2.8	5.0	2.2	0.0	1.1	0.6	3.9
C: Tracking progress and outcome by the insurance company – weight: 20%	4.4	2.8	3.3	4.4	3.9	2.8	1.7	4.4	3.3
D: Providing for or cooperating in remediation – weight: 20%	1.6	1.1	0.0	5.0	0.0	0.0	0.0	0.0	1.6
Total	3.0	2.6	2.9	5.0	2.3	1.1	1.4	1.8	3.9

Overall, the pension funds score low on their engagement activities on the selected cases of human rights abuses, with seven out of nine pension funds scoring less than or equal to 3 out of 10. The highest scores were achieved by Pensioenfond Detailhandel (5.0) and StiPP (3.9), the two pension funds which shared internal information on the selected cases. The lowest scores were obtained by PFZW (1.1), PME (1.4) and PMT (1.8). None of the pension funds provided in-depth information on engagement for all the relevant selected human rights abuses to which they are linked through their investments.

Based on the information analysed, the main observations can be done:

- **Pension funds do not account for outcomes of controversy screening and prioritisation of cases for engagement.**

All the pension funds outsource their engagement activities to fiduciary managers, which are responsible for the adequate implementation of the pension funds' responsible investment policies, including the application of exclusion criteria. Most pension funds' policies state that their managers assess human rights incidents on severity, scale and irremediable character. The outcome of this controversy screening determines the prioritisation of cases for engagement and may even lead to companies becoming excluded from the investment universe. However, this information is generally not made public for individual cases. As a result, civil society organisations, people who experience negative effects, and other stakeholders cannot access information about whether and how a pension fund, as investor in a specific company, has evaluated an identified human rights abuse.

Because of the limited public information accounting for screening methodologies and criteria, it is also difficult to explain differences between the outcomes of different pension funds' screening exercises. For instance, Vale was excluded by BPL Pensioen and Pensioenfond Vervoer based on violations of the UN Global Compact principles. On the other hand, Pensioenfond Detailhandel, BpfBOUW and ABP also report they expect investee companies to respect the UN Global Compact principles, yet the three pension funds continue to invest in Vale. These discrepancies point at differences in how screening is conducted and how international standards, including the UN Global Compact, are applied and interpreted. However, public information is too limited to understand these differences in screening outcomes.

- **There is a lack of evidence to show that pension funds' engagement on specific cases define time-bound targets and clear escalation processes in case of insufficient progress.**

All pension funds have released a detailed policy to explain their processes to implement the OECD guidelines. This effort has been reinforced by their commitment under the Dutch Agreement on International Responsible Investment by Pension Funds. However, this study could not verify if and how pension funds implement these policies by defining clear goals, intermediary targets, timelines, and milestones achieved by the companies on the selected cases. In failing to define such variables in its engagement with investee companies, a pension fund runs the risk that the engagement becomes unguided, ineffective, not measurable and unbound in time.

In some cases, pension funds have identified selected companies as laggards or as making insufficient progress within the engagement trajectory. Yet, years after, they remain invested in those companies without providing explanations for such decisions. This is the case for ABP and Pensioenfond Detailhandel's investments in Glencore, for instance.

- **Pension funds are untransparent about individual engagement trajectories.**

In most cases, public information was too limited to assess which human rights abuses were addressed in the engagement trajectories. Most pension funds report a list of companies engaged including the broad topics of engagement (e.g., just referring to 'human rights' or 'labour conditions'), and only provide more details in their engagement reports on some examples that often did not cover the selected cases and companies central to this study. Because most pension funds, except for Pensioenfond Detailhandel and StIPP, did not provide supplementary internal documents about their engagement activities regarding the selected companies, it could not be ascertained whether those pension funds did or did not engage with the selected companies on the human rights abuses.

- **Pension funds generally fail to successfully address remediation processes and multistakeholder approaches.**

Overall, only few pension funds were able to share evidence that they tried to use their influence to enable access to remedy for victims of harm as part of their engagement on the selected cases of human rights abuses. For five pension funds (BPL Pensioen, PFZW, Pensioenfond Vervoer, PME and PMT), no evidence was found that they engaged with the selected companies on remediation. ABP, bpfBOUW, Pensioenfond Detailhandel and Stipp provided evidence that they have tried to use their influence on investee companies to encourage them to provide remediation for one or more of the selected cases. However, it is not clear if such attempts have actually successfully convinced the companies to accelerate the remediation process. Moreover, sometimes the evidence shared of such discussion is very outdated, such as for Pensioenfond Detailhandel with PetroChina for which the last milestones reported date from 2013.

4.2 Recommendations

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

4.2.1 Recommendations Fair Pension Guide to pension funds

Pension funds with investments in the extractive sector are given the following recommendations, to better manage and address the human rights' risks linked to these investments.

1. Give engagement a more central role in the pension fund's strategy

At present, engagement for all pension funds is now a rarely used add-on to the normal investment process. While pension funds invest in several thousand companies, they only engage with a few dozen. As a consequence, they are not engaging with many companies which are involved in well-documented human rights' violations. The potential impact which pension funds could have through engagement is hardly exploited.

Pension funds should therefore rethink their investment processes, including their risk management approach, and give engagement a much more central role. They should radically reduce the number of companies they invest in, and they should only invest in companies they are engaging with. This frees up resources for meaningful engagement and turns investors in long-term committed shareholders, which work together with companies to identify, manage and prevent human rights, and remediate human rights violations when they occur. In terms of risk management, this means moving from a statistical way of risk management, to a hands-on approach based on thoroughly knowing and influencing the strategies and activities of investee companies.

2. Adopt "SMART" (interim) goals to pressure companies to halt human rights abuses

It is crucial that pension funds set up "SMART" (interim) goals to be achieved by investees involved in human rights abuses and consider divestment where these goals are not achieved on time. An objective is SMART if it is **specific, measurable, achievable, relevant and time-bound**. Goals, timelines and intermediate steps are essential parameters which need to be monitored to ensure the credibility and success of an engagement process. The outcomes of this monitoring should determine if a pension fund should attempt to increase its leverage on the investee companies, if objectives need to be adjusted or renewed, or if exclusion or divestment needs to be considered.

3. Build internal capacity to ensure a critical review of the ESG screening, engagement, monitoring and reporting of their services providers

The research shows that the nine Dutch pension funds assessed outsource the implementation of their responsible investment policy (including controversy screening) and engagement activities to service providers such as their fiduciary managers and investment managers. As the outcome of controversy screening is usually the main variable that will trigger the decision to start engaging or not on a specific controversy, it is essential that pension funds show ability to be critical on the information reported by the organisations they mandate to implement their engagement and stewardship activities. This means that pension funds should integrate strong ESG criteria in the selection of their managers, include conditions regarding reporting in the contracts with the managers and develop clear procedures for incorporating due diligence considerations into their relationship with them. In addition, pension funds should be more proactive in raising questions when they notice strong stakeholders' concerns or wide media coverage on a project that was not flagged in a controversy screening by their manager. This will only be possible if pension funds allocate sufficient resources to build internal capacity on human rights topics and ensure monitoring of the engagement activities of their service providers.

4. Enhance the integration of stakeholder concerns in engagement processes, including the decision to consider engagement as successful

The findings in this report show that pension funds, in line with their own policies and the OECD Guidelines, should improve the integration of stakeholders' views in their decisions whether to engage with specific companies on human rights abuses or not. There are a variety of ways in which pension funds can ensure the voices of stakeholders, especially rightsholders, are heard in engagement processes, including organising structural stakeholder consultations with civil society organisations demonstrating expertise on the risks associated with the extractive industries, or setting up a grievance mechanism to enable stakeholders to raise their concerns. Pension funds should also consider stakeholders' opinions on the progress achieved by investee companies in dealing with the case, before considering closing an engagement responsibly.

Recently, the Principles for Responsible Investments (PRI) launched a new stewardship initiative that institutional investors are called to join with the overall goals to work together to take action on human rights and social issues. The PRI released an engagement focus company list composed of 35 companies active in the metals and mining sector and renewable sector. The list includes six companies covered by this study namely Freeport-McMoRan, Glencore, Lundin Mining, Newmont, Rio Tinto and Vale. The PRI mentions that in collaboration with lead investors and with input from the technical expert group, they will identify and consult stakeholders who have or may be affected by companies (such as local communities and workers).²⁴² Participating in such an initiative is a good opportunity for the Dutch pension funds to better integrate stakeholder concerns in the various steps of their human rights due diligence.

In conflict-affected contexts, pension funds need to conduct 'heightened' human rights due diligence, based on sound conflict and context analysis. Stakeholder engagement in these contexts needs to be especially robust and broad, in order to mitigate for the lack of information, the polarization and the high level of mistrust which usually exists among groups and communities. For further guidance, see the thematic framework on investing in conflict and post-conflict areas for institutional investors, published in the context of the Dutch Agreement on International Responsible Investment by Pension Funds.

5. Ensure the integration of remediation in a more structural manner into the engagement approach

Ensuring adequate remediation is critical for human rights engagements with extractive companies. The low scores achieved by pension funds on this topic show that there is significant room to better integrate remediation in their engagement approaches. The first step to achieve this could be to ensure remediation processes are more firmly established in the general engagement policy and strategy of pension funds, in line with the OECD Guidelines. Then, it is fundamental that pension funds ensure an adequate implementation of their engagement strategy by assessing the topic of remediation in a case-specific context.

Such assessment requires a prior qualification of the pension funds' own relationship to the human rights' impacts. This research shows that pension funds do not make this qualification or just assume that they are always "*directly linked to*" human rights abuses (in terms of the UNGPs) because in most cases they are minority shareholders, while this qualification is also dependent on their own engagement efforts. If an investor continues its investment relationship with a company, despite the lack of tangible results achieved during the engagement, it may run the risk to be in fact "*facilitating*" the lack of steps taken by the company to remedy the human rights abuses it is causing. Thereby, pension funds could become 'contributing' to the violation, which would open up other responsibilities under the UNGPs, such as remediation.

The pension funds' responsibility to use their leverage to influence investee companies to enable remediation is not limited to merely discussing the topic with investee companies. Requirements made to investee companies such as providing financial compensations to the victims and their relatives, or establishing channels to ensure stakeholders can raise complaints about the impacts of the company's activities, should be followed by systematic monitoring of the steps taken by companies.

In addition, the report shows that pension funds' participation in dialogue or mediation processes regarding specific cases of human rights abuses remains a very little shared practice which deserves further attention.

6. Enhance transparency significantly

Transparency increases accountability of both investors and investee companies towards their stakeholders and society. Therefore, it is important that the pension funds and the investee companies are transparent about the human rights controversies in which they are involved or linked to and their responses to them. The pension funds could improve transparency by systematically publishing the details of each engagement activity with the companies, including the (interim) goals formulated, and the (interim) goals achieved, the next steps for the engagement and the overall timeline of the engagement. It is also essential that the pension funds communicate more transparently on their decisions to conclude or continue the engagement with companies, as this research shows that it was not always possible to identify (from public sources) if an engagement was still ongoing or terminated.

Transparency about prioritisation of possible engagement cases is also important. If a pension fund decides to take no action on the basis of a prioritisation, it should indicate how it prioritised, what other controversies outweighed this one, and what it will do with the non-prioritised case.

Pension funds should also promote transparency by the investee companies by requiring the companies to publish a human rights policy and to report on how the policy is implemented, the state of affairs at the sites, actions taken by the company, and progress made on remediation, in case of reported human rights breaches. Encouraging investee companies to use the UN Guiding Principles Reporting Framework can significantly contribute to increasing transparency and accountability on how they respect human rights.

For further guidance on transparency and reporting, pension funds can refer to the instrumentarium (p.39-44) published by the parties in the Dutch Agreement on International

Responsible Investment by Pension Funds. In particular, the instrumentarium mentions that pension funds' public reporting should contain *"to the extent legally possible and without prejudice to the effectiveness of engagement, a list of the activities undertaken on behalf of the participatory pension fund, consisting of companies with which a form of engagement has been pursued on behalf of the Participating Pension Fund and to what end; the results of engagement pursued on behalf of the pension fund in specific companies; and decisions taken by the pension fund when engagement has been unsuccessful"*.

7. Set up a grievance mechanism

It is essential that stakeholders can access a channel to raise concerns, and the creation of a grievance mechanism, at individual or sector level for investors, would be a good practice to further understand the adverse impacts caused by companies in portfolio, and understand what is expected from affected stakeholders as remedial actions. The establishment of a grievance mechanism would enable pension funds to further develop their knowledge and expertise on the topic of access to remedy. This seems all the more relevant as one of the findings of the last progress report published in December 2021 by the Independent Monitoring Committee of the Dutch Agreement on International Responsible Investment by Pension Funds, is that the progress done by pension funds on recovery and remediation (step 6 of the OECD Due Diligence) lagged behind and was sometimes confused with risk mitigation.²⁴³ In addition, the report mentions that pension funds are not taking an active role in practice in enabling remediation, as they are unexperienced and confused about the responsibilities.

4.2.2 Recommendations of the Fair Pension Guide to the Dutch government

Governments need to show strong leadership to contribute to a better integration of human rights issues in the due diligence processes of investors. The following recommendations are made in this regard by the Fair Pension Guide to the Dutch government:

1. **Adopt national human rights due diligence legislation for companies, including financial institutions**, that will set binding requirements for companies to respect human rights in compliance with the UNGPs and OECD Guidelines.

A new law should cover all companies and its subsidiaries in all sectors, requiring due diligence over the entire value chain including its business relationships. It should require the implementation of gender-responsive due diligence, the involvement of stakeholder consultation, civil liability, and ensure access to justice and remedy for the victims of adverse impact of business operations. The law should contain public reporting requirements and enforcement mechanisms.

2. **Advocate within the European Commission for a proper recognition and integration of the human rights responsibility of the financial sector in the EU Directive on Corporate Due Diligence, in line with the OECD sectoral Guidelines for the financial sector.**

In February 2022, the European Commission released the much-anticipated proposal for the Directive on Corporate Sustainability Due Diligence (CSDD) following several delays. The proposal was expected to represent a landmark step forward in creating corporate accountability for adverse human rights and environmental impacts along supply chains and provide new avenues for justice. However, many civil society organisations, and non-profit organisations with strong expertise on business and human rights have responded critically to the proposed text of the directive as it presents a certain number of weaknesses.

One of these weaknesses lies specifically in the coverage of the financial sector, which under the current proposal is only required to undertake a due diligence prior to investment, rather than a continuous and ongoing responsibility as defined in the OECD Guidelines²⁴⁴. Moreover, the definition of 'value chain' needs to be clarified with regards to the financial sector; it should include the full range of capital market activities, including secondary market transactions. In

addition, the financial sector has not been included as a high impact sector, despite the Commission's claim that high impact sectors were selected based on OECD sectoral guidance. This decision from the European Commission can legitimately be questioned considering the efforts made by the OECD over the past years to support the financial sector in the implementation of its guidelines for multinational enterprises by publishing specific due diligence guidance for investors (in 2017) and banks (2019).

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