Summary case study extractives and human rights

A case study for the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide

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Summary

In the case studies executed for the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide, Profundo analyses a number of times per year how the selected banks and/or insurers let sustainability standards play a role in their decision making process on investments and financial services. This case study on “Extractive companies and human rights” is the first case study that was contracted jointly by the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide.

Background

Since the global scope and influence of companies have increased strongly over the last decades, their responsibilities for the protection of human rights have also increased considerably. Company activities may have both a positive and negative impact on human rights. The ways in which a company treats its employees, how it structures and governs production processes, which commodities and services it is buying, how it is operating in the local community, how it deals with indigenous people, which use is made of security companies and the kind of essential public services they offer, can all have both positive and negative impacts on human rights. Also, how companies cooperate with governments and controlling authorities may have both positive and negative impacts on the compliance with human rights in the region they operate in.

Financial institutions, as participants in society, have the responsibility to respect human rights in all their activities. This responsibility encompasses their own activities as well as the activities of companies they invest in. By lending funds to companies, by underwriting share and bond issuances, and by buying shares and bonds, banks and insurers facilitate the activities of companies in different ways. By doing so, they can enhance the financial position of companies that respect human rights properly or they can support companies that are involved in violating human rights.

The responsibility of financial institutions is, however, not limited to the selection of companies they decide to invest in or provide financial services to. As shareholders and creditors, financial institutions can also exert influence on the companies they have already invested in. As such, they are in the position to bring human rights to the attention of companies and stimulate them to improve their behaviour with regard to human rights. In this way financial institutions can contribute to preventing and ending human rights violations.

To describe more clearly what is expected from companies in the field of human rights, professor John Ruggie was appointed as the “Special Representative of the Secretary-General of the United Nations on the issue of Human Rights and Transnational Corporations” in July 2005. Ruggie’s final report was published in March 2011. It contains the *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*.

Although these *Guiding Principles on Business and Human Rights* do not specifically describe the role of financial institutions, they do indicate that “all business enterprises have the same responsibility to respect human rights. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate.” As financial institutions are business enterprises, the *Guiding Principles* apply to financial institutions as well. However, what exactly the *Guiding Principles* do expect from a financial institution depends on both the seriousness of the violation of human rights and on the way in which the financial institution is involved in this violation.

Research framework

The research objective of this case study is to assess to what extent 16 financial institutions, selected for the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide, comply to the "responsibility to respect human rights", which is laid down in the *Guiding Principles*, with regard to their investments.

To this end we assessed, using publicly available sources, whether these 16 financial institutions maintain financial relations with ten selected extractive companies. These ten companies have been selected since there are either indications of their involvement or their association with severe violations of human rights over the last four years (1 July 2009 – 1 July 2013), or of a duty to restore the damages due to prior violations of human rights in that same period. The following ten companies were selected:

1.	Barrick Gold	Canada
2.	Freeport-McMoran Copper & Gold	United States of America
3.	Glencore Xstrata	Switzerland
4.	Goldcorp	Canada
5.	Oil and Natural Gas Corporation (ONGC)	India
6.	PetroChina / CNPC	China
7.	Posco	South-Korea
8.	Royal Dutch Shell	The Netherlands
9.	Trafigura	The Netherlands
10.	Vedanta Resources	United Kingdom

One way in which financial institutions may use their influence on the behaviour of companies with regard to human rights, is by *not* investing in companies structurally violating human rights. We have checked whether financial institutions that did not have financial relations with the selected extractive companies, had decided to not get involved deliberately, as a result of their sustainable investment policies.

Regarding the financial institutions who did have financial relations with the ten extractive companies, we have researched whether, and if so, how, they have made use of their influence on the companies' behaviour with regard to human rights. Specifically, we analysed to what extent they made use of the following instruments: screening, voting, engagement and exclusion. These instruments are defined as followed:

- Screening is analysing in what way (potential) investments may have negative effects on human rights. Based on this analysis a decision can be taken whether or not to invest and - when a decision is taken to invest - if additional measures are necessary to try to tackle or prevent negative effects on human rights.
- Engagement is a critical dialogue between a company's management and board of directors on one side and investors in the company on the other. By actively engaging in a discussion with the company, financial institutions may obtain information and exert influence on the company's behaviour.
- Voting is giving one's vote to each of the issues which are discussed at the Annual Shareholders' Meeting of a company.
- Exclusion means restricting or completely excluding investments in a certain company, after it has become clear that this particular company, or some of its activities, do not comply to the financial institution's human rights policy.

To evaluate these policies, we have done interviews with financial institutions that maintain financial relations with the selected companies. In these interviews the instruments financial institutions use to guarantee that human rights are respected by extractive companies were discussed. As a principle, financial institutions were asked to support their answers with screening reports, accounts of discussions, progress reports and/or other specific documents of the company.

We assessed the financial institutions' activities by comparing the research results with a framework of 22 predetermined elements. Every single financial institution got one, two or three scores, depending on the kind of financial relations found between the financial institution and the companies: the first is a score on bank investments and services, the second one concerns insurance investments and the third focusses on asset management activities.

Research group

The 16 financial institutions that were researched in this case study were selected for the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide. The following 10 banking groups, including the brand names under which they operate in the Netherlands, have been selected for the Fair Bank Guide:

Banking groups selected for the Fair Bank Guide

Banking group	Brand names
ABN Amro	ABN Amro Bank, MoneYou
Aegon	Aegon Bank, Knab
ASN Bank	ASN Bank
Delta Lloyd	Delta Lloyd Bank
ING	ING Bank, Nationale-Nederlanden Bank, WestlandUtrecht Bank
NIBC	NIBC Bank
Rabobank	Rabobank, Friesland Bank
SNS Reaal	SNS Bank, RegioBank
Triodos	Triodos Bank
Van Lanschot	Van Lanschot

For the Dutch Fair Insurance Guide the following 10 insurance groups, including the brand names under which they operate in the Netherlands, were selected:

Insurance groups selected for the Dutch Fair Insurance Guide

Insurance group	Brand names
Achmea	Achmea, Agis, Avéro, Centraal Beheer, FBTO, Inshared, Interpolis, OZF, Prolife, Syntrus, Woonfonds, Zilveren Kruis
Aegon	Aegon, Kroodle, Optas
Allianz	Allianz, Allsecur, London Verzekeringen, Royal Nederland, Zwolsche Algemeene
APG	Loyalis
ASR Nederland	Ardanta, a.s.r., Budgio, Crisper, De Amersfoortse, Ditzo, Europeesche Verzekeringen

Insurance group	Brand names
Delta Lloyd	ABN Amro Verzekeringen, Be Frank, Delta Lloyd, Erasmus Leven, Nationaal Spaarfonds, Ohra
Generali	Generali
ING	AZL, ING, Movir, Nationale-Nederlanden
Legal & General	Legal & General
SNS Reaal	Proteq, Reaal, Zelf, Zwitserleven

Four of the selected banking and insurance groups are assessed by both the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide. These banking and insurance groups are Aegon, Delta Lloyd, ING and SNS Reaal. Thus, in total 16 financial institutions were researched in this study.

Research results

The 16 financial institutions researched, together have invested billions of euros in the ten selected extractive companies. Within this group of 16 financial institutions the biggest investments were made by the following banking and insurance groups:

- ING Bank and Rabobank were the biggest providers of loans to the selected extractive companies over the last four years. They invested respectively € 2.8 billion and € 1.4 billion in the ten companies.
- Legal & General is the biggest shareholder, owning shares with a total value of € 5.8 billion in the ten companies combined. It is followed by Allianz with shareholdings with a total value of € 1.4 billion.
- The most important holders of bonds issued by the ten companies are Allianz (€ 717 million) and ING Group (€ 444 million).

Among the 16 financial institutions, only ASN Bank, NIBC and Triodos do not maintain any financial relation with the ten selected companies. NIBC is not active in the extractive sector for strategic reasons. Therefore, it has not been included in this case study. The asset managers of ASN and Triodos have pointed out that the fact that they do not invest in the ten selected companies is a direct consequence of their sustainable investment policy. This has been researched in this case study, by testing the asset management activities of the two banks with regard to some of the assessment elements.

Four out of the 16 financial institutions did not cooperate with this case study. These are: Allianz, Delta Lloyd, Generali and Legal & General.

As NIBC was not included in the case study and 4 financial institutions did not cooperate, we have done interviews with 11 financial institutions. We have asked them how they exert influence in order to make a positive contribution to the behaviour of companies with regard to human rights. We have also asked whether they make use of the following instruments: screening, voting, engagement and exclusion.
We discussed asset management activities with 9 of the financial institutions, bank services and investments with 3 financial institutions and insurance investments with 6 financiaal institutions.

From these interviews we can conclude that all of the 11 financial institutions that were researched, except for the asset management division of ABN Amro, have been able to show that they structurally screen their (potential) investments, based on human rights criteria. They usually do this using company analyses which they buy from external research providers.

However, a negative conclusion with regard to a company's behaviour concerning human rights does not always lead to a negative investment decision. Less than 50% of the banks, insurers and asset managers exclude companies as a result of negative outcome of the screening process.

A negative outcome of the screening process does, however, does stimulate most of the financial institutions that we have researched to use their influence on the companies they invest in by entering into engagement. A large majority of the researched financial institutions, about 90%, have shown that they enter into discussions with some of the companies. These discussions deal with the way these companies take responsibility with regard to respecting human rights.

The financial institutions which own shares of the selected companies, actively make use of the right to vote on shareholder resolutions. More than 50% of the financial institutions lay down specific measures for the way they take responsibility regarding human rights.

However, this case study also shows that the engagement processes are often rather free of obligations. Less than 25% of the financial institutions end the financial relation within a reasonable term when it turns out to be impossible to come to agreements with the extractive company or when the company does not comply with the agreements made.

73% of the researched banks, insurers and asset managers focus, when they use the instruments of screening or engagement, mainly on stimulating extractive companies to implement policies and take procedural measures. The agreements they make usually concern the framing of human rights policies or procedural measures.
Only one third of the financial institutions discuss with the companies restoring damages and compensation for victims when human rights violations have taken place. And only 10% of the financial institutions actually come to specific agreements on these topics.

We get a similar picture with regard to how seriously financial institutions look at the results of the policies which companies have implemented, or measures that have been taken in order to respect human rights. One third of the researched financial institutions discusses the desired effect of policy and procedural measures in the engagement process. SNS Reaal is the only financial institution that has been able to show that they set clear goals with regard to the desired impact that companies' activities have on human rights.

Bank investments

Many banking groups are not able, or do not want to, show certain documents on companies due to the client confidentiality which needs to be respected between them and the companies they invest in. For this reason, banks were allowed to show de-identified documents. Banks have been granted scores for specific elements if they were able to show at least two de-identified documents which indicated that the bank meets the required element. As this methodology differs from the methodology used for assessing asset management and insurance investments, the scores for bank investments cannot be properly compared with those for asset management and insurance investments.

On the basis of the documentation provided it was not possible to determine whether ABN Amro Bank, ING Bank and Rabobank applied screening and engagement to the ten selected companies. Nevertheless each of these three banks have made clear that they pay attention to the impact of their clients' activities on human rights in their screening and engagement processes. Furthermore, ABN Amro Bank and ING Bank both provided insight into the kind of the engagement trajectories they set up with their business clients active in the extractive industries. Moreover, ING Bank has also shown that agreements on human rights have sometimes been included in credit agreements. As a result ABN Amro Bank scores 6 points and ING Bank scores 7 points regarding their bank investments.

Rabobank did not provide de-identified reports. Consequently it was impossible to assess most elements. As a result, Rabobank scores 3 points, which is well below average.

Asset management

The nine asset managers we have interviewed take a leading position in this research, by actively taking responsibility for human rights. They score 6.6 on average.

Yet there are great differences amongst the various asset managers. While the asset managers of ABN Amro and ING score very low, 1 point and 3 points respectively, the other asset managers manage to gain sufficient or even outstanding scores. The asset managers of APG and Aegon both score 6, Achmea asset management scores 7 points, the asset manager of Van Lanschot scores 8 and the asset managers of ASN, SNS Reaal and Triodos manage to score 10 points.

By engaging with nearly all of the selected companies they invest in, Aegon, Achmea and APG show that they take their responsibility with regard to human rights seriously. The asset manager at Van Lanschot invests in only one of the selected companies. In this particular case, Van Lanschot engages with the company and tries to come to clear agreements with regard to human rights. Van Lanschot also engages with the companies in which they invest through externally managed funds. The asset manager of SNS Reaal sets clear goals prior to the engagement process, and tries to reach the defined goals by means of clear agreements with companies. To this end, SNS Asset Management screens (potential) investments thoroughly by means of a comprehensive policy document focused on the mining, oil and gas sector.

The asset managers of ASN and Triodos apply a methodology based on inclusion of suitable investments. This means that only companies that live up to their criteria for sustainable investments are included in their investment universe. The list of these companies is open to the public. ASN and Triodos only invest in companies that are included in this universe. None of the ten selected companies complies with the ASN and Triodos sustainability and human rights criteria. Therefore none of the ten selected companies was included in the ASN and Triodos investment universes.

Insurance investments

The six insurance companies that we interviewed only just score sufficiently. They scored 5.7 points on average. However, as with asset management, there are great differences amongst the insurance companies.
SNS Reaal received the highest score due to its consistent use of screening, engagement and exclusion at a high level. The insurance company of SNS Reaal scores 10 points. The insurance companies of ING and APG lag far behind. Both insurance groups score no more than 3 points for their insurance investments. At Loyalis, the insurance company of APG, this is due to the fact that no engagement is applied for its externally managed stocks. ING Insurance Management only enters into engagement discussions with a minority of the

companies with whom it maintains business relations.

The insurance companies of Achmea (7), ASR (7) and Aegon (7) take their responsibilities concerning human rights seriously, as is indicated by their scores. Regarding its internally managed funds, ASR does not invest in the selected companies at all, as these companies do not meet the requirements of the ASR sustainability and human rights policy. Nevertheless, ASR fails to score maximum points due to investments in the selected companies by an externally managed ASR fund that is not offered actively to clients anymore.

No cooperation with the case study

Four financial institutions have not cooperated with this case study. These are Allianz, Delta Lloyd, Generali and Legal & General. Delta Lloyd stated that it did not want to cooperate. Legal & General Nederland pointed out that it was not able to cooperate. The general information it has provided was insufficient to make a proper assessment. Allianz and Generali have not responded at all to repeated requests for cooperation.

For this reason these four insurance companies score 1 point in the categories where investments were found, i.e. asset management and insurance investments. This is in accordance with the previously agreed assessment methodology.

For these insurance companies we have identified investments in the selected extractive companies. Allianz and Legal & General even turned out to be the largest shareholders in the ten selected companies among the studied financial institutions.

Overview of scores

The following table provides an overview of the scores of the 10 banking groups.

Overview of scores per banking group

Banking group	Bank investments	Asset management
ABN Amro	6	1
Aegon		6
ASN		10
Delta Lloyd		1
ING	7	3
NIBC		
Rabobank	3	
SNS Reaal		10
Triodos		10
Van Lanschot		8

The following table provides an overview of the scores of the 10 insurance groups.

Overview scores per insurance group

Insurance group	Insurance group	Asset management
Achmea	7	7
Aegon	7	6
Allianz	1	1
APG (Loyalis)	3	6
ASR	7	
Delta Lloyd	1	1
Generali	1	1
ING	3	3
Legal & General	1	1
SNS Reaal	10	10

Commitments

A number of financial institutions have made commitments to improve the implementation of their human rights policies. ABN Amro (bank investments and asset management), ASR, ING Bank (bank investments), Achmea (insurance investments and asset management) and SNS Reaal (insurance investments and asset management) have promised in writing that as of next year, they will make use of more instruments to avoid investing in extractive companies that do not take sufficient responsibility for respecting human rights.

Recommendations

Based on the results of the 'Extractive Companies and Human Rights' case study, the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide make the following recommendations to the banking and insurance groups that were examined in this research project:

1. Too often, the human rights policies of financial institutions do not apply to all the institution's subsidiaries. Neither do these policies apply to all types of financing. Human rights policies are only convincing when they are applied to all bank services, insurance investments and all sorts of asset management provided by the financial institution.
2. When screening companies, banks, insurance companies and asset managers should pay more attention to the impact of a company's activities on the human rights of affected communities. They should especially focus on the right to information, the right to an adequate standard of living, the right to health and the right to water. Improvements could be made by paying more attention to grievance mechanisms, rehabilitation and compensation.
3. Financial institutions select companies to engage with on the basis of several elements. These elements are: risks, reputation, substance, regional or thematic focus, and amount of assets. This is the accepted practice. However, according to the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide, in some situations the impact of the company's activities on human rights is so big that this should get priority while selecting candidates to engage with.

4. Banks, insurance companies and asset managers often only proceed to engage with companies after they have noticed an infringement of their human rights policy or when incidents have taken place. Financial institutions could enhance their influence by engaging with companies when they do not (yet) violate human rights. Such a proactive approach could lead to lead to prevention of violations of human rights.
5. In their engagements with companies banks, insurance companies and asset managers mainly focus on encouraging mining, oil and gas companies and other extractive companies to implement policies and procedural measures to address human rights issues. However, this approach neglects the fact that the result is more important than the process, i.e. companies should have a more positive impact on human rights. This is an important principle that should take a central role in the discussions that financial institutions have with these companies.
6. Banks and insurance companies, and to a lesser extent also asset managers, should set clearer goals as well as create interim goals when engaging with companies. In order to be able to monitor the results, they should use, as often as possible, Key Performance Indicators (KPI). While discussing with companies they should try to come to specific agreements, which focus on actually reaching these goals, with the companies. Using the first results and the fact whether the set goals have been reached (or not), they can evaluate and decide whether they either should end the engagement process or that they could adjust their strategies through means of, for example, cooperation with other financial institutions or entering the discussion at another level.
7. Insurance companies and asset managers do not often apply screening, engagement and exclusion procedures to passive or externally managed funds. The responsibility of a financial institution, however, also applies to these kinds of funds. Although the possibilities for applying screening, engagement and exclusion procedures are different from the possibilities that exist in active or internally managed funds, possibilities do exist. The Dutch Fair Bank Guide and the Dutch Fair Insurance Guide expect that insurance companies and asset managers that choose to invest in passive or externally managed funds should actively make use of these instruments if they wish to continue investing in these kind of funds.
8. Most of the financial institutions choose engagement as their main instrument to exert influence on companies. Engagement certainly can be a strong instrument, but there are situations in which it is not effective or does not make sense. For example when a company is involved in certain activities that will undoubtedly lead to severe violations, or if a company is active in an area that is so vulnerable that it would be unrealistic to believe that violations would not occur. Consequently, in case that an initial screening already points out that the violations of human rights committed by a company are severe and structural, and when it is highly unlikely that corrective measures would be effective, this should be a reason for a financial institution not to invest in, or disinvest from, this particular company. Many financial institutions presently do not use the instrument of exclusion on any meaningful scale.
9. Also when an engagement process has ended without achieving the predetermined goals of engagement, exclusion is hardly ever applied. There are only a few financial institutions that take decisive action to the result of an engagement process. However, without a clear link to (future) investment decisions, an engagement process fails to create needed pressure and can most of the times be regarded as ineffective.
10. Financial institutions should share information. Although the human rights policies of many financial institutions are quite similar, there are quite a few differences with regard to the specific companies whom they have engaged with, and with regard to the ones which they have excluded. If financial institutions would properly coordinate and combine their research and engagement activities, they would not only make better use of their limited capacities, but they would also be able to set up more fruitful engagement processes.

11. Dutch banking groups could and should be a lot more transparent with regard to their investments, engagement processes and exclusions. Without disrespecting the duty of care they have towards clients, they could and should be more transparent in the information they provide to society. More transparency and accountability are required, both regarding their bank services and their asset management activities. They could take the following steps in this regard:
    - Publish an annual overview of the number of companies with whom the bank, insurance company or asset manager has exchanged information regarding social and environmental issues (GRI indicator FS10).
    - Publish records of the engagement processes with individual companies or publish a detailed, and externally monitored overview of the goals and success rates of the engagement processes.
    - Publish an overview of the voting behaviour on shareholder resolutions for the shares that the bank or asset manager invests in.
    - Ensure that the annual sustainability report is audited by an independent auditor. This auditor should check whether GRI standards are taken into account and whether there is information in the report regarding each of the GRI criteria. These audits should be more than just a conclusion that there is no reason to believe that the given information would be contrary to the GRI standards. They should also assess whether sufficient information has been provided with regard to decisive criteria (like FS6 and FS10)
12. The Dutch Fair Insurance Guide calls on the four insurance groups who did not wish to cooperate with this research project - Allianz, Delta Lloyd, Generali and Legal & General - to take their clients and other stakeholders, such as many Dutch civilians, seriously. Clients and other stakeholders deserve to know what their money is used for and whether Allianz, Delta Lloyd, Generali and Legal & General pay sufficient attention to human rights with regard to their investments.