Responsible Investment, Human Rights and the Extractive Industry

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A research paper by
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Executive summary

The annual benchmark study of the VBDO revealed that almost all pension funds in the Netherlands have developed a responsible investment policy. However, there is no 'one-size-fits-all' approach to how investors are actually implementing ESG issues into their investment decisions. This is due to a divergence in views, goals, and the availability and use of resources. The objective of this report was to gain insight into the current implementation process of the responsible investment policy by pension funds in the Netherlands. Thus, where the focus of the VBDO annual benchmark studies is on the responsible investment process, this report deals with how responsible investment is put into practice, in particular when it comes to human rights violations by companies in the extractive industry. In doing so, the VBDO wants to provide pension funds with some guidance in dealing with these issues.

Background

A responsible investment strategy contains numerous instruments. In this report, the focus lies on four of the most common elements: a responsible investment policy, screening, exclusion and engagement.

Responsible investment can be driven by four interrelated motivations: to reduce potential reputational, regulatory and financial risks, the belief that investors should play a critical role in the transition towards a more sustainable economy, the belief that ESG issues have a potential material impact on the valuation of investments over the longer term, and marketing purposes.

The responsible investment policy defines the screening criteria on which the investments are analysed. Different investor views contribute to differences in investor policies. While many investors adhere to Principles for Responsible Investment (PRI) and UN Global Compact, or opt for norm-based exclusion in order to improve their risk management, others have more elaborated policies that not only describe exclusion criteria, but also the sustainable objectives they want to help achieve. Furthermore, differences exist between investors that mainly focus on corporate governance aspects and investors that focus on environmental and social impact.

Following screening, institutional investors are increasingly undertaking activities to try to improve the social and environmental record of their investments by means of engagement. Differences in use of resources and assigned responsibilities have an important influence of screening and engagement methods and results.

Earlier research has shown limited convergence among investor exclusion lists. This can partly be explained by differences in the scope and reach of investor policies: while investor policies on paper can look identical, in practice there often exist a lot of exceptions to the rule with regards to the criteria defined, and the financial services and companies the policy applies to. Also, while some investors exclude only the specific company involved in a breach of their policies, other investors will also exclude its parent company and all other subsidiaries of this parent company.

Methodology

Human rights figure prominently in the UN Global Compact principles and are therefore included in almost every responsible investment policy. Significant differences exist among various industry sectors in terms of the types and magnitude of human rights challenges. This case study focuses on human rights in the extractives industries, as this particular sector has a significant social and environmental footprint.

In order to gain insight into the practice of responsible investment in the extractive industry, the VBDO put together an online survey for pension funds. The survey included the various elements of a responsible investment strategy: policy, screening, engagement, and exclusion. Pension funds were also asked to indicate which controversial companies were part of an engagement program, or were excluded. A total of 25 pension funds responded, which corresponds to a response rate of 50%.

Results & conclusions

The survey revealed that almost all pension funds indicated that human rights are explicitly covered as part of the responsible investment policy. In most cases, pension funds refer to standards such as the UN Global Compact, the Universal Declaration of Human Rights or the ILO conventions. Industry-specific initiatives such as the Extractive Industry Transparency Initiative (EITI) are less often referred to. For most pension funds, the board is very much involved in the management of the policy, and to a lesser extent the ESG analyst(s) of the asset managers.

External ESG-providers are shown to have great influence on the implementation of the responsible investment strategy of Dutch pension funds. These providers often select the screened companies, and provide relevant information on which the pension funds base their engagement activities and exclusion decisions. However, pension funds also take NGO reports and media reports into account, showing the continuing importance of these information sources.

More than half of the surveyed pension funds currently engage with more than 10 extractive companies on the topic of human rights. The most important reason for pension funds to decide to enter into an engagement program is to reduce reputational risk. During the engagement process, most pension funds put the respective company on an internal watch list, so that it is clear for portfolio managers that the company is being engaged with.

Pension funds have indicated that the most engaged companies within the extractive industry on the topic of human rights are Freeport-McMoRan, Rio Tinto, Total, Chevron and Vedanta Resources.

The most important reason for pension funds to exclude a company is to reduce negative ESG impacts. However, companies in the extractive industry are not often excluded (yet), as many engagement programs are still on-going. In fact, most pension funds do not have any extractive companies on the exclusion list.

The wide variety of policy implementation strategies is underlined when looking at which companies are actually excluded. Some pension funds that indicate that they exclude both mother companies and all subsidiaries, yet exclude Vedanta Resources from their investment universe, but not Madras Aluminium Company, which is owned by Vedanta Resources.

Pension funds have indicated that the most excluded companies within the extractive industry on the topic of human rights are Vedanta Resources, PetroChina Company, Sterlite Industries, Barrick Gold and Chevron. This corresponds perfectly to the findings of the Novethic report.

Also interesting to note is that financial considerations play much more of a role in the engagement process than in the exclusion process.

In conclusion, it is clear that the practice of engagement and exclusion among pension funds in the Netherlands takes on many forms. The VBDO urges pension funds to adopt additional relevant norms and initiatives for sectors with significant ESG issues such as the extractive industry. It is important that institutional investors continue to share knowledge and best practices.

Introduction

In December of 2012, the Dutch Association of Investors for Sustainable Development (VBDO) published its 6th annual edition of its *Benchmark Responsible Investment by Pension Funds in The Netherlands*. The study presents the development of the Dutch pension funds in formulating, implementing, and reporting on their responsible investment policy. One of the main conclusions of the study is that while there appears to be an increase of implementation over the last couple of years, implementation still lags behind the development of and the reporting on the responsible investment policy.

The aim of this study is to gain insight into the implementation process of the responsible investment policy by pension funds in the Netherlands. By gaining insight, the VBDO wants to provide pension funds with guidance in how to implement their policies in a practical manner. In order to operationalise this research, the case study considers the approach of pension funds investing in companies in the extractive industry, which is a controversial industry because of its frequent human rights controversies.

Chapter 1 starts with a brief introduction to responsible investment and identifies key responsible investment building blocks of a responsible investment strategy, as well as investor motivations for investing responsibly. Chapter 2 focuses on differences in implementation of responsible investment strategies. While part of those differences is the result of different investment views, other differences are explained by the way implementation is organised. Chapter 3 examines the implementation of investors' responsible investment strategies in terms of human rights. This topic is chosen as human rights figure prominently most responsible investment policies, because reference is made to the UN Global Compact principles. The focus is narrowed down to human rights in the extractives industries, as this industry has a large social (and environmental) footprint.[1]

The fourth chapter covers the methodology of the study. Here, the research objective of the study is addressed, as well as a short description of the researched pension funds and the research period. The survey covers several basic elements of a responsible investment strategy: the development of a responsible investment policy, screening of human rights violations, engagement with companies, and the exclusion of companies.

In chapter 5 the results of the survey are presented and analysed. The chapter provides insight into the implementation process of responsible investment policies in human rights and the extractive industry by pension funds in the Netherlands. It covers specific issues such as the standards that are most referred to in the human rights policy, who is responsible for the screening activities, and what the most important reasons are for engagement and exclusion of pension funds. The sixth and final chapter presents concluding remarks and a comparison with the broader picture of investor strategies.

1 What is a responsible investment strategy?

This chapter covers an introduction to responsible investment strategies of institutional investors. First, a definition is given of this particular strategy, followed by the definition of the different elements. The second section covers the different investor views and motivations for responsible investment.

1.1 Responsible investment strategy

Responsible investment is an approach to investment that explicitly acknowledges that the generation of long-term sustainable returns is dependent on stable, well-functioning, well-governed socially and environmentally responsible companies and economic systems.[2]

Many institutional investors nowadays recognise the importance of Environmental Social Governance (ESG) aspects for their investment strategy and the potential contribution of responsible investment to society and business itself. Currently, 170 banks, insurance companies and other financial institutions from all over the world have signed one of the two declarations of the UNEP Finance Initiative, the UNEP Financial Institutions Initiative (FII) and the UNEP Insurance Industry Initiative (III), in which they commit to integrate social and environmental criteria in all of their business activities. Over the last few years, 273 asset owners, 727 investment managers, and 181 professional service partners signed the Principles for Responsible Investment (PRI).[3] Combined, these parties manage an invested capital of more than US$ 30,000 billion.[4]

Nevertheless, it is also true that responsible investment remains a relatively new activity for many investment organisations.[5] This may be for a number of reasons, including force of habit, reluctance to address uncertainty and scepticism about responsible investment, as well as misunderstandings about the relationship between fiduciary duty and responsible investing.[6]

A responsible investment strategy potentially contains numerous elements. Common elements are the formulation of a responsible investment policy, screening, exclusion and engagement:

- Responsible investment policy

A responsible investment policy starts with a clear statement (e.g. a policy statement or a statement of investment principles) on the importance of ESG issues to the organisation, and on the goals that it has set for itself in this regard. This is then further elaborated into specific non-financial ESG criteria and can include a detailed description of how instruments such as screening, exclusion, voting and engagement are applied.

- Screening

Screening involves the evaluation of a company, country or project against an investor's responsible investment policy that generally includes certain minimum standards of business conduct, which in most cases involve or are based on (international) norms. Screening can result in an investor decision to engage with it in order to effect positive change or to exclude a company from investment.

- Exclusion

Exclusion is the act of removing a company, country or project from a portfolio based on ESG, ethical, non-financial objections to certain activities of this (potential) investment entity.[7]

- Engagement

While excluding companies is a possible way of keeping the portfolio in line with the responsible investment policy, institutional investors also undertake activities to improve the social and environmental record and behaviour of an investment through direct interactions with companies. This is known as engagement. The idea behind engagement activities is to solve problems in partnership with the company and to meet challenges for the future.

Engagement activities can be conducted alone or in combination with other, like-minded investors. There are various (international) initiatives such as Eumedion and the PRI that provide an opportunity for pension funds to work together on engagement. While working together increases the weight and seriousness of engagement activities, it also reduces the amount of freedom an individual investor has on the engagement process.

Of course there are a number of other options like voting, impact investment, ESG integration and stakeholder management. For this research, the focus was on the instruments listed above, which means that others will not be dealt with in this report.

1.2 Different investor views and motivations

Investor views and motivations to adopt responsible investment strategies can be divided in four main, interrelated categories:

- **To improve or protect financial results**

This view is driven by the growing recognition in the financial community that effective research, analysis and evaluation of ESG issues is a fundamental part of assessing the value and performance of an investment, and that ESG issues have the potential to materially impact the valuation of investments over the longer term. Indeed, for some investors, this has been the key catalyst for adopting a responsible investment strategy. Return on investment can, among other things, be increased by performance improvements and operational efficiencies. Furthermore, companies that are pro-active in respecting human rights do not incur costs resulting from disputes with dissatisfied stakeholders (employees and communities).[8]

However, next to a growing group of investors convinced of the materiality of responsible investment, the majority of investment analysts and fund managers still believe that it is extremely difficult to add investment value through a focus on ESG issues.[9] There are various reasons, including the potential research costs (time and money) associated with the analysis of ESG issues; the belief that if these issues are material they will already be reflected in share or asset prices; the wide scope of ESG issues (i.e. identifying which issues may be financially significant); the long term nature of these issues (i.e. many of the expected financial impacts will occur some years into the future and so outside current investment time horizons) and the lack of understanding about how certain issues such as human rights can be integrated into financial models.[10]

- **To mitigate risk**

This is often the main, or at least an important, reason: pro-actively identifying, preventing and mitigating impacts reduces the risk of getting involved in disputes and/or being accused of involvement with moral and/or ESG violations.[11] Implementing a responsible investment strategy in this view works to reduce potential reputational, regulatory and financial risks.

- To create a positive impact or achieve a sustainable goal

Another driver for responsible investment is the increasing acknowledgment by investors that that they are global citizens and therefore share an ethical or moral responsibility for the external (social and environmental) consequences of their investment decisions. Sustainable investors can be motivated by the belief that investors should play a critical role in the transition towards a more sustainable economy. Therefore social and ecological criteria must play a role in the creation and use of financial products.

- For marketing purposes

The expectations of consumers and other stakeholders are an important driver of the responsible investment agenda. As such, responsible investment can be used as an important marketing instrument to attract socially conscious consumers, entrepreneurs and leaders who expect business to play a role in generating social good.

2 Implementing a responsible investment strategy

The past years have shown major developments in implementing responsible investment strategies.[12] More instruments have been developed and have been applied to a broader range of asset classes. Because the instruments are complementary to each and investors tend to find different solutions for each asset class, the implementation practices between asset classes can vary a lot.[13] While part of those differences is the result of different investment views, others are explained by the way implementation is organised within the organisation. Chapter 2 therefore begins by focusing on how the implementation of a responsible investment policy is organised, how knowledge is gathered, and who is responsible for what. In the subsequent sections, the differences in implementation of responsible investment strategies are addressed.

2.1 Organising implementation

When looking at differences in implementation of a responsible investment strategy, various types of knowledge and resources are needed as shown in section 2.1.1. Due to differences in investor motivation and organisational capacity, there is a lot of divergence in the way financial institutions organise the implementation of their responsible investment strategy. An overview is provided in section 2.1.2.

2.1.1 Securing knowledge and resources

To be able to implement a responsible investment strategy, various types of data sources and resources are needed.

First of all, knowledge about responsible investment and possible methods of implementing a responsible investment strategy is needed. This can be found in (inter)national regulations and standards. Furthermore, to be able to screen (potential) investments, non-financial ESG information about the relevant company and sector ESG issues are needed. This kind of knowledge can be taken from various sources:

- CSR reports of companies

Company reporting on ESG issues – both in terms of scope and quality – has improved significantly over the past decade.[14] Although the majority of ESG-related information is only reported once a year and is generally backward-looking, some leading companies provide a robust account of their performance on ESG issues. Robust means that users of the data can understand, among other things, the company's position on the issues in question, the company's history (or historic trend) and expected future performance on these issues and the relationship between these issues and short and long term value creation and risk management.[15]

- Data providers

Third party (financial) data providers such as Thomson Reuters, Bloomberg, Capital Q and Factiva are valuable, because they are able to provide relevant insights into (potential) investments. Data providers increasingly provide information on sustainability aspects of potential investments, but their core product still consists of relevant financial data, news and market and sector insights.

- ESG research providers

These providers, such as MSCI, Sustainalytics and Vigeo, compile and analyse sustainability information on (publicly-traded) companies based on the needs of the investors. Other possible tools might include ratings of company ESG practices and performance, assessments of whether companies meet specific product, activity or performance-related criteria, and assessments of countries on issues such as corruption, human rights and environmental protection.[16]

- Industry peers

Through organizations such as the PRI and the VBDO, investors can exchange experiences and best practices with regards to the implementation of responsible investment. These organizations are valuable as they provide investors with the ability to pool resources, share information, and enhance influence and engage with companies, stakeholders, policymakers and other actors in the investment value chain on ESG issues across different sectors and regions.[17]

- NGO reports

NGOs frequently produce reports that provide information on the activities of companies and their sustainability impact. These are valuable because of NGOs' watchdog role, in particular in emerging markets where it is often difficult to gather robust information on corporate activity.

- Governments

Governments provide the conditions (e.g. reporting requirements) to enable investors to properly analyse company performance on ESG issues and provide the incentives (through regulation and other policy interventions) that determine how companies respond to particular ESG issues.[18]

- News sources

News sources are relevant press releases, documentaries, and news bulletins. There are organizations that compile and analyse these sources of information on companies and countries for investors.

In terms of the allocation of day-to-day responsibility for managing a responsible investment strategy, various skills and expertise are needed:

- ESG specialist(s), who understand and are able to analyse relevant company or sector issues at hand;
- Operational, financial and risk management expertise is needed to integrate the responsible investment strategy into the company (monitor) systems;
- Interpersonal and networking skills are needed to be able to inform various stakeholders on the development, implementation and results of the responsible investment strategy.

Moreover, to be able to set up, implement and monitor a responsible investment strategy one needs sufficient commitment within the company. It is, therefore, important to identify a senior or executive (board) level person with ultimate responsibility for overseeing the strategy.

2.1.2 Assigning responsibilities

Developing and implementing a responsible investment strategy is a lot of work. Creating and improving ESG policies, position papers, screening and engaging potential investments is only half the job. Providing training to key individuals within the organisation on ESG issues and related implementation requirements, as well as explaining to various internal stakeholders the importance of responsible investment can substantially increase the workload. More advanced strategies also involve deeper integration of sustainability issues into company strategies, operations, performance management and monitoring processes. As becomes clear from this list of tasks and responsibilities, developing and implementing a responsible investment strategy is not something that can be done overnight.

Due to differences in investor motivation and organisational capacity, there is a lot of divergence in the way financial institutions organise the implementation of their responsible investment strategy. Some create in-house capacity while others outsource their screening and engagement activities to research and service providers.

- **Building in-house capacity**

While some financial institutions have a separate, dedicated ESG department containing various persons with different backgrounds, other institutions assign the responsibility to one employee or less; in this case responsible investment activities become the additional responsibility of an existing role or team.

When ESG issues are perceived as material and the organisation aims to integrate responsible investment in the mainstream investment process, financial analysts and portfolio managers can be trained to consider ESG factors and externalities in order to produce higher returns and/or reduce risks.[19]

- **Making use of external capacity**

To use available capacity more efficient, or to be able to implement or expand the responsible investment strategy without having to expand the workforce, many institutional investors could make use of ESG rating or research providers as well as service providers.

Some investors might only expect ESG research providers to provide them with investment-relevant research. In that case ESG research providers provide information that investors themselves use to assess company performance on corporate governance and corporate responsibility issues.[20] Other institutional investors ask the research provider to inform their investment decisions by identifying whether companies meet specific product, activity or performance-related criteria, and assessments of countries on issues such as corruption, human rights and environmental protection.[21] ESG research providers also produce other research, including bespoke company, sector or country research, research on new or emerging issues, and analysis of trends in ESG performance.[22] For engagement, separate service providers exist to support, or completely overtake investors' engagement activities, but in some instances ESG research providers perform these services as well.

2.2 Elements of a responsible investment strategy

2.2.1 Policy development

The implementation of a responsible investment policy requires in the first place that it is defined in a (publicly available) document. In doing so, it is important to provide a clear description of the policy objectives and basic principles by referring to recognized legislation and international treaty standards, such as the UN Declaration on Human Rights and ILO conventions.[23] Currently many investors refer to the PRI and/or the UN Global Compact.

Financial institutions that adhere to the PRI or the UN Global Compact make a statement on ESG issues. This shows their awareness on the subject and intention to apply responsible (financing) policies to their investment decisions. Being a member of the PRI or adhering to the UN Global Compact, however, is not a guarantee for sustainable practices. Although the six principles of the PRI or the ten principles of the UN Global Compact provide direction, they need to be implemented. For this reason, investors can explain how (some of the) PRI and global principles are dealt with in the actual investment practice.

Additionally or instead of an adherence to PRI and Global Compact, investors can opt for exclusion of specific controversial ESG practices in order to improve their risk management and avoid investing in controversial investments. Investors that are motivated to create a positive impact generally have more elaborated policies that not only describe excluded practices, but also the sustainable objectives they want to contribute to.

Separate policies are often set up for specific sectors or themes most relevant to them. For each sector or theme, several criteria, like its financial and ecological impact, enable investors to rank the seriousness of the violation involved or the sustainability of its practices.[24]

Good governance has long been considered a prerequisite for successful investors.[25] A poorly governed or unsustainable business model will ultimately be reflected in a company's operating performance metrics.[26] As such, investors have often put a lot of focus on corporate governance aspects in their policy. Over the years, the belief in the materiality of social and environmental aspects has grown considerately; many investors are still motivated by the materiality of responsible investment, and therefore tend to focus more on corporate governance issues.

More advanced investor polices contain verifiable social and environmental criteria. Often these criteria are derived from internationally recognised standards. Such a specific policy can be used to evaluate the proposed investment and to set up, if needed, engagement targets.

2.2.2 Screening

Screening involves the evaluation of a company, country or project against the investor's responsible investment policy that generally include certain minimum standards of business conduct. Screening can result in an investor decision to engage with a company or exclude it from investment.

The screening method, as such, is very much the result of both the use and availability of resources, and the investor views and motivations as well as the resulting ESG policy. The ESG analyst, either internal or external, will analyse a potential investment based on the available screening criteria as defined by an internal or external investment policy.

Depending on the content of the policy, company screenings can be executed only after one or several incidents with a (potential) client have taken place, but can also be the result of a systematic approach in which all potential investments are screened regularly.

Those with a more systematic approach tend to have a process in place which:
- Identifies potential ESG risks and opportunities across their portfolio of companies;
- Establishes action plans and targets to realise opportunities or mitigate risks; and
- Monitors ESG performance (or progress against action plans) on an on-going basis.[27]

Depending on the executive power of the person(s) responsible, the decision to exclude a company or start engagement will be made by an internal or external analyst, an ethics committee or the board of directors.[28]

Some investors apply a two-step approach, which involves the extra-financial research team or analyst identifying problematic companies, and a rating committee that includes members from the research, investment and risk management teams taking exclusion decisions on a case-by-case basis.[29]

As screening an entire portfolio on ESG issues is time consuming, institutional investors with limited capacity might focus on specific sectors or themes most relevant to them. A number of investors also explain responsible investment as choosing the best performing organisation out of a group of corresponding organisations (sector, industry, class) with the use of ESG-criteria. In this case, known as best in class, ESG-criteria do not guide the investment decision process but form the basis for selecting companies that perform above average on ESG issues.

2.2.3 Engagement

Institutional investors are increasingly undertaking activities to try to improve the social and environmental record of their investments by means of engagement. The strategy of dialogue and engagement of the financial sector can be very effective.[30]

The reasoning behind engagement activities is to solve problems in partnership with the company and to meet challenges for the future. This approach enables investors to encourage companies to refrain from certain undesired operational practices and to motivate companies to work towards realizing more sustainable business operations, improving the reputation and marketability of the investment and reducing compliance costs. There are two main options in engagement processes:

- In case of reactive or responsive engagement, an investor will engage with a company after it is perceived to be in violation of its policies. This approach is used to keep the portfolio free from unwanted (potential) investments;
- In case of pro-active engagement, investors enter into a dialogue with companies with the aim of preventing incidents, mitigating risk and improving sustainable and/or financial results.

Differences in the number of engagements and the type of companies engaged with can be explained by the following reasons:

- The difference in the use and availability of resources. As engaging an entire portfolio on ESG issues is an immense undertaking, institutional investors generally focus on specific sectors or themes most relevant to them.
- Engagement trajectories can be done individually or through collaborative initiative. Individual engagement trajectories require more resources and often focus on fewer companies. Collaborative engagements can be done in close partnership with peers or through a global platform, like the PRI Clearinghouse, which provides PRI signatories with a private forum to pool resources, share information, enhance influence and engage with companies, stakeholders, policymakers and other actors in the investment value chain.[31]

In case of pro-active engagements, some investors might engage with companies to reduce risk of incidents, while others focus on certain sustainable practices.

In the case of reactive engagement, engagements will differ as investors might:

- Only engage with companies on the brink of exclusion;
- Engage with companies after an incident or recurrent and severe incidents.

Investors with sustainable targets might also:

- Engage to improve company ESG practices;
- Engage to improve portfolio ESG performance (e.g. to achieve climate neutrality within the portfolio).

2.2.4 Exclusion

Exclusion, in simplified terms, is the process of avoiding investments in certain companies or projects based on certain products, services or activities. For most investors, exclusion is a direct result of their investment policy and screening process. Others may not have implemented a screening process themselves, but follow the exclusion decisions of some high-profile investors, like the Norwegian Government Pension Fund.[32]

As became clear from the last *Benchmark Responsible Investment by Pension Funds in the Netherlands 2011* of the VBDO, there is limited convergence among investor exclusion lists.[33] This conclusion is reaffirmed by a 2012 Novethic report.[34] In this report, Novethic drew up a comparative analysis of the main European practices with regard to norm-based screening. To this end, the exclusion lists (excluding anti-personnel mines and cluster bombs) of 15 investors were gathered.[35]

A compilation of the exclusion lists of the 15 investors led to no fewer than 120 different companies. Only one member of the panel excluded almost three quarters of them, and only 16 companies are excluded by at least 20% of investors. So although most investors rely on the same body of international norms, especially the UN Global Compact principles, consensus among investors on which companies to exclude remains rare.[36]

Differences in size and composition of exclusion lists can be explained by various reasons:

- Although investors often rely on the same body of international norms, only few have elaborated those in clear criteria, which creates room for interpretation;
- Some investors take the view that engagement is the best way to use their influence, while other investors exclude all companies that violate their policies.

While investor policies on paper can look identical, in practice there are often big differences in the scope and reach of investor policies with regard to:

- Criteria: While for some investors' policy criteria are absolute, others have a more flexible, case-by-case approach. Some investors add provisional criteria or exceptions to the rule, which make a policy statement more vague.
- Asset classes: While some investors try to apply their policies to all investments, most investors do not cover all relevant financial services or asset classes under their ESG policies. In this way, the policy might cover only a small part of the investments made.
- Companies: While some investors exclude all (potential) investments that do not apply to their policy, others exclude only clients with for example more than 50% involvement in controversial activities. In that case the process involves an evaluation of how much company revenue, profit or other metric derives from the controversial product or activity. This evaluation may also extend to affiliated companies and joint ventures.[37] While some investors exclude only the specific company involved in a breach of their policies, other investors are more rigorous and will also exclude its parent company and all other subsidiaries of this parent company.

In conclusion, there appears to be no 'one-size-fits-all' approach to how investors are incorporating ESG issues into their investment decisions, due to a divergence in views, goals, policies, building blocks and availability and use of resources.

3 Investors and human rights in the extractive industry

This chapter provides an introduction to the main human rights issues in the extractive industry (section 3.1), as well as investors' involvement in this industry (section 3.2). Section 3.3 reviews the human rights policies that are relevant for the extractive industry. The subsequent sections cover screening, engagement and exclusion practices of investors in the extractive industry.

3.1 Main human rights issues

Although significant differences exist among various industry sectors in terms of the types and magnitude of human rights challenges, human rights issues are included in virtually every responsible investment policy. In this report, the topic is focused on human rights in the extractives industries. The extractive sector is unique because no other sector has such a significant social (and environmental) footprint.[38]

To provide an illustrative profile of alleged corporate human rights abuses, Professor John Ruggie, special representative on Business and Human Rights of the Secretary-General of the UN, surveyed sixty-five instances reported by NGOs in 2006. The extractive sector (oil, gas, and mining) dominated this sample of reported abuses, with two-thirds of the total.[39] Moreover, a 2012 Novethic report found that companies in the extractives sector, especially mining companies, are most often excluded from investment due to ESG concerns.[40]

While the sector has seen several positive developments in this regard, the relationship between extractive companies and local communities remains challenging. Social impacts from the extractive industries are experienced directly by inhabitants on site as well as by communities situated in the impact zone downstream. The activities of companies extracting raw materials are regularly associated with serious violations of human rights. This may occur when mining causes loss of land and livelihoods, degradation of land and waterways or when mining companies do not provide (sufficient) compensation or do not obtain voluntary, timely and well-informed permission. In some instances mining leads to increased violence and conflict.

Certain 'communities of interest', such as indigenous peoples, women and artisanal miners require special consideration by mining companies, governments, and investors, as they often tend to be excluded from the benefits of mining.

Other major social challenges are related to labour and health and safety issues towards employees and the community. Despite the implementation of comprehensive safety management systems by many companies in the mining and metals industry, fatal and potentially fatal events continue to occur with unacceptable frequency.[41]

Working in oil and gas and mining is physically demanding and often dangerous. The history of explosions, rock falls, cave-ins, rock bursts, and other accidents is a large catalogue of large and small accidents resulting in a high number of deaths and serious injuries to employees in the extractive sector.[42] The risks that those operations pose for human health can be divided into risks for employees and risks for communities living in, or close to, the extraction area. Workers face occupational diseases, while communities have to cope with contaminated sites causing poisoned drinking water and poisoned food supply, as well as lacking drinking water due to immense water consumption.

Furthermore, mineral or oil extraction regularly involves the violent enforcement of security measures. Serious human rights abuses have occurred when extractive companies have relied on national security forces to gain control over land, defend established premises or to break strikes.[43]

Inadequate local and international laws, corrupt officials and resistance to regulation by the business world means that some of the above-mentioned business practices continue to be allowed. In many places, the lack of regulation is replaced by codes of conduct and guidelines, which vary in quality and binding force.

3.2 Investors' involvement

The extractive industry is very capital-intensive. Companies in this sector need large sums of capital for which they depend strongly on international capital markets. By issuing equity and (long-term) bonds, they finance the majority of their expansion plans. The average investor portfolio is therefore strongly exposed to the extractive industry; on February 28 2013 the MSCI world index showed sector weights of 10.2% for Energy en 6.59% for Materials.[44]

This situation brings along opportunities and responsibilities in the field of responsible investment. Investors' views on social and environmental issues are critically important for the extractive industries given the potential of investors, through a combination of active ownership and the integration of ESG issues into their investment research and decision-making activities, to make a significant contribution to ESG performance, outcomes and reporting by investee companies.[45] In turn, these activities can make a significant contribution to improved investment performance.[46]

3.3 Investor's human rights policies on the extractive industry

Although investors are generally not directly involved in violations of human rights, they can become involved by means of investing in companies or governments that violate human rights. In order to avoid any type of involvement in violations of human rights, investors need a human rights policy with clear standards and policy lines.

As became clear from chapter 2, while many investors adhere to PRI and Global Compact, or opt for norm-based exclusion in order to improve their risk management, others have more extensive policies that not only describe exclusion criteria, but also the sustainable objectives they want to help achieve. Furthermore, differences exist between investors that mainly focus on corporate governance aspects and investors that also focus on environmental and social impact.

Yet as revealed by a recent VBDO study on human rights among Dutch companies, the financial sector takes a leading position in comparison to other companies on integrating human rights in investment decisions.[47]

A policy that only formulates general objectives will be insufficiently effective. The following elements are crucial for an effective policy:[48]

- Reference to international human rights standard such as the nine core human rights treaties as well as relevant labour standards;
- A clear statement against practices that are not acceptable;
- Reference to stakeholders, including employees, customers, affected communities and others;

- Reference to specific human rights themes that are frequently known to have an impact on companies, such as the right of indigenous people, artisanal miners, security forces, labour rights or the right to freedom of expression;
- A commitment to establish formal mechanisms for dialogue with all relevant stakeholders, including civil society and governmental bodies, in human rights matters.

As stated above, it is important to provide a clear description of the policy objectives and basic principles by referring to recognized legislation and international treaty standards. Globally, there is increasingly more consensus to apply standards to this industry. Various international guidelines deal with risks that extractive industry poses for people and the environment. In addition, there are some sector initiatives and multi-stakeholder processes that set standards for specific extractive industry activities, such as those described below.

- The Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights (UDHR) that has been adopted by the United Nations in 1948 describes the rights and freedoms of every human being "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status."

- International Labour Organisation (ILO)

Besides respecting human rights, it is important that mining companies adhere to the United Nations International Labour Organisation's (ILO) main codes of conduct. These are the 1998 ILO Declaration on Fundamental Principles and Rights at Work and the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, of which the fourth edition was published in March 2006.

- UN Global Compact

The UN Global Compact is by far the world's largest corporate social responsibility initiative. Established in 2000, it engages firms in implementing ten universal principles drawn from UN sources in the areas of human rights and labour standards, but also environmental practices, and anti-corruption. In essence, the Global Compact is a learning network, sharing and disseminating good practices.[49] Companies that participate in the UN Global Compact programme endorse two principles on human rights related to the concepts of "complicity" and "spheres of influence":

- Companies have to support and respect the protection of international established human rights;
- Companies have to be able to show that they have no share in violations of human rights.

- The Extractive Industries Transparency Initiative (EITI)

The problems of corruption and the misallocation of public revenues are endemic in the extractive sector.[50] They undermine the rule of law, impede the pursuit of social objectives, and contribute to conflicts that frequently foster human rights abuses. In the Extractive Industries Transparency Initiative (EITI), a coalition of governments, companies, social organisations and investors has drafted criteria to prevent these problems of corruption and misallocation for governments of countries where oil and gas extraction and mining take place. Governments are expected to fully publish all revenues they receive from these activities.

- Voluntary Principles on Security and Human Rights

Companies become involved in violations of human rights when (private or public) company security officers use violence against nearby residents of the company. In a multi-stakeholder process, the Voluntary Principles on Security and Human Rights have been developed that set guidelines for companies for their security methods. This standard is based on the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

- Free Prior and Informed Consent (FPIC)

Mining companies are called to respect the rights of indigenous peoples to protect their land, culture and sources of livelihood. The so-called Free Prior Informed Consent (FPIC) principle requires the full and timely publication of information on the potential consequences of proposed investment plans. Communities have the right to respond to this in a negotiation process. This gives them more influence in decision-making processes, offers them the opportunity to negotiate any direct advantages and to speak out in favour of or against the plans. Furthermore, the rights of other local communities that are influenced by extractive industry activities need to be respected.

- International Council in Minerals & Metals (ICMM)

The Sustainable Development Framework of the International Council on Minerals & Metals (ICMM) is based on the Mining, Minerals and Sustainable Development (MMSD) project. The Framework consists of 10 principles for sustainable development in the extractive industry, it obliges the participants of ICMM to report according to GRI, including the Mining and Metals Industry Supplement, and it requires verification of this reporting. Also, a grievance mechanism has been set up for dealing with grievances of ICMM participants.[51]

- Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework

In July 2005 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*. Ruggie was assigned to introduce recommendations that could also count on support from the corporate world.[52]

In April 2008, Ruggie presented his first report to the Human Rights Council. This report did not establish new criteria, but summarized all human rights guidelines relevant for companies. Ruggie encouraged companies to take responsibility for the compliance with these guidelines, instead of shifting this responsibility to national and international governments. He established a policy framework to improve the relation between companies and human rights: *Protect, Respect and Remedy*. The framework consists of three pillars that mutually enhance one another:[53]

- *Protecting*: the duty of the government to protect human rights in situations where companies possibly contribute to violations by means of suitable policy, effective legislation and access to justice;
- *Complying*: the responsibility of companies to respect human rights;
- *Legal remedies*: improving the possibilities for victims to get compensation and other ways to prevent recurrence of violations.

By means of investigation and multi-stakeholder consultation, Ruggie tried to find solutions for implementing *Protect, Respect and Remedy*. The final report of Ruggie was published in March 2011. This report summarises the work of Ruggie in the period 2005-2011 and comprises the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework". Guiding Principle 15 shortly summarises what companies can do to respect human rights within the framework of their responsibility:

- Draft a policy statement in which the company commits itself to respect human rights (see also 3.3);
- Conduct *human rights due diligence*, which means that companies identify their (negative) impact on human rights; preventing and reducing that impact; and accounting for how they address this impact; pro-actively identifying, preventing and mitigating impacts reduces the risk of getting involved in disputes or being accused of not respecting human rights.[54] As part of a risk reduction strategy, human rights impact assessments of actual impacts should be made regularly, since human rights situations are dynamic. An assessment ought to precede

a new activity or relationship, as well as major decisions or changes in operation. Periodic updates are necessary as well.[55] Establishing procedures (grievance mechanisms) for recovery of the negative impact on human rights caused by the company or where the company contributes to this. The company takes appropriate action where it has caused or contributed to negative impact or uses its leverage where negative impact is directly linked to its operations, products or services by its business relationship with another entity.[56]

3.4 Investor exclusion and engagement of extractive companies

From a company perspective, the emergence of responsible investment represents a significant opportunity as it suggests that one of the industry's key stakeholders – one that wants to ensure its long term (financial) success – is concerned about encouraging high standards of social and environmental performance. There is clear alignment between the interests of these investors and the interests of the industry as a whole.[57]

With the aim of developing a better understanding of how investors view the industry's performance on environmental and social issues, the ICMM, over the period January-August 2012, held over 30 meetings with key responsible investment organisations - asset owners, asset managers, SRI research organisations, investor collaborations - in Europe, North America and Australia.[58]

One of the main conclusions was that investors are starting to pay more attention to the mining and metals industry's environmental and social performance, environmental and social performance is recognised as an integral part of the industry's social licence to operate.

As a result of, or in spite of, increased investor attention, companies from the extractive industries are among the most excluded companies by European investors, apart from the weapons industry.[59] Remarkable fact is that although oil and gas companies are the subjects of a high number of controversies, they are far less excluded than mining companies.

Investors focused on responsible and sustainable investment in the extractive industries are not standing by idly. While some firms exclude extractives from their portfolios or seek only those that meet best-in-class standards, others utilize a variety of approaches, including engagement, shareholder resolutions, annual general meeting attendance, strengthening or proposing legislation, and creating and/or participating in multi-stakeholder initiatives and advisory panels.[60]

In 2010, two responsible investors, *Bâtirente and Regroupement pour la responsabilité sociale des entreprises*, encouraged Talisman Energy to explore the benefits that might be derived by the company if it were able to secure the free, prior and informed consent of indigenous peoples potentially impacted by its global operations.[61] The company commissioned a report entitled Implementing a Corporate Free, Prior, and Informed Consent Policy: Benefits and Challenges, that looks not only at the advantages of adopting FPIC but also concerns related to conflicting constitutional frameworks or unsupportive governments.[62]

One of the most heralded human rights reviews was the 2010 Human Rights Assessment of Goldcorp's Marlin Mine in the western highlands of Guatemala, which was proposed by Goldcorp shareholders, including the Public Service Alliance of Canada Staff Pension Fund, the Ethical Funds Company (now Northwest & Ethical Investments), the First Swedish National Pension Fund (AP1) and the Fourth Swedish National Pension Fund (AP4).[63] The assessment prepared by independent contractor On Common Ground Consultants evaluated both human rights impacts as well as human rights compliance.[64]

3.5 Excluding extractive companies

In the 2012 Novethic report on norm-based exclusions, Novethic drew up a comparative analysis of the main European practices with regard to norm- based screening. In a statistical study on companies excluded, Novethic combined the lists of companies that are currently excluded by about thirty asset owners or asset managers, in order to identify those that appear mostly on exclusion lists. To this end, the exclusion lists (excluding anti-personnel mines and cluster bombs) of 15 investors were gathered, either from data published on their websites (60%), or from data directly forwarded to Novethic (40%).[65]

In this report, 12 extractive companies are profiled based on the data gathered for the Novethic report and are shown in Table 3.1 below. Selected were extractive companies that were excluded by at least two investors on human rights grounds. As becomes clear from the company profiles in Appendix 1, the human rights issues that persuade investors to exclude a company are often the result of environmental pollution. The profiles do not aim to provide a complete overview or analyses of the human rights issues at hand regarding the selected companies. The profiles are predominantly derived from investor reports and focus on investors' reasons for excluding the company from investment.

Table 3.1: The 12 extractive companies excluded most frequently for human rights violations

	Name company	Business sector	Country	% of investors in Novethic study excluding this company	Exclusion criteria
1	Vedanta Resources	Mining	United Kingdom	67%	Environment, human rights
2	Freeport-McMoRan	Mining	United States	40%	Environment, human rights
3	Barrick Gold	Mining	Canada	33%	Environment, human rights
4	Chevron	Oil & gas	United States	27%	Environment, human rights
5	PetroChina	Oil & gas	China	27%	Environment, human rights
6	Sterlite Industries	Mining	India	27%	Human rights
7	Alpha Natural Resources	Mining	United States	20%	Human rights
8	Norilsk Nickel	Mining	Russia	20%	Environment, human rights
9	Potash Corporation	Mining	Canada	20%	Environment, human rights
10	Rio Tinto	Mining	UK/Australia	20%	Environment, human rights
11	Madras Aluminium Company	Mining	India	13%	Environment, human rights
12	Zijin Mining Group	Mining	China	13%	Environment, human rights

4 Methodology

This chapter covers the methodology of the survey carried out by the VBDO. First, the research objective is addressed, which is followed by a short description of the researched pension funds. The subsequent section covers the research period of the study. Finally, the research process and task division are described, and an overview of the topics and elements covered in the survey is given.

4.1 Research objective

Since the year 2007, the VBDO has carried out an annual benchmark study. The objective of the *'Benchmark Responsible Investment by Pension Funds in the Netherlands'* is to provide pension funds and their participants insight into the current status of responsible investment among the fifty largest pension funds in the Netherlands. The aim is to encourage Dutch pension funds to develop a sound responsible investment policy, to implement this policy in an effective manner using various instruments in different asset classes, and to account for it in a clear and transparent manner.

The annual benchmarks focus on the process of implementation, but do not cover the actual practice of responsible investment. In order to fill in this gap and capitalize on the institutionalized knowledge that it has built up over the past few years, the VBDO decided to conduct a case study focusing on the practice of responsible investment by Dutch pension funds.

As described in chapter 3, human rights are often included in the responsible investment policy of Dutch pension funds. A survey was designed, respectively aimed at the *implementation* of the responsible investment policy in the area of human rights in the international extractive industry.

4.2 Description of the researched pension funds

For this study a total of fifty Dutch pension funds were approached. The list of researched pension funds is the same as in the annual benchmark studies conducted in the years 2011 and 2012. Of these pension funds, 21 are corporate pension funds, 26 are industry-wide, and 3 are occupational, and together had a total of €709.7 billion in assets under management (AuM) at the end of 2011. The largest pension fund had €244 billion in AuM, while the smallest had €179 million in AuM.

4.3 Research period

The annual benchmark study of Dutch pension funds is the starting point for this report focusing on the implementation of the responsible investment policies. The results and conclusions of the latest benchmark study, forming the basis of this report, are from the year 2012. In addition, the Dutch pension funds were surveyed in the beginning of 2013.

4.4 Research process and task division

This report was conducted together with Profundo, a Dutch economic research consultancy. Profundo provided the background chapter, which includes the introduction to responsible investment and the (implementation of) corresponding responsible investment strategies. It also provided the introduction to the main human rights issues in the international extractive industry as well as the different overviews of controversial companies within this specific industry.

The list of these controversial extractive companies is based on a report of the French research organization Novethic, published in 2012. The selection of the 12 extractive companies as presented in chapter 3 includes the extractive companies that are excluded on human rights grounds by at least two investors that participated in the research of Novethic.

The VBDO was responsible for the drafting and analysing the survey. In order to test the survey, an asset manager provided feedback. After revisions were made based on this feedback, the survey was sent out to the Dutch pension funds.

4.5 The survey

The past years have shown major developments in implementing a responsible investment policy. More different types of instruments have been developed and applied to a broader range of asset classes, despite the limitations of some of these asset classes. Because the instruments are complementary to each and investors tend to find different solutions for each asset class, the implementation practices between asset classes may vary a lot.

In order to gain insight into the practice of responsible investment in the extractive industry, the VBDO put together an online survey that pension funds were able to respond to. This survey included the following elements (the complete survey can be found in Appendix 2):

Responsible investment policy

The first part of the survey covered the responsible investment policy in the area of human rights. In order to gain insight in current policies of the Dutch pension funds, the questions covered the following elements:

- The explicit coverage of human rights as part of the responsible investment policy of pension funds;
- Who composed the human rights policy of the pension funds;
- The elements of the human rights policy (for the extractive industry).

Screening

Secondly, the screening process of the Dutch pension funds was covered. Please see section 2.2 of this report for more insight in this particular element of the responsible investment strategy. The following elements were included in this part of the survey:

- Who is in charge of the screening for the pension funds on the topic of human rights;
- Which companies are screened by the pension funds on the topic of human rights.

Engagement

As stated in section 2.2, the reasoning behind engagement activities is to solve problems in partnership with the company and to meet challenges for the future. In terms of engagement, the survey covered the following elements:

- If the pension fund currently engages with companies in the extractive industry on the topic of human rights;
- How important the following reasons are for pension fund to engage with companies in the extractive industry on the topic of human rights;
- What the reason is for pension funds to engage with companies in the extractive industry on the topic of human rights;
- What the duration is of an average engagement program of pension funds with companies in the extractive industry on the topic of human rights;
- An indication of the percentage of companies in the extractive industry that have been excluded by the pension fund after engagement has failed on the topic of human rights;
- If the pension funds engage with companies in the extractive industry on the topic of human rights, what will happen with this company.

Exclusion

The survey then focused on exclusion as part of the responsible investment strategy. Please look into section 2.2 of this report for more information on exclusion. The following elements were covered in the survey concerning exclusion:

- The number of companies in the extractive industry that are currently on the exclusion lists of pension funds because of human rights;
- The importance of reasons for pension funds to exclude companies in the extractive industry on the topic of human rights;
- In what way the size of the financial position influences the exclusion process;
- The extent of exclusions if a company in the extractive industry is in violation of the human rights policy.

In the final part of the survey, the pension funds were asked to indicate with which of the companies introduced in chapter 2 were part of the engagement program of or excluded by the pension funds.

5 Results

This chapter covers the results of the study. First, the response rate of the survey is given, as well general information on the respondents. Following this, the results of the survey are presented, covering the human rights policy, and the different responsible investment strategies (screening, engagement, and exclusion). At the end of this chapter, comparative results are presented.

5.1 Response rate

As mentioned in the previous chapter, in total fifty Dutch pension funds were approached in 2012 for the annual benchmark study. These same pension funds were also asked to fill in the survey for this study.

Twenty-five Dutch pension funds responded to the online survey, which is a response rate of 50%. Two pension funds did not fully complete the survey, and are therefore only included in the analysis for the questions that they answered. Of these pension funds, 11 were corporate pension funds (44%), 11 were industry-wide (44%), and 3 were occupational (12%). In some cases, the asset manager answered on behalf of the pension fund(s).

The pension funds that did not participate in the survey provided various reasons, such as that the information needed to answer the questions was very specific and time-consuming. Another reason given was that the responsible investment policy was in development or under revision.

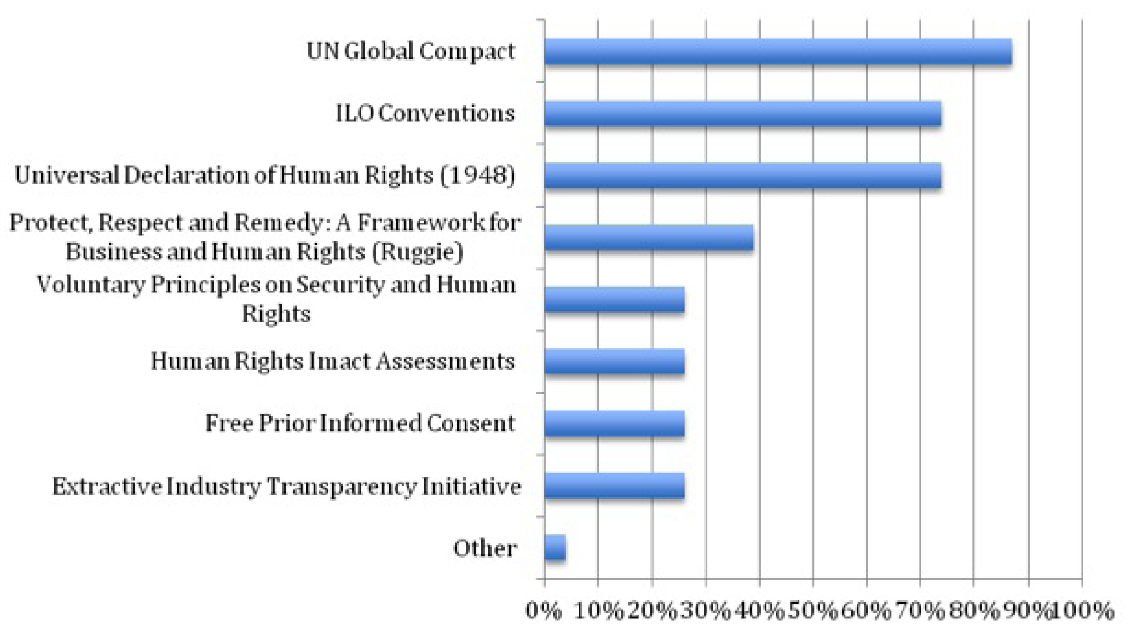
The results of the survey were initially analysed according to size and type. However, as the differences between the responses of the different sizes and types of pension funds were insignificant, the results presented below include all surveyed pension funds.

All 25 of the pension funds invest in developed markets, such as the USA, Europe, and developed Asia, and 21 pension funds also invest in emerging markets.

5.2 Human rights policy

According to the survey, almost 96%, or 24 pension funds indicated that human rights are explicitly a part of their responsible investment policy. As shown in Figure 5.1, most pension funds refer to the UN Global Compact when making human rights part of their responsible investment policy. Furthermore, the Universal Declaration of Human Rights (1948), and the ILO conventions are often referred to. These are general standards and conventions. When looking at more specific standards, such as the Extractive Industry Transparency Initiative (EITI), Human Rights Impact Assessments (HRIAs), and the Voluntary Principles on Security and Human Rights, these are applied less often by pension funds.

Figure 5.1: Reference to standards, conventions, and initiatives in area of human rights



5.3 Management of human rights policy

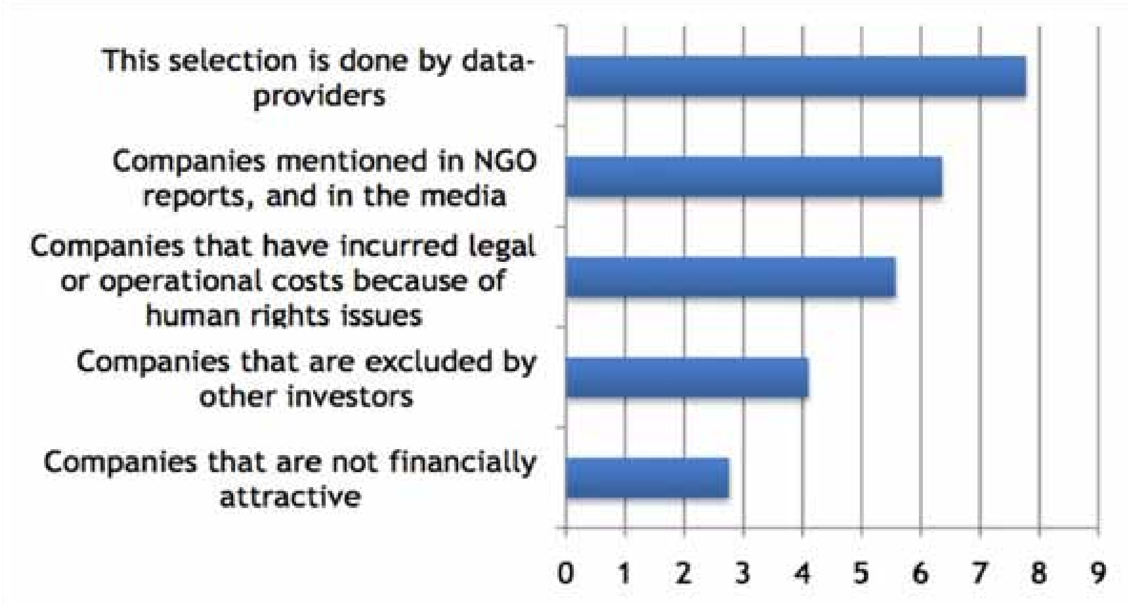
In terms of composing the human rights policy of the pension funds, more than one party can be involved. Seventeen of the Dutch pension funds (74%) indicated that the board is involved. For 8 pension funds (35%), the ESG analyst at the asset manager is involved, and an external ESG data provider is used for 5 of the pension funds (22%). Working groups or a selection committee, and consultants are involved to a lesser extent.

5.4 Screening results

Screening involves the evaluation of a company, country or project against certain minimum standards of business conduct, which are mostly based on international norms. For this responsible investment strategy, what stands out is that for 22 pension funds (96%), an external ESG provider does the screening on the topic of human rights. This reveals that ESG providers such as MSCI, Sustainalytics, and Vigeo have great influence on the implementation of the human rights policies of Dutch pension funds. Also important in the screening process are the ESG analysts of the asset manager, as indicated by 12 pension funds (52%). For a few pension funds, the board or a working group/selection committee does the screening itself.

In the survey, the pension funds were also asked to indicate how the selection of screened companies takes place. For several predefined options the pension funds were asked to indicate on a scale of 1 to 10 how important these are to their screening activities. The average scores for these options can be found in Figure 5.2. As shown below, the data-providers are most important in the selection of screened companies (average rating: 7.8), which underlines their influence in the responsible investment strategy of the Dutch pension funds. The importance of NGO and media reports are also emphasized, indicating that these reports do have a significant effect on the responsible investment behaviours of pension funds in the Netherlands. Finally, legal or operational costs of human rights abuses are also seen as an important driver for screening companies.

Figure 5.2: Reasons to screen companies



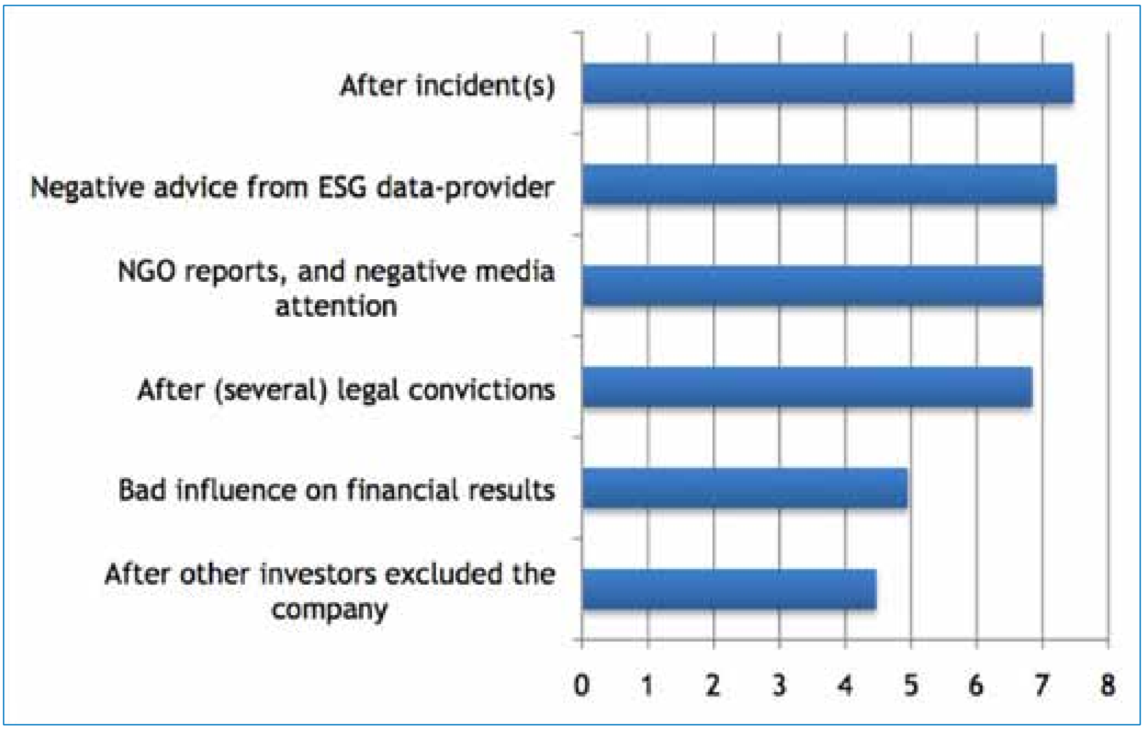
5.5 Engagement results

Following the screening process, pension funds can actively exert influence on companies in which investments are made by entering into dialogue with them, for instance on the topic of human rights. Fourteen of the Dutch pension funds (61%) indicate to currently engage with more than 10 companies in the extractive industry on the topic of human rights. Three pension funds (13%) engage with fewer than 10 extractive companies on this particular topic. This leaves 6 pension funds (26%) that do not engage with companies in this specific sector on the topic of human rights.

The Dutch pension funds were also asked to indicate on a scale from 1 to 10 if several predefined reasons were of importance when deciding whether to enter into an engagement program with extractive companies on the topic of human rights. The most important reason is to reduce reputational risk of the pension fund (average rating: 8.5) followed by reducing financial risk (average rating: 8.1). Finally, reducing negative ESG impacts (average rating: 8.1) was seen as important.

Dutch pension funds also engage with companies in the extractive industry on the topic of human rights after one or more incidents have occurred (average rating 7.5) or based on advice from ESG data providers (average rating: 7.2). This again indicates the strong influence that these providers have over the implementation of the human rights policy of Dutch pension funds. NGO reports, negative media attention and legal convictions are also important indicators (average rating: 7.0). As shown in the figure below, the influence on financial results as well as the actions of other investors towards particular companies are not seen as important.

Figure 5.3: Importance of reasons to engage with extractive companies on topic human rights



5.5.1 During engagement

Of the Dutch pension funds that engage with companies in the extractive industry on the topic of human rights, 16 pension funds stated that the duration of an average engagement program is two years or more. For only two funds such a program takes one to two years, and no pension fund has a program that takes less than a year. For other pension funds, SMART (Specific, Measurable, Achievable, Realistic, and Time) objectives are formulated for each company within the engagement program.

The success ratio of these engagement programs is, according to the pension funds, hard to indicate, as these programs are still on-going. Therefore it appears hard to quantify this issue. This underscores a recurring issue with engagement, namely how the results can be quantified and tabulated.

During engagement programs, 13 of the surveyed pension funds (68%) place the respective company on an internal watch list, so that it is clear for portfolio managers that the company is included in the engagement program. Five pension funds (26%) place such a company on a public watch list. Six pension funds (32%) do not place extractive companies that are involved in an engagement program concerning human rights on a watch list.

5.6 Exclusion results

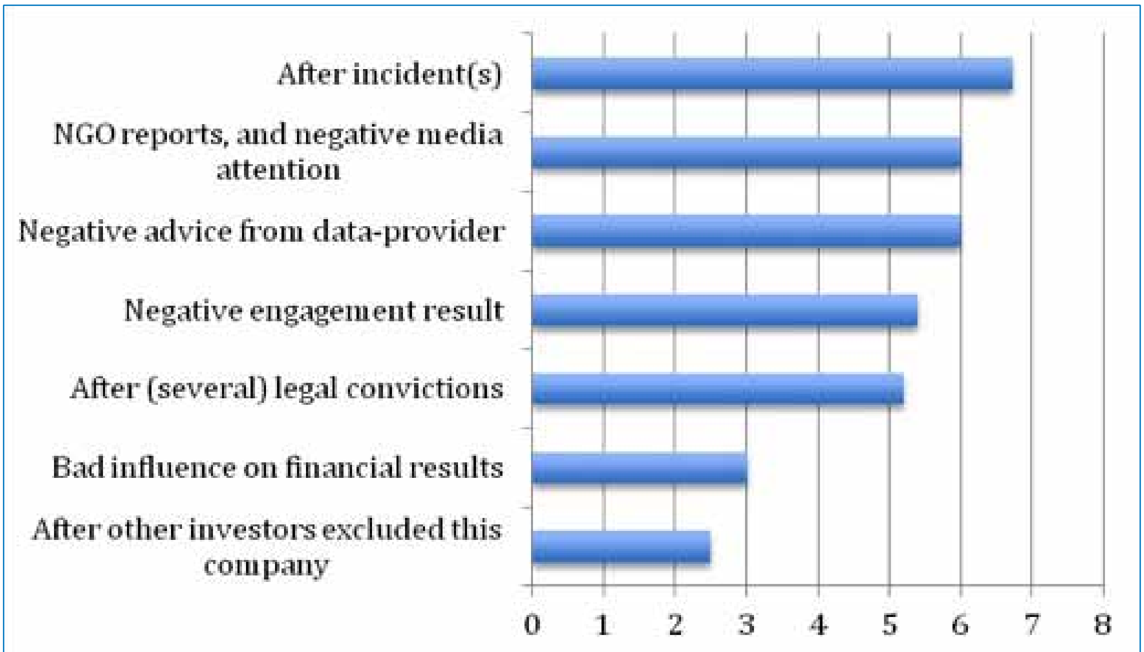
Companies in the extractive industry are not (yet) often excluded on the grounds of human rights issues, as engagement programs are often still on-going. This survey showed that 17 of the pension funds (70%) do not have any extractive company on the exclusion list. Six pension funds (26%) have 1-5 extractive companies on their exclusion list on these grounds. Four pension funds indicated that they excluded 2 extractive companies on the grounds of human rights issues. One pension fund indicated that at the moment there are 6 companies in the extractive industry that are excluded due to human rights issues. It is unclear whether these were included in engagement programs before they were excluded from the investment portfolio.

A remark by one of the pension funds is important to note. According to this pension fund, the reason for exclusion depends on the definition of human rights, as some environmental issues might immediately result in a human rights risk, so it is unclear whether this should be considered as an environmental or social issue. In this study these cases have also been included.

Similar to engagement, Dutch pension funds were asked to indicate which of the predefined reasons are of importance when excluding extractive companies on the topic of human rights from the investment universe. Surveyed pension funds indicated that the reduction of reputational risk (average rating: 7.7) is almost as important to engage with companies in the extractive industry on the topic of human rights as to reduce negative ESG impacts (average rating: 7.9). However, for pension funds to exclude such companies, the reduction of financial risk seems of less importance (average rating: 5.7).

When looking at more specific reasons to exclude companies in the extractive industry on the grounds of human rights issues, the pension funds were asked again to indicate the importance with a number from 1 to 10. The most important reasons correspond with the results for engagement. The foremost reason for exclusion is when companies are involved in one or several incidents (average rating: 6.7). Thereby, exclusion is also done on basis of negative advice from ESG data-providers (average rating: 6.0), as well as NGO reports and negative media attention (average rating: 6.0). Failed engagement does not seem to lead to exclusion in most cases, nor after legal convictions, or when it has bad influence on financial results. The exclusions of other investors do not influence the decisions of pension funds either. An overview is given in Figure 5.4. More than half of the pension funds also state that the financial position of the company does not influence the exclusion process.

Figure 5.4: Reasons to exclude companies on topic human rights



If a company in the extractive industry is in violation of human rights, and the decision is made to exclude the company, almost half of the Dutch pension funds indicated that both the mother company and all the subsidiaries will be excluded, whether or not the mother company is responsible, or one of the subsidiaries. One quarter of the pension funds state that only the responsible subsidiary will be excluded. The other pension funds state that only the parent company will be excluded, or the parent company and the responsible subsidiary.

5.7 Implementation in practice

The research of Novethic, as described in chapter 2, includes a list of 12 companies that are excluded most frequently for norms violations (excluding anti-personnel mines and cluster bombs). The VBDO also asked pension funds to indicate which of the previously identified companies were being engaged with or excluded.

As can be seen in Table 5.2, engagement is carried out by at least one Dutch pension fund for all the companies on the list. Most pension funds engage with Freeport-McMoRan, Rio Tinto, Total, Chevron and Vedanta Resources. This shows that there seems to be consensus with regards to the companies with the most engagement potential.

Table 5.2: Engagement with extractive companies by Dutch pension funds

Company	Engagement
Freeport-McMoRan	81%
Rio Tinto	81%
Total	81%
Chevron	75%
Vedanta Resources	63%
PetroChina Company Ltd.	50%
Zijin Mining Group	31%
Barrick Gold	25%
Halliburton Company	25%
Alpha Natural Resources	19%
Norlisk Nickel	19%
Potash Corporation	19%
Madras Aluminium Company	6%
Sterlite Industries	6%

While companies in the extractive industry are excluded to a much lesser extent than they are engaged with, the number of pension funds that exclude Vedanta Resources, PetroChina Ltd., Sterlite Industries, and Barrick Gold are the highest, as can be seen in table 5.3. In the research by Novethic, these companies also appear on top of the list of companies that are excluded by investors.[66]

Table 5.3: Exclusion of extractive companies by Dutch pension funds

Company	Exclusion
Vedanta Resources	31%
PetroChina Company Ltd.	25%
Sterlite Industries	25%
Barrick Gold	19%
Chevron	13%
Freeport-McMoRan	13%
Alpha Natural Resources	6%
Rio Tinto	6%
Zijin Mining Group	6%
Halliburton Company	0%
Madras Aluminium Company	0%
Norlisk Nickel	0%
Potash Corporation	0%
Total	0%

The most common reason by the surveyed pension funds for either engagement, or exclusion with the companies as shown in the previous tables, was the violation of the UN Global Compact. In some cases, activities in certain geographic locations are important as well, such as activities in controversial regimes (Freeport MCMoRan), pollution in Ecuador and Brazil (Chevron), or health & safety issues in the United States (Alpha Natural Resources).

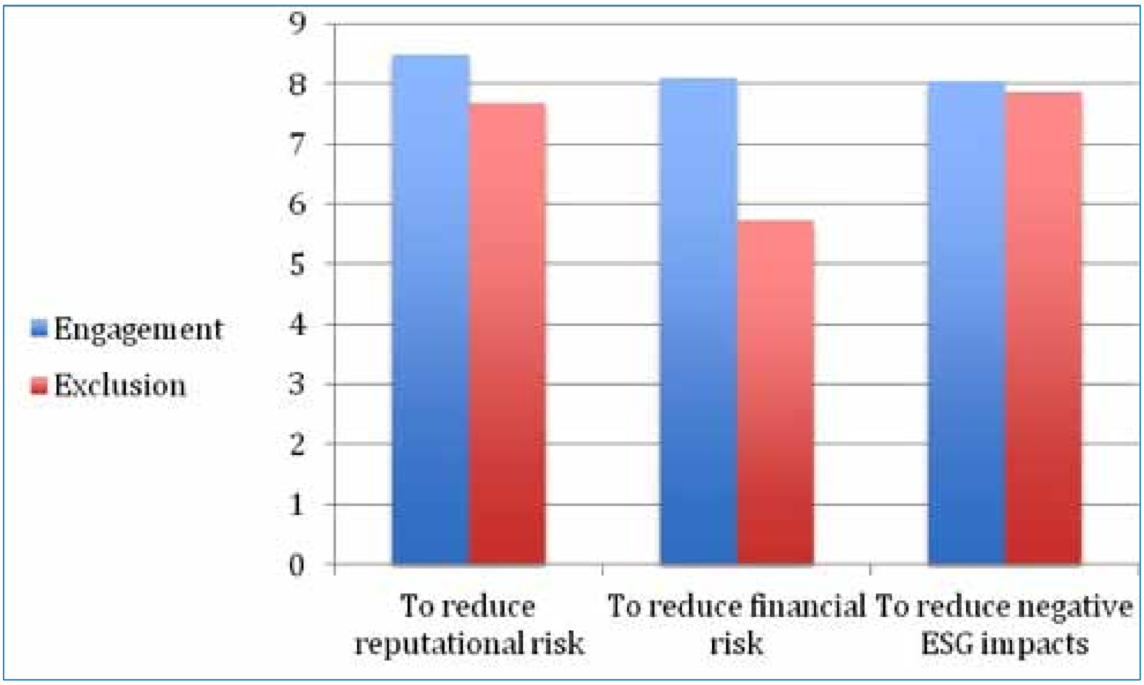
As mentioned in the previous section, almost half of the Dutch pension funds indicated that both the mother company and all the subsidiaries will be excluded when human rights are violated, despite whether the mother company is responsible, or one of the subsidiaries. Interesting to note is that in practice this seems not always to be the case. A few pension funds that stated to exclude both the mother company, and all the subsidiaries, excluded Vedanta Resources from their investment universe, but not Madras Aluminium Company, which is owned for 95% by Vedanta Resources.[67]

5.8 Comparative results

This section compares and summarizes the various responsible investment approaches. Most of the surveyed pension funds indicate that the board is the responsible for the human rights policy. External ESG data-providers provide the pension funds with advice and information on which the funds base their screening activities. The data-providers appear also to be important in the engagement and exclusion process.

The reasons for engagement and exclusion for Dutch pension funds with extractive companies on the topic of human rights can be seen in Figure 5.5 below.

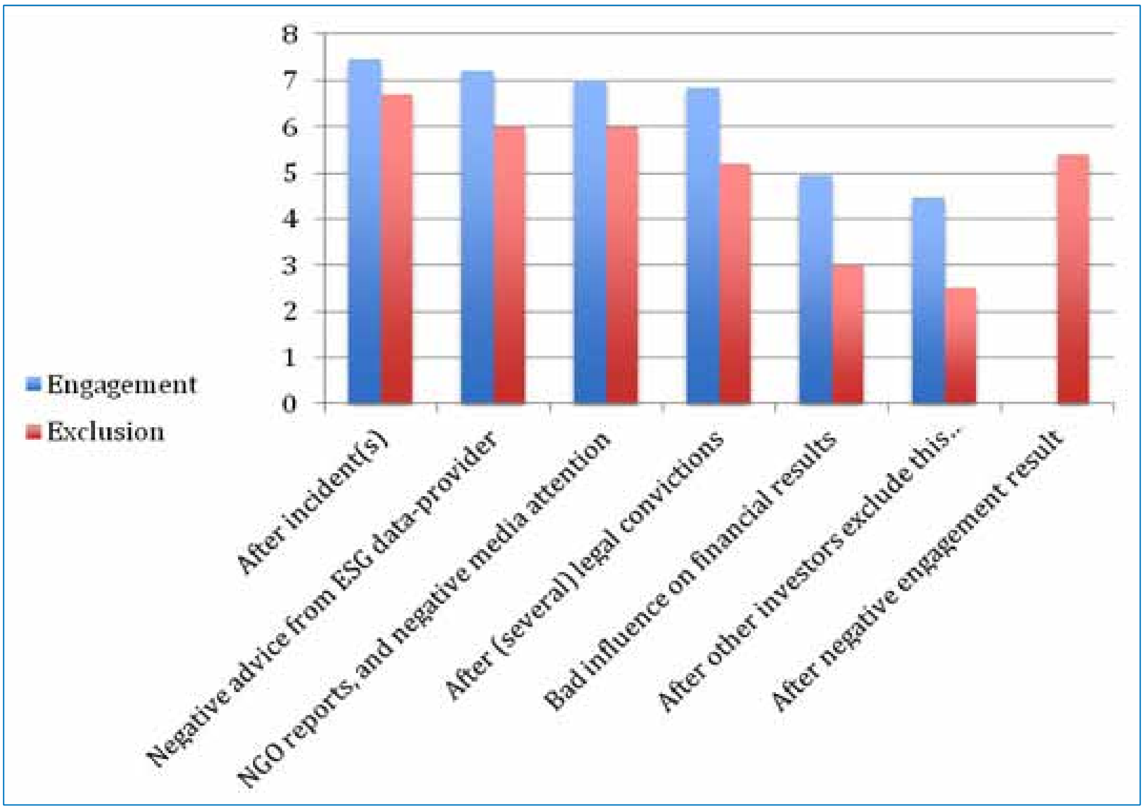
Figure 5.5: General reasons for engagement/exclusion of Dutch pension funds



Reputational risks and ESG impacts are seen to be just as important, but the survey also seems to indicate that financial considerations are not (yet) seen as being very important in the decision whether to exclude the company, while it is seen as an important reason for engagement.

When it comes to the importance of reasons for engagement with or exclusion of extractive companies because of human rights issues, Figure 5.6 shows a number of interesting trends.

Figure 5.6: Reasons for engagement/exclusion of Dutch pension funds



Negative incidents, legal convictions, negative advice from ESG data-providers, and NGO reports and negative media attention are all important indicators for engagement or exclusion. Interesting to see is that the influence on financial results in general seems to be of less importance for exclusion decisions, which is a difference from the instrument 'engagement'. Surveyed pension funds do not look at other investors to make their investment decisions in relation to human rights violations in the extractive industry.

6 Conclusions

The annual benchmark study of the VBDO revealed that the pension funds in the Netherlands have developed a responsible investment policy. However, there is no 'one-size-fits-all' approach to how investors are actually implementing ESG issues into their investment decisions. This is due to a divergence in views, goals, and the availability and use of resources. The objective of this report was to reveal how pension funds currently implement their responsible investment policy, and to provide Dutch pension funds with guidance in how to implement this particular policy in a practical manner.

While the results of this study are specifically aimed at the human rights policies of Dutch pension funds in the extractive industry, many of these results can considered to be applicable for other areas of responsible investment and sectors as well. Thus, most results are generalized in order to come to concluding remarks on the current implementation of the responsible investment policies of Dutch pension funds.

6.1 Human rights policy

This report revealed that the starting point for Dutch pension funds in the development of a responsible investment policy lies with the boards of the funds. The board is responsible for the decision-making concerning this particular policy. At the same time, the ESG analysts of the asset managers are important in the development process of the policy, as they are in charge of managing the investments of the pension funds in most cases.

When looking at the content of the policy, it is often composed with reference to general international standards and conventions, such as the UN Global Compact, the ILO conventions and the United Nations Declaration of Human Rights. To a lesser extent pension funds refer to more specific standards, such as the EITI. However, in the view of the VBDO, it is important that when deciding to invest in certain (controversial) areas, pension funds should enhance the general responsible investment policy. As the case study indicated, in an area such as the extractive industry, certain industry-specific issues need to be covered, it is important to identify these issues, and then include the relevant standards, conventions, or guidelines in the policy.

6.2 Screening

Considering the strategies to implement the responsible investment, screening is done based on the information and advice as provided by external ESG providers. Often the ESG analyst of the asset manager is responsible for the screening, but also make their decisions based on data as provided by the external ESG providers. This indicates that pension funds largely depend on external sources when selecting the companies that they would want to engage with, or exclude from their investment universe, on grounds of ESG issues. It is important to make sure that the data is reliable and accurate. One way to do this is to not rely on just one ESG data-provider, but use the information of more providers.

6.3 Engagement

Considering engagement, the Dutch pension funds look, besides on the information and advice of external ESG providers, also at information from NGOs as well as the media and legal convictions.

In order to start an engagement program, the reduction of reputational and financial risk, and negative ESG impacts are seen by pension funds as highly relevant. Not many companies are yet excluded from the investment universe after an engagement program has failed. This might be explained by the fact that engagement programs in most cases take at least two years, and are therefore still on-going. However, the surveyed pension funds often place companies that are included in an engagement program on an internal watch list, so that it is clear for portfolio managers that the company is included in an engagement program.

Pension funds have indicated that the most engaged companies within the extractive industry on the topic of human rights are Freeport-McMoRan, Rio Tinto, Total, Chevron and Vedanta Resources.

6.4 Exclusion

Differences in size and composition of exclusion lists can be linked to various reasons. As revealed in the case study, some Dutch pension funds exclude companies on grounds of violation of the UN Global Compact. However, funds may interpret this international standard differently, and not exclude that company. This once again underscores the importance of adopting industry-specific guidelines and initiatives. Some pension funds also take a case-by-case approach, what also helps explain the differences in choices that Dutch pension funds take in composing their exclusion list.

In contrast to engagement, exclusion is less often associated with the reduction of financial risk. Of more importance are the motivations to reduce reputational risk and negative ESG impacts. The surveyed pension funds also rely on the advice of external ESG providers in terms of their exclusion decisions, as well as NGO reports and negative media attention. If a company is excluded from the investment universe, most pension funds state to exclude both the mother company, and all its subsidiaries, despite the mother company or one of the subsidiaries is responsible for certain violations. However, as shown in the results chapter, in practice this might not always be the case, as Dutch pension funds remain their investments in a subsidiary, after a mother company is excluded. This also highlights the difference in policy and implementation of the responsible investment policy.

Pension funds have indicated that the most excluded companies within the extractive industry on the topic of human rights are Vedanta Resources, PetroChina Company, Sterlite Industries, Barrick Gold, Chevron and Freeport McMoRan. This corresponds perfectly to the findings of the Novethic report.

In conclusion, it is clear that the practice of engagement and exclusion among pension funds in the Netherlands takes on many forms. The VBDO urges pension funds to adopt additional relevant norms and initiatives for sectors with significant ESG issues such as the extractive industry. It is important that institutional investors continue to share knowledge and best practices.

Appendices

1 Company descriptions and grounds for exclusion

Alpha Natural Resources

- **Company description**

The American company Alpha Natural Resources, Inc. extracts, processes, and markets steam and metallurgical coal. The company conducts operations from surface and underground mines located in the northern and central Appalachian regions and Colorado, all located in the United States. Alpha Natural Resources markets its coal to electric utilities, steel and other industrial producers.[68]

Alpha Natural Resources is the world's third largest metallurgical coal supplier with an annual output of nearly 126 million tons of metallurgical coal. The company operates 150 active coalmines and 40 coal preparation plants across Virginia, West Virginia, Kentucky, Pennsylvania, and Wyoming.[69]

- **Ground of exclusion**

After taking over the coal producer Massey Energy in 2011, Alpha Natural Resources ended up on the list of controversial mining companies as Massey Energy has been accused of having poor working conditions, safety problems, issues with fraud, and is involved in mountaintop removal mining (MTR). MTR is a surface mining technique with an enormous environmental impact. This method is used in the Appalachian region in the Eastern part of the United States. Thin seams of coal inside the mountain are reached by blasting mountaintops.[70] The blasted soil from the mountaintop is often dumped into nearby valleys; these are referred to as 'valley fills'.[71] The mining process adds toxins to the soil, which then makes its way into the area's water supply. The blasting process also pollutes the air with toxic particles. Health problems such as cancer, liver and kidney diseases, and skin rashes result for people in these regions.[72]

Barrick Gold

- **Company description**

Barrick Gold is a Canadian gold mining company engaged in the acquisition, exploration and development of gold properties. Its products include gold, copper, silver and zinc. The company's operations are comprised of 27 operating mines located in Argentina, Australia, Chile, Canada, Papua New Guinea, Peru, Tanzania and the United States. In addition, offices in Chile and Russia are actively working towards the development of mines in those countries. Through its acquisition of Placer Dome in 2006, Barrick has become the world's largest gold miner.[73]

- **Ground for exclusion**

Barrick Gold has been criticized for several operations which caused severe environmental damage or in which human rights were violated:

- Barrick Gold is involved in riverine disposal in the Porgera mine in Papua New Guinea. In 2006, Barrick Gold acquired Placer Dome and integrated the Porgera mine among its mining interests. The mine has been emptying millions of tons of tailings and waste rock into the Porgera River since 1992, which is part of an 800-kilometer river system that eventually empties into the Gulf of Papua[74]. After the gold has been extracted, the tailings (the mixture of finely ground ore, leaching chemicals, and water) are neutralized before being discharged through a pipeline directly into the Maiapam River, a small tributary to the Porgera-Laigap-Strickland river system. The tailings discharge occurs on a continuous basis, causing serious environmental damage and problems for surrounding communities.[75]

- In 2005, the Pascua Lama gold mine project, the first open-pit gold mine to straddle two countries, was set up at the Province of San Juan (Argentina), under the name of Veladero. The project has been marred with controversy for years, as concerns have been expressed over the project's impacts in an environmentally fragile, populated region. The project is Barrick's most important project worldwide and, after a decade of intense debate, is scheduled to start production in 2014.[76]
- At the North Mara gold mines in Tanzania, communities of small-scale miners have been displaced and disenfranchised by African Barrick Gold (ABG), a 73% subsidiary of Barrick Gold. Since the mine opened, there have been multiple confrontations with the security staff where people were shot. Protests against the mine in 2011 ended in violence with police forces killing seven people. Police and security forces were also accused of arbitrary detention and sexual abuse of women. A study from 2009 revealed a concentration of arsenic 40 times higher than the WHO limit. The drinking water was poisoned. Additionally, ABG was suspected of tax evasion.[77]

Chevron

- **Company description**

Chevron Corporation is an American company engaging in petroleum operations, chemicals operations, mining operations, power generation and energy services. Upstream operations consist primarily of exploring for, developing and producing crude oil and natural gas; processing, liquefaction, transportation and regasification associated with liquefied natural gas; transporting crude oil by international oil export pipelines; transporting, storage and marketing of natural gas; and a gas-to-liquids project. Downstream operations consist primarily of refining crude oil into petroleum products; marketing of crude oil and refined products; transporting crude oil and refined products by pipeline, marine vessel, motor equipment and rail car, and manufacturing and marketing of commodity petrochemicals, plastics for industrial uses and fuel and lubricant additives.[78]

- **Exclusion criteria**

Chevron has been involved in Myanmar since the company's 2005 takeover of Unocal. Chevron is a minority partner, along with French energy giant Total, in the operation of the Yadana gas project - one of just two producing offshore projects in the country.[79] For some investors Chevron's exposure to Burma is reason to exclude the company from investment.[80]

Furthermore, Chevron still deals with long due severe environmental and human rights violations in the Amazon region of Ecuador. In 1971, Texaco began building oil wells in areas of the Ecuadorian rainforest, which was inhabited by indigenous communities, and continued project development through 1992.[81] In 2001, the Chevron Corporation acquired Texaco, which became a brand name under Chevron. In 2003, United States trial attorneys and thousands of Ecuadorian peasants brought a class action lawsuit against Chevron for environmental and human rights infractions while Texaco was operating in Ecuador. It has so far taken the affected communities 18 years to hold Chevron responsible, but Chevron has refused to accept the verdict of the Ecuadorian courts.[82]

More recently, Some of Chevron's shareholders argue that the company faces regulatory, reputational and competitive risks surrounding the environmental impacts of its tar sands projects.[83] The Alberta tar sands are a controversial and unconventional oil reserve where Chevron participates in two major projects. Labelled 'the most destructive project on Earth' by Canada's Environmental Defence, tar sands development has significant environmental impacts, including heavy water use, clear-cutting of the Boreal Forest, formation of toxic “tailings” lakes, habitat destruction of iconic species such as the woodland caribou, and up to five times higher greenhouse gas emissions than conventional oil extraction.[84]

Halliburton

- **Company description**

Halliburton Company, incorporated in 1924, is an American oilfield services company. The company is provider of services and products to the energy industry related to the exploration, development, and production of oil and natural gas. It serves national, and independent oil and natural gas companies worldwide and operates in two segments: Completion and Production segment and Drilling and Evaluation segment. The company conducts business worldwide in approximately 80 countries. The business operations of its divisions are organized around four primary geographic regions: North America, Latin America, Europe/Africa/CIS, and Middle East/Asia.[85]

- **Ground for exclusion**

Halliburton is facing many controversies varying from involvement in corruption, antitrust lawsuits, health & safety incidents, and involvement in human rights violations in countries like Chad, Myanmar, Iraq and Cameroon.[86]

Freeport-McMoRan Copper & Gold

- **Company description**

Freeport-McMoRan Copper & Gold Inc. (FCX) is an American mining company. It engages in the exploration, mining, and production of mineral properties primarily in Indonesia, North America, South America, and Africa. FCX focuses on copper, gold, molybdenum, and silver prospects. FCX has a dynamic portfolio of operating, expansion and growth projects in the copper industry and is the world’s largest producer of molybdenum. The company’s portfolio of assets includes the Grasberg mining operation in the Papua rainforest, which makes FCX among the largest US investors and employers in Indonesia.[87]

- **Ground for exclusion**

Freeport-McMoRan has been excluded by several investors based on breaches of human rights standards by security forces around the Grasberg mine, and concerns over requirements for direct payments to government security forces by the company in Indonesia and Papua. Despite improvements in Freeport McMoRan’s own human rights policies, breaches of standards by government security forces are beyond the company’s control.[88]

Furthermore, in 2007 FCX acquired the company Phelps Dodge and thereby started mining operations in the Democratic Republic of Congo, a country that has been devastated by political upheaval, war and widespread human rights abuses.[89]

Madras Aluminium Company

• Company description

The Madras Aluminium Company Ltd. (MALCO) was established in India in 1965. In 1995, the Sterlite group acquired the company, and today Vedanta Resources is the principal shareholder with an ownership stake of 80 per cent.[90] MALCO is an integrated aluminium complex including captive bauxite mines (Yercaud and Kolli Hills), a refinery, a smelter and a coal-based power plant. The complex is located near Mettur Dam (in the state of Tamil Nadu), which is one of the biggest water reservoirs in Southern India (the Stanley Reservoir).[91]

• Ground for exclusion

The accusations against MALCO have centred on the disposal of red mud, which is a residue generated by bauxite refining. Because of its disposal of red mud, there have been reports that MALCO's mine, smelter, and power plant inflict considerable environmental impacts and health burdens on the local population. Also, the company is accused of repeated work accidents and hazardous working conditions[92]. Also, see the ground for exclusion of Vedanta Resources further on in this section.

Norilsk Nickel

• Company description

Mining and Metallurgical Company Norilsk Nickel OJSC is a Russia-based company engaged in the exploration, extraction, refining and sale of base and precious metals.[93] The company is a producer of nickel and palladium and a producer of platinum and copper. It also produces various by-products, such as cobalt, chromium, rhodium, silver, gold, iridium, ruthenium, selenium, tellurium and sulphur. The company's production facilities are located in Taimyr and Kola peninsulas of the Russian Federation, Australia, Botswana, Finland and South Africa. It has subsidiaries in the Russian Federation, the United Kingdom, Switzerland, the United States, Hong Kong and China.[94]

• Ground for exclusion

The city of Norilsk, where Norilsk Nickel is operating, is one of the most polluted cities in Russia. Increased levels of air pollution above the maximum allowable levels are registered in the city of Norilsk 350 days out of each year. In around 80% of cases, levels of harmful substances registered in the atmosphere are five times over the maximum allowable concentrations (MAC) in Russia, and in 20% of cases, levels of pollutants in the air reach an equivalent of 10 MAC values or greater. Emissions from Norilsk Nickel's operations in the Norilsk area have a severe impact on the environment and health of people living in the area. For many years, Norilsk Nickel's Polar Division has emitted large amounts of sulphur dioxide, nickel and heavy metals and copper. Yearly atmospheric emissions of sulphur dioxide are around 2 million tons, while emissions of heavy metals such as nickel and copper are around 450 tons and 500 tons respectively. Emissions have caused death or significant damage to vegetation up to 200 km from the operations. Atmospheric emissions have also caused the local population significant health problems. Respiratory diseases and various forms of cancer are more prevalent here than in other regions in Russia.[95]

PetroChina Ltd.

- **Company description**

PetroChina Company Limited is the listed subsidiary of the Chinese state-owned oil company China National Petroleum Corporation (CNPC). PetroChina mainly engaged in the production and sale of oil and gas related products. The Company's main businesses include the exploration, development, production and sale of crude oil and natural gas; refining of crude oil and petroleum products, production and sale of basic and derivative petrochemical products and other chemical products; sale of refined oil products and trading business; the transportation of natural gas, crude oil and refined oil, as well as the sale of natural gas. The company's major products include gasoline, diesel, kerosene, synthetic resin, synthetic fiber raw materials and polymers, synthetic rubber and urea. The Company is involved in the retail of refined oil and the international trading of petroleum and natural gas, and the construction and operation of oil and gas pipelines. As of December 31, 2011, the company operated 19,362 gas stations, produced 87.15 million tons of oil and sold 146 million tons of gasoline, diesel and kerosene.[96]

- **Ground for exclusion**

PetroChina is not directly involved in the unethical activities, but has been excluded due to the alleged activities of its parent company China National Petroleum Corporation in Sudan and Burma.

CNPC has repeatedly failed to address investors' concerns regarding its complicity in human rights violations in war-torn Sudan. This is despite being a formal signatory to the Global Compact's guiding principles, which prevent corporations from taking part in unethical and illegal behaviour.[97]

Along with operations in Sudan, PetroChina and CNPC have ignored EU and US sanctions with the dictatorial-regime in Myanmar (Burma). In December last year, PetroChina gave approximately US$ 6 million of aid to the Burmese government for medical aid to the general population.[98] PetroChina, is not directly involved in the human rights violations. It is Southeast Asia Crude Pipeline Company, another subsidiary of CNPC, which is constructing the pipelines in cooperation with, among others, the state-owned Burmese company Myanmar Oil and Gas Enterprise (MOGE). The main issue in this case is therefore whether PetroChina can be held accountable for human rights violations to which its parent company, CNPC, may be involved through its subsidiary Southeast Asia Crude Pipeline Company. CNPC, which is 100% state-owned, owns 87% of PetroChina.[99]

Potash Corporation of Saskatchewan

- **Company description**

Potash Corporation of Saskatchewan Inc. (PCS) is a Canadian integrated fertilizer and related industrial and feed products company. It is a producer of potash, phosphates and nitrogen producer. PCS owns and operates five potash mines in Saskatchewan and one in New Brunswick. It also holds mineral rights at the Esterhazy mine in Saskatchewan where potash is produced under a mining and processing agreement with a third party. Its phosphate operations include the manufacture and sale of solid and liquid phosphate fertilizers, animal feed supplements and industrial acid, which is used in food products and industrial processes. Its nitrogen operations include the production of nitrogen fertilizers and nitrogen feed and industrial products, including ammonia, urea, nitrogen solutions, ammonium nitrate and nitric acid. It has nitrogen facilities in Georgia, Louisiana, Ohio and Trinidad.[100]

- **Ground for exclusion**

Potash purchases phosphate from the Moroccan company Office Cherifien des Phosphates (OCP). OCP extracts phosphate in Western Sahara, a territory which is not self-governed and which has no recognised administrator.[101] In an opinion by the UN Under-Secretary General for Legal Affairs, issued in 2002, the exploitation of natural resources in colonized territories; Western Sahara in particular, was declared illegal if it is not to the benefit of the people of the territory.[102] Some investors take the view that the interests of the local population are not served by OCP's operations, and that it is this unacceptable situation that constitutes the core of the breach of human and ethical standards.[103]

Rio Tinto

- **Company description**

The UK-Australian company Rio Tinto is engaged in minerals exploration, development, production, and processing. Its major products are aluminium, copper, diamonds, coal, iron ore, uranium, molybdenum, gold, borates, titanium dioxide, salt and talc.[104] The group is the combination of Rio Tinto PLC (registered in the UK) and Rio Tinto Ltd (registered in Australia), structured as a single economic entity. The group operates in the United Kingdom, Australia, Canada, France, Indonesia, Namibia, Papua New Guinea, South Africa and the United States.

- **Ground for exclusion**

Rio Tinto is facing some strong controversies on subjects such as biodiversity, human rights and communities' relations. The company faces difficulties in maintaining its social license to operate, and, being one of the largest diversified companies, its footprint is expansive and often results in stakeholder controversies.[105]

The main reason for exclusion for most investors concerns a 40 per cent stake in a joint venture with Freeport McMoRan, at a mining operation in the Indonesian province of Papua. The Grasberg complex is the biggest gold mine in the world, and the third biggest for copper. Environmental groups and local people are concerned with the environmental damage caused by dumping millions of tonnes of ore waste, or tailings, into the local river system and the harm that could be done by the stored overburden.[106]

This environmentally damaging practice does not comply with the company's own environmental principles, but Rio Tinto remains its stake in the Grasberg mine, stating that riverine disposal is the best possible solution in this complex mining area.[107]

Sterlite Industries

- **Company description**

Sterlite Industries (India) Limited is one of two major copper producers in India. It is controlled by Vedanta Resources. The production is divided between two units, Tuticorin and Silvassa. The first is located on the southern tip of India in Tamil Nadu state, featuring a smelter, a refinery, and copper rod plants. The other includes a refinery and copper rod plants in Western India, Gujarat state. Receiving copper anode from the Tuticorin smelter 575 km further south, the Silvassa refinery processes it.[108]

- **Ground for exclusion**

Sterlite has been accused of irresponsible handling of hazardous waste, illegal production expansion, and repeated and severe violations of a series of environmental requirements. Allegedly, this has happened systematically and over many years. The company's hazardous waste management and illegal emissions are thought to have generated far-reaching pollution of soil, air, groundwater and drinking water, causing considerable environmental damage and adverse health effects in the local population[109].

Also, see the ground for exclusion in the section of Vedanta Resources.

Total

- **Company description**

Total S.A., together with its subsidiaries and affiliates worldwide, is an integrated international oil and gas company. With operations in more than 130 countries, Total engages in all aspects of the petroleum industry, including upstream operations: oil and gas exploration, development and production, liquefied natural gas (LNG) and downstream operations (refining, marketing and the trading and shipping of crude oil and petroleum products). The Company has exploration and production activities in more than 40 countries and produces oil or gas in 30 countries.[110]

- **Ground for exclusion**

In Myamar, Total operates the Yadana gas field with a 31.2% interest. Commercial production began in 2000, with an expected field life of 30 years.[111] The Yadana project has been subject to much criticism in the international community, particularly because companies of democratic nations invested in a regime that has been noted for its human rights violations.

In January 2013 Total SA was put on trial in France for violating UN sanctions against the Iraqi regime of Saddam Hussein. Between 1996 and 2003 the 60-billion-dollar United Nations oil-for-food programme allowed Iraq to sell some of its oil to pay for necessities such as food and medicine, supposedly mitigating an embargo imposed after the first Gulf War. But it also served the interests of Saddam Hussein and some of his allies, who profited from the illicit sale of Iraqi oil. In return for lobbying against sanctions on Iraq's behalf, Hussein's friends are suspected of receiving bribes, including barrels of oil. Total SA is accused of having bought some of that crude oil, and faces charges of corruption and involvement in fraudulent activity. Executives of Total face charges of corruption and bribery for buying oil from Iraq.[112]

Vedanta Resources

- **Company description**

Vedanta Resources Plc. is an Indian diversified metals and mining company. Its segments include zinc, iron ore, copper, aluminium, power and oil and gas. The aluminium business consists of bauxite mining, alumina refining and aluminium smelting operations in India, and trading through the Bharat Aluminium Company Limited as well as Madras Aluminium Company. The copper business includes a copper smelter, two refineries and two copper rod plants in India, trading through Sterlite Industries (India) Limited; one copper mine in Australia, trading through Copper Mines of Tasmania Pty Limited, and an integrated operation in Zambia comprising three mines, a leaching plant and a smelter, trading through Konkola Copper Mines Plc. Its zinc-lead business includes zinc-lead mining and smelting operations in India, and trading through the Hindustan Zinc Limited. The Power segment consists of power plants. In December 2012, the Company's subsidiary Sesa Goa Limited acquired the remaining 49% of Western Cluster Limited.[113]

- **Ground for exclusion**

The company is alleged to be directly and indirectly involved in gross and serious human rights violations and serious environmental damage, and is taking insufficient measures to prevent similar situations from occurring in the future. Particularly the unwillingness to change, results in the exclusion of this company from investment by several investors.[114] In several different contexts there have been allegations that Vedanta Resources has caused environmental damage and contributed to human rights and labour violations. Most violations concerning severe environmental damage focus on the operations of Sterlite Industries, MALCO, and Vedanta Alumina. Violations of human rights mostly focus on forced relocation of tribal peoples at Vedanta Alumina's operations in Orissa and Balco's bauxite mine. The company has been accused of repeated breaches of national environmental legislation, illegal production expansions, irresponsible handling of hazardous waste, violations against tribal peoples, deplorable wages, and dangerous working conditions in the mines and factories. The company is also accused of being involved in bribery and corruption.[115]

Zijin Mining Group

- **Company description**

Zijin Mining Group is a large-scale state-owned mining group with the headquarters located in Shanghang County, Fujian Province, in the People's Republic of China. It is China's largest gold producer, and second largest copper producer. Furthermore, it is an important producer in zinc, tungsten and iron ore, as well as the enterprise with most reserves of minerals resources in China. According to the statistics from China Gold Association, the mined gold produced by Zijin in 2011 accounts for 9.48% of total amount of mined gold in China.[116]

- **Ground for exclusion**

The Zijin Mining Group has been excluded following severe breaches of environmental and safety standards including toxic spills and emissions, and a tailings dam collapse, which led to multiple fatalities. In 2010 Chinese regulators prosecuted the company and criticised its slow response to improving systems despite earlier warnings. The company faced multiple lawsuits in China.[117]

Zijin Mining Group has been ordered by local courts to respond to a lawsuit filed by the Guangdong authorities for damages, which resulted after the collapse of the Gaoqiling tailing pool dam of Yinyan Tin Mine, owned by Xinyi Zijin, on September 21, 2010[118]. The collapse resulted in the deaths of 22 people and the destruction of 523 homes in Xinyi City. Thousands of tons of fish were killed because of the water pollution. After an investigation, Guangdong provincial authorities identified Xinyi Zijin as responsible for the accident. Zijin Mining Group, the mine owners and China's largest gold producer, was subsequently hit with 2,497 lawsuits.[119] Zijin Mining's two wholly owned subsidiaries, Xinyi Zijin Mining Co and Xinyi Baoyuan Mining Co., and four other companies involved in the incident have been ordered to respond to the filing of a lawsuit seeking 170 million yuan in compensation to victims affected by the accident.[120] The case is on-going.

On January 31 2011, Zijin announced that it had been fined 30 million yuan for a massive acid wastewater leak from one of the company's copper mines in Fujian Province in 2010.[121]

2 Survey

Responsible Investment, Human Rights and the Extractive Industry

1. Name pension fund (the results will be anonymized)

2. Name respondent

3. In which regions is your pension fund invested in?
   - Developed markets (US, Europe, Asia - developed countries)
   - Emerging markets

4. Could you please give an estimation in how many companies you are invested in?
   - 0-100
   - 101-300
   - 301-1000
   - 1001-2500
   - 2500+
   - Other, please specify:

5. Does your pension fund explicitly cover human rights as part of its responsible investment policy?
   - Yes
   - No
   - Please indicate why / why not:

6. Who composed the human rights policy of your pension fund? More than one answer is possible.
   - Board
   - Consultant
   - External ESG-provider
   - Fiduciary / asset manager: ESG analyst
   - Fiduciary / asset manager: Portfolio analyst
   - Working group / selection committee
   - Other, please specify:

7. What does the human rights policy (for the extractive industry) of your pension fund contain? More than one answer is possible.
   - Reference to Extractive Industry Transparency Initiative
   - Reference to Free Prior Informed Consent
   - Reference to Human Rights Impact Assessments (HRIAs)
   - Reference to ILO conventions
   - Reference to Protect, Respect and Remedy: a Framework for Business and Human Rights (Ruggie)
   - Reference to UN Global Compact
   - Reference to Universal Declaration of Human Rights (1948)
   - Reference to Voluntary Principles on Security and Human Rights
   - No human rights policy
   - Other, please specify:

8. Who does the screening for your pension fund on the topic of human rights? More than one answer is possible.
   - Board
   - Consultant
   - External ESG-provider
   - Fiduciary / asset manager: ESG analyst
   - Fiduciary / asset manager: portfolio analyst
   - Working group / selection committee
   - Other, please specify:

9. Which companies are screened by your pension fund on the topic of human rights? Please indicate on a scale of 1-10, with 1 being not important and 10 very important.
   - This selection is done by data-providers (eg. MSCI, Sustainalytics, Vigeo)
   - Companies mentioned in NGO reports, and in the media
   - Companies that are excluded by other investors
   - Companies that have incurred legal or operational costs because of human right issues
   - Companies that are not financially attractive

10. Does your pension fund currently engage with companies in the extractive industry on the topic of human rights?
    - No
    - Yes, with 1-5 companies
    - Yes, with 6-10 companies
    - Yes, with more than 10 companies
    - Please comment:

11. How important are the following reasons for your pension fund to engage with companies in the extractive industry on the topic of human rights? Please indicate on a scale of 1-10, with 1 being not important and 10 very important.
    - To reduce financial risk
    - To reduce reputational risk
    - To reduce negative ESG impacts
    - Other, please specify:

12. What was the reason for your pension fund to engage with companies in the extractive industry on the topic of human rights? Please indicate on a scale of 1-10, with 1 being not important and 10 very important.
    - After incident(s)
    - After (several) legal convictions
    - Bad influence on financial results
    - Negative advice from ESG-data provider
    - NGO reports, and negative media attention
    - After other investors excluded this company

13. What is the duration of an average engagement program of your pension fund with companies in the extractive industry on the topic of human rights?
    - Less then a year
    - One or two years
    - Two years or more
    - Other, please specify:

14. Could you please indicate the success ratio of the engagement program (the percentage that the human rights issue has been mitigated)?

15. Could you please indicate the percentage of companies in the extractive industry that have been excluded by your pension fund after engagement has failed on the topic of human rights?

16. If your pension fund engages with companies in the extractive industry on the topic of human rights, what will happen with this company? More than one answer is possible.
    - It will be placed on an internal watchlist (for portfolio managers clear that the company is included in the engagement program)
    - It will be placed on a public watchlist
    - Investments in the securities concerned are frozen
    - It will not be placed on a watchlist
    - Other, please specify:

17. How many companies in the extractive industry are currently on your exclusion list because of human rights?
    - None
    - Yes, with 1-5 companies
    - Yes, with 6-10 companies
    - Yes, with more than 10 companies
    - Other, please specify

18. What is the main reason for your pension fund to exclude companies in the extractive industry? Please indicate on a scale of 1-10, with 1 being not important and 10 very important.
    - To reduce financial risk
    - To reduce reputational risk
    - To reduce negative ESG impacts
    - Other, please specify:

19. What was the reason for your pension fund to exclude companies in the extractive industry on the topic of human rights? Please indicate on a scale of 1-10, with 1 being not important and 10 very important.
    - After one, or frequent incident(s)
    - After (several) legal convictions
    - Bad influence on financial results
    - Negative advice from data provider
    - NGO reports, and negative media attention
    - After other investors excluded this company
    - Negative engagement result
    - Other, please specify:

20. In what way does the size of the financial position influence the exclusion process?
    - No impact
    - Little impact
    - Neutral
    - Some impact
    - Large impact
    - Other, please specify:

21. Considering the reach of exclusions, if a company in the extractive industry is in violation of the human rights policy:
    - only the responsible subsidiary will be excluded
    - only the parent company will be excluded
    - the parent company and the responsible subsidiary will be excluded
    - the parent company, the responsible subsidiary, and all other subsidiaries will be excluded

22. The following companies are engaged with or excluded by various institutional investors, based on research done by Novethic. Could you please indicate whether your pension fund engages with the following companies in the extractive industry, or is on your exclusion list, on the topic of human rights?
    - Alpha Natural Resources
    - Barrick Gold
    - Chevron
    - Freeport-McMoRan
    - Halliburton Company
    - Madras Aluminium Company
    - Norlisk Nickel
    - PetroChina Company Ltd.
    - Potash Corporation
    - Rio Tinto
    - Sterlite Industries
    - Total
    - Vedanta Resources
    - Zijin Mining Group

23. Following the previous question, could you please further elaborate on your engagement activities with, or reason for exclusion of the following companies?
    - Alpha Natural Resources
    - Barrick Gold
    - Chevron
    - Freeport-McMoRan
    - Halliburton Company
    - Madras Aluminium Company
    - Norlisk Nickel
    - PetroChina Company Ltd.
    - Potash Corporation
    - Rio Tinto
    - Sterlite Industries
    - Total
    - Vedanta Resources
    - Zijin Mining Group

24. Could you please indicate what other companies have been excluded based on human rights violations in the extractive industry (oil & gas, and mining)?

25. We thank you for your participation in this survey. However, you might think we have overlooked some important matters, or questions, or you might have other valuable feedback. In that case, we ask you to comment in the textbox below.

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