

# Dirty Profits 9



How

much

Pain

for

Corporate

Gain?

Human rights violations and the role of the financial sector

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The full report can be downloaded here  
(incl. statements from banks and companies):



[facing-finance.org/de/publications/dirty-profits/](https://facing-finance.org/de/publications/dirty-profits/)

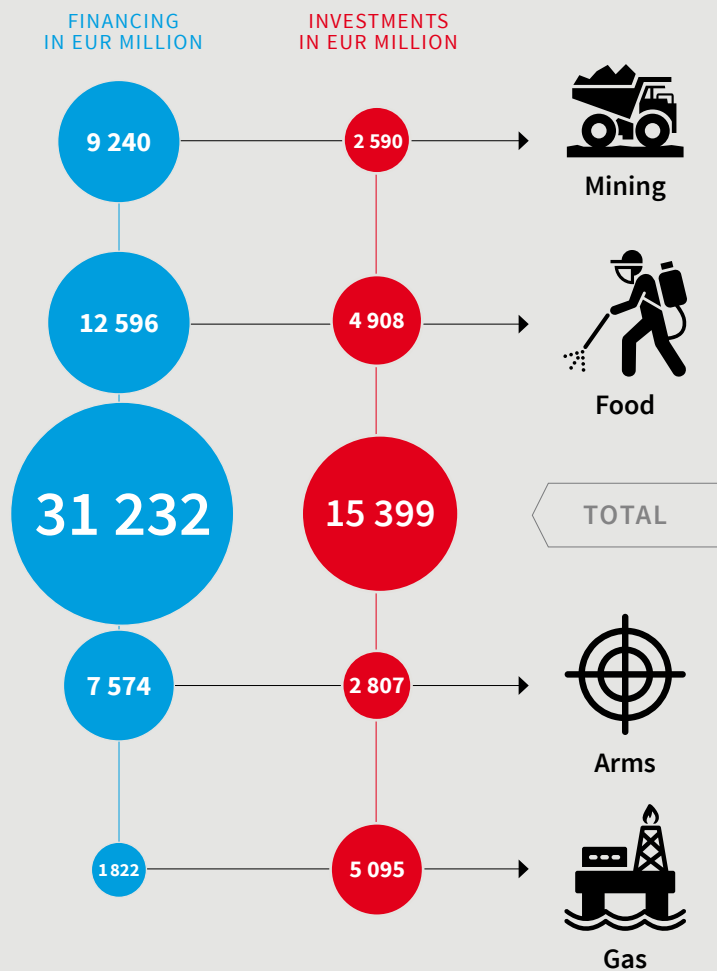
**Excerpt from address by former United Nations Secretary-General Kofi Annan at the World Economic Forum in Davos, Switzerland (1999).**

**“** *Many of you are big investors, employers and producers in dozens of different countries across the world. That power brings with it great opportunities – and great responsibilities. You can uphold human rights and decent labour and environmental standards directly, by your own conduct of your own business.*

*Indeed, you can use these universal values as the cement binding together your global corporations, since they are values people all over the world will recognize as their own. You can make sure that in your own corporate practices you uphold and respect human rights; and that you are not yourselves complicit in human rights abuses.”*

# Financial Institutions on the Human Rights Test Bench

	IN EUR MILLION
Allianz	2 960
Alte Leipziger	11
apoBank	5
Axa	285
BayernLB	1 324 13
Commerzbank	6 551 64
DekaBank	2 222
Deutsche Bank	6 790 6 835
DZ Bank	1 215 2 713
HypoVereinsbank (UniCredit Group)	8 833 31
ING	5 435 80
LBBW	1 041 113
Stadtsparkasse Düsseldorf	42 7
Zurich	61



\* The chart represents the totality of the identified financial relationships and is not intended for comparability. Different numbers of companies were examined in the individual sectors.

\*\* Note: All figures are rounded.

# Summary

This study uses a human rights framework to examine 14 funders on the German financial services market of corporate human rights abuses across the globe. Financial institutions play a central role in our economic system which puts corporate profits above the rights and welfare of people and the environment. They invest in mining companies that violate the rights of Indigenous Peoples, like Anglo American and HeidelbergCement, lend to European pesticide producers that sell their toxic products to countries with less stringent standards, such as Bayer and BASF, and facilitate the placement of bonds for arms companies profiting from the Yemen War that claimed the lives of more than 370 000 people, including Airbus, BAE and Raytheon. By financially supporting companies like the ones just mentioned, all of which have a record of human rights violations, without requiring compliance with the most basic human rights and environmental standards, these financial institutions are making money from the exploitation of people and the planet. All 22 companies examined in this study are doing far too little to curb the human rights violations and pollution they cause and to take the necessary remedial action. At the same time, there are a number of authoritative and internationally agreed standards and conventions that financial institutions, corporations and governments must adhere to:

The *Declaration of Human Rights* is considered a milestone in human history. For over 70 years, every person, without exception, has enjoyed these rights and freedoms from birth to death – no matter where they were born, what religion or ethnicity they belong to, what language they speak or what their gender or color of skin. These rights are inherent to all human beings. They are universal and inalienable. But in reality, theory and practice diverge all too often.

More than a decade after the adoption of the *United Nations Guiding Principles on Business and Human Rights* (UNGPs), companies, including financial institutions, are still failing to meet their human rights obligations. While some corporations continually disregard the most basic rights of the communities in which they operate, banks and life insurers continue to recklessly pour money into them.

The Covid-19 pandemic has overshadowed long-standing human rights violations that have been committed not only by states, but also by companies over the years. While governments have responded with economic rescue packages, these have hardly reached those at the bottom of supply chains. The pandemic has deepened global inequalities and, as with most crises, the most vulnerable and marginalized segments of society have been hit the hardest.

This report illustrates seven examples of financial flow between 14 financial institutions on the German market and 22 companies that have violated, among others, the right to health, to remedy, or to free prior and informed consent of Indigenous Peoples and of communities with customary tenure rights:

- ▶ The pesticide companies **Bayer**, **BASF** and **Syngenta** (ChemChina) ship toxic “crop protection products” banned in the EU to developing and emerging countries. This leads not only to **groundwater contamination**, but also to serious **health risks**, including accidental **poisonings**, for workers without proper protective clothing and for residents living in close proximity to the fields. The financial relationships found in this report amount to roughly 18 billion euros. The lion’s share of general corporate finance was provided by **Deutsche Bank** and the Italian **UniCredit Group (HypoVereinsbank)**.
- ▶ The mining company **Anglo American exploits the water resources** of communities in Chile so that residents lack sufficient, equal and permanent access to this vital resource. The financial relationships of banks and life insurers with Anglo American revealed in this report amount to more than 2 billion euros. While **Commerzbank** was the mining giant’s biggest financier, **DZ Bank** is its largest investor.
- ▶ **Allianz**, **DekaBank** and **Deutsche Bank** through its asset manager **DWS** continue to do business with the Brazilian mining company **Vale**, which bears the responsibility for nearly 300 deaths in its recent history as a result of two dam breaches. More specifically, the aforementioned financial institutions invest 461 million euros in the company. Unfortunately, there are no signs of improvement on the horizon: The Brazilian company continues to ruthlessly **destroy people’s livelihoods** and makes it difficult for victims to exercise their **rights to remedy and compensation**.
- ▶ Despite of being accused of **labor rights abuses**, **environmental pollution** and **corruption**, ten banks and life insurance companies continue to have financial relationships with **Glencore**, which amount to more than 6 billion euros. The Swiss commodities trading company mines and processes copper ore as well as cobalt as a by-product in the Democratic Republic of the Congo. The Dutch **ING**, which is active on the German financial services market through its **ING-DiBa** brand, and **Commerzbank** provided the chief part of general corporate finance to the company.

- ▶ Twelve financial institutions have relationships corresponding to more than 10 billion euros with the defense companies **Airbus, BAE, Dassault, Leonardo, Raytheon, Rheinmetall, and Thales**, which are profiting from arms exports to the Saudi Arabia-led anti-Houthi coalition in the ongoing war and dire humanitarian crisis in Yemen. The exported bombs, aircrafts and spare parts are being used to commit severe **human rights abuses** against the Yemeni people. The **UniCredit Group (HypoVereinsbank)** and **Commerzbank** were the largest providers of capital.
- ▶ Although the oil and gas companies **Chevron, ONGC, Posco, PTT, and TotalEnergies**, as well as the defense company **BEL** and manufacturer **Sinotruk**, continued to operate in Myanmar after the 2021 military coup, 13 financial institutions did not cease doing business with them, the volume of which amounts to almost 7 billion euros. Through their economic activities, the companies provided financial support to the brutal military junta, ignoring the fact that **oppression and systematic human rights violations** are a daily reality in Myanmar. **Deutsche Bank** accounts for almost half of all the identified financial relationships.
- ▶ Twelve financial institutions on the German financial services market as well as two Indonesian banks have financial ties to **PT Semen, HeidelbergCement** or its subsidiary **Indocement** amounting to over 3 billion euros. The companies are in conflict with Indonesian communities united in the *People's Movement Kendeng* over limestone mining and cement production on the Indonesian island of Java. Indigenous communities depend on agriculture for their livelihoods, which the mining companies put at risk by violating their **right to a clean, healthy, and sustainable environment**. These human rights violations do not seem to stand in the way of entering into a business relationship for either the major banks **Deutsche Bank** and **ING** or the smaller institutions **LBBW** and **BayernLB**.

## THE ROLE OF FINANCIAL INSTITUTIONS

Financial institutions have great power over companies, which is why they can make a big difference. The enterprises in this report are part of the real economy but, like all companies, they depend on capital to fund their operations. Financial institutions can make a conscious decision for or against a financial relationship with a company, depending on whether they agree with its social and ecological actions in addition to the economic performance. This requires strict and transparent voluntary commitments so that financial institutions themselves can be held accountable. In the case of mining, for example, banks can and must expect companies to consult affected communities prior to any extractive activity and obtain their consent, to take measures to protect workers and residents, to handle toxic waste responsibly and to thoroughly assess the risks to the environment. But regardless of industry, financial actors must expect their clients to conduct comprehensive human rights due diligence.

For the financial research, 18 banks and six life insurance companies were selected (for a detailed list see page 10ff.). The list of financial institutions was derived from the *Fair Finance Guide Germany* project led by Facing Finance and conducted in cooperation with the Südwind-Institut and the consumer

protection organization Verbraucherzentrale Bremen. In this project, the policies of a cross-section of the German banking and life insurance landscape are examined and ranked on the basis of responsible environmental, social and governance (ESG) criteria. The Dutch bank ING and the Italian UniCredit, as well as the French life insurer Axa are included in the research because they are also active on the German financial services market.

The staggering number of financial linkages between the assessed companies and the financial institutions shows that there is still a long way to go. **The research reveals an extremely high volume of business for ten banks and four life insurers vis-à-vis the 22 companies, amounting to more than 46 billion euros.** While Glencore and Airbus were the largest recipients of corporate loans, the financial institutions also have particularly large holdings in the pesticide companies Bayer and BASF as well as in the oil and gas company TotalEnergies. **On a positive note, eight banks and two life insurance companies had no financial interests in the companies studied.**

### Financial institutions with ties to companies in this report:

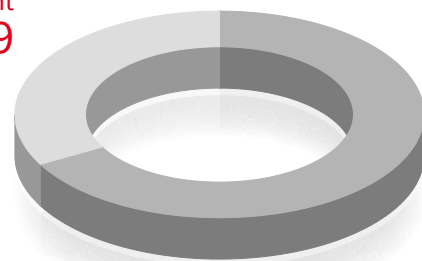
Allianz, Alte Leipziger, Axa, apoBank, BayernLB, Commerzbank, DekaBank, Deutsche Bank, DZ Bank, ING, LBBW, Stadtsparkasse Düsseldorf, UniCredit (HypoVereinsbank), Zurich

### Financial institutions with no identified ties to companies in this report:

Debeka, DKB, EthikBank, GLS Bank, KD-Bank, Pax-Bank, R+V, Sparda-Bank West, Sparkasse KölnBonn, Triodos Bank

VALUE OF FINANCIAL RELATIONSHIPS FOUND in million euros

Investment  
15 399



Financing  
31 232

**Since 2018, eight banks on the German financial services market have provided a total of more than 31 billion euros to 14 of the selected companies for the financing of their business models. This amounts to 67% of the identified financial relationships.**

Fresh capital was provided in the form of participation in loans and issuance of shares and bonds. Financing a company is considered the strongest form of support for economic activities because it directly increases the company's funds. Roughly 90% of the identified finance volume is accounted for by **UniCredit (HypoVereinsbank), Deutsche Bank, Commerzbank** and **ING**. A much lower finance volume was recorded for BayernLB, DZ Bank, LBBW and Stadtsparkasse Düsseldorf.

**TOTAL FINANCING OF THE COMPANIES IN THIS REPORT** from January 2018 to February 2022 in millions of euros

	<b>Equity</b>	<b>Bonds</b>	<b>Loans</b>
BayernLB		392	932
Commerzbank	300	2 177	4 074
Deutsche Bank	300	5 406	1 084
DZ Bank			1 215
ING	300	1 886	3 249
LBBW		123	917
Stadtsparkasse Düsseldorf			42
UniCredit (HypoVereinsbank)	351	3 347	5 136
<b>TOTAL</b>	<b>1 252</b>	<b>13 332</b>	<b>16 648</b>

Note: All figures are rounded.

In invested capital, a high **investment volume** of more than **15 billion euros** can be identified in the form of shares and bonds held. With almost 7 billion euros, **Deutsche Bank** is particularly prominent with high investments in the oil and gas company TotalEnergies and the chemical giant BASF. But the life insurance company **Allianz** as well as **DZ Bank** and **DekaBank** also have large stakes in the firms. apoBank, Stadtsparkasse Düsseldorf and BayernLB, all banks with lower balance sheet totals, are the smallest investors.

**TOTAL INVESTMENTS IN THE COMPANIES IN THIS REPORT** as of February 2022 in millions of euros

	<b>Bondholdings</b>	<b>Shareholdings</b>
Allianz	2 157	804
Alte Leipziger	1	10
apoBank	5	
Axa	94	191
BayernLB	12	1
Commerzbank		64
DekaBank	205	2 018
Deutsche Bank	595	6 240
DZ Bank	266	2 447
ING	2	77
LBBW	40	73
Stadtsparkasse Düsseldorf	5	2
UniCredit (HypoVereinsbank)		31
Zurich		61
<b>TOTAL</b>	<b>3 382</b>	<b>12 017</b>

Note: All figures are rounded.

## DIALOGUE WITH COMPANIES

An important building block for a financial institution's fulfillment of its human rights obligations is the dialogue with the companies it finances or invests in. A survey of banks and life insurance companies conducted by Facing Finance on four of the companies selected from the report, **Airbus**, **Bayer**, **Glencore**, and **TotalEnergies**, concludes that the responses of financial institutions to date have been insufficient to address the pressing issues of human rights abuses by these companies. None of the financial institutions could demonstrate a comprehensive **engagement** process, including sufficient and time-bound targets. Union Investment, the asset manager of DZ Bank, performed best compared to all other underperforming banks and life insurance companies where financial relationships could be demonstrated.

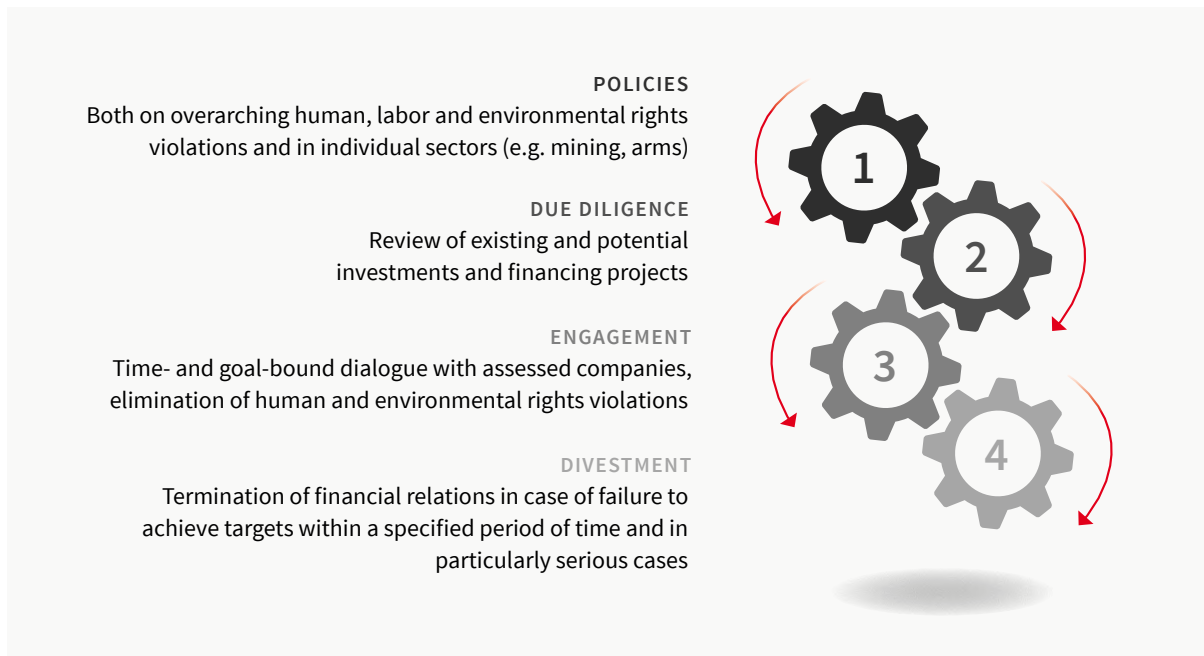
## POLICIES

Although most of the selected banks and life insurance companies have developed and improved their **human rights policies** in recent years, most of the times they remain inadequate, to address the full scope of human rights violations committed by companies. The report draws on seven exemplary cases to show how diverse human rights violations can occur, but also what commonalities can be found. Comprehensive guidelines for banking and insurance can be applied to a wide range of overarching violations, despite the many individual stories. Not only within individual sectors, but also beyond them, the abuses occur repeatedly harming people and the environment.

Notable exceptions among financial institutions are the green and ethical banks EthikBank, GLS Bank, KD-Bank, Pax-Bank, and Triodos Bank. However, as the examples of LBBW and Sparkasse KölnBonn show a sound policy is only as good as the banks follow it. Despite LBBW's very comprehensive human rights policy, research revealed financial relationships to ten human rights abusing companies in this report. On the other hand, Sparkasse KölnBonn's policy is only satisfactory, but in practice no financial links were found with any of the selected companies in this report.

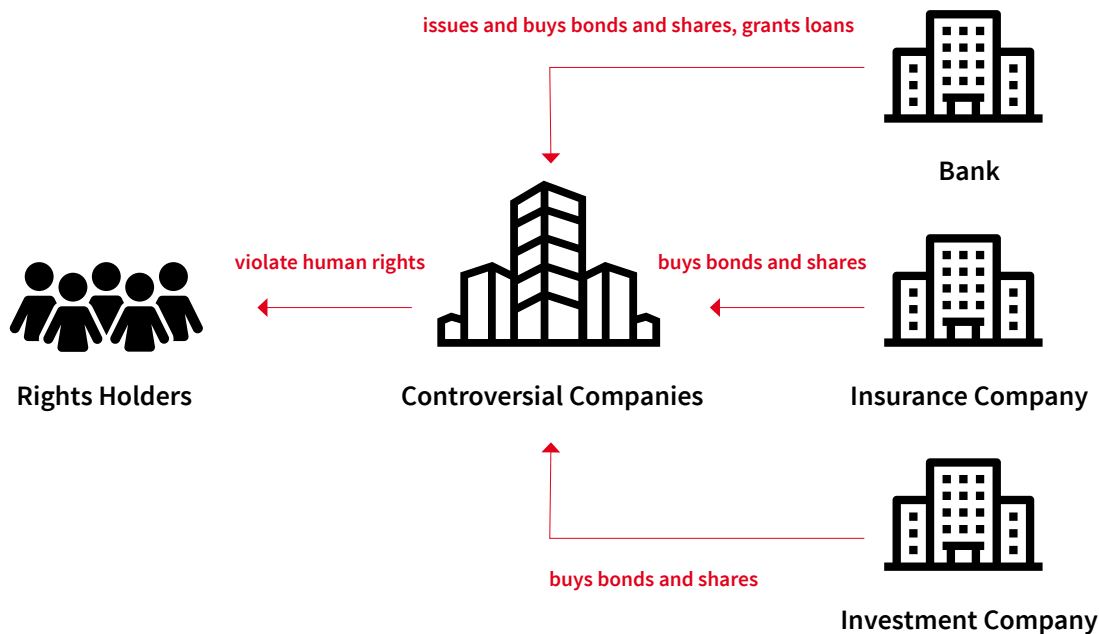
### RECOMMENDATIONS

Financial institutions must be aware that they are enabling human rights violations, even if they do not cause them themselves. It is partly due to their lack of policies, processes and procedures that human rights violations by their clients go undetected or without consequence. As long as this is the case, banks and life insurers cannot claim to have responsible investment and financing policies. We call on all financial institutions to overhaul commitments they have already made or are currently developing and to align them, at a minimum, with the *UN Guiding Principles on Business and Human Rights* with the ultimate goal to protect the rights of people affected by their clients' operations. Any violation must trigger an immediate and pre-defined engagement process. If a company breaches hard exclusion criteria, the financial relationship must be terminated as quickly as possible with reference to its unacceptable business model.





# Methodology



## WHY FINANCIAL INSTITUTIONS ARE FOUND COMPLICIT IN HUMAN RIGHTS ABUSES

This report draws on a conceptual human rights framework to examine interactions in the real economy between the financial sector and private companies as their clients in the area of human rights abuses. Deviating from the traditional conception of a relationship between the rights holder and the state as the duty bearer, a horizontal approach is taken. Then even though international human rights law imposes obligations and duties primarily on states, companies can also infringe the rights of individuals or entire communities. Therefore, they have a duty to prevent human rights abuses and mitigate the impact of their operations. This view is widely recognized, for example in the *UN Guiding Principles on Business and Human Rights*, which were unanimously endorsed by the UN Human Rights Council in 2011. The starting point for this analysis is therefore human rights violations resulting from corporate activities.

Financial institutions are a category of companies. Although they share the same duties and responsibilities with other business enterprises, they are rather associated with a co-responsibility for human rights violations committed by their clients. In their role as financial services providers to companies in need of capital in the real economy, banks and other financial institutions enable and facilitate their clients' corporate misconduct and may also profit from it. It is in their responsibility to also ensure that human rights are respected..

The study of financial relations between controversial companies and financial institutions within a human rights framework allows responsibility to be allocated at different stages. In seven exemplary cases of human rights violations by corporate clients of financial institutions or investees, it is shown both how the various rights violations occur and what commonalities there are. This provides a basis to identify gaps in the current human rights policies of banks and life insurance companies.

### SELECTION OF CASE STUDIES AND COMPANIES

The selection of case studies was based on **geographical**, **sectoral**, and **human rights** criteria, as well as **suggestions** from partner organizations in the Global South. A total of seven case studies comprising 22 companies in four sectors on three continents were prepared.

### SELECTION OF CASE STUDIES BASED ON PARTNER ORGANIZATIONS

As an organization based in Germany, Facing Finance asked partner organizations in the Global South which cases they consider particularly worrying or are currently investigating. In the process, an extensive list of companies that violate human rights was compiled. Three of the civil society organizations, namely Perkumpulan PRAKARSA in Indonesia, Justiça nos Trilhos (JnT) in Brazil and the Observatorio Latinoamericano de Conflictos Ambientales (OLCA) in Chile, agreed to support this report with their field research. The last two organizations are part of the ecumenical network Iglesias y Minería, which addresses the impacts and violations on social and environmental rights caused by mining activities in Latin America. Perkumpulan PRAKSARA, part of the joint *Fair Finance International* network, works to promote and improve social justice and well-being in Indonesian communities.

The three civil society organizations have written about the water crisis caused by Anglo American's copper mining operations in Chile (see p. 33), the struggle of Brazilian communities to obtain

compensation and remediation for Vale’s iron ore operations (see p. 31) and the threat to the livelihoods of Indonesian indigenous communities posed by a planned limestone mine to be operated by a subsidiary of HeidelbergCement and a cement plant by the Indonesian company PT Semen (see p. 70).

Another case selected from the partner organizations’ proposals due to its extreme urgency is the case study on financial flows from international companies to the Burmese military regime after the coup d’état in February 2021. For the safety of the stakeholders involved, this case study was prepared solely under the responsibility of Facing Finance (see p. 63).

#### SELECTION OF CASE STUDIES BASED ON GEOGRAPHICAL CRITERIA

Although human rights abuses occur in all parts of the world, this report is concerned with human rights violations committed by transnational companies in the Global South. Weaker laws, lack of enforcement, and limited international attention create in some countries a favourable environment for companies to operate largely undisturbed by international scrutiny. As a result, some of the cases covered in this report are characterized by decades of human rights abuses. Using geographical distribution as a criterion, Facing Finance selected cases from Africa, Asia, the MENA region, and South America.

#### SELECTION OF CASE STUDIES BASED ON INDUSTRY CRITERIA

Human rights violations are reported in virtually all industries. Although they occur in different sectors, the similarities between the cases are often striking. Land grabbing, for example, is a recurring problem ranging from agriculture to mining. The report covers cases in sectors as diverse as arms, food, mining, oil and gas. The extractive industry’s strikingly poor track record of severe and multiple human and environmental rights violations, as well as the repeated operational failures with tragic human and environmental consequences, combined with the proposals of our partner organizations, have led to an overrepresentation of the mining sector in this report. However, this also demonstrates the urgent need for improvements in this industry.

#### SELECTION OF FINANCIAL INSTITUTIONS

For the financial research, the 18 banks and six life insurance companies were selected from the project *Fair Finance Guide Germany*, which is led by Facing Finance in cooperation with the Südwind-Institut and Verbraucherzentrale Bremen. In this project, the policies of a cross-section of the German banking and life insurance landscape – which is highly fragmented with around 1 700 banks and 80 life insurers – are examined and ranked on the basis of ESG investment criteria (Deutsche Bundesbank 2021, 7; BaFin 2021). The following table provides an overview of the financial institutions included.

Banks	Description
apoBank	Deutsche Apotheker- und Ärztebank, or apoBank, is a cooperative bank that offers all the financial and advisory services of a universal bank, i.e. it is active in the lending, deposit and investment business as well as in asset management. It is the largest cooperative primary bank and is open to health care professionals.
BayernLB incl. DKB	Bayerische Landesbank is not only the principal bank of the State of Bavaria, but also the central institution of the Bavarian savings banks, for which it performs refinancing and administrative tasks. Private investors cannot open savings accounts with BayernLB itself, but its business policy is indirectly relevant for all savings banks and other private customers, because BayernLB refinances the savings banks and offers retail funds through its subsidiary BayernInvest. Deutsche Kreditbank Aktiengesellschaft, or DKB, is a wholly owned subsidiary of Bayerische Landesbank. It is the second largest direct bank in Germany.

#### SELECTION OF CASE STUDIES BASED ON HUMAN RIGHTS CRITERIA

The most important criterion for the selection of cases was human rights violations arising from corporate activities. The cases were selected on the basis of research into current and persistent, direct and indirect, and severe and multiple violations of norms and standards that fall into the below categories (see also p. 15):

- ▶ Right to health
- ▶ Right to an adequate standard of living including the right to adequate food and housing
- ▶ Right to water and sanitation
- ▶ Right to a clean and healthy environment
- ▶ Right to effective remedy and reparation
- ▶ Collective rights, including those related to Indigenous Peoples, such as the right to development and self-determination, and the right to free, prior and informed consent
- ▶ Labour rights

#### OTHER CRITERIA

A number of other factors played a role in the selection of cases, albeit a subordinate one. Cases involving companies headquartered in German-speaking countries were preferred, as the majority of German banks tend to be domestically oriented in their financing activities. Naturally, most cases involve publicly listed companies, as they are subject to more regulatory requirements and are consequently more transparent. Thus, financial relationships between banks and life insurance companies on the one hand and companies on the other are accessible.

Commerzbank	Commerzbank is Germany's fourth-largest bank in terms of total assets. The largest shareholder is the Federal Republic of Germany, which in 2009 sought to prevent a foreign takeover with its stake. In the meantime, the Federal Republic's share in Commerzbank has fallen to 15%. Commerzbank is a universal bank.
DekaBank	DekaBank is a wholly owned subsidiary of the German savings banks associations. Together with various subsidiaries in Germany and abroad, it forms the Deka Group. DekaBank acts as the central securities house of the savings banks and conducts both asset management and banking business in the areas of securities, real estate, banking services, capital markets and financing. It serves private and institutional customers and acts as financier, issuer, structurer, and trustee as well as custodian.
Deutsche Bank	Deutsche Bank is one of the largest universal banks in the world and the largest bank in Germany. It combines a wide range of financial services, including lending and deposit business, insurance and, through the fund company DWS, investments in securities. Deutsche Bank invests worldwide in companies in all sectors and finances major projects.
DZ Bank	DZ Bank AG Deutsche Zentral-Genossenschaftsbank is part of the cooperative financial sector, which also includes the better-known Volks-, Raiffeisen-, and Spardabanks in Germany. Its main functions are those of a central bank, i.e., refinancing and supporting the business operations of the approximately 800 independent cooperative banks. In addition, DZ Bank operates as a commercial bank and holding company. In terms of total assets, it is the second largest bank in Germany. DZ Bank is the main shareholder in Union Investment, which offers investment funds that are also distributed by the local Volks-, Raiffeisen- and Spardabanks.
EthikBank	EthikBank is an ethical-ecological direct bank. It is not an independent bank, but a branch of Volksbank Eisenberg in Thuringia, with which it shares sustainable investment and financing guidelines.
GLS	GLS Bank is the largest alternative bank with a socio-ecological profile in Germany. It is a cooperatively organized universal bank with over 100 000 members.
HypoVereinsbank	HypoVereinsbank is a brand of UniCredit Bank AG, which belongs to the Italian UniCredit banking group. The bank mainly serves private and corporate customers in Germany and is active in investment banking. It is the fifth largest bank in Germany in terms of total assets.
ING	The Dutch ING Groep N.V. is the tenth largest European bank by total assets. ING-Diba AG, a wholly owned subsidiary, ranks eighth in Germany and is the largest direct bank.
KD-Bank	Bank for Church and Diakonia, or KD-Bank, is organized as a cooperative bank. Its members are mainly institutions of the Protestant Church and the Diakonie. Its predominantly institutional customers also come from this environment; retail banking accounts for only a relatively small proportion. When investing surplus funds (own investments), a sustainability filter developed according to Christian values is used, with the help of which companies are selected according to social and ecological criteria.
LBBW	Landesbank Baden-Württemberg (LBBW) is the principal bank of the three federal states of Baden-Württemberg, Rhineland-Palatinate and Saxony as well as the central bank for the savings banks there. It finances small and medium-sized enterprises of all kinds in the three federal states. Internationally, in addition to project financing, LBBW is mainly active through its subsidiary LBBW Asset Management and its investment funds. In terms of total assets, LBBW is among the ten largest banks in Germany.
Pax-Bank	The Pax-Bank is a bank of Christian-ethical orientation with the legal form of a cooperative bank that offers its customers and members banking services. Among Pax-Bank's customers are church, non-profit as well as social institutions and associations, corporations and institutions under public law, and private individuals, while the bank is generally open to all people and organizations that identify with Christian values.
Sparda-West Bank	Sparda-Bank West eG is the second largest of a total of eleven cooperative Sparda banks in Germany. According to the bank, the focus is on the cooperative idea, i.e. "the economic promotion and support" of its members, and not on maximizing the bank's profits.
Sparkasse KölnBonn	Of a total of 376 savings banks in Germany, Sparkasse KölnBonn is the third largest. As a savings bank, it is an institution under public law and operates universally in the savings, giro and lending business. Like any savings bank, it is a fully-fledged credit institution.
Stadtsparkasse Düsseldorf	Of a total of 376 savings banks in Germany, Stadtsparkasse Düsseldorf is the twelfth largest. As a savings bank, it is an institution under public law and operates universally in the savings, checking and lending business. Like any savings bank, it is a fully-fledged credit institution.
Triodos Bank	Triodos Bank N.V. is a public limited company operating not only in the Netherlands but also in Belgium, Germany, Spain, and the United Kingdom. The bank has a socio-ecologically orientation and invests in projects that have a positive impact on society or the environment. Although it focuses on lending to companies and organizations, Triodos also offers own investment funds.

## Life Insurance

Companies	Description
Allianz	Allianz is Germany's largest insurance group, which operates in more than 70 countries and is one of the largest financial services providers in the world. Allianz Lebensversicherungs-AG is under the umbrella of Allianz Deutschland AG. With 27.7 billion euros in 2020, it makes up the largest part of Allianz Deutschland and offers, for example, contracts for private and company pension products.
Alte Leipziger	The ALTE LEIPZIGER-HALLESCHE Group is a group of companies under the same legal structure, consisting of the two equal company divisions AL Lebensversicherung and HALLESCHE Krankenversicherung a.G. As a mutual insurance company, the policyholders are at the same time the members and the owners of the company. The product range of AL Leben includes private and company pension plans, as well as savings and investment products.
Axa	Axa Germany offers, among other things, pension products. Axa is one of the largest primary insurers in Germany. The parent company in Germany is Axa Konzern AG, which also includes Axa Lebensversicherung, among others. Axa Germany is subject to the sustainability regulations of the French group as a whole.
Debeka	Debeka is one of the largest insurance companies in Germany. The group targets private individuals and small and medium-sized businesses, and is limited to Germany. Debeka Lebensversicherung is a mutual insurance company.
R+V	R+V is part of the Volksbanken Raiffeisenbanken Cooperative Financial Network. 92.1% of R+V is owned by DZ Bank. R+V offers a wide range of insurance policies for private customers and companies, which are sold on the one hand through the network of Volksbanken Raiffeisenbanken and on the other hand through its own sales outlets.
Zurich	As part of the globally active Zurich Insurance Group from Switzerland, Zurich Group Germany offers life as well as non-life insurances. The German subsidiary of Zurich Insurance Group is Zurich Beteiligungs-AG, which also includes Zurich Deutscher Herold Lebensversicherung AG. The latter is an insurance partner of Deutsche Bank.

Source: Fair Finance Guide Germany (2020)

## RESEARCH STEPS

For this report two major research steps were undertaken: a content-based research and a financial analysis.

### CONTENT-BASED RESEARCH

The first part of the *Dirty Profits* research project involved case selection, case study research, and the compilation of human rights norms and standards (see p. 9f.). For the case studies as well as other research in this report, a wide range of publicly available information was drawn from reports, academic papers, books, newspapers, essays and documentaries. The publications used are mainly authored by other civil society organizations, academic institutions, journalists or other experts, as well as companies and financial institutions.

### FINANCIAL ANALYSIS

In a second step, a comprehensive financial research was conducted, financial institutions were surveyed about their engagement with companies, and the human rights policies of the selected banks and life insurers were reviewed.

The financial relationships identified were obtained from the *Refinitiv Eikon* database, for the period from January 2018 to February 2022. The database contains information provided by, among others, capital management companies and banks, although this cannot be considered conclusive, especially as regards the granting of loans. Neither are the figures presented in this report claimed to be exhaustive. It should also be noted, that the different currencies were converted into euros, which might have led to minor rounding errors. However, these deviations are negligible relative to the amounts in question. In cases where there was no pro rata breakdown of a syndicate of banks, the amount was divided evenly by the number of banks.

All the financial institutions examined were given the opportunity to comment on the results of the financial research prior to publication.

Overall, the research considered loans, the issuance of bonds and shares, as well as investments in bonds and shares. The financial institutions' profits in these arrangements come from interest, dividends, price gains and commissions.

### DIRECT COMPANY ENGAGEMENT: SURVEY AMONG FINANCIAL INSTITUTIONS

There are several ways in which financial institutions can take responsibility for sustainability issues in their financing and investments. A key instrument for addressing environmental and social concerns related to their corporate clients and driving positive change is the direct engagement with companies. Such a dialogue should always be combined with transparent and time-bound targets, and with a clear message to the companies regarding the consequences of not improving significantly.

Four companies were selected from the seven case studies for a survey conducted among banks and life insurance companies to shed light on the engagement practices of financial institutions:

The Life Science company **Bayer** was selected on the one hand because it is headquartered in Germany, meaning that the obstacles to engagement faced by German financial institutions are expected to be correspondingly low, and on the other hand because eight of the banks and three of the insurance companies have financial relationships with the company.

The mining company **Glencore** was chosen because it has been the subject of international criticism for many years due to its activities in developing countries, such as in Africa and South America: Be it because of the violation of human and labour rights, environmental damage or corruption scandals. For any financial institution that does business with the company and takes its own sustainability pledges seriously, an engagement process is a one-way street.

The aerospace and defence company **Airbus** was chosen because the company's fighter jets are regularly used by Saudi Arabia, one of the parties to the conflict in Yemen. On the subject of arms in particular, many financial institutions have tightened their guidelines in recent years, and yet eight of the banks and two of the insurance companies are found to have financial ties to Airbus – a company that is the subject of a criminal complaint filed with the International Criminal Court.

**TotalEnergies** was selected because it withdrew from the Yadana gas field in Myanmar in January 2022, almost exactly one year after the military coup. Because the energy company justified this in part as the result of pressure from shareholders and civil society, it was particularly well suited for the engagement survey.

## HUMAN RIGHTS POLICIES OF FINANCIAL INSTITUTIONS

In addition to the financial aspect of the research, the financing and investment policies of the selected banks and life insurers on the topic of human rights were also reviewed. The review for banks was carried out in the second half of 2021 as part of the annual update of the *Fair Finance Guide Germany* project and applied to this report. The review for life insurance companies was conducted separately in April 2022.

The *Fair Finance Guide* reviews publicly available financing and investment policies across banks' corporate lending, project finance, and investments for the institutions' own account (proprietary investments) as well as financial institutions' asset management including investment funds for clients to assess their sustainability.

## THE WHAT, WHY AND HOW OF OUR INVESTIGATION

The financial research maps the financial relations from banks and life insurers to companies. In most cases, the information gathered about financial relationships reveals neither the purposes for which the firms used the capital they obtained from the banks nor the amount of profit the financial institutions made from the transactions.

## FINANCING

The provision of capital from banks to companies in the form of loans and the issuance of bonds and shares can be seen as the strongest form of support for economic activities.

## LOANS

The easiest way for companies to gain capital is to take out a loan. They usually receive these funds for "general purposes". The debt is most often not earmarked, and the company can use the money freely: for either socially and ecologically justifiable projects or controversial ones, e.g. expansion plans of mining operations without obtaining free, prior and informed consent from affected frontline communities. However, all lending without exception should be linked to minimum social and environmental requirements. Facing Finance has excluded from the analysis loans that are clearly not related to the case studies.

## ISSUANCE OF SHARES AND BONDS

Companies can also increase their liquid assets by selling shares and bonds. Banks, on the other hand, act as intermediaries to ensure that there are enough buyers and that companies get good prices. Proceeds from the sale of shares flow into a company's equity – regardless of whether parcels of existing shares are being sold or the company is issuing shares for the first time. A bond, however, is nothing more than a large loan in which the company makes an appearance as a capital market participant. Banks first put the issued shares or bonds on their own books and then sell them to other investors as quickly as possible. Once the securities have been successfully placed on the market, banks ensure that they continue to be traded. Facing Finance has excluded from the analysis sales of shares and bonds that are clearly not related to the case studies. But banks should also ensure for all their business relationships that real-economy companies do not violate human rights and environmental standards in their operations.

## INVESTMENTS

Financial institutions profit from investments made for their own account or on behalf of their clients, e.g. through commissions, dividends or price gains. To ensure that these returns are not generated at the expense of people and the environment, banks and life insurance companies need to develop a comprehensive set of social and environmental minimum requirements for companies they invest in.

## MANAGEMENT OF SHARES AND BONDS (HOLDINGS)

Life insurance companies and banks invest incoming monies on their own account, while the latter often also manage investments for the account of clients. However, transactions on behalf of individual customers are confidential and as invisible as a bank's own investments. Only investment funds are required to disclose all positions every six months. It is clear that banks benefit from the management of investments on behalf of third parties through the fees they charge, just as they do from the management or distribution of investment funds. Another way in which financial institutions share responsibility for corporate business models is by keeping bonds and shares liquid on the financial markets, thus facilitating the availability of capital for companies – and consequently for their conduct of business. As shareholders, they have a right to vote at annual general meetings, which they can use, for example, to vote in the interest of human rights and climate protection. As shareholders, they should also demand social and environmental improvements from companies through a process of critical dialogue.

# Human Rights caught between Financial Institutions, Companies, and Regulatory Developments

## MAPPING HUMAN RIGHTS STANDARDS IN THE CONTEXT OF CORPORATE RESPONSIBILITY

Human rights are not granted by a state; we own them because we exist as human beings. These rights are inherent to all of us, “regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status” (OHCHR 2021a). Beginning with the right to life, one of the most fundamental human rights, they extend to rights that make life worth living, such as the right to food, education, work, and health (Stand Up for Human Rights n.d.).

The *Universal Declaration of Human Rights* (UDHR) was adopted by the UN General Assembly in 1948. It was the first legal document to set out the fundamental human rights to be universally protected. However, it was not and it still is not a binding treaty, but a declaration of principles. Nevertheless, the UDHR remains the foundation of all international human rights law to this day. Thirty articles form the basis for current and future human rights conventions, treaties and other legal instruments (OHCHR 2021a). Together with the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), they form the *International Bill of Human Rights* (Shift / Mazars 2015, 1).

In addition, there are some UN conventions with a specific focus on vulnerable groups such as the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP). Human rights standards related to labor and health are covered, among others, by the International Labour Organization (ILO) and the World Health Organization (WHO).

Human rights have two important characteristics: they are both universal and inalienable (Weitz 2019, 9). Thus, everyone is equally entitled to them.

### GENDER AND HUMAN RIGHTS

**Women and men often experience the impact of corporate activities very differently**, with women usually being disproportionately harmed by the human rights abuses committed by transnational companies. At the same time, they are more likely to be excluded from the economic benefits that these corporations may bring. In virtually all of the case studies in this report, Facing Finance has noted the absence from women’s experiences and perspectives from corporate human rights responses. Although women make up half of the world’s population and are actively organizing to make their realities heard, their voices are all too often excluded by corporate gender blindness. The structural failure of companies to engage with women reinforces existing inequalities by ignoring specific gender impacts and further disempowering women and girls. The companies identified in this report should conduct gender impact assessments and develop gender policies that go beyond their internal affairs.

## REPORTS ON HUMAN RIGHTS VIOLATIONS COMMITTED BY COMPANIES

This section lists some of the human rights that are among the most frequently violated by international companies in this report. Some of these violations, such as components of the right to an adequate standard of living, have been repeatedly noted in the case studies that unfold in the next chapters. The list does not claim to be exhaustive.



The right to adequate food and to be free from hunger protects people's access to sufficient and healthy food that meets the nutritional needs of the individual.

— UDHR Art. 25, ICESCR Art. 11 (2)



The **right to water and sanitation** acknowledges the need for drinking water and sanitation as essential parts of human life. For many other human rights explicitly recognized in UN conventions, e.g. the right to food, the availability of water is a necessary precondition.

— UN Resolution 64/292 (2010), UDHR Art. 25, ICESCR Art. 11



Everyone has the right to the highest attainable standard of physical and mental health. This does not simply mean the absence of disease or infirmity, but complete physical, mental and social well-being. The **right to physical and mental health** further includes the right to public health, medical care, social security, and social services.

— 1946 Constitution of the WHO, UDHR Art. 25, ICESCR Art. 11



All people have the **right to adequate housing** as part of a decent living standard. This includes measures to prevent homelessness, prohibit forced evictions, combat discrimination, as well as focus on the most vulnerable and marginalized groups, and ensure security of tenure for all. People also have the right to live where they have access to appropriate services, schools, and employment.

— UDHR Art. 25, ICESCR Art. 11



All human beings have the **right to a clean, healthy, and sustainable environment**. This includes clean air, safe and sufficient water, healthy and sustainably produced food, a safe climate, flourishing ecosystems and biodiversity, and a toxic-free environment in which people can live, work, study and play safely. Access to information, participation in decision-making and access to justice with effective remedies is also a substantial part of this human right.

— UN-Resolution 48/13 (2021)



All human beings have the **right to effective remedy** for acts violating their fundamental rights. This includes **reparations** for harm suffered. The *UN Guiding Principles on Business and Human Rights* are composed of three pillars, one of which is remedy. This emphasizes that both governments and businesses have a role to play in providing victims with access to remedy.

— UDHR Art. 8/10, ICCPR Art. 2/14, UNGPs Pillar III



The ILO core labour standards are universally applicable. They include the **freedom of association, free collective bargaining, elimination of forced and child labor, and no discrimination at work** including the principle of equal pay for the same work.

— ILO Declaration on Fundamental Principles and Rights at Work



Everyone who works has the right to just and favorable working conditions. Workers must be protected from any suffering arising from their employment, such as injury, disease, and other physical and mental conditions. To minimize accidents and other tragedies, both governments and companies must ensure the **highest level of safety at work** and improve **occupational safety and health working conditions**.

— ICESCR Art. 7(b), UDHR Art. 23, ILO Convention No. 155 on Occupational Safety and Health



**Indigenous Peoples** have the right to freely determine their political status and to advance their economic, social, and cultural development. They may freely dispose of natural wealth and resources. In exercising their **right to self-determination**, they have the right to autonomy or self-government in matters pertaining to their internal and local affairs, as well as ways and means of financing their autonomous functions.

— UNDRIP Art. 3/4



**Indigenous Peoples** shall not be forcibly relocated from their lands or territories. Relocation shall not take place without the **free, prior and informed consent** of the Indigenous Peoples affected and after an agreement on fair and adequate compensation and, where possible, with the option to return.

— ICESCR Art. 10/11, Basic Principles and Guidelines on Development-based Evictions, Tirana Declaration, Voluntary Guidelines on the Responsible Governance of Tenure

# HEED THE CALL: THE HUMAN RIGHTS IMPERATIVE FOR COMPANIES AND FINANCIAL INSTITUTIONS

To implement international human rights standards, states must enact appropriate legislation. But it is not only governments that are responsible for the realization of human rights: the actions of business enterprises, including financial institutions, can have both positive and negative effects on the implementation of human rights. These private-sector institutions can and often do violate human rights standards.

*“Enterprises can affect the human rights of their employees and contract workers, their customers, workers in their supply chains, communities around their operations and end users of their products or services. They can have an impact – directly or indirectly – on virtually the entire spectrum of internationally recognized human rights”* (Shift / Mazars 2015, 1)

It is crucial that companies and financial institutions fulfill their responsibilities to promote and safeguard human rights, both internally and in relation to their clients and customers. Some of the most important standards aimed at companies and financial institutions are presented below.

## UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The *UN Guiding Principles on Business and Human Rights* (UNGPs) are the result of the operationalization of the *Protect, Respect and Remedy Framework* in 2011. The UNGPs emphasize corporate responsibility not only with respect to the implementation of internationally recognized human rights, but also in light of “additional standards covering the human rights of individuals from groups or populations that may be particularly vulnerable to negative impacts” (Shift / Mazars 2015, 1). The UNGPs rest on three pillars: the state duty to protect against human rights abuses by third parties (including businesses), the corporate responsibility to respect human rights and better access to effective remedy for victims (UNEP FI 2014). These principles are considered to be the most important

## ENDING IMPUNITY FOR CORPORATE HUMAN RIGHTS ABUSES: UN BUSINESS & HUMAN RIGHTS TREATY

The *UN Business & Human Rights Treaty* is a binding treaty in the making, which follows a resolution adopted by the UN Human Rights Council in Geneva in 2014. “The ultimate goal of the treaty is to oblige states to effectively regulate business enterprises to ensure corporate respect for human rights” (Grama et al. 2021, 5). Unlike the UNGPs, this treaty would create new legal obligations for state parties once adopted. The first draft of the treaty was presented in 2018 and has since been revised several times. The third and latest draft was released in late 2021 and aims to ensure human rights due diligence for businesses through the introduction of laws or regulations by states. Unlike the second draft, due diligence is to include labor rights and climate impact assessments in addition to human and environmental rights. Most importantly, the revised draft emphasizes remedies and reparations for those who have been victims of rights violations, particularly in the context of transnational corporate activities (Lopez 2021). This goal is highlighted in several articles, e.g. Article 4 (rights of victims), Article 5 (protection of victims) and Article 7 (right to a remedy). However, the draft treaty is still criticized for lacking clarity and has not yet been adopted (ibid.).

global standard for addressing human rights risks and impacts in the context of corporate activities (OHCHR 2021b).

## UN GLOBAL COMPACT

The *UN Global Compact* (UNGC) consists of ten principles derived from the *Universal Declaration of Human Rights*, the *International Labour Organization’s Declaration on Fundamental Principles and Rights at Work*, the *Rio Declaration on Environment and Development*, and the *United Nations Convention against Corruption* (GCN Germany 2022). The UNGC helps companies conduct their business responsibly by aligning their strategies and operations with the ten principles on human rights, labor, environment and the fight against corruption. It also helps companies to take strategic action to advance broader societal goals such as the *UN Sustainable Development Goals* (SDGs) (UNGC n.d.). The first two principles refer directly to human rights: “Businesses should support and respect the protection of internationally proclaimed human rights. [...] Businesses should make sure that they are not complicit in human rights abuses” (van Gelder and van Loenen 2020, 86). The UNGC is a widespread but also low-threshold sustainability initiative. It can be a starting point for financial institutions to assess sustainability at companies. However, the UNGC does not have high informative value on its own and should therefore always be combined with other norms and standards (Tafel 2022, 14).

## OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The *OECD Guidelines for Multinational Enterprises*, the latest version of which was published in 2011, address multinational enterprises operating in or from OECD countries. The guidelines contain non-binding principles and standards for responsible business conduct in a global context, in accordance with applicable laws and internationally accepted standards. They are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting (OECD



## INTERNATIONAL FINANCE CORPORATIONS STANDARDS

The *International Finance Corporation (IFC) Standards* consist of the *IFC Environmental, Health, and Safety (EHS) Guidelines* as well as the *IFC Performance Standards*. The EHS Guidelines are technical reference documents with general and industry-specific examples of *Good International Industry Practice* (IFC 2022). The *IFC Performance Standards* contain eight standards on environmental and social sustainability, such as “Labor and Working Conditions”, “Community Health, Safety and Security” or “Land Acquisition and Involuntary Resettlement” (IFC 2012, 2). As part of their environmental and social due diligence processes, financial institutions must verify that the commercial client or investee complies with the *Performance Standards*. To do so effectively, financial institutions must observe local environmental and social legislation. This way, potential gaps in the analysis of environmental and social risks of financial transactions can be identified. The *IFC Standards* apply only to project finance.

## UN PRINCIPLES FOR RESPONSIBLE INVESTMENT

As the name suggests, the *UN Principles for Responsible Investment (PRI)* apply to investments only. They include six principles, which aim at incorporating ESG concerns into investment practices. “The Principles were developed by investors, for investors (PRI Association n.d.). However, the initiative only requires a more transparent reporting – it does not impose minimum ESG standards on members (Tafel 2022, 6).

## UN PRINCIPLES FOR RESPONSIBLE BANKING

Six principles make up the *UN Principles for Responsible Banking (PRB)*, a “framework for ensuring that signatory banks’ strategy and practice align with the vision society has set out for its future in the Sustainable Development Goals and the Paris Climate Agreement” (UNEP FI n.d.). Since its inception in 2019, through a partnership between founding banks and the UN, a total of 240 financial institutions have signed the PRB. By undersigning these principles, financial institutions commit to embed them across all business areas at the strategic, transactional and portfolio level. Signatories are advised to implement their commitment through impact analysis, target setting, and reporting (ibid.).

2011, 3). The human rights chapter of the OECD Guidelines is consistent with the UNGPs and provides further due diligence guidance for relevant sectors (e.g. minerals, extractive or agriculture) as well as institutional Investors (OECD 2011, 4). “According to the guidelines, companies have to respect the human rights of people affected by their activities” (van Gelder / van Loenen 2020, 85). In particular, the focus on enabling remediation and the explicit expectations of the participating countries make the OECD Guidelines an accepted assessment basis for financial institutions, despite their voluntary and non-binding legal nature (Tafel 2022, 15).

## EQUATOR PRINCIPLES

The *Equator Principles (EPs)* are “a financial industry benchmark for determining, assessing and managing environmental and social risk in projects” (Equator Principles Association 2022). They are voluntary guidelines and not legally binding. As of February 2022, 127 financial institutions in 38 countries have adopted the EPs. Since they were first introduced in 2003, the principles have been updated regularly. The fourth and latest update of the *Equator Principles (EP4)* was published in November 2019 (van Gelder and van Loenen 2020, 125). Similar to the *OECD Guidelines*, the EP4 have aligned their guidance on human rights with the UNGPs consisting of ten principles, e.g. “Reporting and Transparency”, “Independent Monitoring and Reporting” or “Grievance Mechanism”. The principles mainly apply to project finance and project-related lending provided by financial institutions (The Equator Principles Association 2022). Although the EPs are a useful standard, civil society organizations such as *BankTrack* have pointed out the non-compliance of many projects funded “under Equator”. In addition, one of the biggest obstacles to transparency and thus accountability is that banks must obtain client approval for project name reporting (Greep / Frijns 2022).

# HUMAN RIGHTS COMPLIANCE IN SUPPLY CHAINS: A COMPARISON OF GERMAN AND EUROPEAN LEGISLATION

The numerous tragedies of recent years have shown that fundamental human rights are often disregarded in global supply chains. In January 2019, the Brumadinho dam in Brazil burst, killing 272 people. Shortly before, a subsidiary of the German testing and certification company TÜV SÜD certified the dam for its stability and safety (see p. 47). European chemical companies sell highly toxic pesticides to emerging and developing countries with less stringent health and environmental standards. Not only people working in agriculture, but also entire neighborhoods fall ill from their toxic cocktails (see p. 26). Millions of people around the world live in misery and hardship because minimum social standards, such as the ban on forced and child labor, are being ignored by multinational companies (BMZ 2022).

In recent years, civil society calls for binding legislation to address exploitation, environmental pollution and disregard for basic human rights along supply chains have become louder. And indeed, policymakers have responded: In 2021, Germany ratified a national supply chain due diligence law to conquer human rights and environmental abuses. Following in February 2022, the European Commission adopted a proposal for a directive on corporate sustainability due diligence, aiming “to foster sustainable and responsible corporate behavior throughout global value chains” (EC 2022). Four questions guide the comparison of the framework of the German Act and the Commission’s proposal in this chapter: Whom do they apply to? What is their scope of action? What is their scope of due diligence? How will they be enforced?

## SCOPE OF APPLICATION

The German Supply Chain Act (ger. Lieferkettensorgfaltspflichtengesetz) will come into effect in 2023. Initially, it applies to companies with more than 3 000 employees and a head office or branch in Germany corresponding to about 900 companies. From 2024 onwards, the law will apply to companies with over 1 000 employees; an estimated 4 800 companies will be affected (BMZ 2022). As the Supply Chain Act also applies to the service sector, financial services providers are covered by this Act. However, the due diligence obligations towards the downstream stages of the supply chain only apply to the financial services provider if it has special information and control capabilities (e.g. for large loans). If a financial services provider does not have such influence, it is only subject to due diligence obligations towards the borrower, the secured party and the investment object. In such cases, other corporate actors along the supply chain can be left out of the loop by financial institutions (Leifker / Porschke 2021, 9f.).

The European Commission's proposal for a directive applies to all EU companies with more than 500 employees and sales of more than 150 million euros. In addition, so-called risk sectors are defined including the textile, agricultural, and raw materials industries. In cases where more than 50% of total revenue is generated in one or more risk sectors, the directive applies to companies with 250 or more employees and revenue of over 40 million euros. According to estimates by the Commission, the directive will affect 13 000 European and 4 000 foreign companies (EC 2022). Unlike the German Supply Chain Act, the EU draft directly targets the financial sector. Financial services providers will be required to conduct due diligence on potential human rights and environmental violations before granting loans or providing other financial services (Bund Verlag 2022). The current draft is still criticized for several reasons. For example, only "very large" and listed financial institutions are subject to due diligence requirements to cover current and potential negative impacts of financing. In addition, due diligence is only required prior to closing a contract. Thus, after granting a loan, a bank would

no longer have to check whether the loan finances or contributes to human rights abuses or environmental damage. Unlike companies, financial actors would not be required to suspend a contractual relationship or terminate a contract in such a case (Bergius 2022).

## SCOPE OF ACTION

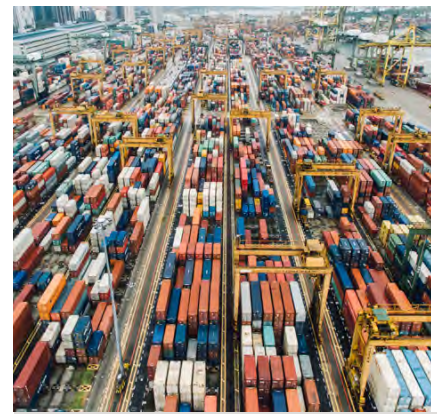
The German Supply Chain Act is based on a catalog of human rights violations that in some cases falls short of international standards (e.g. minimum wages compared to living wages). Furthermore, the German Supply Chain Act offers only limited criteria for environmental protection; climate protection is not considered (Leifker 2022).

The EU proposal, on the other hand, formulates an extensive list of human rights violations that, compared to the German legislation, also includes the withholding of living wages securing one's livelihood in opposition to a mere minimum wage. The European proposal for a directive also aims to ensure more comprehensive environmental protection. For example, companies are to set up a climate protection plan in line with the 1.5°C Paris goal (Leifker 2022).

## SCOPE OF DUE DILIGENCE

The German law includes a so-called "graduated due diligence" (ger. abgestufte Sorgfalt): Although the Supply Chain Act applies in principle to the entire supply chain, due diligence measures only have to be taken with indirect suppliers if the companies have "substantial knowledge" of possible violations. This runs the risk of counteracting the originally preventive approach of the Supply Chain Act (Leifker 2022).

In contrast, the European Commission's proposal for a directive contains a broad definition of the supply and value chain, which, for example, also includes the use as well as disposal of products such as pesticides. However, the limitation of due diligence to "established business relationships" is rather negative. This may provide an incentive for companies to change their suppliers frequently in order to escape liability risks and obligations (Leifker 2022). If the goal is to permanently eliminate grievances, this is counterproductive.



Singapore (May 2017). CHUTTERSNAIP, unsplash.

## ENFORCEMENT

The German Supply Chain Act endows the *Federal Office for Economic Affairs and Export Control* (ger. *Bundesamt für Wirtschaft und Ausfuhrkontrolle*) with far-reaching powers to monitor and sanction companies. However, the law does not regulate civil liability (Leifker 2022). In other words, companies are not liable for harms if, for example, the health of workers is negatively affected. Accordingly, there is also no entitlement to compensation for the injured individuals.

The European Commission's proposal for a directive provides for a combination of both regulatory enforcement and civil liability. Although an EU-wide network is intended to coordinate and support the authorities in the member states, provisions for effective liability are currently lacking. For example, class actions or the relief from the burden of proof are currently missing. In addition, the proposal does not provide for an audit of public contracts before they are awarded (Leifker 2022).

## OUTLOOK

The European solution for corporate responsibility along supply chains will be a directive, so it must be implemented by national governments within two years of coming into force leaving EU countries some legislative leeway. It is already apparent that the European directive will be more comprehensive than the German Supply Chain Act. Nevertheless, the directive will only apply to a fraction of all European companies (Initiative Lieferkettengesetz 2022). More ambitious solutions are required to tackle human rights and environmental abuses along supply chains. In addition, legislators should create comprehensive duties for financial institutions along the supply chains of companies they finance.

# THE SOCIAL COMPONENT OF THE EU TAXONOMY FRAMEWORK

The European Union has set itself the goal of becoming the first climate-neutral continent by 2050, while declaring that “no person and no place [is] left behind” (EC 2022a). To fund and implement the *European Green Deal* substantial public and private investment is needed (EC 2021a). With the gradual creation of a taxonomy framework since 2020, the EU aims to redirect capital flows into green economic activities and enable sustainability-oriented investors to take informed decisions (EC 2020).

The EU taxonomy is a classification system designed to provide a definition of sustainable economic activities (EC 2022b). To date, the EU has focused on environmental aspects in the classification of sustainable investments by creating a “green” taxonomy. Social aspects, albeit integrated as a minimum standard in the taxonomy, have not been regarded as an objective in themselves (Platform on Sustainable Finance 2022, 6/11). But only if environmental and climate issues are brought together with social objectives, a just and ecological transformation can be achieved for the benefit of people and the planet.

The failure to integrate social aspects from the beginning contrasts with the EU’s own ambitions for a “strong social Europe that is fair, inclusive and full of opportunity” as enshrined in the *European Pillar* (EC 2021b). Social risks could interfere with the envisaged transition to a green economy: Structural unemployment in former coal regions, forced labor in the supply chains of solar parks, or serious human and labor rights abuses in the mining of raw materials for electric cars constitute examples that could weaken the acceptance of the transformation (Marc 2020; Schneeweiß 2020; Swanson / Buckley 2021; Guhr 2018). In addition, significant social investments are still needed at a global level to reach the SDGs by 2030 (UN 2019). The EU taxonomy has consequently been criticized by civil society organizations for the lack of attention to social concerns (Südwind 2020).

Against this backdrop, the EU commissioned its advisory body, the *Platform on Sustainable Finance* (hereafter referred to as *Platform*), to elaborate on the possibility of a social taxonomy. In February 2022, the *Platform* published its final report on how an EU social taxonomy could be structured (see Platform on Sustainable Finance 2022).

In contrast to the existing green taxonomy that contains mainly science-based criteria, social aspects are less quantifiable. Instead, the social taxonomy is largely derived from internationally agreed norms and principles such as the *Bill of Human Rights* or the ILO’s fundamental conventions (for an overview of important human rights norms see p. 15) (Platform on Sustainable Finance 2022, 30ff.).

The *Platform’s* proposal for a social taxonomy encompasses the three stakeholder groups of workers, consumers, and societies and aims towards three overarching objectives (Platform on Sustainable Finance 2022, 33f.):

- ▶ decent work
- ▶ adequate living standards and wellbeing for consumers
- ▶ inclusive and sustainable communities and societies

Each objective includes a non-exhaustive list of sub-goals such as living wages, access to healthcare, social housing, or the inclusion of people with disabilities (Platform on Sustainable Finance 2022, 37f.).

The *Platform* proposes the following criteria for an economic activity to receive the EU social label and thus attract socially oriented investors (Platform on Sustainable Finance 2022, 39-47):

1. The activity must **substantially contribute** to at least one of the three social objectives listed above.
2. An activity should not harm any of the other social objectives (“**Do no significant harm**”, DNSH).
3. Universal **minimum safeguards** on crucial topics such as child labor, but also environmental standards must be considered for any activity.

Some aspects, such as the prioritization of (sub-)objectives or the design of DNSH-criteria and minimum safeguards remain open in the report (Platform on Sustainable Finance 2022, 79).

The *Platform’s* report will be the basis for an upcoming review and decision by the European Commission on the further development of the taxonomy framework. As of March 2022, this review has not yet been conducted. Since the report is not binding on the European Commission, the future of the social taxonomy has not yet been determined.

One area of concern is the ongoing lobbying efforts by several defense industry associations to be classified as inherently social in the taxonomy (BSDI et al. 2022). Currently, the *Platform’s* report labels certain types of weapons as harmful and “opposed to social objectives” (Platform on Sustainable Finance 2022, 70f.). Recent events, however, may give arms manufacturers a boost: Putin’s war of aggression against Ukraine triggered, for example, a U-turn in Germany’s defense policy leading to Chancellor Scholz’s decision to fund the national military at 2% of GDP annually from now on (Noyan 2022). If the European Commission classifies weapons as social, similar to how it has already labelled gas and nuclear as sustainable in the green taxonomy, it unnecessarily further undermines the credibility of the whole taxonomy. However, it remains unclear whether the social taxonomy will ever be put into practice.

## FEATURE

## PAVING THE WAY TO HELL: THE FINANCIERS OF PUTIN'S WAR

“Putin’s mobilization power is greater than that of climate change”, analyzes political scientist Ivan Krastev in the face of Putin’s invasion of Ukraine in March 2022 (Gorris 2022, 29). And indeed, in the days and weeks following Putin’s invasion of Ukraine, the world has witnessed a momentum of sanctions on and the withdrawal of private companies from Russia on an unprecedented scale. Among the companies pulling out of the Russian market are Western gas and oil giants like BP, Shell, and ExxonMobil, the payment service providers Visa, Mastercard, American Express, and PayPal, and the fast food chain McDonald’s as well as the entertainment service Netflix (Partalidou 2022; Race / Hooker 2022). The united and swift action of some western companies and governments may well have come as a surprise to Putin. During the illegal annexation of Crimea in 2014, similar reactions were absent as the West simply stood by and watched. Moreover, other wars and severe humanitarian crises, such as in Syria or Yemen, did not trigger similar collective action, nor has the global threat of climate change. But (van Gelder 2022, 7):

*“[n]ow that Russian tanks are ready to roll through the streets of Kyiv, with the risk of an escalation of the conflict to other European countries, the European attitude is different. Governments are offering military support and welcome displaced people, companies withdraw, and investors divest. Because there is one major difference between Putin and Assad: Putin is threatening European lives and interests, Assad was not. Syrian lives were not worth it.”*

Over time, Putin has created a narrative to discredit the democratic government of Ukraine: He accused Ukraine of being taken over by anti-Russian extremists since former pro-Russian president Yanukovich was ousted as a consequence of the Euromaidan protests in 2013 and 2014. The protests erupted when Putin’s regime pressured the Ukrainian president not to sign an association agreement with the EU in 2013. Putin’s response: the annexation of Crimea in southern Ukraine and the spark of a separatist rebellion in the Donbass. In the last eight years, 14 000 people have fallen victim to this war (Kirby 2022). Yet neither the loss of thousands of lives in Ukraine nor the shooting down of 298 passengers and crew members of Malaysia Airlines flight MH17 have caused the West to impose such drastic sanctions on or reconsider its relationship with Russia. In late 2021, Putin deployed an increasing number of troops to the Ukrainian-Russian border, while publicly denying that he was planning an invasion. On February 24, 2022, Putin suspended the 2015 Minsk Peace agreements for eastern Ukraine and recognized

the rebel-controlled areas as independent (Kirby 2022). How many have already fallen victim to this war is uncertain, while its outcome is utterly unclear.

It is beyond doubt that political and investment decisions by governments, businesses, and financial institutions in the past have paved the way for Putin’s war and strengthened the regime’s economic and military power (Partalidou 2022; van Gelder 2022, 1). After years of supporting the Russian government, European leaders must now counter the aggression with rigid sanctions. These sanctions will disproportionately affect the ordinary Russian people, who have not chosen to start this war, and may also further weaken the already violently suppressed opposition. Europe’s dependency on Russian raw materials and fossil fuels exacerbate the situation further. As van Gelder notes, “Putin’s continuous violations of humanitarian, ethical and juridical principles over the past decades did not outweigh the abundant oil, gas and coal reserves he had to offer” (van Gelder 2022, 1). European companies, banks, and investors unquestionably continued to finance the Russian fossil fuel sector, hence the government and indirectly the production of (nuclear) weapons (ibid.). On the other hand, environmental and climate impacts have been consistently neglected by companies operating in sensitive Russian ecosystems. Shell and its financiers, for example, have ignored evidence on the destructive social and environmental consequences of the Sakhalin LNG project (van Gelder 2022, 2). It has taken more than 20 years and an invasion of Ukraine for Shell to now finally divest from this and other Russian projects. Other companies did not follow the decision of their competitors or have done so only half-heartedly. The gas and oil giants TotalEnergies and Chevron remain invested in their Russian business (Partalidou 2022).

European banks and investors have been among the major financiers of the Russian oil, gas and coal industry, providing finance for exploration and production, pipelines and other infrastructure needed for storage and transportation (van Gelder 2022, 2). German financial institutions are no exception: Between 2016 and 2021, Commerzbank (1.4 billion US dollars) and Deutsche Bank (577 million US dollars) provided loans and underwriting services to the Russian coal mining sector. As of December 2021, many German financial institutions were invested in Russian oil and gas companies (Deutsche Bank with 364 million US dollars, Allianz with 237 million US dollars, Deka Group with 139 million US dollars) as well as in coal mining (Deutsche Bank with 12 million US dollars) (van Gelder 2022, 2ff.). Numerous European investors, such as pension funds, life insurance companies and asset managers, have also invested in Russian government bonds. The proceeds from these bonds are used directly to finance Russian government expenditures including its aggression against Ukraine (van Gelder 2022, 4). German financial institutions are the largest among European investors in Russian sovereign bonds. Allianz alone, with 2.6 billion US dollars, holds about 43% of all European investments in Russian government bonds. Together all German investors

hold more than 2.9 billion US dollars worth of these bonds (besides Allianz: DZ Bank with 141 million US dollars, Deka Group with 99 million US dollars, Deutsche Bank with 42 million US dollars, Munich Re with 16 million US dollars). In total, all European investments in Russian sovereign bonds amount to 6.1 billion US dollars (van Gelder 2022, 5).

Without European governments, companies, and investors strengthening the Russian economy, the war against Ukraine would not have been possible. It is intolerable that some companies and financial actors have not yet withdrawn from the Russian market, thus continuing to finance this war. Current events in Ukraine should be a wake-up call leading to “government policies based on human rights and sustainability principles and a new, sincere wave of Corporate Social Responsibility (CSR) in the corporate and financial world” (van Gelder 2022, 7).

**Banks and investors should take responsibility and act as agents of change by shifting capital allocation from fossil fuels to renewable energy and taking greater account of human rights due diligence in all financing and investment decisions, as authoritarian regimes and companies which cause or contribute to human rights abuses should no longer be supported.**

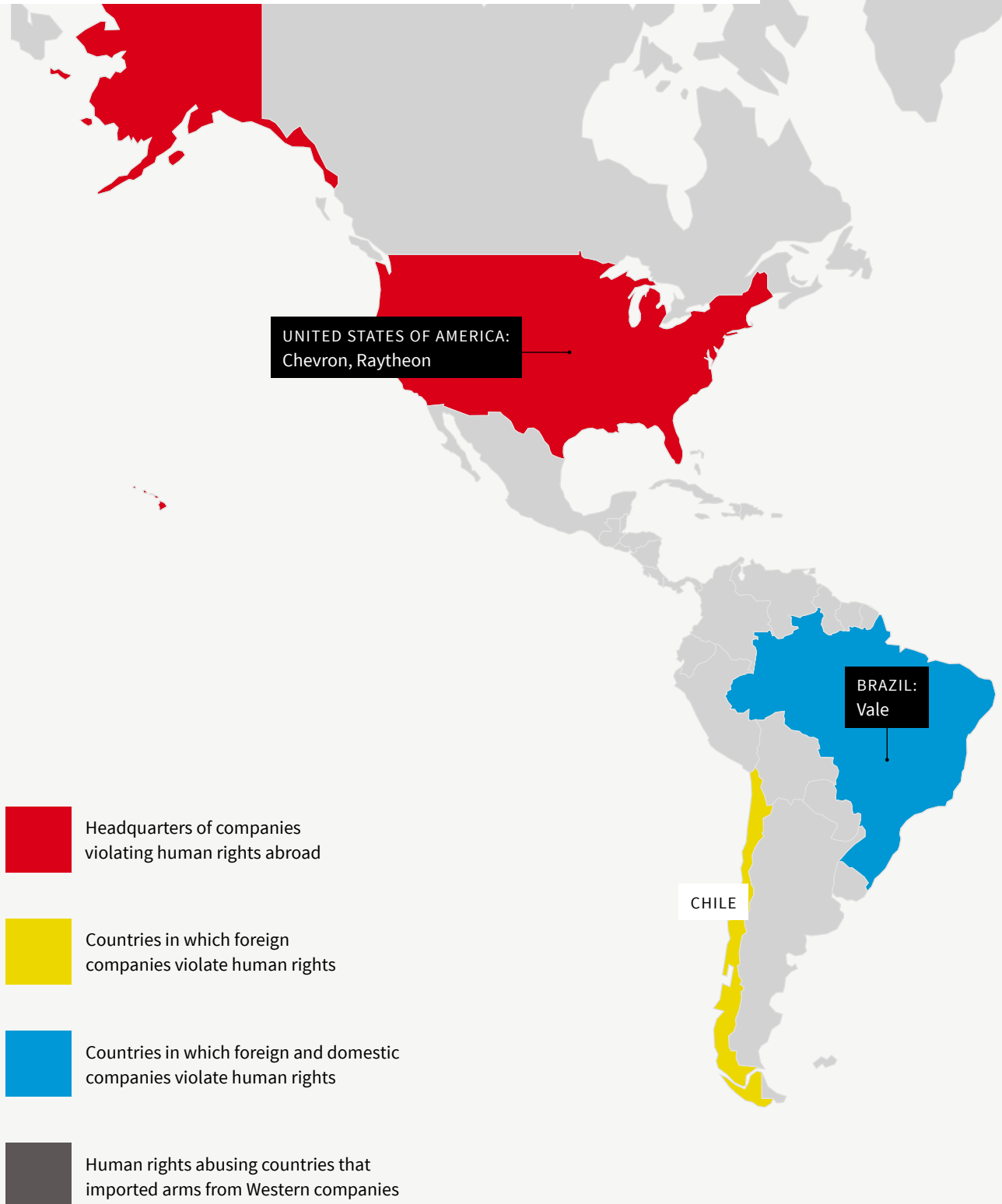
Moreover, financial institutions should not provide capital to companies involved in the production or maintenance of nuclear weapons (ibid.). As political scientist Krastev states, “The world of globalization and free trade, in which the economy is not interested in politics but only in making good deals, will be over” (Gorris 2022, 29). This is also and especially true for financial services providers.

The willingness of most European leaders and some companies and financial players to stand together against the Putin regime and support the Ukrainian people is positive. However, by no means do all companies, banks, and life insurers show active solidarity. It is also unfortunate that a humanitarian disaster of this magnitude was necessary for Europe to recognize the need for collective action. Similar efforts will be needed to tackle climate change and human rights abuses worldwide.



Russian missile attack on an oil storage facility in Lviv, Ukraine (March 2022). Sodel Vladyslav, shutterstock.

# Crime Scene South: When Companies from the North violate Human Rights in the South





# BASF | BAYER | SYNGENTA

## PESTICIDES: FRIEND OR FOE?

The brochures, reports, and websites of leading agribusiness companies convey the image of a flawless world of agriculture. Animals graze undisturbed on green pastures. Smallholder farmers smile into the cameras from greenhouses. But the industrialised agriculture of today often looks quite different: Monocultures of maize and sugar cane as far as the eye can see, destroyed ecosystems and livelihoods, loss of biodiversity..

Pesticides build a substantial part of today's agriculture. "Crop protection products" are not bad per se, but some of those manufactured by the European companies BASF, Bayer, and Syngenta are so toxic that they harm humans, animals, and the environment. This does not stop the corporations from selling their products to emerging and developing countries with lower safety standards and less strict regulations, resulting in millions of poisonings every year and, time and again, tragic deaths.

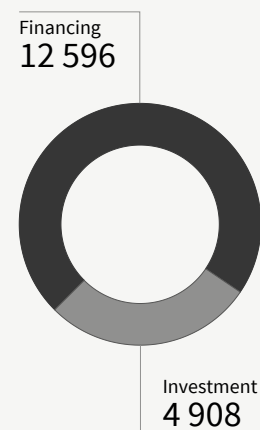
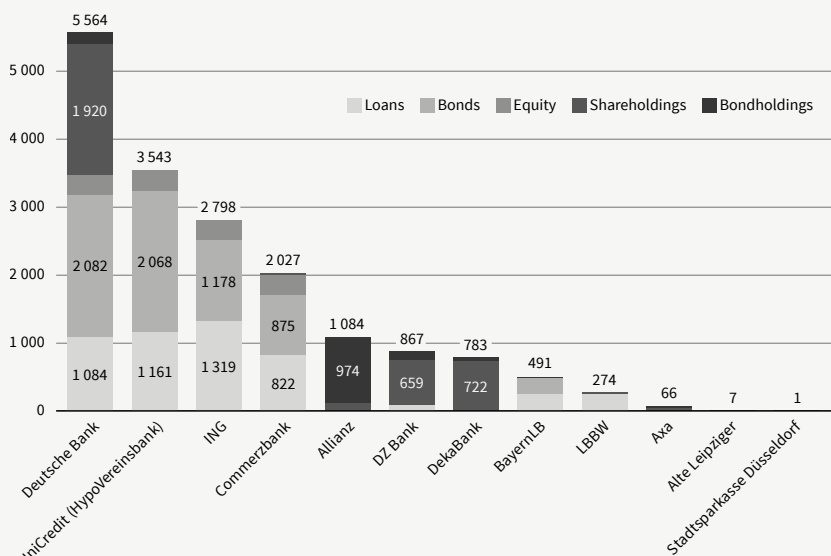
The case study focuses on the three top European pesticides and seed producers and their toxic imports to Mercosur countries, particularly Brazil.<sup>1</sup>

An important step in strengthening corporate accountability is to address the human rights concerns of communities affected by a company's operations, as well as those of other stakeholders. Facing Finance stresses that BASF Bayer, and Syngenta have taken the opportunity to address matters prior to publication.

### HUMAN RIGHTS RISKS



TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN BASF, BAYER, SYNGENTA (CHEMCHINA) in millions of euros



<sup>1</sup> The Mercosur trade bloc (Mercado Común del Sur, eng. Common Market of the South) consists of Argentina, Brazil, Paraguay, and Uruguay (full members) as well as Bolivia, Chile, Colombia, Ecuador, Guyana, Peru and Suriname (associate countries).

Note: All figures in the charts are rounded.





Airplane sprays pesticides over a plantation in the municipality of Riachão das Neves, Brazil. The region is known as the “Ring of Soy”, which connects several farms, processing plants and distribution centers for soybeans (May 2019). © Marizilda Cruppe, Greenpeace.

Every year, nearly half of the global food production is lost to pest infestation (Sharma et al. 2019, 1). The agro-industry’s solution is a long list of herbicides, insecticides, and fungicides. Pesticides can indeed increase crop yields in the short term by preventing insect and weed infestations but, in the long run, application can come at a high price: There is almost no pesticide that only harms the pest. The loss of biodiversity, the threat to insect diversity and damages to the human body, such as fertility disorders or cancer, are just some of the examples that have come to the public’s attention in recent years. Yet the use of pesticides has increased by a factor of fifty since the 1950s (Wenz 2020, 18). While the EU has recently responded by tightening the legislation for approving pesticides, other parts of the world, such as Latin America, have experienced an increase in their use (Hoinkes 2021, 24).

Pesticides are chemical agents used in crops to control pests and prevent disease. In particular, herbicides against weeds and insecticides have been criticized for endangering food chains in ecosystems and for posing the risk of a vicious cycle of pesticide and fertilizer use. Approximately 4.1 million tons of pesticides are used worldwide every year. Two-thirds can be traced back to agriculture, the rest is used by industry and households (Gränicher 2021, 1). Incorrect storage and application are a problem in various regions of the world. Even when applied correctly, vapor drift, surface runoff and other physical processes can cause the pesticide to reach places where it does not belong (Gränicher 2021, 2). Greenpeace tested fruit bought in German stores for pesticides and found residues in 59 out of 70 fruits. A total of 35 different pesticides were detected, 11 of which are not authorized in the EU and 21 of which are classified as highly hazardous (HHPs) by the Pesticide Action Network (PAN) (Jürgens / Knirsch 2021, 8f.).

## THE PESTICIDE MARKET

The pesticide market is dominated by roughly a handful of companies: The two German chemical giants BASF and Bayer, the US-based Corteva, following its spin-off from DowDuPont, and the Swiss Syngenta, which was acquired by ChemChina in 2015. Together, they control two-thirds of the global market (Wenz 2020, 18). The companies have steadily increased their market power in recent years by buying up others. Smaller companies have gradually been pushed aside with the result that they now only serve national markets (Moldenhauer / Hirtz 2017, 20f.; Hoinkes 2021, 24; compare also Howard 2018). Stricter EU legislation has raised market barriers for pesticide companies like Bayer and others. Instead of stopping their particularly risky product lines, they increasingly focus on developing and emerging countries with weaker regulations, such as countries in Latin America (Hoinkes 2021, 24).

In 2019, China was the largest exporter of pesticides, followed by the US, Germany, France, and India. The top importers were Brazil, France, the US, Germany, and Canada. Latin America imported 17.42% of globally traded pesticides. MERCOSR countries accounted for 13.74% of this figure (OEC 2021). The usage of pesticides is particularly problematic in poor regions. In addition to low-threshold approval procedures, there is often a lack of knowledge and information about the proper use of pesticides. Incorrect use, storage or disposal can result in environmental damage as well as serious injuries and death, 99% of the latter occurring in developing countries. Yet only 25% of the global pesticide volume ends up there (Haffmans / Neumeister 2019, 5; Luig et al. 2020, 4; UNHRC 2017, 3/16f.).

## TOXIC EXPORTS

Pesticides from European companies shipped around the world are often banned in their countries of origin (Rueter 2021). In 2018, over 81 000 tons of pesticides deemed too hazardous for the EU were exported to developing and emerging countries: a trend that continues to move upwards (Gaberell / Viret 2020a). This is due to the stricter environmental regulations in the EU: Pesticides cannot be placed on the market or used without prior authorization. A dual system requires approval of active ingredients at the EU level and authorization of finished crop protection products, an euphemistic term for pesticides, at the member state level (efsa n.d.). While proven and presumed carcinogenic, mutagenic, reprotoxic or endocrine-disrupting active ingredients are banned in pesticides in the EU, less stringent standards apply in other parts of the world. This leads to an unacceptable situation where pesticides banned in Europe are for example marketed by European manufacturers in Brazil.

In 2016, a study found that out of 504 active ingredients approved in Brazil, 149 are banned in the EU (Gonçalves 2016, 119). Similarly for 2019, Greenpeace found that 44% of active ingredients are not approved in the EU. 70% of pesticides used in Brazil are classified as highly hazardous according to the same researchers (Jürgens / Knirsch 2021, 3).

There are many examples of pesticides that are banned in the EU but exported to Latin America. Bayer exports Fenamidon, Cyclanilid, Ethoxysulfuron and Ioxynil, to name but a few. BASF's Cyanamid and Flufenoxuron are other pesticides that are not authorised in the EU (Bauchmüller / Liebrich 2020). In 2020, Bayer and BASF each sold at least 12 active ingredients in Brazil that were not approved in the EU. Six active ingredients from each of the two companies were classified as highly hazardous by PAN. In Bayer's case, the EU revoked or refused to approve four of the active ingredients such as the fungicide Propineb. According to the US Environmental Protection Agency, Propineb is classified as a probable carcinogen. A former authorization has been withdrawn in 2018 by EU regulators. Nevertheless, Bayer exported between 1 000 and 2 500 metric tons from Germany to Brazil in 2018. At BASF, two active ingredients did not survive the EU review process including the herbicide Cyanamide. The growth regulator has a toxic effect if swallowed. When it comes into contact with the skin, Cyanamide causes serious skin burns and eye damage. In addition to allergic skin reactions, it can cause long-term damage to organs. It is suspected that the herbicide can cause cancer as well as damage to the unborn child and fertility problems. BASF's product also poses a risk to aquatic organisms. In 2018, the company exported between 2 500 and 10 000 metric tons of Cyanamide to Brazil (Luig et al. 2020, 14f./20f.). However, according to the civil society organization Public Eye, the Swiss company Syngenta is number one in the trade of dangerous pesticides. With a market share of 18% in Brazil in 2017, the company sold 1.6 billion US dollars worth of pesticides – 60% of which are classified as highly hazardous pesticides (Kollbrunner 2019, 19).

## WHAT DOES THE INDUSTRY SAY?

The above-mentioned European-based corporations usually respond to criticism of their business model with a diversionary tactic. For example, they appeal to emotions and argue that pesticides are necessary to ensure food safety, or they dismiss any blame by pointing to the laws in importing countries and presenting pesticides as generally safe when used correctly.

Yet over 800 million people still suffer from hunger every day (Ferreirim 2017). Contrary to the UN's goal of Zero Hunger by 2030 (SDG 2), food insecurity is even on the rise again since 2015. The Covid crisis was predicted to lead to another 95 million of people living in extreme poverty and hunger (Laborde et al. 2020, 1). The impact of Russia's war of aggression on Ukraine is raising additional fears of a global food crisis. However, hunger is increasingly being perceived as a problem of distribution, not so much production, as the Special Rapporteur on the Right to Food noted before the recent crises (UNHRC 2017):

*“The assertion promoted by the agrochemical industry that pesticides are necessary to achieve food security is not only inaccurate, but dangerously misleading. In principle, there is adequate food to feed the world; inequitable production and distribution systems present major blockages that prevent those in need from accessing it.”*

In addition, the linear industrial food chain is not as efficient as it is often portrayed. While industrial farming occupies 75% of agricultural resources, it feeds only 30% of the world's people. In contrast, 70% of the planet's population is supplied by peasants, who grow food on less than 25% of agricultural lands. Peasant food production uses less pesticides, less fertilizers, less water, and less energy. It safeguards agricultural biodiversity, strengthens local structures, is healthier and comes with a much lighter footprint (etc Group 2017). This begs the question, where all the food from the linear industrial food chain goes to? Experts estimate that between 36% and 50% of the calories harvested from crops globally are used to feed livestock. Of this share, only 12% nourish humans in the form of animal products (compare ETC Group 2017, 15/50; Cassidy et al. 2013, 1). In other words, the linear industrial food chain wastes agricultural land on meat production instead of feeding people directly. If the US converted farmland used for animal feed to growing food for direct human consumption, it could feed another 1 billion people (Cassidy 2013). Synthetic chemical pesticides that are an integral part of the industrial food chain are strongly linked to monocultures and meat production and are unlikely to solve the hunger crisis. On the contrary, hazardous pesticides do not distinguish between friend or foe. They pollute vital ecosystems and impair natural services from pollination to soil fertility (Reuter / Neumeister 2015, 5f.). When groundwater is contaminated by pesticides, it becomes unsuitable for both human consumption and agricultural purposes. The declining resilience of ecosystems, characterized by biodiversity loss and species extinction, is another cause for concern, partly associated with current habits in pesticide use (UNHRC 2017, 9; EC 2020b, 9). The currently prevailing form of industrial agriculture with high pesticide use is unsustainable, deprives future generations of a livable environment and undermines food sovereignty (UNHRC 2017, 22; Burity et al. 2020, 16f.).

Another common claim made by the industry is that the use of pesticides is safe if done properly. However, this approach ignores the realities and contexts in which they are applied. As a study commissioned by the European Parliament's Committee on Development concludes, proper use is not achievable for many people in developing countries. It also remains the industry's secret why a pesticide banned in the EU because of its risks should be safe in other countries (EP 2021, 30/36).

There is an urgent need for European and other exporting countries to ban the export of pesticides that they themselves consider to be a danger to the environment and to people and therefore prohibit them domestically. Some European states, such as France and Switzerland, have already tightened their laws on pesticide exports. From January 2022, no pesticides banned in the EU may be produced, traded or exported in France. A joint lawsuit by pesticide giants such as Bayer, BASF, and Syngenta against the French ambitions failed in court. Switzerland has imposed an export ban on five pesticides because of their risks to the human health and the environment (Rueter 2021; PAN Germany 2020). In autumn 2020, the European Commission has announced to revise its chemical strategy. Tighter export regulation of hazardous pesticides is explicitly not ruled out (EC 2020a, 24). **Financial institutions should pay close attention to the lobbying efforts of pesticide manufacturers, who are trying to water down regulators' efforts to stop unsustainable practices related to hazardous active ingredients in pesticides. This should be in their own interest, not only out of reputational considerations, but also to safeguard an environment for future investment.**

### WHY PESTICIDES ARE A HUMAN RIGHTS ISSUE

The estimated number of unintentional pesticide poisonings varies between 500 000 and 385 million people per year, ultimately indicating a lack of data and high uncertainty since most cases go unreported (Boedeker et al. 2020, 14; Yadav / Devi 2017, 150; see also PAN-UK 2020). This is also illustrated by an example from Brazil: About 15 acute pesticide poisonings are reported every day, but the actual number is estimated to be 50 times higher according to the Ministry of Health (Rueter 2021). In 2017, 7 200 pesticide poisonings were officially registered in Brazil. However, since cancer and other diseases are often not associated with pesticide use, a high number of unreported cases can be assumed. As a result, the Brazilian National Cancer Institute issued a strong warning about various health problems, including certain types of cancer, caused by exposure to pesticides (Luig et al 2020, 15; INCA 2015, 2).

Socially and politically marginalized groups, such as agricultural workers who apply toxic pesticides and fenceline communities located in close proximity to pesticide production sites or neighboring pesticide-contaminated fields, are among the most vulnerable groups. The excessive use of pesticides not only poses a health risk, but also threatens livelihoods when it makes homegrown vegetables and fruits inedible or livestock fall ill or die. In particular, when pesticides are sprayed by aircraft large areas can become contaminated. The risk of drift is very high. There are reported cases of residents getting sick after being exposed to such practices. Indigenous communities report cases of aerial spraying being used as a weapon of intimidation and eviction (Luig et al. 2020, 15f.).

Another area of concern associated with pesticide use is the contamination of groundwater. Between 2014 and 2017, 27 different pesticide residues were found in the groundwater of the municipality of Caarapó in the South-West of Brazil, including eleven active ingredients such as Carbendazim used in products by Bayer in Brazil (e.g. Derosal Plus) linked to diseases like cancer, miscarriages, and endocrine disruption. Carbendazim is classified as highly hazardous by PAN and is not authorized in the EU because it can alter genetic material and disrupt reproductive ability. Moreover, it poses long-term risks to aquatic organisms

(Luig et al. 2020, 17). After years of criticism, Bayer has voluntarily agreed to ban Carbendazim from its portfolio at the beginning of 2021 – a first step (Bayer 2021b).

Women alongside with children are disproportionately exposed to pesticides. Since the placenta is not a safe barrier, pesticides can disrupt the development of the unborn child. In addition to common diseases and bodily reactions to pesticide exposure, pregnant women and their children suffer specific health problems such as spontaneous abortions, premature births or foetal malformations and contamination of breast milk. Recent studies have further indicated that children who were exposed to pesticides in the womb have a higher risk of developing cancer, autism and other diseases. But it is not only foetuses that can suffer severe damage. Children whose organs are not yet fully developed or who are exposed to a disproportionately higher dose due to their smaller size and weight can develop various physical and mental disorders as a result of exposure to some pesticides (UNHRC 2017, 7f.; Burity et al. 2020, 18).

Companies that export hazardous pesticides should acknowledge the realities under which their products are applied. This implies a responsibility for the human costs that rural populations particularly in developing countries have to bear when applying such pesticides. Hiding behind local laws and repeating the mantra “Safe when used Properly” is a mockery of those affected.

### EXCURSUS:

#### CORPORATE SHOPPING SPREE: THE VERTICAL INTEGRATION OF THE INDUSTRY

*The pesticide and seed markets have one thing in common: They are dominated by the same companies. Depending on one's point of view, having power over both – planting and ostensibly protecting – is either practical or frightening. The companies can sell their products in one sweep: the seed and the pesticide to go with it. But is it not in their interest, to ensure that the seeds also require pesticides in the first place?*

Pesticide producers secure ongoing revenues by entering the seed market (Gura et al. 2014, 12). Bayer, Corteva and Syngenta, the largest pesticide suppliers, are also the three largest seed companies. Similar to developments in the pesticide industry, the oligopoly is the result of numerous mergers and acquisitions. In the 1980's, the ten largest seed companies controlled less than 15% of the market (Public Eye n.d.). Since 1996, there have been roughly 400 changes in ownership involving today's major seed companies (Howard 2018). Already in 2017, the three agribusinesses together with BASF controlled the two global markets: 60% in seeds and 75% in pesticides (Mooney 2017, 21).

Hybrid varieties are a cross between two unrelated inbred plants.

It is in the companies' interest to develop the seed dependent on its pesticide (Public Eye n.d.).

Traditionally, farmers reseeded and exchanged seeds bypassing the corporations. Hybrid-sorts and patents turned the tide (Banzhaf 2016, 4f.; Frühschütz 2019). Patents on vegetables, grains and fruit give the patent holder exclusive rights of the “invention” for a specified period. This does not only include genetically engineered plants. Companies are eager to patent non-genetic crops as well. In the EU, over 200 patents on conventional breeding have already been approved (Tippe et al. 2021, 8; Frühschütz 2019). Hybrid sorts, on the other hand, cannot be resown. Their positive characteristics, such

as higher yield or homogeneity, disappear already in the second generation forcing farmers to buy new seeds every year. Hybrid seeds are also not necessarily always the better alternative compared to their native predecessors. In some cases, the need for new seeds, new pesticides, new fertilizers combined with fees, the profit margins of traders and ultimately the strong market position of seed and pesticide companies has led farmers into a cycle of dependence and sometimes debt (Wilß 2015, 8). This is accompanied by a dwindling diversity of varieties, which reduces agricultural resilience and increases vulnerability (Banzhaf 2016, 33).

## WHY SEEDS ARE A HUMAN RIGHTS ISSUE

Seeds are a symbol of life. The “Right to Seeds” is tied to various other rights. For example, access and availability of seeds is an integral precondition to exercise the human right to food and nutrition. The monopolization of seeds in the hands of a few corporations not only contradicts the rights of peasants and Indigenous Peoples, but also consolidates the corporate stranglehold over the food system. Over decades, peasants and Indigenous Peoples have not only passed on traditional knowledge from one generation to the next, but also nurtured their communities and their relationship with nature. The right to seeds is deeply anchored in the cultural, social and economic life of communities and requires a collective and holistic understanding. It plays a profound role in the exercise of peasant’s and Indigenous People’s right to self-determination (Seufert et al. 2021, 10f. / 14).

Over 70% of the global population rely on peasants’ and Indigenous Peoples’ seed management and production systems. They form the backbone of food sovereignty, while sustaining biodiversity, protecting ecosystems and enhancing resilience to the adverse impacts of climate change and other man-made crises. Although the importance of the right of farmers and Indigenous Peoples to seeds has been acknowledged in various international agreements, it is increasingly undermined and threatened by the lobbying efforts of international companies (Seufert et al. 2021, 10 / 17).

## WHO ARE THE COMPANIES RESPONSIBLE FOR THIS?

### BAYER

Founded in 1863, the chemical and pharmaceutical company Bayer AG, headquartered in Leverkusen, Germany, now owns 385 consolidated companies in more than 80 countries. The group, which is represented in almost all major stock exchange indices, is divided into three areas of activity. In addition to Crop Science, which sells seeds and pesticides, there are the Consumer Health and Pharmaceuticals divisions, which sell over-the-counter and prescription medicines, respectively (Bayer 2021a).

With the acquisition of Monsanto in 2018, the Bayer Group additionally took over a number of legal claims in the US related to the herbicide Roundup, which is suspected to be carcinogenic. Bayer set aside billions in its balance sheet as provisions, but the costs for the mainly out-of-court settlements turned out higher than initially predicted. So far, the Group has been able to reach settlements with about 96 000 of the 125 000 plaintiffs amounting to 9.6 billion US dollars (Blechner 2021; tagesschau 2020). But domestic investors are also dissatisfied and are counting

on a class action lawsuit (Dostert 2021). After all, the takeover of Monsanto has destroyed billions of euros in stock market value. As of the beginning of January 2022, Bayer’s market capitalisation of 46 billion euros is far below the 63 billion euros it once spent for Monsanto.

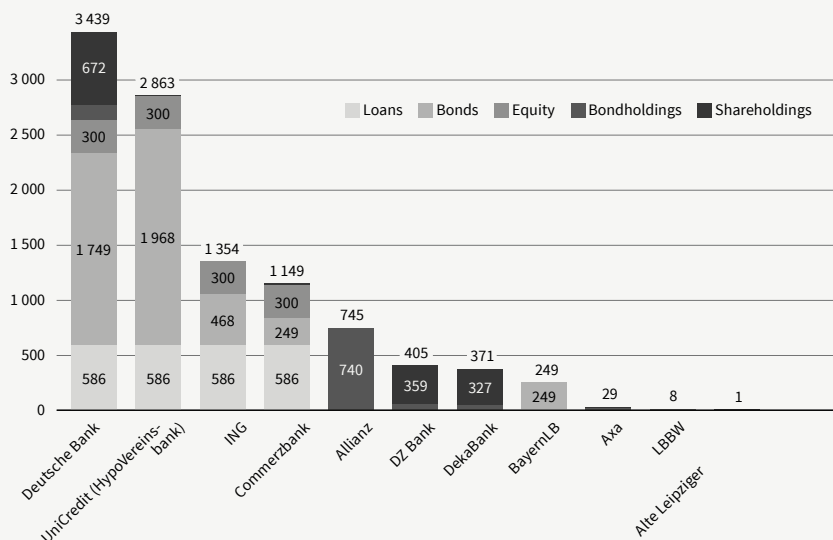
Bayer maintains that Glyphosate is safe, but will no longer sell weed killers containing Glyphosate to the private sector in the US after 2023 to avoid further legal claims (Bayer 2021c). While private customers in the US can enforce their rights in court and hope for compensation, this path is usually not accessible for those affected in emerging countries. Although everyone is entitled to the same rights, these are not equally enforced for everyone worldwide. The disproportionately more difficult access to justice for Indigenous Peoples and rural workers in Brazil and other countries facing violations of their rights to health, clean air and water or food by multinational corporations points to a glaring discrepancy between developed and emerging countries. Companies like Bayer are not to blame for the structural imbalance between countries. However, by taking pesticides out of one market and leaving them in another despite the health and environmental risks, partly because legal action is less likely, they reinforce this injustice.

## WHAT DOES BAYER SAY?

In its written response to Facing Finance, Bayer stresses that the safety of its products is a top priority. To this end, as well as in view of the world’s growing population, the company develops safe tools for farmers to meet social, environmental and economic needs. Effective and safe crop protection prevents harvest losses by pests or weeds, the company adds. The chemical and pharmaceutical group affirms that the mere fact that a plant protection product is banned in the EU says nothing about its safety. Rather, different regulatory authorities around the world would reflect the specific agronomic conditions of each country, writes Bayer, also referring to the example of Brazil as a country with strict regulatory requirements that bans many pesticides otherwise approved in the EU because needed there. Bayer points to the locust infestation in parts of Africa and Asia as an example, where many people would lose their nutritional basis without the decisive use of crop protection products. In the second part of the response, Bayer notes that there are clear national as well as international regulations, which it adheres to; in some cases, exceeding them. Since 2012, for example, Bayer does not sell crop protection products which the WHO classifies as particularly toxic (Tox 1). Since 2016, active ingredients must at least be registered in one OECD country. In addition, the company has voluntarily committed to marketing crop protection products in developing countries only if they meet the regulatory requirements of the majority of countries in Australia, Brazil, Canada, China, the EU, Japan, New Zealand and the US. Finally, Bayer claims to be conducting more than one million trainings on the safe use of crop protection products in the Global South each year and adds that the active ingredients are safe when used correctly as well as that the company investigates incidents that suggest otherwise on site.

## TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN BAYER

in millions of euros



A research was conducted for financing that took place between the beginning of 2018 and 2022 and investments as of February 2022. The results indicate a high volume of business for eight banks and three life insurance companies vis-à-vis the Bayer Group, amounting to more than 10.6 billion euros. Over 80% of the identified financing and investment volume is accounted for by Deutsche Bank, UniCredit (HypoVereinsbank), ING, and Commerzbank. The smallest investor is life insurer Alte Leipziger, who holds shares in Bayer worth less than 1 million euros.

### BASF

BASF SE, founded in 1865, has its headquarters in Ludwigshafen, Germany. The chemical giant operates 241 production sites in about 90 countries and is divided into six business units: Chemicals, Materials, Industrial Solutions, Surface Technologies, Nutrition & Care and Agricultural Solutions (BASF 2022). With Bayer's takeover of Monsanto, BASF struck a deal of its own. European competition watchdogs demanded, among other things, a divestment of parts of the seed business, nematicides and non-selective herbicides as a condition for the acquisition. BASF bought these businesses from Bayer in August 2018. Previously a world leader in pesticides, the chemical company now also owns a substantial seed business. Both markets are now controlled by even fewer corporations.

BASF sells active ingredients, such as Glufosinate or Epoxiconazole, and pesticides banned in the EU to developing and emerging countries. In 2018, BASF took over the marketing rights for Glufosinate from Bayer and exported 939 tonnes of the active ingredient from the Netherlands and Belgium to Brazil (Reithinger 2020, 10; Clausing et al. 2021, 19). As of 2021 and according to civil society organizations, three of the pesticides marketed by BASF in Brazil contain Glufosinate, as do 14 products from other agrochemical manufacturers. In the EU, Glufosinate is classified as toxic to reproduction and has been banned since mid-2018. In the German home market of BASF and Bayer, the approval for the Glufosinate-containing pesticide Basta had already expired in December 2015 (Clausing et al 2021, 13/20).

But BASF itself has also developed toxic active ingredients for use in pesticides, e.g. Epoxiconazole in 1992. Although the European Chemicals Agency (ECHA) classified the active ingredient as toxic for reproduction as early as 2010, BASF managed to maintain

the approval until October 2021, e.g. by submitting new studies. When an extension could no longer be achieved, BASF voluntarily withdrew the application to avoid a ban (Clausing et al. 2021, 12f.). Because “[w]here the reasons for withdrawal, amendment or non-renewal of the authorisation are not related to the protection of human and animal health or the environment”, the companies can proceed with selling and disposing of the stocks for six months and one year respectively (Clausing et al. 2021, 13; EU 2009, 15/24). But while Epoxiconazole has now been permanently withdrawn from the market in the EU, BASF continues to sell the fungicide in less stringent markets. In Brazil, 23 pesticides contain Epoxiconazole, 14 of which are marketed directly by BASF. Epoxiconazole is manufactured at BASF's Schwarzheide plant in Germany (Clausing et al. 2021, 20).

### WHAT DOES BASF SAY?

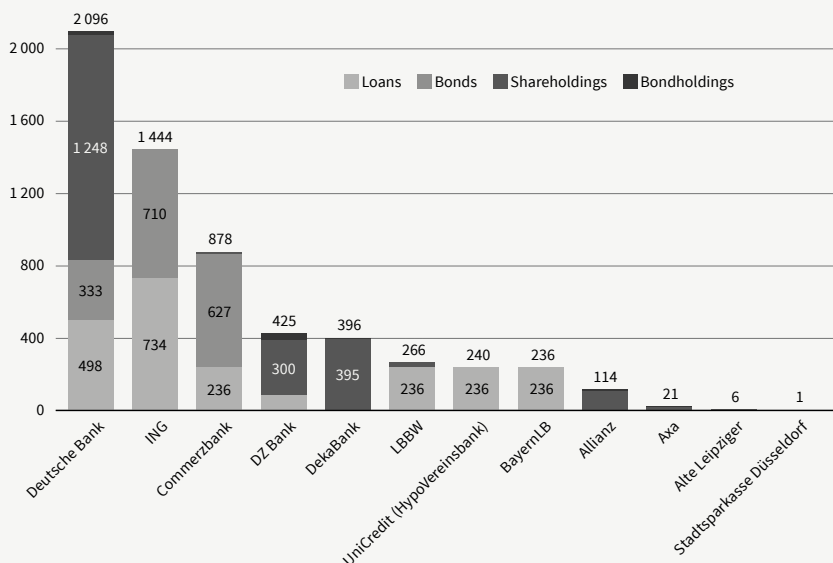
In a written response to Facing Finance, BASF summarizes its perspective on the role of pesticides in global terms such as hunger. The chemical and agricultural company underlines its ambition to have a positive impact on globally productive agriculture as the basis for feeding the world's growing population and describes its role as contributing to a sustainable food system. BASF stressed the need to take greater account of world hunger, which intensified during the Covid pandemic and could now worsen in the wake of the war in Ukraine, when assessing global agriculture. The company is concerned by pesticide poisonings, which is why it included the health and safety of farmers in its sustainability approach. BASF has set itself the goal of zero agricultural incidents that harm human health or the environment worldwide. Stewardship measures for the safe use of its products form the basis for achieving this goal. BASF denies that it has different requirements for the safety of the company's crop protection products in regions outside Europe. It notes, that certain weeds or insect pests do not appear in EU countries, and vice versa. The company's product range is therefore tailored to the requirements of the respective regional markets in terms of climatic or agronomic conditions. With appropriate risk management, crop protection products that pose hazards when used incorrectly can still be used safely and beneficially, the company adds. For this reason, certain products are approved in many countries that are not registered for use in Europe. BASF cites examples of its efforts, such as better labeling of information and instructions, including telephone hotlines listed directly on the product containers. In addition, the company records all incidents in a global data pool and adopts measures based on this data. BASF leads specific programs in Asia, such as the “Farmer Field School” or “Suraksha Hamesha” in India, both of which focus on communication and training on the company's products. In Latin America, BASF writes, to also provide a series of stewardship programs to support farmers in the safe use of its crop protection products. In Brazil, for example, BASF established an initiative with a focus on personal protective equipment more than 20 years ago. Finally,

Note: All figures in the charts are rounded.

the company is developing new digital tools to increase its reach and technologies such as drones to make pesticide use safer and more efficient.

#### TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN BASF

in millions of euros



The financial research conducted for financings from the beginning of 2018 to 2022 and investments as of February 2022 shows a high volume of business for nine banks and three life insurance companies vis-à-vis BASF, amounting to over 6 billion euros. Close to 60% of the identified financing and investment volume is accounted for by only two banks: Deutsche Bank and ING. The smallest investor is the savings bank Stadtsparkasse Düsseldorf, who holds just over 1 million euros in shares in BASF.

#### SYNGENTA

Syngenta AG was formed in 2000 from the merger of the agricultural divisions of Novartis and AstraZeneca. In 2015, Syngenta AG was acquired by the state-owned China National Chemical Corporation, commonly known as ChemChina, and has since traded under the name Syngenta Group. The Swiss-based company is one of the world's leading agribusiness companies and operates in over 100 countries. As of 2018, it is the third largest supplier of seeds and the largest producer of pesticides (Hope / Wetter 2019, 5/7). But Syngenta is not only number one in the general pesticide market; it also outperforms its competitors in the sale of pesticides banned on the European continent, as the civil society organization Public Eye and Greenpeace's investigative journalists from *Unearthed* have found (Gaberell / Viret 2020b).

The neonicotinoids Thiamethoxam, Clothianidin, and Imidacloprid, which are highly toxic to bees and other pollinators, have been strictly banned in the EU since 2018 and in Switzerland since 2019. Even the legal armada of Syngenta & Co. could not change this. Nevertheless, between September and December 2020, the EU allowed the export of around 3 900 tons of these pesticides to non-EU countries: 90% of it went to low- and middle-income countries. More than half of the pesticides (2 241 tons) were exported to Brazil. Syngenta was responsible for about 80% of these exports: 3 426 tons containing 551 tons of Thiamethoxam. This can be attributed to the company's export hit "Engeo Pleno S". Syngenta supplied Brazil with about 2.2 million liters of the pesticide containing the toxic active ingredient Thiamethoxam, where it is often used on soybean plantations (Public Eye 2021). In 2013, "Engeo Pleno S" poisoned

over 90 children and adults when the pesticide was accidentally and illegally applied over a school by an aerial plane. Syngenta Brazil and the carrier were fined a small amount in 2018 (Hoinkes 2018).

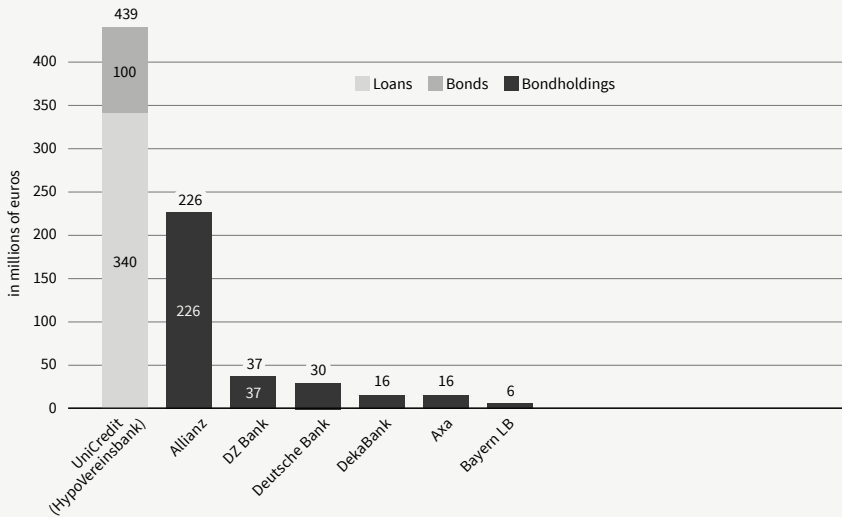
Another substance in Syngenta's product portfolio is Paraquat, which Syngenta produces in northern England. For decades, it has been a key ingredient in the pesticide Gramaxone, which the company sells to countries with less stringent regulations. Paraquat poses substantial threats to human health. It is lethal in small amounts if swallowed. But even if it comes into contact with the skin or is inhaled during spraying, it can lead to serious illnesses and sometimes even death. Paraquat attacks the respiratory tract and lungs, damages the liver and kidneys and is suspected of contributing to an increased risk of Parkinson's disease (ECHA 2021; Dinham 2004, 269; Wesseling et al. 2013; Grabosch 2011, 4/11f.; Boddenberg 2019). The EU and Switzerland have banned the substance due to its toxicity for a long time. Paraquat is also banned in China, where Syngenta has its registered office since its takeover by ChemChina. In the US, farmers are currently still allowed to use Paraquat, provided they have completed a special training course that they have to repeat every three years (EPA 2021).

In 2018 alone, Syngenta exported 28 000 tons of Paraquat from its plant in the United Kingdom to customers outside the EU (Gaberell / Viret 2020b). But as the bans on Paraquat in the above-mentioned countries as well as the strict practices in the US show, strong occupational health and safety regulations and standards for Gramaxone are urgently needed. A legal opinion commissioned by civil society organizations concluded: Syngenta violates human rights by ignoring the realities in countries importing Paraquat, especially in the Global South. As the expert report points out, it was known that an adequate level of safety was not feasible in contexts of mostly unrestricted access to pesticides coupled with weak labor protection regulations and poor enforcement, as well as in realities of widespread poverty, low levels of formal education, literacy and ignorance of the need for protective clothing (Grabosch 2011, 7).

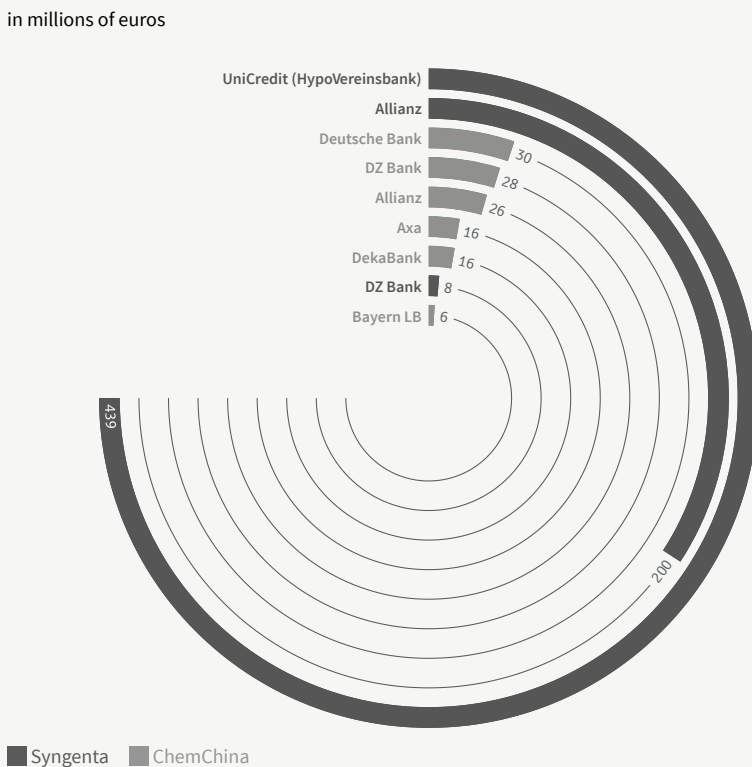
Note: All figures in the charts are rounded.

Hundreds of farmers in the US are currently suing Syngenta on the suspicion that Gramoxone causes Parkinson's disease. In the course of the class action lawsuits, Syngenta had to release internal documents. According to evaluations of civil society organizations, the company's internal communication reveals that Syngenta, out of economic considerations, had set the dosage of an emetic in Gramoxone too low to have any effect on preventing deaths from poisonings since at least 1990 (Gaberell 2021).

**TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN SYNGENTA AND CHEMCHINA**  
in millions of euros



**TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) SPLIT BETWEEN SYNGENTA AND CHEMCHINA**  
in millions of euros



The financial research for financings carried out between the beginning of 2018 and 2022 and investments as of February 2022 shows a high volume of business for five banks and two life insurance companies vis-à-vis the Swiss Syngenta Group and its parent company ChemChina, amounting to over 769 million euros. Almost 85% of the value of the financial relationships identified, or 648 million euros, is directly attributable to Syngenta and distributed among Allianz, UniCredit (HypoVereinsbank) and, to a smaller extent, DZ Bank in the form of bond issuances, loan participations and bondholdings. The remaining 15%, or 122 million euros, corresponds to bonds held by Deutsche Bank, DZ Bank, Allianz, Axa, DekaBank, and BayernLB.

## WHAT DOES SYNGENTA SAY?

In a written response to Facing Finance, Syngenta emphasizes that human rights are a key priority of its responsible business approach worldwide. The company refers to its publicly available human rights policies, including its adherence to the principles set out in the Universal Declarations of Human Rights and the ILO core norms while also following the UN Guiding Principles of Business and Human Rights. Syngenta further refers to the progress made with its „Good Growth Plan“, where 11 million farm workers were trained on the safe use of its products and 99,5% of Syngenta's suppliers were included in „sustainability and fair labor programs“ in 2021. Syngenta denounces the conclusions of investigations carried out by some civil society organizations. The company refers to its export data demonstrating that its products are sold under the provision of a prior informed consent in the destination country. Products are only exported to developing countries, if the respective ingredient has already been approved in an OECD country, or national regulatory data is of an equivalent standard to OECD requirements, the company claims. Syngenta disapproves any improper or illegal use of its products. The company adds that registering certain products only in some jurisdictions is a reflection of differing global agricultural and market conditions, such as climatic and pest pressures. As regards Paraquat, Syngenta points out to an article on its website where the company reacts to the critical media coverage mentioning i.a. Syngenta's past and current research and monetary efforts to develop and commercialize safer Paraquat formulations. With reference to studies by CropLife International and the OECD-FAO Agricultural Outlook 2012, Syngenta stresses the general necessity of modern crop protection products as farming without pesticides would result in devastating crop losses due to pests and diseases. Lastly, Syngenta attached a study of the consultancy firm Phillips McDougall (today IHS Markit) illustrating the entire industry's reduced use of active ingredients application by 95% since the 1960s.

Note: All figures in the charts are rounded.

## EXCURSUS: THE EU-MERCOSUR TRADE AGREEMENT

The EU-Mercosur Trade Agreement is a trade deal that has been negotiated in principle, but has not yet entered into force. It is to be concluded between the EU member states and the four Mercosur countries Argentina, Brazil, Paraguay, and Uruguay. It would cover a market of 780 million citizens and a trade volume of about 88 billion euros in goods. Both sides would eventually eliminate more than 90% of tariffs on each other's imports (EC 2019).

The German automotive and chemical industries are considered to be among the winners of such an agreement. They would benefit most from tariff dismantling. On the other side of the Atlantic, tariffs on the export of agricultural products are to be eliminated. But beef, soy or the sugar cane needed for bio-ethanol are among the main drivers of deforestation in the Amazon rainforest and the species-rich Cerrado savanna (Fritz 2020, 4ff.). In Brazil, local conflicts over land and water, which primarily affect indigenous communities, could intensify further (Fritz 2020, 28f.). Already today, human rights violations and repressions against land rights defenders and other frontline activists are brutal and increasingly deadly (Global Witness 2021, 11f.). Not to mention the greenhouse gas emissions and ecological damage associated with deforestation.

In particular, the quotas dictating certain export volumes would drive Amazon deforestation even further. The EU-Mercosur trade agreement provides for preferential tariff export quotas for beef and bioethanol, which is expected to double the former and increase the latter sixfold (Fritz 2020, 5f.). The increase in EU imports for these commodities takes place despite knowledge of the link between agricultural products and local deforestation. Cattle ranching in particular, which requires large areas of pasture, is considered the driving force behind deforestation and slash-and-burn agriculture in the Amazon. The EU also subordinates the industry's frequent disregard for workers' rights or the displacement of Indigenous Peoples to its economic interests (Campos / Barros 2021, 7ff.). Agricultural products and raw minerals account for two-thirds of European imports from Mercosur countries. The envisaged tariff cuts would further increase the trade volume. Such large market access requires the assumption of responsibility. The EU must act accordingly if it wants to prevent further complicity in the social, ecological, and economic distortions resulting from its imported products (Fritz 2020, 5).

It is not only European agricultural imports that will increase, but also Europe's own pesticide exports. The chemical industry is subject to import duties of up to 18%. With the EU-Mercosur Trade Agreement in place, most of the tariffs would be removed (cefic 2019). In combination with low-threshold approval procedures, this is likely to steadily increase pesticide use and further cement an agricultural model based on monoculture (Greenpeace 2021). For example, within just five months in office, the Brazilian government under Jair Bolsonaro had already approved 169 new pesticides by the end of May 2019 (Clarke 2019). Two years later, there were already 1 172 newly registered pesticides (Jürgens / Knirsch 2021, 3). However, the current government is merely continuing the pesticide-friendly course of its predecessor (Clarke 2019). In addition, since the EU has failed to adequately implement and enforce one of the most fundamental principles of EU environmental law – the precautionary principle – in the EU-Mercosur Trade Agreement, civil society organizations fear that it will have little ability to protect consumers within the EU from imports of agricultural products heavily contaminated with pesticides (Stanton 2020, 5ff.; Fritz 2020, 5; Teller et al. 2020, 23f.).



# ANGLO AMERICAN

## IS HISTORY REPEATING ITSELF IN CHILE?

The global mining industry is responsible for some of the worst human and environmental rights abuses. Where mining companies operate, the rights of traditional communities and Indigenous Peoples are regularly trampled. Chile's El Melón community has experienced the consequences of irresponsible corporate looting firsthand. The UK-headquartered company Anglo American's water-intensive and high-emission exploitation of the El Soldado mine has left a dry and dirty trail of destruction.

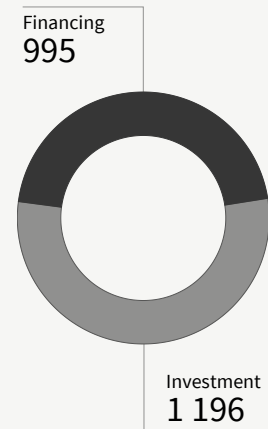
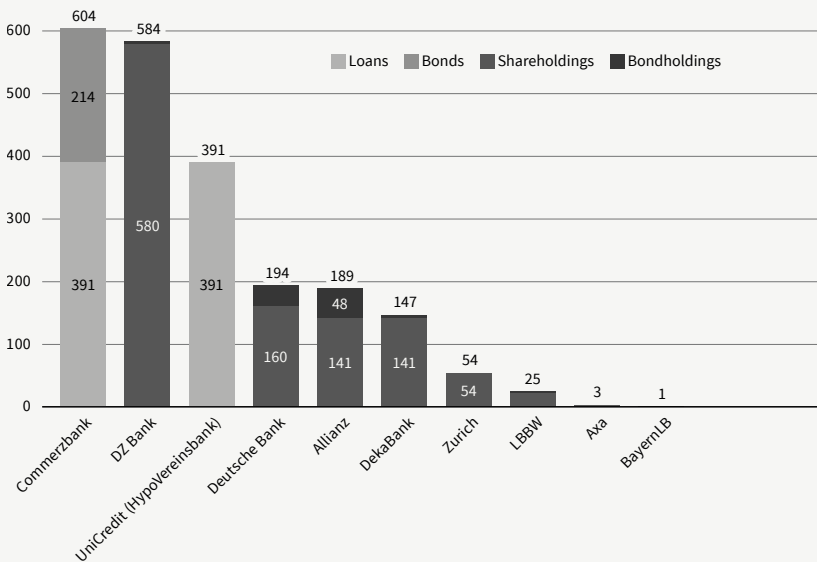
Instead of responding adequately to the demands of the community, which suffers particularly from water scarcity and drought, the company is planning the next expansion of the mine. The conflict culminated in the occupation of one of Anglo American's industrial pools by the affected residents in 2019.

This case study was provided by Javier Arroyo Olea from the Observatorio Latinoamericano de Conflictos Ambientales (OLCA) in Chile.

### HUMAN RIGHTS RISKS



### TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN ANGLO AMERICAN in millions of euros



Note: All figures in the charts are rounded.

## WHAT ARE THE AFFLICTIONS FORCED UPON THE POPULATION OF EL MELÓN BY ANGLO AMERICAN, THE MINING BEHEMOTH?



The occupation of Anglo American's industrial pool No. 9 by residents of the community El Melón. © Javier Arroyo Olea

### THE EXTRACTIVIST NEIGHBOR

“Our low waterwheels are dry, it is an intolerable situation”.<sup>1</sup> This is just one of the concerns the inhabitants of El Melón face. In order to exploit the “El Soldado” mine, the UK-headquartered mining giant Anglo American penetrated deep into local communities’ territory, ravaging the natural common goods and shattering the livelihood of the local population. On 7 November 2019, residents of the territory occupied the transnational company’s industrial pool No. 9. This resistance was part of the Chilean protests of fall 2019, called “*Estallido Social* – Social Outburst”, but with demands that have existed and dragged on for years.

The systematic encroachment on nature has caused droughts and has been facilitated by the very legislation of Chile, which favors the privatization and commercialization of water. In addition to exacerbating the drought, this has led to an intensification of the conflict, with the occupation of industrial pool No. 9 being “the ultimate demonstration that the resistance gives us what the law has denied us”.<sup>2</sup>

Anglo American’s exploitation has widely permeated various aspects of community life and ecosystems. The mining operation, which has spawned a tailings dam with a volume of around 180 million metric tons of toxic waste, has implications on various dimensions of life in El Melón. Not only is pollution a latent issue, but so is the impact of a persistent drought due to the company’s extensive water use (London Mining Network 2020).

The daily life of a community that has historically been based on a solid peasant-family economic model and livestock farming was brutally disrupted by the activities of Anglo American. The conflict escalated into the seizure of industrial pool No. 9 and subsequently to the Supreme Court ordering the Municipality of Nogales to ensure the daily supply of 100 liters of water per person to secure the communities’ right to water (Corte Suprema 2020). Unfortunately, the court did not address the ecosystem damage and released the transnational company of its responsibility.

Anglo American has frequently denied the violation of rights that the community has proven through various records. These violations concern both the rights of the residents and of nature in El Melón, whose noxious neighbor is the embodiment of extractivism.

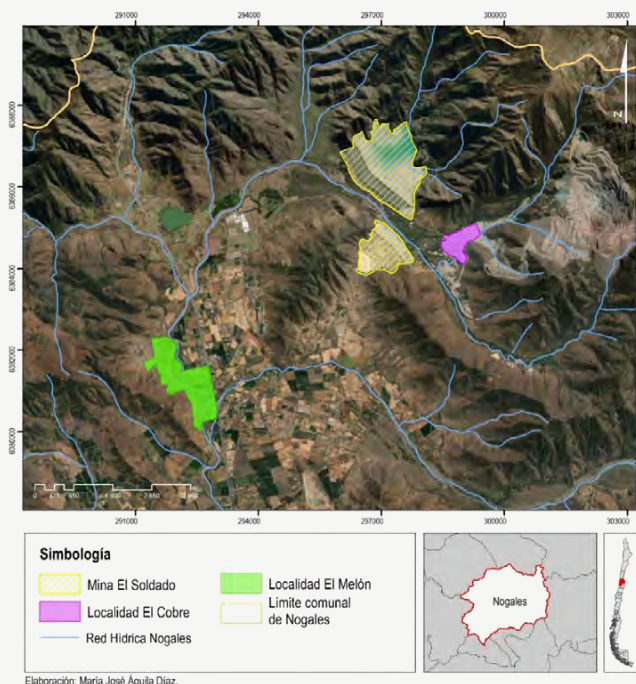
1 Audiovisual interview with Gilberto Castillo, carried out by Miguel Hechenleitner for OLCA.

2 Audiovisual interview with Karen White, carried out by Miguel Hechenleitner for OLCA.

## A LASTING CONFLICT THAT EXPLODED

The village El Melón is part of the municipality of Nogales in the Chilean region of Valparaíso, a place where the plundering of the copper mine El Soldado dates back to the end of the 19th century (Anglo American n.d.). In the course of its exploitation, the mine was controlled by various companies, such as Compañía Minera Disputada de Las Condes (1958) and, since 2002, by Anglo American Sur, a Chilean subsidiary of the UK-based company Anglo American (50.1%), also owned by the Codelco-Mitsu joint venture (29.5%) and Mitsubishi Corp (20.4%) (Consejo Minero 2022).

### “EL SOLDADO” MINE, TOWNSHIPS AND ASSOCIATED WATERWAYS, PROVINCE OF VALPARAISO



Symbols (clockwise from lower left): Nogales Water Network, El Cobre Township, El Soldado Mine, El Melón Township, Nogales Municipal limits

The company’s exploitation of the mine, which yielded more than 45 000 tons of copper in 2020, has led to a serious conflict between local communities and the transnational corporations; a dispute whose roots originate from previous mining experiences:

An earthquake on 28 March 1965, which caused the collapse of a tailings dam and buried the inhabitants of the village of El Cobre, was a disaster that is still deeply anchored in the collective memory of the citizens (Fundación Terram 2016).<sup>1</sup> This tragedy threatens to repeat itself at the El Torito tailings dam, whose expansion Anglo American has encouraged from the beginning (SEA 2003): According to El Melón residents, this could provoke an imminent landslide that might lead to another mining-related disaster in the territory. Data provided by the communities indicate that the eventual rupture of the dam would release an enormous amount of tailings, bury approximately 1 000 hectares, affect about 5 000 people and interrupt the artery of Route 5 North – an important route for transportation in Chile.<sup>2</sup>

Although the company has proposed an emergency coordination plan for the tailings dam, in which “four meeting points were identified as safety zones”, the more than 160 million tons of waste were not appropriately considered and continue to pose a threat to the population (Anglo American 2021a; London Mining Network 2020; Relaves 2019). Residents explained that Anglo American had recently started marking the evacuation route for a possible collapse, stressing that “we are anticipating a possible failure”.<sup>3</sup> A risk reminiscent of the disaster of the mid-1960s. Nevertheless, the company intends to enlarge the tailings dam by an additional 30%.

The community of El Melón is not only facing the threat of a latent disaster, but also a disruption of its way of life and of its ecosystems, the violation of which has increased exponentially over the last 20 years. This vulnerability has become interwoven into their livelihood in the territory. The residents of El Melón have emphasized the strong and traditional relationship they have with the territory, which “used to maintain a peasant family economy that developed mainly after the Agrarian Reform”, and which had coexisted with extractions from the mine El Navío, a cement production venture.<sup>4</sup>

The communities defend the relationship they maintain with the namesake mountain range and its biodiversity, and the natural resources such as the water. In the municipality of Nogales in particular, there is still a strong presence of agricultural and livestock farming. The communities are also affected by the impact of mining on the ecosystem, which is all the more disrespectful given that most workers have no involvement in mining whatsoever (BCN 2021).

In light of the persistent exploitation by Anglo American, the cultural links that “are directly related to the hills where livestock farming used to be, barely subsist alongside peasant family farming”.<sup>5</sup> The consequences go beyond environmental impacts such as the worsening of the drought, and also threaten “local tradition rooted in the inhabitants of rural areas,” driving a process of forced displacement in search of work that is not necessarily found in the mining industry.<sup>6</sup> According to company data, just over 160 residents of the municipality of Nogales work in the mine (compare Anglo American 2022a, 16; Anglo American 2022).<sup>7</sup> Simultaneously, the systematic worsening of the drought increases migration even further (see Karen White in Fundación Rosa Luxemburgo et al. 2021).

1 Audiovisual interview with Gilberto Castillo, carried out by Miguel Hechenleitner for OLCA.  
2 Audiovisual interview with Carlos Vásquez, Gilberto Castillo and Jorge Ramírez, carried out by Miguel Hechenleitner for OLCA; from analyzes presented by the Colegio de Geógrafos de Valparaíso.

3 Interview with Jorge Ramírez.  
4 Interview with Jorge Ramírez.  
5 Interview with Jorge Ramírez.  
6 Interview with Jorge Ramírez.  
7 According to Sustainability Report 2019, 661 people performed in the El Soldado operation. According to data available on the Anglo American website, 70% are from the province of Quillota and only 25% from the municipality of Nogales, without divulging how many of these are from El Melón.

This led to an extremely critical situation for the communities, who described the burden of having “no water to wash our hands, that there was no water to wash the grandparents, that there was no water to have dignity”.<sup>1</sup> The indignation erupted in the mobilization of a section of the population that, in the first weeks of the social uprising in Chile, the “Estallido Social”, decided to occupy Anglo American’s industrial pool No. 9. The demand: the installation of a bypass connecting one of the company’s installations to the Rural Potable Water Supply (APR).<sup>2</sup> After the occupation the transnational company relented: If now, the Municipality of Nogales submits a water request to the company, it will provide 10 liters per second (Anglo American 2021b).<sup>3</sup>

The Supreme Court’s support for an appeal for protection filed by the residents of El Melón in relation to the common good of water was a first step in the right direction. The Municipality of Nogales was ordered to ensure a daily supply of 100 liters of water per person (Corte Suprema 2020). Yet, despite the historical nature of this ruling, it did not take an ecosystemic view but rather an anthropocentric one, referring to human consumption rather than subsistence activities, affirming its subsidiary role vis-à-vis a solidarity state, and leaving Anglo American unsanctioned.

### WATER: FOR PEOPLE OR FOR MINING?

The privatization and commercialization of water, promoted by the 1980 Constitution imposed during Augusto Pinochet’s civil-military dictatorship, and the Water Code, which prioritizes water use based on the ownership of this common good, are a turning point in the conflict between the communities of El Melón and the transnational company.

Anglo American has water rights for 400 l/s in the territory, whose extraction should not exceed 120 l/s. The company itself states to deliver water to the population by means of trucks, in addition to just 10 l/s through the system of wells to support the Rural Drinking Water (APR) model (London Mining Network 2020). However, the company has published in its own reports that it has 109 l/s approved for the mine “El Soldado”, while maintaining 13.5 l/s available for the community, which does not add up to the respective figures (Anglo American 2020). Overall the transnational company has 19 water-use rights in the Aconcagua Aquifer.<sup>4</sup>

These figures contrast sharply with the considerably lower exploitation rights managed by social organizations and state institutions. In total, there are only nine rights to these spaces, including the Municipality of Nogales with a total of 14.4 l/s, while the local group Los Caleos has only 1.4 l/s.

All of this takes place under the protection of a legal framework that for decades has allowed the use of water based on private ownership and its administration by private owners. What is Anglo American’s position? The company claimed that “we are not responsible for the water shortage” in El Melón, asserting that it is a consequence of lower rainfall and the lack of infrastructure (Anglo American 2021b). The communities, on the other hand, have claimed that there is “water plundering” in the territory as a result of mining, leaving the population and the naturally flowing streams “without a supply of drinking water”.<sup>5</sup>

Although the Chilean State itself affirmed that the residents of El Melón should be guaranteed 100 liters of water per day, this rhetoric is far from reality. The negligence is protected not only by the logic of the subsidiary state, but also by Anglo American itself. The ones who suffer are the people in El Navío, a sector in the district of El Melón, who barely receive 20 liters of water per day (Ugarte 2021).

The arrival of Covid-19 has exacerbated the already latent crisis and intense conflict in the territory, given the systemic relationship between the commercialization of water, poverty, and public health (Fragkou 2020). The communities have pointed out that the consequences have worsened “due to the need to have more water to comply with hygiene standards”.<sup>6</sup>

### “OUR VALLEY IS DYING DAY BY DAY”: ECOSYSTEM AT RISK

The concerns of El Melón are far-reaching and not limited to the severe water problem. They extend to other areas of the ecosystem, mainly pollution and vegetation depletion. An example of this: In 2015, the Local Police Court of Quillota found Anglo American guilty of clearing native forest under protection and conservation without a management plan approved by the National Forestry Corporation (Conaf) (OCLA 2015).

The violations of the ecosystem integrity have been accompanied by complaints about contamination. In 2012, the waters of the stream “El Cobre” were found to be contaminated by mining operations with concentrations of metals, sediments and dust. Likewise, a new report in 2019 on groundwater samples in El Melón revealed higher than average concentrations of manganese, iron, and sulphates, suggesting infiltrations primarily from the tailings dam (London Mining Network 2020).

According to the communities, the contamination originates from the dam El Torito – the same dam that is to be enlarged. The residents point to the extraction and movement of machinery, as well as to a “zone that is saturated by annually measurable material respirable particles and a latent zone with daily concentrations” (London Mining Network 2020).

1 Audiovisual interview with Gilberto Castillo, carried out by Miguel Hechenleitner for OLCA.

2 For Anglo American’s perspective on the APR see Anglo American 2022b.

3 Even at the beginning of 2020, Anglo American had to connect a second well to supply the community with water. See Minería Chilena 2020.

4 Information provided to the author by means of a copy of resolutions of the General Direction of Waters by the communities (2019).

5 Audiovisual interview with Karen White, conducted by Miguel Hechenleitner for OLCA.

6 Interview with Jorge Ramirez.

A resident describes the situation: *“We live downstream from the mining operations and our latent reality backed by studies is [that] we are constantly damaged by pollution and by contamination of surface and groundwater”*. He adds, *“We have to buy purified water to avoid possible illnesses”*.<sup>1</sup>

The statement is an excerpt from interviews conducted by organizations such as the Centro Nacional de Medio Ambiente. For the residents, the pollution is critical, described as a scenario in which “we are doomed to illness and death”.<sup>2</sup>

These elements have exacerbated an already serious situation faced by the residents of El Melón because of decades of environmental destruction caused by mining activities. However, Anglo American’s responses essentially focus on the company’s monitoring which is “showing no impact on human health”. This is in stark contrast to the experiences presented by the communities, indicating not only damages to the human health, but also to the entire ecosystem.

## HUMAN RIGHTS VIOLATIONS

The residents of El Melón are facing various violations of their rights due to the mining activities of their neighbor Anglo American in El Soldado. For a better overview, and without being exclusive, a brief summary of the rights that have been denounced as violated and a general description can be found below:

### SUMMARY OF RIGHTS VIOLATIONS

Right	Description
Right to human consumption of water	The residents of El Melón do not have sufficient, equal, and permanent access to water for consumption and use for various purposes.
Right to housing	The residents have been forced to move out of the territory or to live in unacceptable conditions.
Right to a pollution-free environment	Pollution from mining affects the entire ecosystem and harms not only the health of the population, but also the local vegetation and fauna.
Right to health	Community health and health care are adversely affected by mining activities.
Rights of nature	There is a systematic violation of the rights of nature itself, intensified by mining extraction, affecting the entire ecosystem.

\* Elaboration based on summary of accounts, review of papers and the Map of Socio-Environmental Conflicts in Chile of Instituto Nacional de Derechos Humanos.

## COMMUNITY DEMANDS AND ANGLO AMERICAN’S GREENWASHING

The community’s demands stretch beyond what has already been achieved with the occupation of industrial pool No. 9. They reach to the heart of the extractivist model that has permeated not only their lives, but also the entire ecosystem. Given the serious impacts, as well as those to be expected by the company’s expansion plans, they focus on demanding a complete halt to the operations of Anglo American, as well as its withdrawal from El Melón.

From a generational perspective, the adult population draws attention to the importance of defending the territory and activities related to livestock and agriculture, which have been curtailed by the extractivist activities of Anglo American. Protests and occupations are an accepted means of mobilization. Some civil society organizations have also chosen to intervene at the institutional sphere to make the situation visible and provide concrete solutions. In addition, there are calls for policies aimed at addressing the critical water and contamination situation as well as the possible disaster from landslides that the residents continue to face on a daily basis. The community further demands that the concept of water should not only take human consumption into account.

1 Audiovisual Interviews with Gilberto Castillo and Jorge Ramirez, made by Miguel Hechenleitner for OLCA.  
 2 Audiovisual Interview with Jorge Ramirez, made by Miguel Hechenleitner for OLCA.

Therefore, the release of the basin to facilitate water consumption and conservation, as well as the initiation of a process to decontaminate the water for human consumption, livestock watering, and irrigation was requested. In addition, there is a call for the urgent implementation of an evacuation plan in the event of a possible collapse of the El Torito dam, as well as effective protection of cultural heritage such as the native forest of the El Melón Mountains and the ancestral treasures present in the territory.

Anglo American's response mainly regards policies that communities have conceived as image polishing, as they do not provide a fundamental response to the demands raised.

Under the guise of corporate social responsibility, Anglo American has tried to promote a form of "conflict management," silencing not only the protests but also the underlying problems. In their annual reports, the company highlights specific issues as triumphs and accurate measures to conceal problems that are caused by their own mining activities (Anglo American 2022c).

Examples of this are social programs such as the "Mountain Plan", aimed at the valorization and maintenance of the territory, or the "Rural Water Program", based on a "water shortage in the territory" – in reality aggravated by Anglo American's own operations (Anglo American 2022d; Anglo American 2022b). There are also new forms of justification for the expansion of mining operations, such as the construction of coarse particle flotation units, which rely on the operational continuity (Anglo American 2019; SEA 2020). The company has sought to position itself as a "friendly neighbour". The creation of an Anglo American Pre-University course, the establishment of a plan to deal with the effects of Covid-19 (focusing on medical supplies, food, and economic support) and the maintenance of the "Programa Emerge" as an economic stimulus, ultimately are all attempts to maintain the same form of production and exploitation in the territory.

Under the so-called "Social Way Policy", Anglo American intends to promote this type of policies until 2025. After that, the company will review its "activities and interactions with local communities and other stakeholders in areas affected by our mining activities, as well as the results of those activities" (Anglo American 2022e).

## CONCLUSION

The company Anglo American, which operates the El Soldado mine, has violated various rights of the residents of El Melón. This includes the undue exploitation of common natural resources, the continuing harm to the residents' quality of life, and the worsening of ecosystem damages.

However, instead of responding to these demands, Anglo American has opted for a superficial and piecemeal business policy. It does not only trample upon the core concerns of the communities, but also seeks the continuation and even further expansion of the exploitation. The mining company continues to destroy ecosystem and contributes to the critical water situation in the territory through private and special use of water rights.

There are lessons that can be learned from the ongoing conflict in El Melón. It is urgent not only to advance in policies to mitigate the severe impacts of mining, but also to provide post-extractivist responses that consider the history, the demands and the fundamental needs of the residents in the community and the ecosystem itself.

## RECOMMENDATIONS

We recommend that the Chilean State, with regard to the Municipality of Nogales, enforces the decision of the Supreme Court, which obliges the City to ensure the supply of 100 liters of water per day to the residents of El Melón. This would be an important step in defense of the rights of the communities, which have been violated for years without regard for the welfare of the population or the ecosystem. Likewise, we recommend paying special attention to the various dimensions of the conflict and reviewing the demands raised by the population, not only regarding the advancing deprivatization and decommercialization of water, but also regarding measures for the restoration of the ecosystem and the respect for the rights of nature.

To Anglo American, we recommend to provide a concrete response to the legitimate demands of the population. This encompasses the worsening environmental crisis plaguing the communities, the halting of the El Soldado mine expansion and the continuation of projects, the establishment of participation and discussion channels for prompt reparations, and the provision of water use rights as demanded by the communities.



## A NEVER-ENDING TRAIL OF DESTRUCTION

“Vale exists to improve life and transform the future. Together. We believe mining is essential to the world’s development. We only serve society when we generate prosperity for all and take care of the planet. **This is our purpose.**” (Vale 2022)

It is hard to believe, that the self-image of the Brazilian mining company Vale deviates so blatantly from reality. While the company publicly claims to be protecting the Amazon rainforest and reaffirms its commitment to the rights of indigenous and traditional communities, in reality, it has left a trail of destruction. The catastrophic dam disasters in Mariana in 2015 that killed 19 people, as well as in Brumadinho in 2019, that killed over 270 people, are only the tip of the iceberg. The company’s history is one of destruction at the expense of the planet and its inhabitants.

This case study unmasks the consequences of Vales’ mining activities in northern Brazil for traditional communities along its concessionary railroad network using the example of Piquiá de Baixo. It further addresses the current judicial struggle of the victims against the mining company and its commissioned certifier TÜV SÜD in the aftermath of the Brumadinho dam collapse. Vales’s promises of local development and its commitments to safe and secure mining are contrasted with the realities of those who suffer from the company’s operations. The difficulties faced by affected communities when seeking remedy and justice, as well as the costs and struggles associated with environmental remediation are examined.

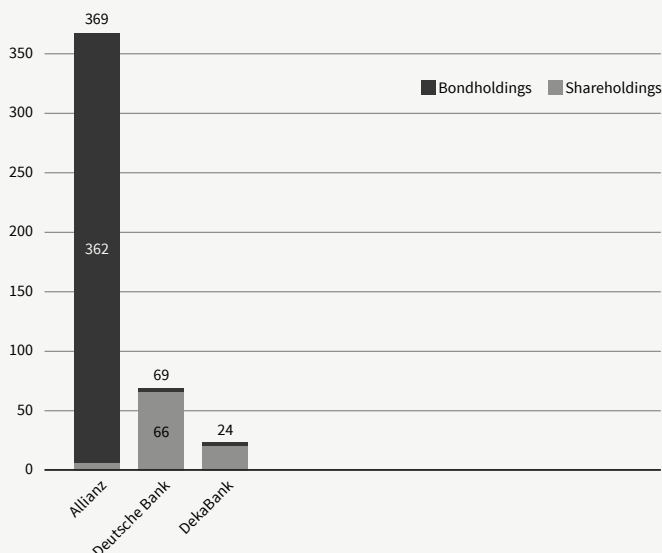
The case study about human rights violations in Piquiá de Baixo was provided by Larissa Pereira Santos, Political Coordinator at Justiça nos Trilhos (Justice on the Rails), a Brazilian civil society organization that accompanies communities affected by mining and agribusiness. She has a Master in Communication Sciences from the Federal University of Pará (UFPA). Letícia Aleixo, a Brazilian professor, technical advisor to Cáritas and human rights lawyer who defends the rights of communities affected by mining in Minas Gerais, provided the case study on Brumadinho in collaboration with Danilo Chammas, human rights lawyer, resident in the community of Jangada, in Brumadinho, legal advisor for RENSER, president of the Instituto Cordilheira, member of the Board of Directors of the Centre for Justice and International Law (CEJIL). He has a Master in Law (LLM) at the University of Ottawa, Canada..

An important step in strengthening corporate accountability is to address the human rights concerns of communities affected by a company’s operations, as well as those of other stakeholders. Facing Finance stresses that Vale and TÜV SÜD have taken the opportunity to address matters in detail prior to publication.

### HUMAN RIGHTS RISKS



TOTAL INVESTMENTS (2022) IN VALE in millions of euros



Facing Finance has investigated Vale in previous reports, including issues 1, 2, 4, and 6 of the *Dirty Profits* series. The finding that most of the financial institutions investigated no longer provide financing for or invest in this company is positive. Conversely, this means that Allianz, Deutsche Bank and DekaBank should urgently reconsider their investments.

Note: All figures in the chart are rounded.

## THE CONSEQUENCES OF VALE S.A.'S MINING ACTIVITIES IN THE CARAJÁS CORRIDOR



The Carajás Railway (EFC) runs above the rooftops of Piquiá de Baixo in Brazil. © Marcelo Cruz.

*“The main corporate representing the Brazilian mineral model is certainly Vale S.A. In 2020, without considering companies under Vale’s control and joint ventures, Vale represented 45.7% (95.4 billion Brazilian Reals) of the total revenues of the national mineral sector (208.9 billion Brazilian Reals) (ANM, 2021). In terms of revenues, mining in Brazil boils down to a single company operating in iron ore, and to the world’s largest iron ore mine – Carajás”.*

These lines are taken from the book “Four Decades of the Great Carajás Project”, published by the Observatory of Mining Conflicts (Observatório dos Conflitos da Mineração) in Brazil and coordinated by the National Committee for the Defense of Territories in the Face of Mining (Comitê Nacional em Defesa dos Território Frente à Mineração) (Wanderley / Coelho 2021). The numbers illustrate the present situation of mining activities in the Brazilian Amazon. The hegemony of the mining company Vale in the Carajás region dominates economic statistics and also the livelihood of the people in the Brazilian Amazon, especially in the municipalities along the Carajás Railway (EFC) in the states of Pará (North) and Maranhão (Northeast). Since the creation of the Greater Carajás Program (1978) and the construction of the Carajás Railroad (1982), Vale has expanded its activities, with Carajás being the main production area in Brazil and the world. The extraction and transport of minerals began in 1985.

**Quilombola** communities in Brazil emerged in the mid-15th century when Africans and Afro-descendants escaped slavery and formed communities to resist slavery and reconquest by occupying isolated land outside plantations. Some quilombos also gained freedom through inheritance, donations or land acquisition. In 1988, the Brazilian Constitution first recognized the right of descendants of slave-era quilombos to receive land from the state. By 2020, nearly 6 000 quilombola communities lived across 24 Brazilian states. These “contemporary” quilombos are social groups whose ethnic identity distinguishes them from the rest of society. Their identity is the root of the group’s organizational form, and determines its relations with other groups and its political action.



The EFC is Vale's railroad, symbolizing the emblematic Carajás corridor case. It is a "logistics corridor" used for the transport of mining, steel production, and agribusiness that affects over a hundred communities in the states of Maranhão and Pará, many of which are centuries-old populations, including Indigenous Peoples and quilombolas. In this region, the company's propaganda about its social responsibility tries to mask a series of socio-environmental injustices and conflicts. However, the presentation of conflict situations from the perspectives of the different territories shows how this "logistics corridor" has created a huge "dry corridor", that affects access to water, ways of life, and nature (Santos 2020).

"Dry corridor" is an expression used by researcher and lawyer Mariana Lucena, responsible for the study "Human Rights and Companies: Vale S.A. and the strategies of domination, violations and conflicts involving territories, water, race and gender," coordinated by the organization Justiça nos Trilhos (JnT) and published in February 2020. According to JnT, an organization that defends the human rights of communities affected by mining, steel production, and agribusiness in Maranhão, Vale plays a central role in widespread rights violations.

In the state of Maranhão, the company uses strategies such as splitting environmental permits, disregarding ILO Convention 169 (*Indigenous and Tribal Peoples Convention*) in decision-making processes related to "development" projects, and criminalizing and attempting to demoralize community leaders and communities. In addition, there are still various violations and forms of disrespect towards collective rights such as (Santos 2020):

*"The right to adequate food; the right to water and sanitation; the right to health; the right to housing; the right to work; the right not to be deprived of the means of subsistence; the right to participate in cultural life; the right to take part in public affairs; the right to individual liberty and security; the right to free access to information; the right to come and go; and the right to a healthy environment."*

The "dry corridor" caused by Vale in the states of Pará and Maranhão in the Brazilian Amazon reflects the situation of impoverished territories and communities: The ways of life of the populations have been crossed by the Carajás railroad and transformed by the logic of exploitation of nature. Carajás is a region where the absence of public policies persists, violence rates are rising, both in the countryside and in the cities, and deforestation is ever increasing.

Against this backdrop, it is difficult to understand the corporate narrative of Vale, which claims that the ore is a source of wealth for Carajás and for Brazil. Far from it, the richness of the iron ore grade extracted in Carajás (on average 67%) is not felt by the inhabitants of these areas. It is a wealth extracted from the inside out, with the force of ever faster exploitation cycles leaving open holes in the Serra de Carajás, a dry endlessness from Pará to Maranhão, focused solely on corporate profit. Nature loses, people lose, while Vale is the only one who profits. The extraction and transport of minerals is felt in a violent form not only because of the size of the railroad and the speed of production, but especially because of what this causes in people's lives and in nature.

*"[The EFC] is 892 km long and connects the world's largest open-pit iron ore mine in Carajás in southeastern Pará with the port of Ponta da Madeira in São Luís (MA). The railroad carries 120 million tons of cargo annually. Some 35 trains run simultaneously, including one of the largest regular freight trains in the world with 330 wagons and a length of 3.3 kilometers" – Vale n.d.*

The transportation of 120 million tons of cargo per year takes place thanks to the S11D project. The acronym S11D refers to the location of the mine where the iron ore mining is carried out. "S" refers to the Serra Sul de Carajás, "11D" to the blocks organized by Vale. It is the largest mining complex in the company's history. It was the S11D project that enabled the duplication of the Carajás Railroad (EFC) from Pará to the coast of Maranhão, the building of a new railroad as well as the expansion of the port of Ponta da Madeira in São Luís do Maranhão.

The approval process for the duplication was simplified. It disrespected the basic rules for granting licenses and failed to consider the interests of more than 100 communities living in the 27 municipalities cut through by the railroad in Pará and Maranhão. The S11D has set the stage for a period of intense acceleration of exploration and new mine openings in Carajás (Wanderley / Coelho 2021):

*"The S11D, N4 and N5 projects are estimated to mine 6.5 billion tons of iron ore, take up 27 000 hectares of land, clear 4 100 hectares of Amazon rainforest, and consume 13.7 million m<sup>3</sup>/year of water and dispose of 4.5 billion tons in tailings and waste rock over the next 22 years."*

The mineral model in the Amazon and in Brazil is not defined only by profitability, but according to the authors of the book "Four Decades of the Great Carajás Project", the sole objective of the company Vale is profit (Wanderley / Coelho 2021):

*"We can define it as the set of public and private institutions, including mining companies; decision-making processes, public policies, norms and laws; technological processes and innovations of extraction, beneficiation, metallurgical transformation, waste and tailings generation, construction of dams and waste rock dumps, land and port transportation logistics."*

It is important to recognize the role of communities and social movements fighting for an end to impunity for transnational corporations and for the protection of human rights and nature, as well as against the establishment and expansion of large "development" projects. There are communities like Piquiá de Baixo that face all the dimensions of rights violations that the Carajás Program represents, encompassing the impacts of other threats and violence resulting from the pathways opened by the mining company Vale.

## PIQUIÁ DE BAIXO, AN EMBLEMATIC CASE IN THE MIDDLE OF VALE'S RAILROAD

Piquiá de Baixo, a small community of 1 100 inhabitants, is located in the city of Açailândia, along the Carajás Railroad. These people have been fighting for more than thirty years against the pollution caused by steel companies who settled in the neighborhood at the end of the 1980s (enterprises such as Viena, Fergumar, Pindaré, Simasa, and Gusa Nordeste). The community also struggles given the negative impacts from the Carajás Railroad and Vale's ore warehouse:

*"In front of our houses passes the Carajás Railroad, all around there are pig iron industries, and next to it, Vale's ore warehouse. It is sad to live in a place where practically the entire population is likely to get lung disease and throat or respiratory problems."*

These words of a Piquiá de Baixo resident are representative of the entire community, which – outraged by the advance of diseases, deaths, and pollution – began to confront the companies and reclaim their rights and dignity.

The Pindaré and Simasa steel mills are currently not in operation and have been sold to the company Suzano Papel e Celulose. The steel mill Fergumar has been closed. Gusa Nordeste (now Aço Verde Brasil, AVB) which in turn belongs to the Ferroeste group, halted its activities at the Piquiá de Baixo plant to concentrate its production at the Aço Verde Brasil Steel Mill (AVB), which is also located near the district of Piquiá de Baixo. Although some steel mills are closed, the facilities of the company Cimento Verde Brasil and the AVB Steel Mill, both part of the Ferroeste group, continue to cause air pollution in the community. These companies process the iron ore produced by Vale in Carajás, which makes Vale co-responsible for the impacts on the lives of these families.

At the peak of production, with five companies in operation, the steel mill complex caused a continuous pollution of the air, river, and soil surrounding the community. In addition, noise exceeding the permissible levels was generated – all of which harmed the health of the locals. Ever since the steelworks began operating, the residents have reported increases in the incidence of respiratory, ophthalmological, and dermatological illnesses; the occurrence of severe and fatal burns due to poor treatment of waste from the pig iron production (fine coal), which is often located in close proximity to their homes; difficulties in accessing health services; the absence of basic infrastructure; the constant fear of accidents; the lack of access to information on pollutants in the community; and restrictions on freedom of expression, as the power of Vale and the steel mills deters any criticism of the environmental pollution caused or the general conduct of these companies.

Through many demonstrations, protests, and complaints at the local, national, and international level, the residents have brought forward their demands for full reparations for the violations suffered. The Public Ministry of Maranhão conducted negotiations between the Community Association of Residents of Pequiá (ACMP), the steel mills, Vale, the State of Maranhão, and the municipality of Açailândia, to facilitate the collective resettlement of the entire community.

This was an important step in bringing justice to affected families. At the negotiating tables, the steel companies agreed to partly compensate for the land on which the community would need to be relocated as part of a Conduct Adjustment Agreement. The Vale Foundation agreed to contribute with an additional portion of funding per housing unit, thus adding to the contribution of the Federal Government's program "Minha Casa Minha Vida" (MCMV), which provided the largest amount for the construction of 312 homes and all the infrastructure of the new neighborhood. It should be noted that the MCMV program has rules established for families to pay small installments for the houses they will receive. The ACMP and its supporters are fighting for this payment not to be assumed by the residents, but by the companies that caused the impacts on the community, or by the government, which authorized these operations.

In November 2018, the resettlement process of these families began with the construction of the new neighborhood, called Piquiá da Conquista. However, the work was temporarily paralyzed due to delays in the transfer of installments by the government's MCMV program. Another problem reported by the ACMP, but never really addressed by the companies or the government, is the initial deficit in the construction project of the new neighborhood (the approved budget dates back to April 2017, but the funds were not released until November 2018). Everything was aggravated by the difference in the values of the materials in comparison with the previous official price lists. The problem continued to escalate, until it was impossible to continue the execution of the work under the initially planned conditions.

For these reasons, the ACMP continued to denounce the disregard of the companies and the Brazilian government for the community's situation and warned that the dream of resettlement might not come true. This was picked up by national and international actors: In 2020 alone, two reports were aired by Brazilian broadcasters of great national reach, dealing with the case and speaking of the real risk of paralyzing the works. Moreover, in the 45th Ordinary Session of the UN Human Rights Council, Brazil was charged for the rights violations that occurred in Piquiá de Baixo, as well as for the insufficient measures taken in relation to environmental crimes in the communities of Brumadinho and Mariana, all involving the company Vale.

This pressure, triggered by the actions of ACMP and its supporters, resulted in a new round of negotiations between ACMP, Vale, the Government of Maranhão and the Brazilian bank Caixa Econômica Federal, mediated by the Public Ministry. In light of the latest claims, the ACMP with the support of partner organizations gained a financial contribution to continue and complete the work in the new neighborhood, which was assumed by Vale. The Government of Maranhão committed itself to the construction of four public facilities for the use of the population of Piquiá da Conquista and the residents of the region. These outcomes are the result of constant and difficult roundtable negotiations over the past year, all in the midst of the Covid-19 pandemic and the resettlement work stoppages. They are guaranteed by means of the Terms of Conduct Adjustment on the part of the company and give hope that the new neighborhood for the people of Piquiá will be completed by December 2022.



The Brazilian community Piquiá de Baixo is surrounded by a constant cloud of smoke and dust. © Marcelo Cruz.

While the ACMP denounces and exerts pressure for the protection of their rights, the community continues to suffer from the effects of pollution. The Health and Environmental Surveillance Collective Edvard Dantas Cardeal has been monitoring air pollution in Piquiá de Baixo since 2017 in collaboration with the public health institution Fiocruz, the civil society organization JnT and the alternative policies institute PACS. The Collective's measurements confirm that pollution levels are higher than the limits indicated by the World Health Organization and that the responsible companies continue to deny this fact. Despite the declining number of companies, in 2020 and 2021 the pollution was felt with similar intensity as in previous years. The name of the Collective is a tribute to Mr. Edvard Dantas Cardeal, the first president of the Community Association of the Residents of Piquiá and a victim of pollution from the steel mills. He died in January 2020, at the age of 76 of lung complications.

### WHAT DOES VALE SAY?

In a written response to Facing Finance, Vale comments in detail on the allegations raised in the text by our partner organizations working on the ground in the affected Brazilian communities. The mining company writes to acknowledge that its Carajás Railroad (EFC) runs through a difficult socioeconomic and environmental territory. In response, it launched its social ambition in 2021 with the aim of becoming a partner in the development of resilient communities and sustainable mining, the company explains. It additionally claims to respect cultural diversity and the rights of Indigenous Peoples and Traditional Communities and to acknowledge apart from physical and socio-economic, also cultural and spiritual aspects. Operations are guided by its Human Rights Policy and are in accordance with the FPIC principle, the company adds. Vale rejects the claim

that there is a connection between the EFC and the drought or that it affects the natural flow of rainwater or existing water bodies in the region. Instead, impacts to water could come from other sources, such as irregular and uncontrolled land use or urbanization, Vale asserts. It also writes that the EFC does not affect the water quality in the region. Vale further describes its measures for the conservation of the Amazon, where it maintains the largest iron ore mine in the world. More specifically, the company writes that it helps protect about one million hectares. Vale further writes that it disagrees that the EFC duplication licensing process occurred fragmented and in violation to ILO 169. The company states that it followed the relevant guidelines and terms of references of the Brazilian authorities and that it allowed for community participation during the licensing process.

With regard to the situation in Piquiá de Baixo, Vale claims to acknowledge the critical situation. The mining giant states that it has visited Piquiá de Baixo in September 2019 and has since been following the actions taken by the pig iron companies to address the environmental issues including the decommissioning of a pig iron unit near the village. According to Vale, the monitoring from the EFC patio did not show particulate emissions beyond the usual levels. Yet, it is undertaking several measures such as paving roads to improve the situation. Regarding the resettlement, Vale said that it was committed to delivering and completing the work of the neighborhood Piquiá da Conquista – of which by the end of 2021 about 43% was completed. It also set up a steering committee to engage and listen to community concerns, the company adds. In addition, Vale claims to pay attention to the concerns of women and strives to guarantee their participation in initiatives that impact their lives.

## THE NECESSARY GENDER FOCUS IN THE ANALYSIS OF THE CONSEQUENCES OF VALE'S MINING ACTIVITIES

Along the Carajás Railroad, women's life stories and reports reveal the damage and pain caused by unbridled mining exploitation and how this type of exploitation is related to patriarchy, machismo, and environmental racism. Mariana Lucena describes the situation as:

*"The emblematic case of the Carajás Corridor mirrors the perpetuation of colonial processes in corporate actions, which gashes through the lives of people – especially of black women, in their relations with the environment."*

The strong corporate presence in the Carajás Corridor creates a context of domination, violations, and conflicts involving territory, water, race, and gender. This model is reinforced as a strategy of domination and violence that severely affects nature and people, and in particular the lives of women. Therefore, when discussing the impact of mining, it is necessary to focus on gender, that is, to understand the different forms in which mining affects women's rights and lives.

In Maranhão, women do not own land in most cases, resulting in the fact that their needs, problems and interests are not considered by the mining companies. In the countryside, access to and ownership of land is directly linked to the idea of autonomy. While in reality denying women effective participation in decision-making processes, Vale reaches out to and further patronizes them by offering benefits such as cisterns, vegetable gardens, and promises of dry toilets, aiming to generate an idea of benevolence, but without providing real solutions and reparations for the damage caused by the depletion of water courses, compromised food security, the isolation of people etc.

Thus, women are the ones who lose the most, because besides being ignored and not consulted, business activities add an additional workload on them. The situation is even worse for women who are left alone with the tasks previously performed by male partners and children who have migrated in search of better living conditions, better opportunities in the labor market, access to education and land ownership. This overload is also transferred to the girls, who often stop attending school to take on domestic tasks.

The impact of the construction, expansion, and duplication of the Carajás Railroad on water bodies is a problem that has not been repaired and has had a different impact on men and women in terms of access to water and its quality. The Carajás Railroad and its duplication have clogged and destroyed streams, silted up rivers, and killed riparian forests (Santos 2020). Women, whose duties are related to the care and reproduction of life, see their rights to clean, safe, and sufficient water being affected. They are now forced to walk long distances to reach other water sources.

Throughout the communities crossed by the Carajás railroad, women have fond memories and reminisce about abundant clean streams that died or are seriously threatened due to corporate actions. This reveals that it is not only necessary to articulate and anchor the debate on machismo and racism – most of these women are black – in the context of business practices in Carajás, but also to be aware of environmental conflicts and the exploitation of nature based on the logic of domination, oppression, and separation.

Companies arrive and take advantage of a patriarchal logic erasing women's rights and deny that their corporate activities affect women in a differentiated and more severe way. This logic is contrary to what the natives and the ancestors proclaim for the ways of life of women and girls.

The communities show that they are capable of creative resistance and combating rights violations in corporate extractive contexts. And it is resistance that takes into account the differentiated forms of oppression and violence in women's lives. Mining is denounced as a model of false development based on inequality and the destruction of nature, and therefore, the destruction of human life.

The quilombola women from Maranhão, whose territories and bodies were deeply gashed by mining activities, refer to this alleged development as a business strategy that "de-involves" autochthonous peoples, disarticulates them, deforests, destroys, and deconstructs what they and their ancestors have collectively built.

## A DEADLY SEA OF TOXIC MUD: THE DAY BRUMADINHO WAS BURIED



Aerial view of the social and environmental disaster caused by the dam collapse of the Vale mining company in Brumadinho (27 January 2019).  
Vinicius Mendonça / Ibama, flickr  
(CC BY-SA 2.0: [bit.ly/33198853868](https://bit.ly/33198853868)).

25 January 2019: A date to remember.

It was 12:28 pm on a Friday when Dam I of the Paraopeba mining complex suddenly bursted, releasing a devastating avalanche of mining tailings and engulfing, in about five minutes, everything below the structure for miles: the administrative center and the cafeteria of the mining company responsible for the dam – Vale S.A. –, mining machinery, houses, inns, corrals, a bridge, vegetation, the river...

This happened in Brumadinho, a city neighboring the capital of the state of Minas Gerais, Brazil, about 120 km from the city of Mariana. The same Mariana where, less than four years ago, the Fundão tailings dam of the Samarco mining company, a joint venture of Vale and Anglo-Australian BHP, had collapsed.

The *sea of mud* dumped some 9.7 million cubic meters of mud and ore tailings in Brumadinho and led to the immediate death of 272 people, including two fetuses. Not only were entire communities devastated and families displaced, but crops, water sources, flora, fauna, air, soil, cultural heritage, ways of life, and integration with nature were destroyed (CIMNE 2021; AVABRUM 2021). The destruction started in the city of Brumadinho, but it dragged along the watershed of the Paraopeba River, affecting at least 18 municipalities (Silva et al. 2019). Considered the biggest work accident ever recorded in Brazilian history, the disaster has affected the ability of communities to maintain their livelihoods, especially those of rural producers, fishermen, peoples, and traditional communities (Souza / Fellet 2019).

Water quality and volume were also impaired. While communities such as Tejuco report water scarcity and high turbidity of the water reaching their homes, the analysis carried out by Minas Gerais Water Management Institute (IGAM), a state environmental agency, detected iron, manganese, lead, and mercury concentrations above the recommended limits.<sup>1</sup> Analyses by the Ministry of Health also indicated unsatisfactory results for human supply solutions due to high iron, aluminum, and manganese concentration in the collected samples (Ministério da Saúde 2020).

Sirens and emergency mechanisms, albeit installed in the region to alert workers and residents in cases of dam anomalies, did not ring on the day of the collapse. According to an expert report from the Federal Police, not only were the sirens not operational at the time, but also there was no system in place to automatically activate alerts. But even if the alarms had been triggered, there would not have been enough time to escape, considering the cafeteria and administrative structures being installed just below the tailings dam.

1 Total iron (3095.5 mg/L) exceeding by up to 2 200 times the maximum value allowed for class II springs; total manganese (736 500 mg/L) at values 7,365 times greater than the maximum allowed; total lead and total mercury presented values up to 21 times above the recommended limit (see Igam et al. 2019).

As a result, most of the victims of the fatal accident were workers and subcontractors of the mining company. For the family members of the victims who left on January 25, 2019, fear and despair in the face of uncertainty about the whereabouts of their loved ones were the only companions. The process of searching and identifying the bodies continues until today: Five victims have not yet been found.

The feeling of collective mourning persists in the region with frequent reports of depression and anxiety (Coletivo de Comunicação MAB MG 2022). Data from the Municipal Secretariat of Brumadinho show an increase of 80% in anxiolytics consumption and 60% in antidepressants usage (CPI 2019, 259).

“ May the clarity that mining irreversibly destroys water sources, streams, creeks, rivers, and seas be radiant and keep us ready to save our water security, our territory, and our people. May we be faithful to memory, and may we have the strength and wisdom to never fail to tell this story as it really happened. May money never be a reason to divide us, and may we not let ourselves be bought by crumbs from those who kill us.” (Renser 2021, 29)

The structure that failed in Brumadinho had been inactive for about 2.5 years, which is to say that tailings disposal from Córrego do Feijão Mine had already been interrupted. At Vale’s annual general meeting in 2018 in Rio de Janeiro, a shareholder living in Brumadinho asked why the company did not implement the “Zero Dam Program”, which since 2009 would have decommissioned eight dams, including Córrego do Feijão Dam I (Mansur / Chernicharo 2020). In December 2018, Vale obtained an environmental license for the project “Jangada and Córrego do Feijão mines Continued operations”, which forecasted the commercial use of tailings (fine and ultra-fine) from Dam I and the pit expansion in depth and extension, under the strong protests of the residents and local groups such as the Jangada Community Association (Governo do Estado de Minas Gerais et al. 2018).

On all the numerous fronts of investigation, whether carried out by the Civil Police, the Federal Police, the Prosecution Office, the Senate Parliamentary Committees of Investigation, the Lower House, and the Legislative Assembly of Minas Gerais, or by Vale’s external auditors, it was concluded that the dam’s sudden failure resulted from a liquefaction process.<sup>1</sup> However, there is a wide variety of potential liquefaction triggers such as earthquakes, drainage system issues, excessive load deposited in a short interval, increased or intense rainfall etc. Computational analysis of the dam failure carried out by the International Center for Numerical Methods in Engineering (CIMNE) of the Polytechnic University of Catalonia in Spain found that “dam background simulations show no signs of imminent dam failure at the time it collapsed”, which suggests that “some additional factor or event was necessary for the dam to fail” (CIMNE 2021).<sup>2</sup> Both the CIMNE study and the expertise of the Federal Police concluded that what led to liquefaction was water overpressure associated with hole B1-SM-13 geotechnical drilling, which was in progress at the time of the failure. The drilling aimed to collect soil samples and install multilevel piezometers to measure water pressure in the soil.

“ The set of numerical analyses carried out allows us to conclude that hole B1-SM-13 drilling is a potential trigger for the liquefaction that caused the dam failure. The analyses carried out were not able to identify other liquefaction triggers” (CIMNE 2021).

The drilling was carried out by Fugro, a company hired by Vale, with the approval of the certification firm TÜV SÜD. The procedure agreed upon by the three companies, involved the water circulation to cool off the drilling crown, which, according to experts, generated an increase in hydrostatic load, acting as a trigger for liquefaction.

According to an expert report by the Federal Police, both Vale and TÜV SÜD had been warned in this case about the risks of drilling using water, a method that contravenes international standards and regulations. In addition, Vale vetoed the use of more recommended equipment for this type of activity, under the guidelines for drilling and sampling in embankment dams of the US Department of the Interior Bureau of Reclamation Technical Service Center Denver. Despite being aware of this and other risks of the structure, Vale has not adopted measures to change the operational facilities location downstream of the dam (Rodrigues 2021).

The works of Fugro, approved by Vale and TÜV SÜD, on the most critical part of the structure began four days before the failure.

1 According to the CIMNE report (CIMNE 2021): “liquefaction is a process associated with increased pore pressure, whereby shear strength is decreased as the effective soil stress approaches zero. Only contractile materials are subject to liquefaction. Liquefaction is intrinsically related to the soil fragile undrained behavior.”  
2 The study was the result of a Cooperation Agreement signed between Vale and the Federal Prosecution Office (MPF), through which the company committed to contribute and collaborate with the authorities in the technical investigation of the failure causes, which included the need to carry out a Dam I specialized computational analysis to clarify the failure causes. In this context, CIMNE was appointed by MPF and hired by Vale to carry out analysis, modeling, and computational simulation activities to assist in the Dam I failure investigation of probable, determinant, and/or concurrent causes.

## The role of TÜV SÜD

In June and September 2018 – months before the dam collapsed – TÜV SÜD's Brazilian subsidiary, the Bureau de Projetos e Consultoria Ltda., issued certificates attesting that Dam I was stable. However, investigations discovered that already at this point the dam stability conditions were not acceptable.

TÜV SÜD's subsidiary was hired by Vale to assess the safety of this and other dams, but investigations by the various bodies indicate that the certifier's employees were aware of the serious problems of Dam I of Paraopeba Complex, but nevertheless attested the structures' safety.

For this reason, the Prosecution Office of Minas Gerais filed an indictment holding TÜV SÜD co-responsible for the disaster: Both the certifier and the mining company colluded, assuming the risks of failure when they learned of the critical condition of the dam, not taking action, nor sharing this information with public authorities (Ministério Público do Estado de Minas Gerais n.d.). In May 2019, TÜV SÜD was prohibited by the Court from issuing new reports related to the safety of dam and other structures (Poder Judiciário do Estado de Minas Gerais 2019).

Currently, the company is the defendant in a civil action in the Regional Court of Munich, Germany, based on EU regulations that establish that companies headquartered in its member countries can respond in court for damages caused by their activities in countries outside the European bloc.

In addition, the certifier was also the target of a criminal complaint filed before the Munich Public Prosecutor's Office in October 2019 by relatives of the victims, the European Center for Constitutional and Human Rights (ECCHR) and Misereor (ECCHR et al. 2019). According to ECCHR, the lawsuit against TÜV SÜD does not exempt Vale from its responsibility, but rather reaffirms that the structural causes are fully addressed (ECCHR n.d.).

Despite the legal disputes pending, **Commerzbank**, **Deutsche Bank**, **LBBW**, and the **UniCredit Group** (HypoVereinsbank) participated in a syndicated loan of 300 million euros for the company in July 2021.

## What does TÜV SÜD say?

In the company's written response to Facing Finance, TÜV SÜD states that the cause of the dam failure is still unclear at this time because, in contrast to the CIMNE report, another panel of experts has ruled out the drilling of B1-SM-13 as the cause of the dam failure (see also Vale's response on p. 49). It makes clear, that it is convinced that it bears no legal responsibility for the dam rupture. The company further states that it was not TÜV SÜD Bureau's responsibility to approve the drilling, the specific drilling method or the hiring of the company Fugro. TÜV SÜD further notes that its understanding of the facts differs from that of the Federal Police, because the discussions regarding drillings with the use of water concerned another dam. Nevertheless, it adds, Fugro's method of drilling with the use of water below the groundwater table complies with international standards and regulations. In addition, TÜV SÜD notes that the declarations of stability (DCEs) were issued by the company in accordance with the laws and standards applicable at the time. According to the company, an inspection of the B I dam by the relevant regulatory authorities in November 2018, after TÜV SÜD Bureau had issued the stability declarations, also revealed no safety concerns. Therefore, the allegations of the Prosecution Office of Minas Gerais (MPMG) in the indictment against the company are not consistent with TÜV SÜD's own interpretation of the facts. The company adds that the preliminary suspension of its dam assessment activities in Brazil was not ordered as a result of an indictment.

With regard to the criminal complaint filed before the Regional Court of Munich, TÜV SÜD explains its view that the issuance of the stability declarations was lawful pointing to the report of the expert panel. Moreover, according to Brazilian law, liability lies with the mine operator, the company notes. TÜV SÜD stresses that it also recommended several measures to improve the safety of the dam, which Vale was required to realize.



The dam collapse of the Vale mining company in Brumadinho leaves a trail of devastation (4 February 2019). Felipe Werneck / Ibama, flickr (CC BY-SA 2.0: [bit.ly/32132223027](https://bit.ly/32132223027))

## VALE – WHO IS THE COMPANY RESPONSIBLE FOR THIS DISASTER?

Vale S.A. was founded as Companhia Vale do Rio Doce (CVRD) in 1942, a state-owned company whose main objective was to supply iron to the UK's and US' military industry, in the midst of World War II. In 1997, it was privatized in a cycle of neoliberal policies experienced in Latin America in the 1990s. Since 2001, its shareholder control has been pulverized, strengthening large foreign investment funds. Currently, the mining company has operations and joint ventures in around 30 countries.

In 2020, despite the extensive list of environmental liabilities in Brumadinho and so many other affected territories, Vale recorded a net profit of 26.71 billion reais (equivalent to approximately 5.2 billion euros), as a result of rising iron ore prices and a 26% increase in sales (Vale 2020). The company's profits follow the trend of the mineral sector in Brazil, which recorded a 36.2% increase in 2020 compared to 2019 (MME 2020).

Despite the high growth declared, a 2018 report by the Federal Court of Auditors points out that Vale operates mechanisms for illicit capital flows, such as price transfers to its subsidiaries in Switzerland and the Cayman Islands, in order to reduce tax payments (Tribunal de Contas da União 2019).

Vale strongly benefits from a conducive and loose regulatory situation for mining projects in Brazil that is characterized by an economy of neo-extraction, financialization of commodities, deindustrialization and policies based on fiscal austerity ideas (Rede Igrejas e Mineração 2020). Thus, Vale has obtained new licenses (such as the Vitória-Minas Railroad concession, a large corridor for ore flow for export) and uses terror strategies to evacuate communities (as in the cities of Nova Lima, Ouro Preto, and Barão de Cocais/MG etc.), appropriating territories and expanding its operations. Also, it has taken initiatives to resume the Jangada mine expansion project in Brumadinho – in the same mining complex as the dam that collapsed in 2019. The expansion of these activities deepens environmental liabilities and human rights violations.

Thus, although the mining company reiterates its promises of local development and social responsibility, the affected communities report social conflicts fueled by the company, environmental racism, and a lack of commitment to the future of the planet (Articulação Internacional dos Atingidos e Atingidas pela Vale 2021).



## OUTLOOK: THE COMMUNITIES' CALL FOR REMEDY – WILL IT BE HEARD BY VALE?

Since 25 January 2019, the affected families and communities have been fighting for full and fair reparation. The road to justice, however, is hampered: Vale does not recognize countless people as affected individuals and seeks to unilaterally arbitrate the compensation parameters and directly lead the so-called reparation measures.

According to the National Observatory on Environmental, Economic, and Social Issues of High Complexity, Impact and Repercussion of the National Council of Justice, there are already more than 4 400 lawsuits related to the dam failure in Brumadinho, whether before the State Court, Federal Court, or Labor Court (CNJ et al. n.d.).

Without even conducting a complete and independent diagnosis of the damage, Vale limits their focus to 11 200 people that are already part of agreements for civil or labor compensation, but disregards a series of damages and, therefore, of people affected along the Paraopeba River Basin (Vale 2021).

On 4 February 2021, Vale announced another contentious compensation measure: The Global Agreement for Full Repair of Brumadinho, signed with the State of Minas Gerais, the Federal and Minas Gerais Public Prosecutors, in addition to the Public Defender's Office of Minas Gerais. This agreement was negotiated under seal by court order and its disclosure resulted in a 4.3% increase of the mining company's shares on that date. Affected communities criticize the agreement for its lack of participation and, in particular, for conveying an image of the mining company's commitments being fulfilled. In practice, they claim that the agreement represented a great source of revenue for the state of Minas Gerais, which started to carry out large works that, in the end, boost political candidacies and iron ore transport itself (Zhoury 2021).

Criminally, the development has not been encouraging either. In October 2021, the Superior Court of Justice of Brazil annulled the indictments filed before the State Court of Minas Gerais, understanding that the case should be judged at the federal level. In practice, this may mean more delay in seeking accountability of the defendants, since procedural acts will have to be ratified or redone before the competent federal court.

## WHAT DOES VALE SAY?

In its written response to Facing Finance, the mining company Vale expresses regret for the dam breach and acknowledges the profound environmental and social impacts. It reiterates that it will no longer operate the Córrego do Feijão mine nor resume the Jangda mine expansion project in Brumadinho. Vale notes that it provided emergency aid and continuous support to the affected individuals and families, which has now culminated in an income transfer program for which the company completed a deposit of R\$4.4 billion in October 2021. Through Vales' Family Reference program, the company offers medical and psychosocial care and treatment. The company continues, that it also signed roughly 13 000 civil and labor agreements for indemnification. Vale disagrees that the Integral Reparation Agreement, which entered into force in February 2021, lacked transparency and community participation, because the justice institutions involved represented the rights of the affected people. The company also denies using terror strategies to evacuate communities. In terms of water quality, Vale also describes its efforts to monitor iron and manganese, including in the Paraopeba River basin, where water quality has improved again. The company continues to deliver drinking water to residents, including to the community Tejuco, Vale adds.

Regarding the dam breach itself, Vale states that two independent studies have come to slightly different conclusions. While in December 2019 an Expert Panel concluded that the collapse occurred abruptly and without previous signs, in August 2021 the CIMNE report concluded that a drilling hole triggered the liquification. The company goes on to argue that before responsibility can be determined, the cause of the rupture needs to be determined. Vale also notes that it had expected to meet its obligations when it hired the renowned companies TÜV SÜD and Fugro. Vale continues, claiming that an emergency plan was in place and that the unfortunate location of the cafeteria and the administrative structures were approved by Brazilian authorities. The company ends with a commitment to non-repetition. To this end, it will decommission upstream dams and seek for alternatives to tailings dams.

Lastly, Vale writes that it does not operate any illicit capital flows.

# GLENCORE

## WHEN GREED COMES FIRST

The name Glencore may not sound familiar to many people. Yet it is one of the biggest commodity producers and traders in the world. Whether talking on the phone or taking the subway, the minerals and metals mined and marketed by the company such as cobalt, copper, nickel or zinc are everyday companions in most people's lives (Global Witness 2017, 1). The Swiss company is also active in the energy business operating coal mines and as a marketer of oil and gas.

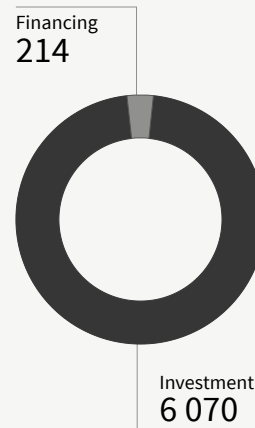
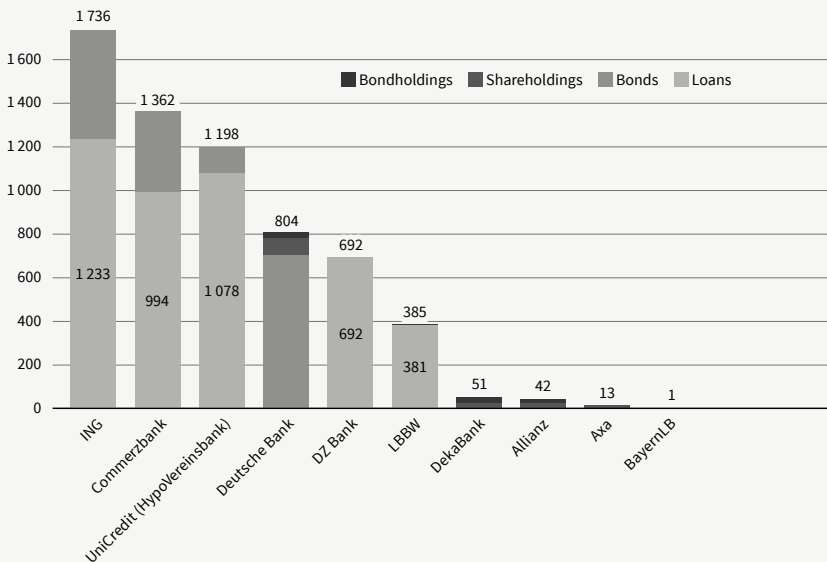
As a major corporate player in the commodity market, the company's sphere of influence extends to the livelihoods in countries where it mines raw materials. In Central Africa, Glencore has been involved in allegations of corruption, bribery, tax affairs, severe human and labor rights violations as well as poor environmental record. Several lawsuits are pending. The company's harmful relationship with mining mogul Dan Gertler over dirty deals in the Democratic Republic of the Congo to the detriment of the interests of the Congolese people was at the heart of the Paradise Papers in 2017 (Fitzgibbon et al. 2017; Blum et al. 2017).

An important step in strengthening corporate accountability is to address the human rights concerns of communities affected by a company's operations as well as those of other stakeholders. Facing Finance stresses that Glencore has taken the opportunity to address matters in detail prior to publication.

### HUMAN RIGHTS RISKS



### TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN GLENCORE in millions of euros





The T17 mine run by KML, a subsidiary of Glencore in Kolwezi (March 2010).  
© Gwenn Dubourthoumieu.

The soils, waters, and geology of the Democratic Republic of the Congo (DRC) accommodate an unparalleled abundance of resources. The country's reserves of raw materials range from sparkling diamonds and precious gold to energy sources such as oil and coal, and the resources of a modern and digitized society such as coltan and cobalt. Unfortunately, this intrinsic natural wealth never translated into a prosperous Congolese society. In 2018, 73% of the population lived in extreme poverty with less than 1.90 US dollar a day. 43% of the Congolese children suffer from malnutrition (World Bank 2021). Only around half of the population have access to improved drinking water (55.2%) and sanitation facilities (40.7%) (CIA 2021).

Ever since the arrival of European colonists over a century ago, the country has attracted violence, exploitation, and corruption. Torn between the political and economic interests of numerous factions, including political leaders, rebel groups and the continuous involvement of neighboring countries, the DRC has experienced high and pervasive levels of violence, ranking it as the fifth most fragile state in the world (UCDP 2021; The Fund for Peace 2021).

International mining companies, such as the Swiss commodities giant Glencore, have found in the DRC a convenient place to operate largely undisturbed and exempt from public or international scrutiny. Glencore produces cobalt mainly as a by-product in its Kamoto and Mutanda mining complexes in the DRC as well as to a far lesser extent in the course of its nickel mining operations in Canada and Australia (Glencore 2021a; see also Glencore 2021b, 1/10). Glencore dominates the cobalt market with a share of roughly 25 - 30% of global production (Glencore 2020b, 4).

Both copper and cobalt are basic components of the world-wide energy transition. Cobalt is indispensably linked to rechargeable batteries, which accounted for about 57% of the global demand in 2020 (Cobalt Institute 2021, 5). Currently, cobalt is mainly built into lithium-ion based batteries of laptops, mobile phones and other electronic devices. However, e-mobility is the biggest driver of cobalt demand given the increasing implementation of government incentives such as subsidies, but also the relatively high cobalt content required for batteries in e-vehicles (Schütte 2021, 3; Cobalt Institute 2021, 5).

The DRC is at the heart of the global cobalt market. Located at the African copper belt, the country holds half of the world's cobalt reserves. In 2020, it accounted for two-thirds of global cobalt production (Shedd 2021, 2). Between 15–30% of the Congolese cobalt production is extracted by *creuseurs*, French for diggers, in mostly informal and unregulated artisanal and small-scale mines (Baumann-Pauly 2020, 5). Compared to large-scale industrial mining that relies on heavy machinery, *creuseurs* work directly with their hands and basic tools such as picks or shovels. The DRC's market concentration is exemplified when compared to Russia, the second biggest top cobalt producer, accounting for 4.5% of global cobalt mining output: which is still less compared to the informal Congolese workforce in the artisanal mining sector (compare Shedd 2021, 2; see also Baumann-Pauly 2020, 5).

Unlike tin, tantalum, tungsten and gold, a source of income for various warring parties in the politically unstable and violent eastern provinces of the DRC, cobalt is typically not classified as a conflict-mineral. Mining operations are situated in the calmer south. Yet cobalt is far from being a conflict-free commodity: The cobalt supply chain is associated, among others, with widespread human rights violations including child labor, land grabbing, harmful health and safety conditions for miners, a poor environmental and toxic track record, as well as local tensions between small-scale miners and industrial mining companies. Although human rights and labor conditions are worrisome in artisanal mining sites, and sometimes deadly, these concerns are by no means restricted to the informal sector, as they constitute a common reality at industrial mining sites (Vetter / Schütte 2019, 4f.).

Glencore's and other industrial mining companies' operations are at the heart of a conflict, that has its roots in economic conditions, between small- and large-scale mining in the southeast of the DRC (International Crisis Group 2020, i). Artisanal mining often takes place on concessions of industrial mining sites for the simple reason that there are virtually no concessions left for artisanal miners (Rigterink / DeCaires Gall 2020; International Crisis Group 2020, 28). Less than one percent of artisanal mining is taking place in designated zones according to a survey, but 63% on industrial sites (International Crisis Group 2020). This is staggering in a context of a strong artisanal mining workforce of at least 150 000–200 000 miners, which in turn supports more than a million people economically (Baumann-Pauly 2020, 6; Home 2021). However, while the DRC government provided and extended permits to industrial mining companies over time, there is only a very limited amount of artisanal mining zones left. In addition, these are sometimes too remote to be exploited profitably by local residents. In this context, a narrative of “illegal miners” has been established. Although the phrase might be correct in a legal framework, it deliberately leaves out the fact that other alternatives have been taken away from artisanal miners. The economic frustration is further fuelled by the failures of large-scale industrial mining to lead to tangible benefits for the local population. The lack of jobs, absent local procurement and failed or missed investments in communities are commonly expressed grievances in that regard (see International Crisis Group 2020, 16). The lack of alternative sources of livelihood attracts not only residents, but also migrants from the heartlands spurring additional tensions about local mineral wealth around some mines (International Crisis Group 2020, i).



As far as the eye can see: Valuable copper in the DRC (February 2011). Fairphone, flickr (CC BY-NC 2.0: [bit.ly/8454777663](https://bit.ly/8454777663)).

Some time after the end of the civil war, the DRC started to renegotiate mining contracts, among them those with Katanga Mining, as well as a so-called *pas-de-porte*, kind of an admission fee, with foreign companies, which had been sold at dumped prices during Mobutu's kleptocratic and authoritarian regime (Blum et al. 2017; Fitzgibbon et al. 2017; Guéniat 2018, 4f.). At the end of the negotiations in 2009, the Congolese state waived 445 million US dollars. As the civil society organization Public Eye accurately points out: the equivalent to the country's education budget in 2010 (Guéniat 2018, 5).

The allegations circle around the relationship between Glencore and the notorious business man Dan Gertler, who helped the Swiss company secure mining rights significantly below value for Katanga Mining in exchange for a 45 million US dollar loan only a few days later (Guéniat 2018, 5; Fitzgibbon et al. 2017). Glencore claims to have conducted an “extensive and thorough” review of Gertler, who currently is subject to US sanctions (Fitzgibbon et al. 2017). However, examinations remain without purpose, when red flags, such as close ties to the former DRC regime and allegations about involvement in blood diamonds and weapon deals by the UN and the Congolese Parliament as early as 2001, are ultimately ignored (UNSC 2001a, 33; UNSC 2001b, 15; Guéniat 2018, 8).

For Glencore the effort has paid off. Through clever manoeuvres, the Swiss company rose from an 8.52% to a 77.9% majority shareholder during the course of negotiations as it helped the struggling company Katanga Mining during the financial crisis with a convertible 265 million US dollar loan that it turned into a controlling interest in mid-2009 (Glencore 2017, 2f.; Guéniat 2018, 5ff.; Fitzgibbon et al. 2017). Just in time for its Kamoto Copper Company joint venture with Gécamines, which was concluded in the same month – and with a *pas-de-portes* payment four times lower than what most of its competitors would have paid at the time (Public Eye 2020; Fitzgibbon et al. 2017).

The Paradise Papers leak and the continuous research efforts of civil society organizations have attracted the attention of judicial authorities in various countries. Glencore currently faces multiple lawsuits in Switzerland, the UK, and US over its shady business deals (Glencore 2021c, 62; Public Eye 2020; Davies 2021). A Katanga Mining lawsuit in Canada has already been settled with a 22 million US dollar fine. It includes a ban of one of the top Glencore architects of the business deal with Dan Gertler (Biesheuvel / Oworm 2018; Fitzgibbon et al. 2017; Guéniat

## THE KAMOTO MINING COMPLEX

### A DIRTY DEAL IN THE FIRST PLACE?

The exploitation of the DRC's abundant resources at little benefit for its vast population is particularly critical when considering how Glencore has obtained its rights over local mines in the first place: Extensive research by NGOs and a global network of journalists over the past decade suggests, that Glencore acquired the mining concessions through opaque business deals (see for example Global Witness 2014; Blum et al. 2017; Public Eye 2020; Guéniat 2018, 4-9; Fitzgibbon et al. 2017; Blum et al. 2017).

Glencore produces copper and cobalt in the Kamoto mining complex in the province of Lualaba, south of DRC. The complex, which is located in the busy city of Kolwezi, includes two open pit mines and one underground mine as well as industrial plants. The mining complex is operated by the Kamoto Copper Company (KCC), a joint venture between the state-owned mining company Générale des Carrières et Mines SA (Gécamines) and Katanga Mining Limited (KML). While Gécamines holds 25%, 75% are owned by Katanga Mining, which Glencore acquired fully in June 2020 after having rising stakes in the company since 2008 (KCC 2021; Glencore 2020c, 213; KCC / KML 2017, 25; Glencore 2017, 1f.; Glencore 2021c; KCC 2020, 3).

2018, 8). The latter has been sanctioned by the US over “opaque and corrupt mining and oil deals in the Democratic Republic of the Congo” in 2017 (USDT 2018, Wild 2021). This brought Glencore into a position where it had to provide further explanation – not only because of the sanctions, but also because it continued with contractual payments to Dan Gertler despite US sanctions (PPLAAF / Global Witness 2020, 24ff.; Budry 2020). In 2016, a New-York hedge fund, Off-Ziff Capital Management, accepted a 412 million US dollar penalty as it admitted to have participated in corrupt payments amounting to 100 million US dollars to DRC officials in exchange for access to the mines between 2005 and 2015 by its “DRC Partner, an Israeli businessman” (USDOJ, 2016a; USDOJ, 2016b). Journalists and civil society organizations alike have identified the half-hearted anonymization as Dan Gertler (Doherty et al. 2017; Carter Center 2017, 11).

However, the real tragedy is how the multi-billion-dollar company Glencore loots the DRC’s mineral resources, while the vast majority of the Congolese population remains in poverty: How hundreds of thousands of artisanal miners risk their lives daily, when digging for copper and cobalt on Glencore’s (and others) mining sites. How the Swiss company and its business partners take advantage of power imbalances and strike deals, instead of paying their fair share. Money that is diverted from urgently needed public spending such as in the education or health sector. This is not to say, that large international mining companies should not be active in the DRC; it is about how they operate and how they ultimately contribute to continuous corruption and bribery at the expense of the Congolese population.

### WHAT DOES GLENCORE SAY?

Glencore provided detailed information when asked by Facing Finance about the allegations. In its written response to Facing Finance, Glencore acknowledges that small-scale mining is a reality and as such an important livelihood. It notes that to date no artisanal cobalt mining site could be certified as responsible and stresses its involvement in various initiatives such as the *Fair Cobalt Alliance*, the Global Battery Alliance’s *Cobalt Action Partnership* and the *Responsible Minerals Initiative*.

Glencore goes on to say that it has been active in the DRC for nearly 15 years, and that its presence contributed not only to the development of the extractive sector, but also of the Katanga region as a whole, through the creation of jobs. The company stresses that it paid 865 million US dollars in taxes and royalties in 2021. It further explains to be aware of the various judicial investigations and to co-operate fully with the respective authorities.

### A DIRTY TRACK RECORD

Mining is often accompanied by environmental violations. As research from the Swiss civil society organizations Fastenopfer and Bread for All in collaboration with the local organization African Resource Watch (AfreWatch), and the Congolese legal aid Centre d’aide juridico-judiciaire (CAJJ) shows: The Kamoto mining complex is no exception.

In January 2018, a dike at a KCC site collapsed. Although the spill was concentrated at the mining site, heavy rains caused it to spread. As a consequence, the chemical Sodium hydrosulfide was dispersed contaminating fields, fish-farming ponds and gardens of 460 households in Tshamundenda. Although KCC provided financial assistance, the compensation was not in line with the national Mining Code as it did not account for future crop

losses provoked by the spill (Bread for All / Fastenopfer 2018, 2). Glencore wrote Facing Finance to disagree with the civil society allegations and claims to have paid provisions as set out in the national mining legislation.

Various other leakages, such as in February 2015, when a truck accident caused the spill of Sulphuric acid in front of KCC’s entrance in Tshamundenda, which was subsequently cleaned up, or in March 2021 during maintenance work must be noted (Bread for All / Fastenopfer 2018, 2; Reuters 2021). The local civil society organization AfreWatch condemned inaction after the latest spill citing failures to inform the population as well as gross negligence, because KCC failed to repair a broken valve over a long period of time (AfreWatch 2021). Glencore responded to have engaged with AfreWatch about the incident in 2021.

Air pollution is another worry for the surrounding population. Dust arises, among others, from mining operations and its associated transport. Dust and smoke can contain harmful pollutants such as heavy metals, ore particulates and other chemical substances. The development of various respiratory diseases is not only a risk for miners, but also for the general population residing close to the mines (Becker et al. 2020, 22f.; Bread for All / Fastenopfer 2018, 3f.). Glencore told Facing Finance that it undertakes dust suppression activities to reduce the impact on local communities and the environment.

KCC’s mining operations are further associated with water contamination and water shortages. According to the civil society organizations Bread for All and Fastenopfer, the company has in the past discharged heavily contaminated mine wastewater into the Luilu River with polluting effects on ground water and wells. The withdrawal of water for mining activities has also led to incidents of water shortages (Bread for All / Fastenopfer 2018, 4; Becker et al. 2020, 22f.). When contacted by Facing Finance, Glencore denied the allegations and pointed to previous operators of the more than 50 years old mining complex that discharged wastewater without treatment.

It is important to note, that KCC is not solely to blame for water and air pollution, as many mining companies as well as artisanal miners are active in and around Kolwezi, a cobalt-copper mining center in the DRC (Becker et al. 2020, 22f.). However, as the various incidents show, KCC has more than once violated the rights of people in the course of its mining operations, which implies poor human and environmental rights due diligence procedures. This includes negative effects on the right to health, food, water, and a clean environment (Bread for All / Fastenopfer 2018).

### THE MUTANDA MINING: DANGEROUS SUPPLY CHAINS AND TAX GAMES

After the above described settlement between US authorities and the New York hedge fund Och-Ziff in 2016, the stakes of being further affiliated with Dan Gertler became increasingly high. To moderate the uncertainties, Glencore bought the businessman out of its Mutanda (31%) and Katanga (10.25%) mining companies for the amount of 534 million US dollar in 2017. However, weighing the difficulties with US authorities and Dan Gertler’s role as a gatekeeper in the DRC, Glencore decided to

continue payments to Gertler by switching from dollars to euros (Wild et al. 2018; Glencore 2018). Although sanctioned, his network continues to receive more than 2% of Glencore's cobalt revenues annually (Davies 2021).

With the purchase of Gertler's shares in 2017, Mutanda Mining became a wholly owned subsidiary of Glencore. The Mutanda Mine is located southeast to Kolwezi. It is the world's largest cobalt mine. Glencore closed the Mutanda Mine in November 2019 for maintenance, citing oversupply in the cobalt market with falling prices as well as increasing costs as a result of the DRC's new Mining Code (Glencore 2020a, 166f.). A re-opening was scheduled for early 2022.

## AN ATROCIOUS ACCIDENT

In February 2019, a terrible accident occurred in the village Kabwe, which is located almost 80 km away from the Mutanda mine. A truck, transporting Sulphuric acid to the mine, drove too fast, overturned, and buried a minibus underneath it. The passengers inside the bus were trapped and died in agony from the leaking acid. Helpless witnesses suffered a trauma as the bodies dissolved before their eyes. That day, 21 people died cruelly. About seven people were severely injured and many more traumatized. The toxic acid also leaked onto properties and fields destroying several livelihoods (Bread for All / Fastenopfer 2020, 12).

Glencore and its subsidiary Mutanda Mining are not responsible for the accident. However, they do have a responsibility for their supply chains. In this case, Mutanda Mining subcontracted the transport, which was again subcontracted by the subcontractor, who then used a private and uninsured truck. As the two civil society organizations Bread for All and Fastenopfer sum up: Mutanda Mining outsourced its responsibility for the safe transport of toxic material (Bread for All / Fastenopfer 2020, 17).

Compensation measures after the incident were far from being sufficient: In the aftermath of the accident, Mutanda Mining provided food to the victim's families. However, only for five months. The first subcontractor provided compensation payments to those families whose fields were affected by the acid: between 30 and 300 US dollars and without a copy of the signed agreement. It remains unclear, what the families have signed after all. Due to the improper and non-transparent procedure, no conclusions can be drawn about the content of the written agreement. The families were also promised to receive seeds. Others, that lost their sources of livelihood due to the accident, did not receive any compensation (Bread for All / Fastenopfer 2020, 18f.).

The second subcontractor, who caused the accident, disappeared for over a year. Ultimately, he paid compensations of up to 3 250 US dollars to 18 families. Two of the severely injured victims were offered 5 000 and 6 000 US dollars. Both rejected the offer, as it would not have compensated for their medical costs and the lifelong consequences of the persistent injuries caused by the accident. One of the victims, still a girl, might never be able to care for herself after the Sulphuric acid has damaged her eyes and her brain. The other victim, a father of three, will be bound to his wheelchair forever (Bread for All / Fastenopfer 2020, 13ff./19). According to Glencore, all victims and their families who sued the truck owner and Mutanda Mining have now settled. The company also noted to support the medical recovery of the girl and the father.

Mutanda Mining noted that the subcontracting by its own subcontractor violated contractual provisions, but the contracts were never made public. It also admits that, at the time, lower safety protocols were in place for the transport of chemicals compared to other countries. In consideration of the road and traffic conditions in the DRC, this is an unacceptable behavior translating into a breach of human rights due diligence obligations (Bread for All / Fastenopfer 2020, 17/20). In response to the accident, Glencore writes it has undertaken a review and subsequent improvement of its road transport protocol.

A culture of prevention should be considered as indispensable. However, as the many different violations and allegations indicate, Glencore and its subsidiaries react most of the time rather in response to pressure or in the aftermath of such incidents. Mining companies have to carefully monitor their supply chain, which includes not only contractual obligations for contractors, but also their enforcement. In the case of accidents, companies need to ensure that victims in their supply chain receive adequate reparations.

## A MINE IN A GAME RESERVE



The Mutanda Mine in the DRC (September 2018).  
OBT – Coordenação-Geral de Observação da Terra/INPE, flickr  
(CC BY-SA 2.0: [bit.ly/30607097118](https://bit.ly/30607097118)).

Mining often goes hand in hand with environmental pollution. The open-pit copper and cobalt Mutanda Mine is no exception. In 2013-2014 Mutanda Mining was responsible for the destruction of 23.85 hectares of farming land in Moloka. In January 2018, waste oil from the Mutanda Mine leaked again on farmer's fields. In April 2017, farming land of the village Kaindu was severely affected by a spill. The nature of the leak remains unclear, because the company – as in the earlier case of Moloka in 2013-2014 – refuses to publish an environmental analysis (Bread for all / Fastenopfer 2018, 2).

In its written response, Glencore disagrees with the Congolese legal aid centre CAJJ about the nature of the discharged substance during the spill in 2013-14 in Moloka. The company adds that it has communicated the make-up of the discharge to community representatives. According to Glencore no compensation was paid for the pipeline leak in Kaindu in 2017, because it did not affect areas with crops. It added that monthly sampling and monitoring followed the leak.

According to the civil society organizations Bread for All, Fastenopfer and RAID, the Mutanda Mine is located in a game reserve: Its concession should never have been granted in the first place, as the mining code prohibits the extraction in protected areas (Peyer et al. 2014, 37ff.). Glencore claimed not to be aware of this in its response.

## MUTANDA MINE CLOSURE

In August 2019, Glencore closed its Mutanda mine citing maintenance reasons, as well as low cobalt prices, oversupply and increased costs (Glencore 2020a, 166f.). However, as research by the Swiss civil society organizations Bread for All, Fastenopfer and others suggest, this might be only half the story.

Indeed in 2019, cobalt prices had been significantly lower compared to the year before. This was partly due to the industry's misconception of the speed of the transition to electric vehicles and, as a result, of the demand for cobalt. Ultimately, increased production and doubling prices between 2017 and 2018 did not meet growth expectations and the unsold cobalt stockpiles increased. The sharp rise was followed by an equally sharp fall in prices around mid-2018 (Larsen 2019; Martin 2019; Trading Economics 2021; Uhlendorff 2020; Bohlsen 2019).

By the time Glencore announced that it would close the Mutanda Mine temporarily, cobalt prices were slowly recovering again (Trading Economics 2021). Despite the price collapse, the growing demand for cobalt due to the electric vehicle boom was also never questioned. Glencore's own long-term contracts with Samsung SDI, closed in February 2020 for the supply of 21 000 tons over a period of five years, and Tesla, closed in June 2020 for over 6 000 tons per year, reflect the industry's bet on the blue metal (Bread for all / Fastenopfer 2020, 10).

On those grounds, some civil society organizations expressed cautious skepticism about Glencore's motivations for closing the Mutanda mine. They note, that the spectrum of motivations might have been somewhat broader. Southern Africa Resource Watch, Inkota, Bread for All and Fastenopfer have argued, that Glencore potentially uses the mine as political leverage to lower the DRC's tax ambitions (SARW 2020; Bread for all / Fastenopfer 2020, 10f.; Schurath 2019). The mining code, that was revised in 2018, categorized cobalt as a strategical mineral. This comes along with a significant increase in taxes from previously 2% to 10% – out of the industry's perspective, an unpopular political move.

In its written response, Glencore rejects the allegations raised by the above civil society organizations. Instead it affirms that the mine was not economically viable due to lower cobalt prices and the reduction in ore available at the mine. The company denies to have suspended operations to improperly negotiate better mining laws.

## LABOR RIGHTS ALLEGATIONS ACROSS GLENCORE'S OPERATIONS

On 27 June 2019, two terraces overlooking an open-pit mine collapsed killing 43 artisanal miners (Reuters 2019). The miners accessed the KCC concession without the company's permission. However, mining can be a deadly job, not only for artisanal miners.

In 2016, a 250-meter wall collapsed at the same mine burying seven workers (Bujakera / Ross 2019). Glencore responded with the construction of a 70 km long wall to discourage unauthorized entries.

In 2018, a fact-finding mission conducted by the global union industriALL at Glencore's Kamoto and Mutanda mines revealed devastating testimonies of workers. Some compared their work and treatment to slavery. A hostile health, safety and working culture, racism, discrimination, threats of dismissal, disregard of collective bargaining agreements and large discrepancies in wages between locals and expatriates were only some of the systematic abuses cited by workers in Glencore's mines (industriALL 2018, 3; UNHRC 2018, 3). In 2019, both Glencore and industriALL reported initiating a dialogue on labor concerns across Glencore's mining operations in the DRC, Zambia, and South Africa (Glencore 2019a, 16; industriALL 2019). Glencore told Facing Finance that it rejects the allegations made by the union. Instead, the company argues, it encourages people to raise labor concerns and has established a company-wide whistleblower program. In its response, Glencore also highlights additional benefits that employees receive in addition to their basic salary, and explains to only hire contractors for specialist activities and temporary work.

The latter is another labor rights concern, which is often associated with the transfer of responsibilities. As research by the civil society organizations RAID, the legal aid center CAJJ and the Guardian shows, KCC employs 44% of its workforce by subcontracting. The mining company does perform slightly better compared to its competitors in and around Kolwezi. Glencore also points to cases of engagements and suspensions of contractors in the past. But, as the investigators note, the use of subcontracting is still significant. Workers employed by subcontractors usually face poorer labor conditions than those employed directly. This includes for example lower payment, often under the living wage, or short-term contracts, hence planning and income uncertainties (Raid / CAJJ 2021; Pattisson 2021).

## CONCLUSION

There is no doubt that Glencore operates in an extremely risky environment. However, this does not absolve the company from sourcing its minerals and metals responsibly. The company must ensure that its employees work safely, are treated with respect and are paid appropriately. To this end, it should work closely with local unions. But even beyond that, the company's responsibilities in the DRC extend not only to its employees, but also to small-scale and artisanal miners who enter the company's concessions, as well as to those who are indirectly affected by the mining operations, for example through air pollution. Glencore should also carefully monitor its operations and prevent spills and leakages in a timely manner. It should uphold the right to remedy and reparation, and act accordingly in the event of accidents. The company should not hide behind subsidiaries or subcontractors, but assume full responsibility for its own supply chain. Glencore has long stressed that it does not buy, trade or process cobalt from artisanal miners. But artisanal miners naturally want their fair share of the cake. It is therefore welcomed, that Glencore appears to acknowledge this reality by joining the multi-stakeholder Fair Cobalt Alliance in 2020. Founded in the same year, the initiative has yet to prove its worth, but it aims to professionalize artisanal mining. Glencore writes to be willing to "co-exist" alongside artisanal and small-scale mining (Glencore 2020d).

AIRBUS

BAE

DASSAULT

LEONARDO

RAYTHEON

RHEINMETALL

THALES

## THE ROLE OF ARMS EXPORTS IN THE YEMEN WAR

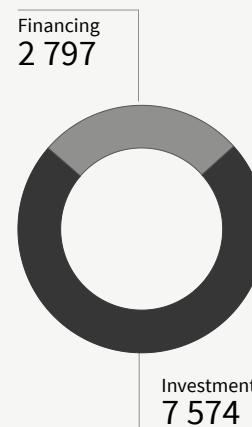
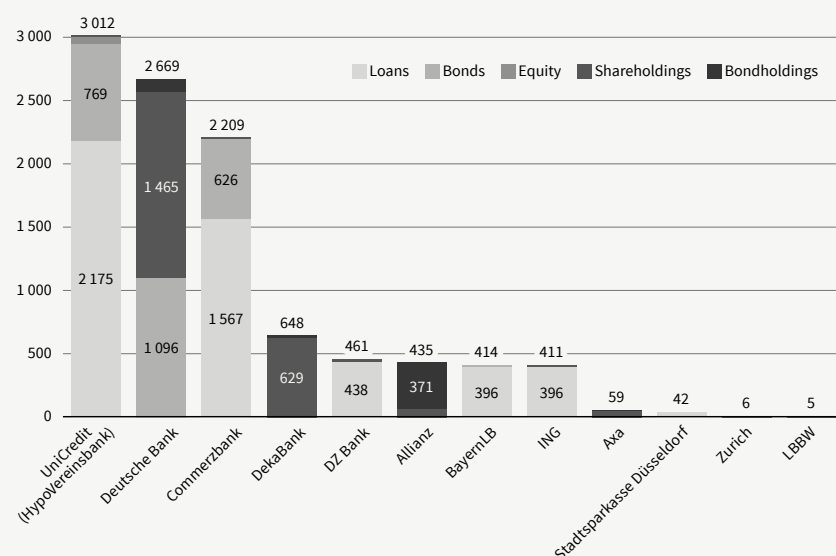
Since a military coalition led by Saudi Arabia entered Yemen in 2015, the country has been ravaged by continuous air strikes, arbitrary artillery attacks and numerous violations of fundamental human rights. The anti-Houthi coalition consists of Saudi Arabia, the United Arab Emirates (UAE), Sudan, Egypt, Jordan, Bahrain, and Kuwait. Most airstrikes are launched by Saudi Arabia – often hitting civilian targets. These attacks constitute violations of customary international humanitarian law that may amount to war crimes, as they violate the principles of distinction, proportionality and precaution.

After the US, European countries are the main suppliers of weapons to the coalition. Particularly military aircraft and (guided) bombs from Europe make up a large part of the coalition's air force arsenal. With the approval of national government officials, defense companies from France, Germany, Italy, Spain, and the UK have contributed to the dire situation in Yemen by exporting bombs, aircrafts and spare parts to the warring parties – despite evidence that these might be used to commit violations of international humanitarian law and human rights law, as well as amount to war crimes (Perlo-Freeman 2019).

### HUMAN RIGHTS CONSEQUENCES ASSOCIATED WITH ARMS EXPORTS



TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN AIRBUS, BAE, LEONARDO, DASSAULT, RAYTHEON, RHEINMETALL, AND THALES in millions of euros



Note: All figures in the charts are rounded.



## YEMEN WAR: PROFITS AT THE EXPENSE OF HUMAN LIVES

“The conflict in Yemen is a stark example of how arms companies’ executives and government officials can potentially abet international crimes committed by and in other states.”  
(ECCHR 2021)



Destroyed buildings in Taiz City, Yemen (4 December 2015).  
Akramalrasny, shutterstock.

The ongoing political, economic and humanitarian crisis in Yemen had its beginnings seven and a half years ago: After Houthi armed forces took over Yemen’s capital Sana’a, a military coalition led by Saudi Arabia entered the country in 2015 in support of President Hadi, which led to an escalation of the conflict in Yemen (Bales / Mutschler 2019, 2; HRW 2020a). Ever since, the country has been ravaged by continuous air strikes, arbitrary artillery attacks, and numerous violations of fundamental human rights (UNHRC 2020, 4). The anti-Houthi coalition consists of Saudi Arabia, the United Arab Emirates (UAE), Sudan, Egypt, Jordan, Bahrain, and Kuwait. Most airstrikes are launched by Saudi Arabia while Sudan provides the largest amount of ground forces. The UAE is active in air warfare but also on the ground (Reuters 2015; Perlo-Freeman 2019).

Settling the conflict is complicated by the multiplicity of actors and conflict lines: Besides Houthis, the coalition and the internationally recognized Government of Yemen, a range of militia and security forces are involved in the conflict. Some are trained, coordinated, and armed by the UAE and/or Saudi Arabia. Another UAE-backed actor is the Southern Transitional Council (STC) aiming for independence of Southern Yemen and often acting in opposition to the Government of Yemen (Perlo-Freeman 2019).

According to the UN, the Yemen conflict remains the world’s largest humanitarian crisis (OCHA 2021). A multitude of grave violations of international humanitarian law (IHL) and human rights law (IHRL) are committed by all parties to the conflict in Yemen, some of which may amount to war crimes under the Rome Statute of the International Criminal Court (HRW 2020b;

UNHRC 2020, 10f.; see also ICC, Art. 8 of the Rome Statute). All parties to the conflict, including Saudi military forces, Saudi-backed Yemeni forces and UAE-backed militia have committed acts of ill treatment, reaching from disappearances and arbitrary arrests to torture, public executions, and sexual abuse (UNSC 2019, 53ff.; UNHRC 2020, 4/10f.; Henckaerts / Doswald 2005, Rule 156; OSESGY, 2021). 259 cases of child recruitment – some no older than seven years – by Houthi forces and the Government of Yemen are documented and there is evidence that child soldiers recruited by Saudi Arabia are used on the battlefield as part of Sudanese ground troops (UNSC 2019, 55; Kirkpatrick 2018).

Ongoing airstrikes led by Saudi Arabia and the use of mortar and rocket shells in populated areas by Houthi forces are disproportionately affecting civilians (UNSC 2019, 47f./51; ECCHR 2020a; UNHRC 2020, 7). Even if no deliberate targeting of civilians can be proven, both sides at least knowingly accept civilian casualties, as numerous artillery attacks hit hospitals, marketplaces, schools, or housing areas (ECCHR 2018; UNHRC 2020, 6f.). According to the *Yemen Data Project*, at least one-third of the approximately 25 054 air raids have hit non-military targets (as of April 2022) (YDP 2022). These attacks constitute violations of customary IHL that may amount to war crimes, as they violate the principles of distinction, proportionality, and precaution (Henckaerts / Doswald 2005, Rule 11/14/15/156).

By the end of 2021, an estimated 154 000 Yemenis had died from warfare. Beyond that, (further) 223 000 people died due to the worsening socioeconomic and humanitarian situation (UNDP 2021, 32). Approximately 10 000 Yemeni children have been killed or maimed since the coalition entered the conflict (Reuters 2021). Besides naval and aerial blockades installed by Saudi Arabia, the various parties to the conflict impede access of aid organizations

to the country through restrictions, bureaucratic hurdles and looting, which constitutes a violation of IHL (Henckaerts / Doswald 2005, Rule 55; UNHRC 2020, 8f.). As a result, Yemeni people are largely cut off from humanitarian aid (OCHA 2020; HRW 2020c). According to the *UN Office for the Coordination of Humanitarian Affairs* (OCHA), 66% of the population are in need of humanitarian assistance (OCHA 2021). More than 16 million people suffer from food insecurity, nearly half of the children under five are at risk of acute malnutrition (WFP 2021).

Until recently, international peace negotiations have remained without lasting success: A first voluntary agreement between the Yemeni Government and the Houthi forces was reached by the UN-backed *Stockholm Agreement* in December 2018. While it did lead to a fragile ceasefire with minor clashes throughout 2019 in the Houthi-controlled port of Hodeida – an important entry point for humanitarian aid, food, and fuel – the security situation in Yemen started to escalate once again in October 2020 (UN 2018; UNSC 2018; UCDP 2022; UNSC 2021, 10f./15; UCDP 2022). Attempts by Saudi Arabia to unify the STC and the Government of Yemen in their fight against Houthi forces collapsed: The *Riyadh Agreement* between both parties in 2019 was never truly implemented and in 2020 the STC ended their participation (Reuters 2020). Tensions and military clashes between STC and the Government of Yemen continued throughout 2020 (HIIK 2021, 195). Hopes for peace were recently revived in April 2022: The warring parties announced a two-month ceasefire and President Hadi declared his withdrawal making room for an eight-member President’s council whose main objective is to negotiate peace with Houthi rebels. But observers remain cautious as to how successful this process will be: The Houthis already denounced the council as they were neither involved in the prior negotiation process nor will they be represented in the council (Holleis 2022).

### EUROPEAN COMPANIES AND GOVERNMENTS: FUELING THE CONFLICT?

*“The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.”* – UN Guiding Principles on Business and Human Rights, Principle 11 Commentary (OHCHR 2011, 13)

Evidence suggests that European companies are complicit in unlawful acts of war and war crimes in Yemen: Remnants of European bombs and guidance kits have been identified on air strike sites in Yemen and several sources confirmed the use of European military jets (ECCHR 2020a). After the US, European countries are the main suppliers of weapons to the anti-Houthi forces. Particularly military aircraft and (guided) bombs from Europe make up a large part of the coalition’s air force arsenal (ECCHR 2020a; Perlo-Freeman 2019).

With the approval of national government officials, defense companies from France, Germany, Italy, Spain, and the UK have contributed to the dire situation in Yemen by exporting bombs, aircrafts and spare parts to the warring parties – despite evidence that these might be used to commit violations of IHL and IHRL, as well as amount to war crimes (Perlo-Freeman 2019). Such exports break European and international export control laws, such as the *European Common Position on arms export control*, or the *Arms Trade Treaty* (ATT) of which all of the aforementioned countries are signatories (Council of the European Union 2008; ECCHR 2020a; UN 2013).

Evidence on the potential role and legal responsibility of European companies and governments in Yemen was also brought to the International Criminal Court (ICC). In 2019, the European Center for Constitutional and Human Rights (ECCHR) along with Amnesty International, the Campaign Against Arms Trade, and Mwatana for Human Rights, filed a communication to the ICC. The communication targets high ranking individuals of European aircraft and bomb manufacturers and arms export licensing authorities from France, Germany, Italy, Spain, and the UK (ECCHR 2020a). A first necessary step would be a decision by the ICC to open a preliminary investigation into whether the factual and legal grounds are sufficient for an official one. The ICC will then consider whether the case falls within its own jurisdiction. If so, the court will initiate investigations against the respective individuals of national authorities and European companies (ECCHR 2020b). As of April 2022, a decision as to whether the ICC will open a preliminary investigation is still pending.

The strong evidence on the responsibility of European companies for human rights violations in Yemen is described in more detail below.

### AIRCRAFT MANUFACTURERS

#### AIRBUS DEFENSE AND SPACE GMBH (GERMANY) AND AIRBUS DEFENSE AND SPACE S.A. (SPAIN)

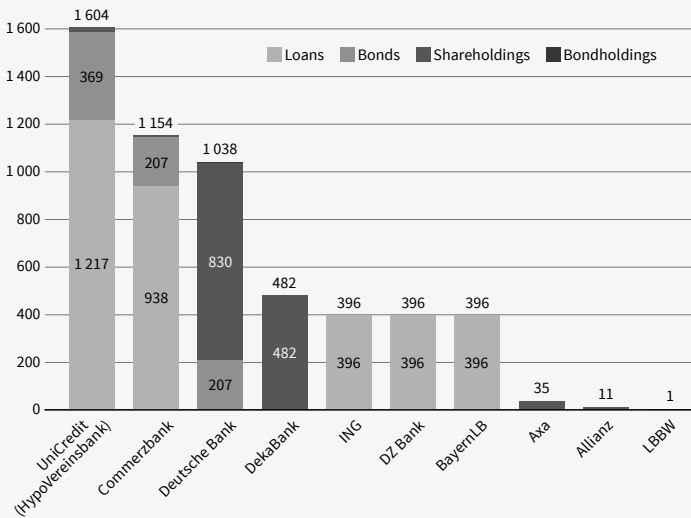
The Spanish Airbus subsidiary produces components of empennage and aft fuselage for all Airbus aircrafts. One of these is the *Eurofighter Typhoon*, a military jet produced by a consortium of European companies and exported globally – including to coalition members. Airbus Spain also exported its *MRTT* fueling planes to Saudi-Arabia and the UAE (Forensic Architecture et al. 2022).

Airbus Germany is involved in the production of the *Eurofighter* as well: besides assembling the final airplanes for German customers, the company also produces fuselage center sections for all *Eurofighters* that are exported (Forensic Architecture et al. 2022). In addition, Airbus Germany is involved in the production of *Panavia Tornado* jets (ECCHR 2020a).

According to *Yemen Forensic Architecture* “the Royal Saudi Air Force possesses at least 67 *Tornado* fighter jets and 71 *Typhoon* fighter jets of European origin, making up almost half of the entire fleet of planes with capacity to attack” (Forensic Architecture et al. 2022).

In its written response to Facing Finance, Airbus affirms to be firmly committed to conduct its business ethically, based on the company's values, and in compliance with all applicable laws and regulations. As part of this commitment, Airbus supports the principles of the UN Global Compact which includes respect for human rights. Airbus further writes to seek compliance with all applicable export control laws and regulations as well as all sanctions laws and regulations implemented by transnational, national or regional authorities.

**TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN AIRBUS**  
in millions of euros



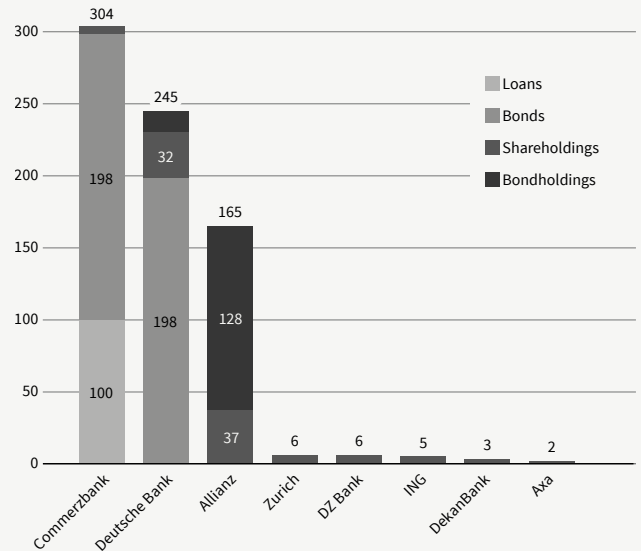
The financial research carried out for financings from the beginning of 2018 to 2022 and investments as of February 2022 shows a high volume of business for eight banks and two life insurance companies vis-à-vis Airbus amounting to 5.5 billion euros. Almost 70% of the identified finance and investment volume is accounted for by UniCredit (HypoVereinsbank), Commerzbank and Deutsche Bank. The smallest investor is LBBW. The bank holds shares amounting to 1.5 million euros.

It is noteworthy that all loans and bonds were concluded or issued between 2020 and 2021. They account for 75%, or 4.1 billion euros, of the total business volume. By that time, Airbus' role for the Saudi coalition in the Yemen war had long been known (see Facing Finance 2019, 21).

**BAE SYSTEMS (UK)**

BAE Systems Plc. is part of the European consortia producing Eurofighter Typhoon and Panavia Tornado jets (CAAT 2020). The company assembles the final aircrafts for all UK Typhoons and produces important components such as front fuselages, foreplans, windscreen, and canopy. In 2016, the UK government confirmed the deployment of Typhoon and Tornado aircrafts built and produced in the UK during air combats in Yemen (UK Parliament n.d.). In 2019, around 6 500 BAE-employees in Saudi-Arabia provided continuous support in form of maintenance, training, and other support services to Saudi air forces (Forensic Architecture et al. 2022).

**TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN BAE**  
in millions of euros



The financial research conducted for financings from the beginning of 2018 to 2022 and investments as of February 2022 shows a volume of business for five banks and three life insurance companies vis-à-vis BAE amounting to 737 million euros. Almost 97% of the finance and investment volume identified is attributable to just three financial institutions: Commerzbank, Deutsche Bank, and Allianz.

Commerzbank and Deutsche Bank are the only two banks that have provided financing to BAE, amounting to 496 million euros. The bonds were issued in 2020, the loans were granted in 2018. At that time, it was long known that BAE weapons were being used in Yemen.

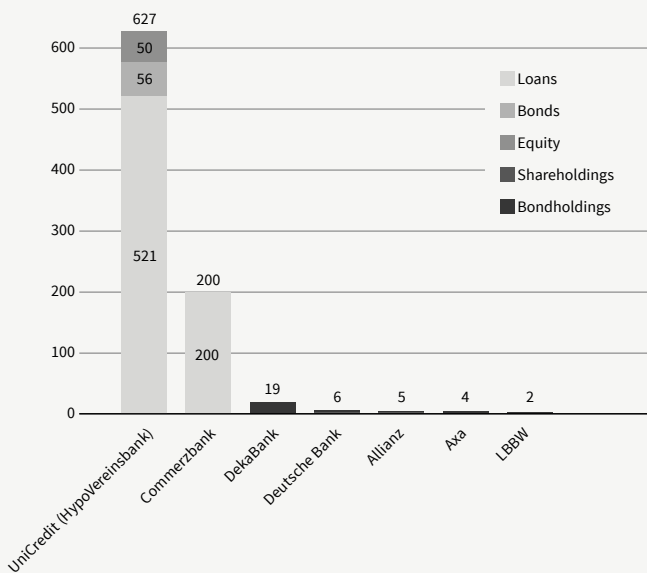
Note: All figures in the chart are rounded.

## LEONARDO (ITALY)

The Italian manufacturer Leonardo is part of the *Eurofighter Typhoon* as well as the *Panavia Tornado* consortium. The company produces aircraft wings with installed systems and rear sections of the fuselage (Forensic Architecture et al. 2022). The *Eurofighter* is manufactured in Leonardo's facilities in the UK (ECCHR 2020a; CAAT 2020). Leonardo maintains close business relations with Saudi Arabia: On its website the company states to collaborate with the country "for more than 4 decades" supplying the Saudi forces with aircraft, surveillance, and naval systems. Moreover, Leonardo owns a representative office and several military bases in Saudi Arabia (Leonardo 2021; Forensic Architecture et al. 2022).

### TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN LEONARDO

in millions of euros



The financial research for financings from the beginning of 2018 to 2022 and investments as of February 2022 reveals a volume of business for five banks and two life insurance companies vis-à-vis Leonardo amounting to 863 million euros. The Italian UniCredit Group alone, to which Germany's HypoVereinsbank belongs, accounts for over 70% of this sum – through the issuance of bonds and shares, and the participation in loans. This directly increased the financial resources of a company involved in the Yemen war. Commerzbank has also provided Leonardo with a total of 200 million euros, with the latest loans closing as recently as October 2021.

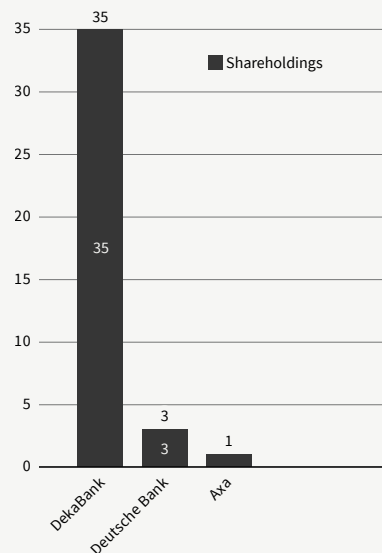
## DASSAULT AVIATION (FRANCE)

In the words of Chairman and CEO Eric Trappier, Dassault Aviation is "a reliable partner of the UAE for over 40 years [and is] fully committed to [...] support the strategic challenges of the UAE" (Dassault Aviation 2017). The French aerospace company produces various types of the *Mirage* jet which are part of the UAE's fleet (Forensic Architecture et al. 2022). In November 2019, Dassault was contracted to modernize 30 of the UAE's *Mirage 2000-9* jets (Charpentreau 2019). Dassault supplies also other coalition members with spare parts and maintenance services (Forensic Architecture et al. 2022).

The use of *Mirage* jets in Yemen has been confirmed by several sources, among them a leaked document by the French government confirming its use during air raids in the Yemen war (Mustafa 2016; CAAT 2022; Disclose 2019).

### TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN DASSAULT AVIATION

in millions of euros



The financial research for financings from the beginning of 2018 to 2022 and investments as of February 2022 shows a volume of business for two banks and one life insurance company vis-à-vis Dassault Aviation, amounting to 38 million euros. DekaBank is by far the largest shareholder of Dassault. None of the banks provided financing to the company.

Note: All figures in the charts are rounded.



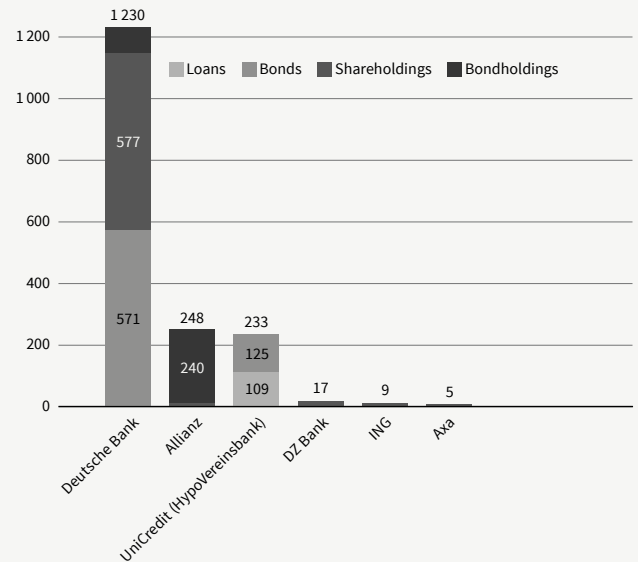
Unexploded bomb found in Sana'a, Sanaa, Yemen (11 July 2021).  
YAHYA ARHAB/EPA-EFE/Shutterstock.

RAYTHEON

As a subsidiary of the US-based Raytheon company, Raytheon Systems UK manufactures *Paveway IV*, a laser-guiding system that is later combined with *MK 80* bombs (Forensic Architecture et al. 2022). 2 400 of these guiding systems were exported to Saudi Arabia for the first time in 2014 (CAAT 2022). Raytheon subsequently also trained the Saudi Royal air force on how to use smart bombs during airstrikes (Briggs 2017). There is overwhelming and well-documented evidence of the use of *Paveway IV*-systems in (unlawful) combats during the Yemen war: remnants of the missiles have been found on many airstrike sites, including 2016 when several non-military factories were bombarded, or 2017 when a bomb hit a residential building killing 16 civilians, including at least seven children, and injuring 17 more (CAAT 2022; Amnesty International 2017).

TOTAL FINANCING (2018-2022) AND INVESTMENTS (2022) IN RAYTHEON

in millions of euros



The financial research for financings from the beginning of 2018 to 2022 and investments as of February 2022 suggests a volume of business for four banks and two life insurance companies vis-à-vis Raytheon, amounting to 1.7 billion euros. Deutsche Bank alone accounts for more than 70% of this sum. However, Allianz has also invested over 200 million euros in Raytheon, and UniCredit (HypoVereinsbank) has provided the company with a similar amount of financing. All the loans and bonds identified were closed and issued between 2020 and 2021. The risk of funding a company whose weapons are also used on civilians in the Yemen War has been well documented at the time.

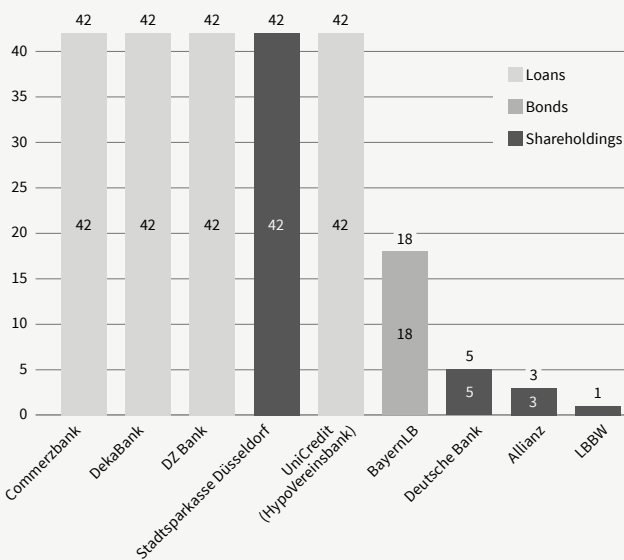
Note: All figures in the chart are rounded.

Essential for the above-mentioned bombs to be deployed during air raids are special targeting and guiding devices (Forensic Architecture et al. 2022). Thales Group is a French manufacturer of such systems: its *Damocles* and *Talios* pods can be integrated on the *Mirage*, *Tornado* and *Eurofighter* jets, all of which are utilized during airstrikes in Yemen. According to *Defense News* sources, *Damocles* pods have been deployed during “Operation Decisive Storm”, the Coalition’s first military intervention in Yemen launched in 2015 (Forensic Architecture et al. 2022).

**RHEINMETALL  
(THROUGH ITS SUBSIDIARY RWM ITALIA)**

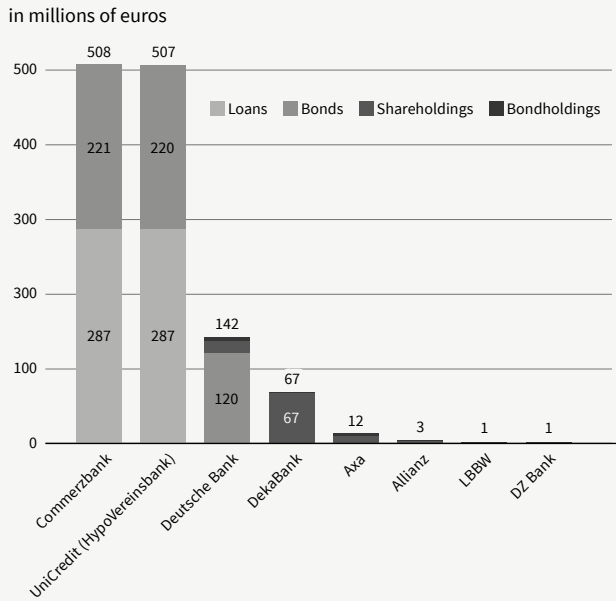
RWM Italia is a subsidiary of Germany’s largest arms manufacturer Rheinmetall AG. The company develops and builds ammunition, countermining systems, and warheads. Bombs of its *MK 80* series are also incorporated into the above-mentioned *Paveway IV* laser-guided systems. There is ample evidence on the use of RWM bombs in Yemen: remnants have been found on the sites of several airstrikes targeting civilians, such as two attacks in the city center of Sana’a in 2016 (Forensic Architecture et al. 2022). A particularly severe example is a Saudi-led air raid in the northwest of Yemen that killed a family of six, including a pregnant woman and four children in 2016 (ECCHR n.d.). The responsibility of RWM in this incident is currently investigated by the ICC (ECCHR 2021).

**TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN RHEINMETALL**  
in millions of euros



The financial research for financings from the beginning of 2018 to 2022 and investments as of February 2022 shows a volume of business for eight banks and one life insurance company vis-à-vis Rheinmetall, amounting to 235 million euros. Financing in the form of issuance of bonds in 2019 and participation in loans in 2021 accounts for almost 80% of this sum, which directly increased the financial resources of the company. At that time, the accusations around RWM Italia had been well documented (see Facing Finance 2019, 35).

**TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN THALES**



The financial research for financings from the beginning of 2018 to 2022 and investments as of February 2022 suggests a high volume of business for six banks and two life insurance companies vis-à-vis Thales, amounting to 1.2 billion euros. More than 80% of the financing and investment volume identified is accounted for by Commerzbank and UniCredit (HypoVereinsbank), which both financed Thales by issuing bonds and participating in loans amounting to more than 500 million euros. The smallest investors are LBBW and DZ Bank who hold bonds amounting to less than one million euros.

**CONCLUSION**

Business activities of private companies are by no means politically neutral – this is particularly true for the arms industry. As this case study illustrates, a number of European defense companies have enabled and continuously supported unlawful military attacks by exporting weaponry and maintenance services to warring parties in Yemen. Corporate officials and government executives must be held accountable for controversial business deals that have made them complicit in war crimes and the deaths of several hundred thousand Yemenis caused directly and indirectly through warfare. Furthermore, Facing Finance urges financial institutions to stop financing and investing in controversial defense contractors.

Note: All figures in the charts are rounded.

TOTALENERGIES | CHEVRON

PTT | POSCO | ONGC | BEL | SINOTRUK

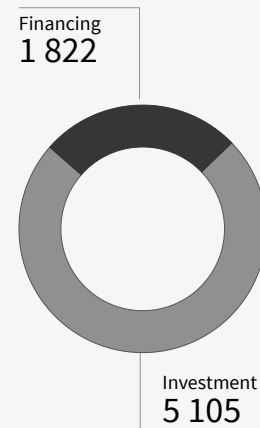
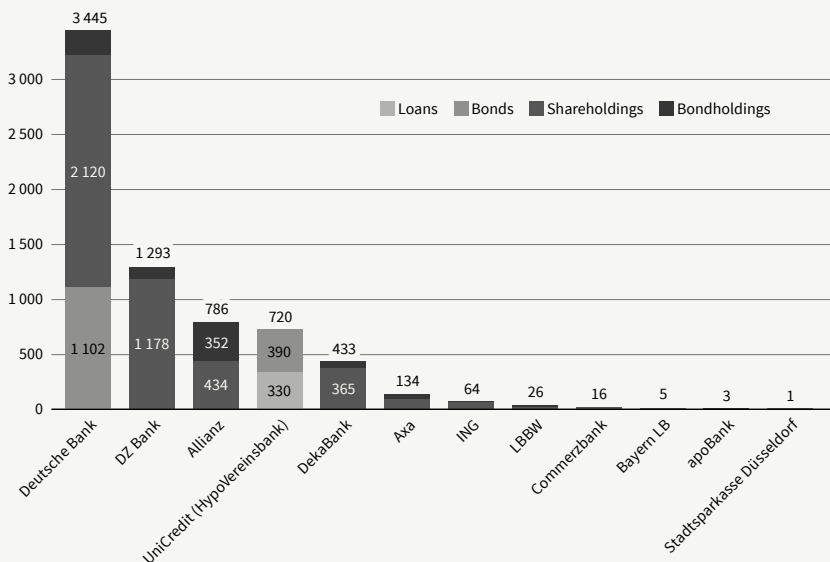
## HOW FOREIGN COMPANIES HELP SUSTAIN MYANMAR'S BLOODY MILITARY

Over a year ago, the military in Myanmar launched a coup against the elected government, suppressed peaceful protests, and has since spread fear and terror. But even before the coup, the military acted largely independently of civilian control by generating large revenues through partnering, among others, with foreign companies. Although their final departure must still be monitored, some corporates such as TotalEnergies, Chevron, and Adani Ports have recently stated to end their partnerships with Myanmar's military. Others such as PTT or Posco, continue to provide funds to military-controlled enterprises, while others such as Sinotruk and BEL supply arms to the junta. These multinational companies help to sustain Myanmar's military. Financial institutions must ensure that they are not complicit and intervene with the companies in question.

HUMAN RIGHTS RISKS: SELECTION OF HUMAN RIGHTS VIOLATIONS COMMITTED BY MYANMAR'S MILITARY THAT CAN BE LINKED INDIRECTLY TO TRANSNATIONAL CORPORATIONS



TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN BEL, CHEVRON, ONGC INCL. ONGC VIDESH, POSCO INCL. POSCO INTERNATIONAL, PTT INCLUDING PTTEP AND PTTOR, SINOTRUK HK AND TOTALENERGIES in millions of euros



Note: All figures in the charts are rounded.



Police used tear gas against protesters in Yangon, Myanmar (March 2021). Maung Nyan, shutterstock.

## THE 2021 MILITARY COUP

On 1 February 2021, the Myanmar military under Commander-in-Chief General Min Aung Hlaing staged a coup, arrested elected civilian leaders and nullified the November 2020 elections, which were won by Nobel Peace Prize laureate Aung San Suu Kyi's party in a landslide. The military responded to the ensuing protests with repression firing at peaceful demonstrators and shutting down the internet (Birsal 2021). In August 2021, junta leader Min Aung Hlaing declared himself prime minister (ALTSEAN 2021c).

The military takeover has set Myanmar's economy back years. Political oppression and the excessive use of military force, followed by a civilian uprising, has paralyzed the country's banking system, interrupted international trade relations, and driven millions into poverty. Hundreds of thousands have lost their jobs, and the country experiences a shortage of US dollars. Inflation has skyrocketed and the value of Myanmar's currency Kyat plummeted, forcing people to pay higher prices for food and other necessities. A fuel supply crisis has crippled the country as an increasing credit risk hampers imports (Economic Times 2021b). The coup led to a sharp decrease in exports and a 92% drop at the Yangon Stock Exchange (YSX), while the junta replaced Myanmar Central Bank experts with allies (ALTSEAN 2021a). As a result, Myanmar's economy dropped by 18.4% in 2021 according to the Asian Development Bank (ADB 2022).

The military coup set a sharp end to a decade of surging exports and foreign investments (Economic Times 2021b). After years of systematic human rights violations under a military dictatorship, the junta was officially dissolved in 2011. Political prisoners such as Aung San Suu Kyi were released and a nominally civilian government installed. This marked the beginning of market liberalization, modernization, slow but steady growth, and the end of isolation (ALTSEAN 2021a). However, corruption flourished, the military continued to control key ministries and industries, as well as violently repressed and attacked ethnic minorities, in what amounted to genocide, war crimes, and crimes against humanity (Economic Times 2021b; HRC 2018a, 351–382). The Myanmar military remained a powerful political force and, in February 2021, seized power once again in an attempted military coup.

Since the coup, at least 5 685 attacks on civilians have been documented, 1 750 people were killed and 13 239 arbitrarily detained by the military. The number of unreported cases is probably much higher (AAPP 2022; ALTSEAN 2021d; JFM 2021h). The Myanmar military's post-coup crimes include shelling and firing on civilian areas, destroying religious buildings, attacking humanitarian aid workers, targeting aid and ambulances, using civilians as human shields, torturing detainees, executing civilians, razing villages to the ground, raping, and looting (ALTSEAN 2021c). In the second half of 2021, the junta intensified its attacks on civilians in northwestern Myanmar, indiscriminately torching homes, setting offices of civil society organizations on fire, and carried out airstrikes that have displaced hundreds of thousands of people (ALTSEAN 2021b; JFM 2021h).

The Myanmar military has been responsible for serious human rights violations before the coup as well. In August 2017, genocidal operations against the Rohingya minority began in western Myanmar. Over 700 000 Rohingya refugees fled to Bangladesh to escape from mass shootings, systematic torture, rape, and sexual slavery (HRC 2018). As the human rights violations committed by Myanmar's military could amount to genocide, war crimes, and crimes against humanity, the International Criminal Court opened investigations (ICC 2019).



## THE MILITARY'S SOURCES OF REVENUE

The Myanmar military was able to commit these crimes and act independently of civilian control in part due to the flow of money it receives in addition to its national defense budget (Amnesty International 2020). The generals control two conglomerates, Myanma Economic Holdings Limited (MEHL) and Myanmar Economic Corporation (MEC), which guarantee them large revenues. The two conglomerates control about 120 companies in a variety of economic sectors, owned by former and current military officers, and which are integrated into the military command structure. The chairman of MEC is a general who is directly subordinate to army chief Min Aung Hlaing (ACIJ / JFM 2021). Furthermore, coup leader Min Aung Hlaing and Soe Win, who is Myanmar's second highest ranking military officer, oversee MEHL's board of directors. Many of the subsidiaries of MEC and MEHL are run by family members of the generals (Hartlep / Visser 2021). In addition, MEHL has paid out billions of US dollars in dividends to military units accused of crimes against humanity (Amnesty International 2020). MEC and MEHL enable the junta to secure financial resources to support its unlawful activities and evade accountability and oversight (BankTrack 2021). For these reasons, Canada, the EU, UK, and US have imposed sanctions against MEC, MEHL, and key military actors (Fraser 2021).

Due to the entanglements, the UN Human Rights Council's 2019 fact-finding mission warned foreign companies with business ties to MEC or MEHL that they may be complicit in human rights abuses (HRC 2019b). In the wake of the coup, some companies including Japanese brewer Kirin Holdings and French multinational Voltalia, have announced the suspension of business relationships with the two conglomerates and their withdrawal from Myanmar (JFM 2021c; Kirin Holdings Company 2021; Star 2021).

While these cases show that pressure from civil society organizations and shareholders can make a difference, other companies such as Adani Ports, officially Adani Ports and Special Economic Zone Limited, long resisted ending their business relationships with the two military conglomerates. Adani Ports provided MEC with 90 million US dollars for the construction of a container terminal on land owned by MEC (Adani Ports and SEZ Limited 2021). In October 2021, Adani Ports announced that it would exit from the container port business in partnership with MEC citing, among others, community and investor pressure (Sethuraman / Varadhan 2021): Indeed S&P Global Inc. had removed Adani Ports from the Dow Jones Sustainability Index after a civil society campaign by the organization Market Forces (Market Forces 2021). While this move was welcomed by Justice for Myanmar and fellow campaigners, the company's stock market value temporarily fell (JFM 2021i; Holger 2021). Furthermore, Norway's largest pension fund KLP, the Finnish financial group Nordea, the Danish pension fund and many other institutional investors considered or performed divestments of Adani Ports citing human rights concerns.

Theoretically, the case of Adani Ports could serve as a model and encourage investors and others to engage in dialogue and apply pressure on international companies to cut ties with the junta. However, there are concerns that the company is not leaving the country despite of its assertions. Banks and investors should watch Adani Ports therefore closely.

## THE JUNTA'S OIL AND GAS BUSINESS



An offshore central platform in Myanmar. T2Thitath, shutterstock.

The Myanmar state earns around 1.5 billion US dollars annually from different oil and gas projects (JFM 2021e). Since the military coup the state-owned Myanma Oil and Gas Enterprise (MOGE) is controlled by the junta and represents its single largest source of revenue, as UN Special Rapporteur Thomas Andrews emphasizes (Bouissou / Wakim 2021). MOGE formed four offshore joint ventures with foreign companies: the Yadana project with TotalEnergies, Chevron and PTT Exploration and Production (PTTEP), the Shwe project with Posco International, the Zawtika project with PTTEP, and the Yetagun project with Petronas, Nippon Oil and PTTEP (BMC 2021b). The four projects generate over one billion US dollars in foreign revenues for the Myanmar military annually, transferred to the junta's bank accounts abroad. These gas and oil projects are crucial for the junta, as payments from energy companies to military-controlled entities are the primary means of sustaining it (HRW 2021c).

The junta's two largest sources of foreign currency are the Yadana and the Shwe projects. The latter makes up more than 30% of the 1.54 billion US dollars in oil and gas revenue forecast for the fiscal year 2021-22. Posco International, a subsidiary of South Korea's Posco, is the majority owner (51%) of the Shwe gas project and additionally owns 25% of the pipelines that transport gas and oil from Rakhine State in Myanmar to the border with China. Posco International's joint venture partners in the Shwe gas project are ONGC Videsh Ltd, Korea Gas Corporation and MOGE (BMC 2021a). MOGE holds a 15% stake in the Shwe gas project, and the relationship between Posco and MOGE dates back well before the coup (Battersby 2021). The company should draw consequences from the military coup for its own business in Myanmar.

TotalEnergies, Chevron, and Posco have partially responded to the new situation following the coup. In April 2021, Posco announced that its subsidiary Posco C&C would end its steel joint venture with MEHL however, it is premature to say if they are in fact disengaging with the military conglomerate (Amnesty International 2021). Also, the company's initial reaction was to refuse to put an end to its steel business with MEHL, even though it was "not making big bucks" (Kim 2021a). Posco feared that cutting ties with MEHL would also jeopardize profits from its more lucrative gas business in Myanmar (Kim 2021a).

Posco also continues its larger and more important gas project with MOGE: In 2020, Posco only made 1.77 million US dollars in profit from its steel business in Myanmar (Kim 2021a). In the same year the Shwe gas field project generated 623 million US dollars in revenue and 276 million US dollars in operating profit, accounting for 64% of Posco International's total operating profit (Battersby 2021; Hyun-woo 2021). Moreover, Posco International has already invested about 1.53 billion US dollars in the gas project (Kim 2021b). In the days following the coup and despite chaos in Myanmar and shareholder criticism, the company continued with development work at the Shwe gas field (Evans 2021). Posco denies a direct link of its gas project to the junta, because relating payments are made to MOGE and the Ministry of Finance (Economic Times 2021a). But both are under complete control of the military (BMC 2021a). Posco should, therefore, hold the proceeds from the sale of oil and gas resulting from the continuation of production in an escrow account until a democratic civilian government is restored.

The military's largest source of revenue is the Yadana gas project. It is operated by Total E&P Myanmar, a subsidiary of TotalEnergies, Unocal Myanmar Offshore, a subsidiary of Chevron, PTTEP, a subsidiary of the Thai company PTT, and MOGE (Chevron Corporation 2021). The construction of the Yadana pipeline in the 1990s involved forced labor by security battalions of the former military regime. For many years, billions of US dollars in gas revenues from the Yadana project flowed into offshore bank accounts under the control of Myanmar's military. Attempts of reform were abruptly ended by the military coup. Once again, huge amounts of revenue are pouring into the junta's finances (JFM 2021d). In 2019, TotalEnergies paid 179 million US dollars to MOGE for its gas production and sales activities and 51 million US dollars in taxes to the Ministry of Finance (Mallet 2021).

A few months after the military coup, amid growing pressure from shareholders and civil society organizations, TotalEnergies and Chevron decided to suspend dividend payments from the Moattama Gas Transportation Company (MGTC) which would have flown to MOGE. The pipeline company MGTC transports gas from Myanmar to the Thai border and is owned by the same joint venture partners as the Yadana project: TotalEnergies, Chevron, PTTEP, and MOGE (Chevron Corporation 2021). However, this dividend cut from MGTC is only a fraction of the income which the junta receives from its business with TotalEnergies, Chevron, and PTTEP. Further income includes the state's share of gas revenues, royalties, hundreds of millions of US dollars in tariffs, fees, and taxes that MGTC transfers to military-controlled bank accounts, and revenue payments to MOGE that TotalEnergies makes in cash for cost recovery from the Yadana gas field operation. Moreover,

MOGE receives hundreds of millions of US dollars from its share of gas sales to PTT, who is the primary purchaser of gas transported by MGTC to the Thai border (BMC 2021b; HRW 2021b).

For these reasons, the UN envoy for human rights in Myanmar, Thomas Andrews, suggested that the US must sanction MOGE to permanently diminish the junta's sources of revenue. However, Chevron had dispatched lobbyists to the US State Department and key congressional offices to warn of sanctions that could disrupt the company's gas operations in Myanmar. It was not the first time Chevron pressured to prevent sanctions against MOGE. Back in 2007, Chevron lobbied Washington to exempt Myanmar's oil and gas sector from sanctions. Apparently, Chevron fears losing the annual net profits of around 150 million US dollars from its Myanmar business (Jakes / Vogel 2021).



Civil society campaign against Total, now TotalEnergies, in London for its activities in Myanmar linked to the Burmese military (May 2009). totaloutnow, flickr (Foto edited under CC BY-NC-ND 2.0: bit.ly/3704792375).

Facing Finance is not asking TotalEnergies, Chevron or PTTEP to suspend production. The Yadana project supplies Western Thailand and Myanmar's capital, Yangon City, with electricity to cover their needs (TotalEnergies n.d.). However, oil and gas sale proceeds should be held in an escrow account until the democratic civilian government is restored. And indeed, during the research and one year after the military coup, TotalEnergies finally announced the withdrawal from the Yadana gas field and from MGTC, both as operator and shareholder. The energy company stated that it was not able to stop all financial flows to MOGE as most payments are made directly by its joint venture partner PTT. TotalEnergies added that shareholder pressure and the calls of civil society organizations influenced the company's decision (TotalEnergies 2022). Chevron also announced its withdrawal from the Yadana gas project (Ratcliffe 2022). Facing Finance welcomes TotalEnergies' statement and urges PTT to take it as an example and shoulder the consequences in a similar way. Financial institutions with ties to the companies should further monitor that the companies stick to their promises and exit the country responsibly.

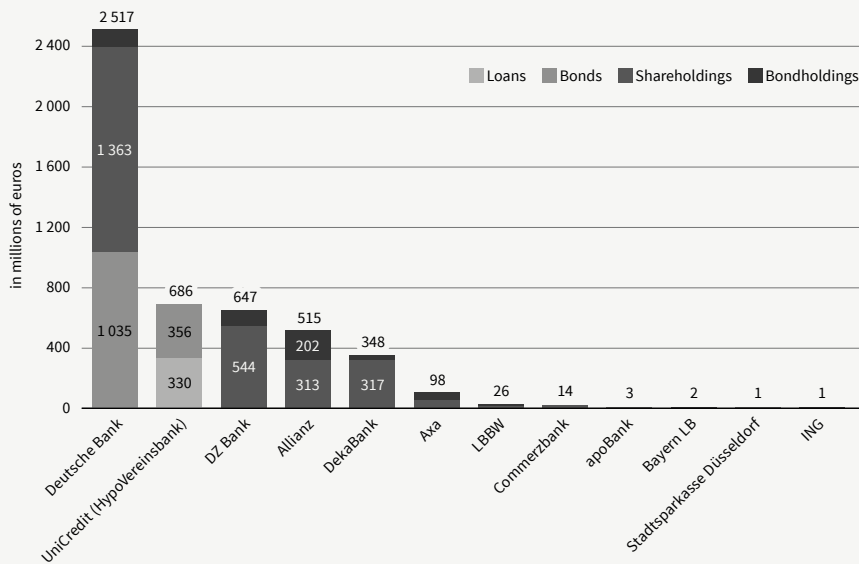
While PTT Exploration and Production (PTTEP) recently withdraw from the Yetagan gas project with MOGE, it remains active in the Zawtika gas field (Mallet 2021; PTTEP 2022). PTT not only partners with MOGE, but also expands its business ties with the military conglomerate MEC. In 2019, a joint venture between PTT's subsidiary PTT Oil and Retail (PTTOR) and the military-aligned Kanbawza Group began construction of a fuel and

storage terminal in Kyauktan, Myanmar. Kanbawza Group is owned by longtime military crony Aung Ko Win, who already partnered with military conglomerate MEHL in jade and gemstone mining ventures and donated 4.7 million US dollars to security forces' operations against the Rohingya minority in 2017. The joint venture between PTTOR and Kanbawza Group invests 150 million US dollars to build the largest terminal in Myanmar. For this purpose, it leases land from MEC and the Ministry of Defense under a build-operate-transfer agreement. Lease payments to MEC include a 1.7 million US dollars land use premium fee and annual rent of nearly one million US dollars. All terminal structures are to be transferred to MEC at no cost upon termination of the lease. The joint venture estimates annual net profits of over 100 million US dollars and tax payments to the junta-controlled Internal Revenue Department of 1.4 billion US dollars over the first 20 years (HRW 2021a).

Since PTT expands its business with military-affiliated companies despite the coup, it shows little regard for human rights issues. Investors in PTT are urged to increase pressure on the company and to consider a divestment given the company's longstanding ties with the military conglomerates and its failure to act even before the attempted coup.

#### TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN TOTALENERGIES

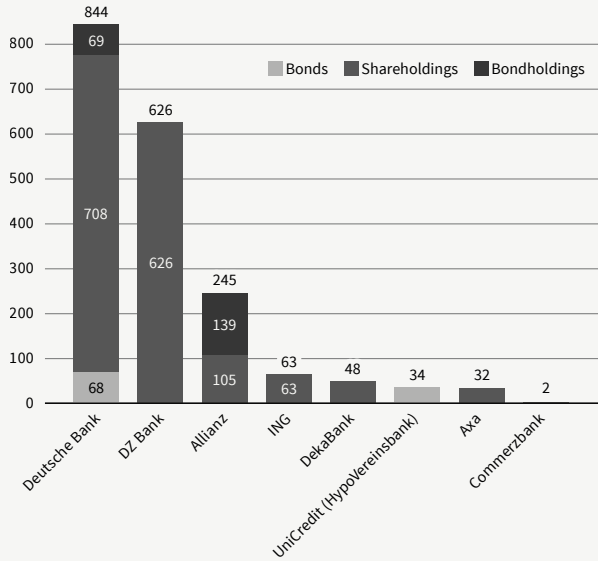
in millions of euros



The research examining the financing activities carried out between the beginning of 2018 and 2022 and the investments as of February 2022 reveals a volume of business for ten banks and two life insurance companies vis-à-vis TotalEnergies amounting to 4.9 billion euros. About half of the financing and investment volume identified is attributable to just one financial institution: Deutsche Bank. The smallest investor is Stadtsparkasse Düsseldorf, who holds shares worth less than one million euros. Deutsche Bank and UniCredit (HypoVereinsbank) are the only banks that have provided financing to TotalEnergies totaling 1.7 billion euros. While most of the loans and bonds were concluded or issued before the coup, Deutsche Bank participated in the issuance of bonds in early January 2022. That is, almost exactly one year after the coup and at a time when TotalEnergies had not yet announced its withdrawal from the Yadana gas field.

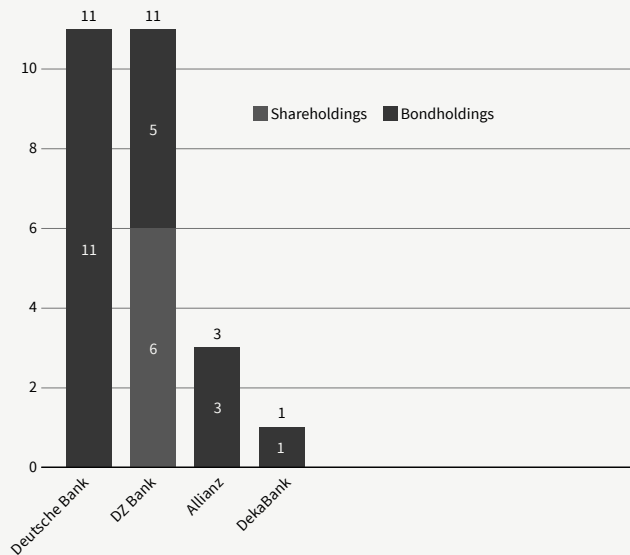
Note: All figures in the chart are rounded.

**TOTAL FINANCING (2018–2022)  
AND INVESTMENTS (2022) IN CHEVRON**  
in millions of euros



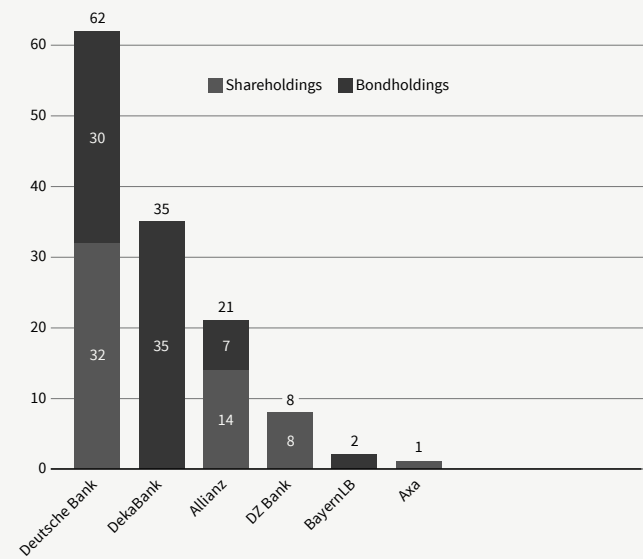
The research conducted for financings from the beginning of 2018 to 2022 and investments as of February 2022 shows a volume of business for six banks and two life insurance companies vis-à-vis Chevron amounting to 1.9 billion euros. Roughly 80% of the financing and investment volume identified is attributable to just two financial institutions: Deutsche Bank and DZ Bank. Deutsche Bank and UniCredit (HypoVereinsbank) are the only two banks that have provided financing to Chevron, which amounts to 101 million euros. All bonds were issued before the coup d'état in 2020.

**TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022)  
IN THE OIL AND NATURAL GAS CORPORATION INCLUDING ITS  
SUBSIDIARY ONGC VIDESH**  
in millions of euros



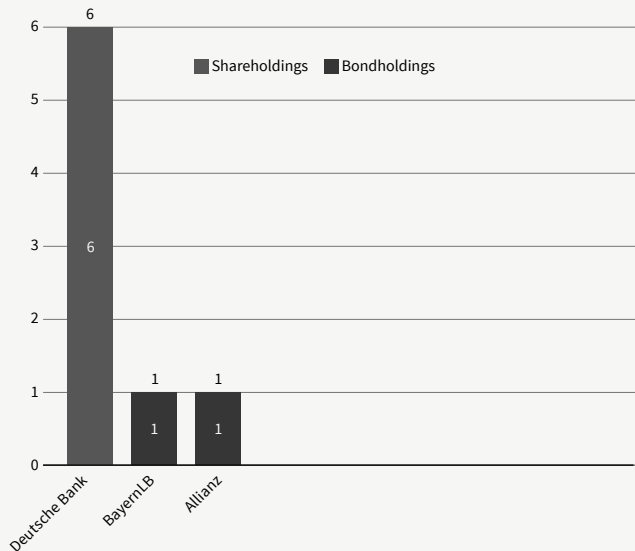
The research for investments as of February 2022 shows a volume of business for three banks and one life insurance company vis-à-vis the Oil and Natural Gas Corporation and its subsidiary ONGC Videsh amounting to 26 million euros. Over 80% of the investment volume is attributable to just two financial institutions: Deutsche Bank and DZ Bank. No financing transactions could be found between the banks and the companies in question. Notably, 20 million euros of the identified investment volume (77%) can be directly attributed to ONGC Videsh.

**TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022)  
IN POSCO INCLUDING ITS SUBSIDIARY POSCO INTERNATIONAL**  
in millions of euros



The research for investments as of February 2022 shows a volume of business for four banks and two life insurance companies vis-à-vis Posco and its subsidiary Posco International amounting to 129 million euros. Almost half of the investment volume is attributable to Deutsche Bank. But Allianz and DekaBank also have stakes in the companies that correspond to eight-digit amounts. The smallest investor is Axa, with a stake of just over one million euros, closely followed by BayernLB with just under two million euros. No financing transactions could be found between the banks and the companies in question. The parent company accounted for almost all of the estimated investment volume (99%). As for the remaining one percent, the insurance company Axa owns shares directly in the subsidiary Posco International worth more than one million euros, while Deutsche Bank and Allianz are smaller shareholders, each with less than half a million euros.

**TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022)  
IN PTT PCL INCLUDING ITS SUBSIDIARIES PTTEP AND PTTOR**  
in millions of euros



Note: All figures in the charts are rounded.

The research for investments as of February 2022 shows a volume of business for two banks and one life insurance company vis-à-vis PTT and its two subsidiaries PTTEP and PTTOR amounting to 8 million euros. 75% of the investment volume is attributable to Deutsche Bank. Deutsche Bank also holds shares in PTTEP and PTTOR directly. No financing transactions could be found between the banks and companies.

## THE MILITARY'S WEAPONS

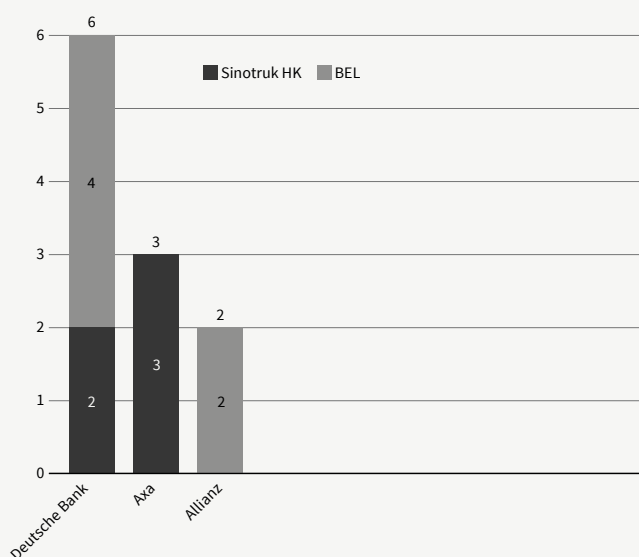
To carry out ethnic clearance operations against the Rohingya and suppress protests, the junta depends on a variety of weapons. It is, for example, well documented that heavy Sinotruk trucks form the logistical backbone of troop deployment (Fromm et. al 2021). In the crackdown on pro-democratic protests in cities across the country, the military used Sinotruk vehicles to move soldiers, shoot at and transport protesters for arresting. In 2011, Sinotruk Hong Kong began upgrading the No.1 Myanmar Automobile Plant, which allowed for production of Sinotruk's HOWO model used to stage attacks against civilians to repress peaceful protests. Furthermore, there are reports of the Myanmar military manufacturing heavy duty MILTRUK vehicles under a Sinotruk license (PVM 2021). Finally, a joint venture between Sinotruk Hong Kong and Chengdu Motor Group also sold fire trucks to the Myanmar Ministry of Home Affairs. Sinotruk Hong Kong is majority-owned by the Chinese-state owned truck manufacturer Sinotruk Group (official name: China National Heavy Duty Truck Group), but MAN SE also holds a 25% stake in Sinotruk Hong Kong. This makes MAN a blocking minority shareholder, who also has four seats on Sinotruk Hong Kong's Board of Directors (JFM 2021b). MAN was a subsidiary of Traton SE, but recently ceased to exist as a legal entity and merged with Traton (Traton SE 2021). Traton, in turn, is part of the car manufacturer Volkswagen (Volkswagen AG n.d.). MAN stated it was unaware of Sinotruk's business in Myanmar, while Sinotruk revealed it had been supplying vehicles to Myanmar since 2008 but denied a cooperation with the Myanmar military (Fromm et. al 2021).

One of the Indian companies supplying weapons to the Myanmar military is Bharat Electronics Limited (BEL), a defense contractor majority-owned by the Indian government (Bharat Electronics Limited 2021). In 2013, BEL supplied weapons to the junta, including a military early warning air radar that the company produced on a license from Thales Nederland. By re-exporting Dutch defense technology to the Myanmar military, BEL breached the EU arms embargo against Myanmar, although Thales had explained to BEL its objection to the delivery as it violated EU legislation (Stop Wapenhandel 2015). BEL continuously provided military technology directly to the junta or through the military's arms broker Myanmar Consultancy Company. In 2019, coup leader Min Aung Hlaing led a delegation to BEL during a visit to India, where gifts were exchanged with company leaders (JFM 2021f). Even the military coup did not stop the company from continuously delivering defense equipment. In July 2021, BEL exported an air defense weapons station to Myanmar, knowing that it was aiding the ongoing atrocities of the Myanmar military (JFM 2021g). Since the coup, BEL supplied the military with radar technology, including electrooptical systems, radar video extractor receivers, VHF communications systems, graphics processors, workstation hardware, server storage, batteries, and other components for surveillance radars (JFM 2021f).

Note: All figures in the chart are rounded.

Chinese companies that have supplied arms to the Myanmar military include AVIC (Aviation Industry Corporation of China) and Norinco (China North Industries Group Corporation) (HRC 2019a). Israeli defense companies supply the Myanmar military as well: Gaia Automotive Industries manufactured armored military vehicles that were used during the coup. Elbit System also maintains business ties with the Myanmar military.

TOTAL SHAREHOLDINGS (2022) IN SINOTRUK HK AND BEL in millions of euros



The financial research for investments as of February 2022 shows a volume of business for one bank and two life insurance companies vis-à-vis Sinotruk HK and BEL amounting to 10 million euros. The identified financial institutions hold together roughly 5 million euros in each of the two companies. Deutsche Bank is the largest investor holding shares worth 6 million euros. No financing transactions could be found between the banks and companies.

## IMMEDIATE ACTION REQUIRED

Companies such as Posco and PTT provide important revenues to the junta. Others such as Sinotruk or BEL deliver weapons to the Myanmar military. Facing Finance urges companies to sever their ties with the Myanmar military and their conglomerates, MEC and MEHL, in order to not risk being complicit in financing the Myanmar military. Companies with direct relationship with the Myanmar military or military-affiliated companies should immediately cease doing business with the junta. Businesses with relationships to state-owned enterprises that came under military control following the coup should suspend all contractually mandated payments and transfer them to an escrow account until democracy is restored. Finally, all defense companies should immediately stop deliveries to Myanmar, as they are complicit in the atrocities committed by the junta. Facing Finance calls upon all financiers and investors of these companies to engage in discussions and increase the pressure.

# HEIDELBERGCEMENT

## PT SEMEN

### DOES THE CEMENT INDUSTRY BURY HUMAN RIGHTS IN THE KENDENG MOUNTAINS IN THE REMBANG AND PATI REGIONS?

Since 2008, conflicts have been recorded between cement companies in the Rembang and Pati regencies and the community organized in the People's Movement Kendeng (JM-PPK), which opposes the industry, because the companies' business operations and practices in the Kendeng Mountains have harmed the environment and affected human rights socially, economically, and culturally. The two corporations of concern – PT Semen Indonesia (PT SI) in Rembang and PT Sahabat Mulia Sakti (PT SMS) (a subsidiary of PT Indocement which in turn is a subsidiary of the German manufacturer HeidelbergCement) in Pati – have since complied with the environmental permits that allow them to operate.

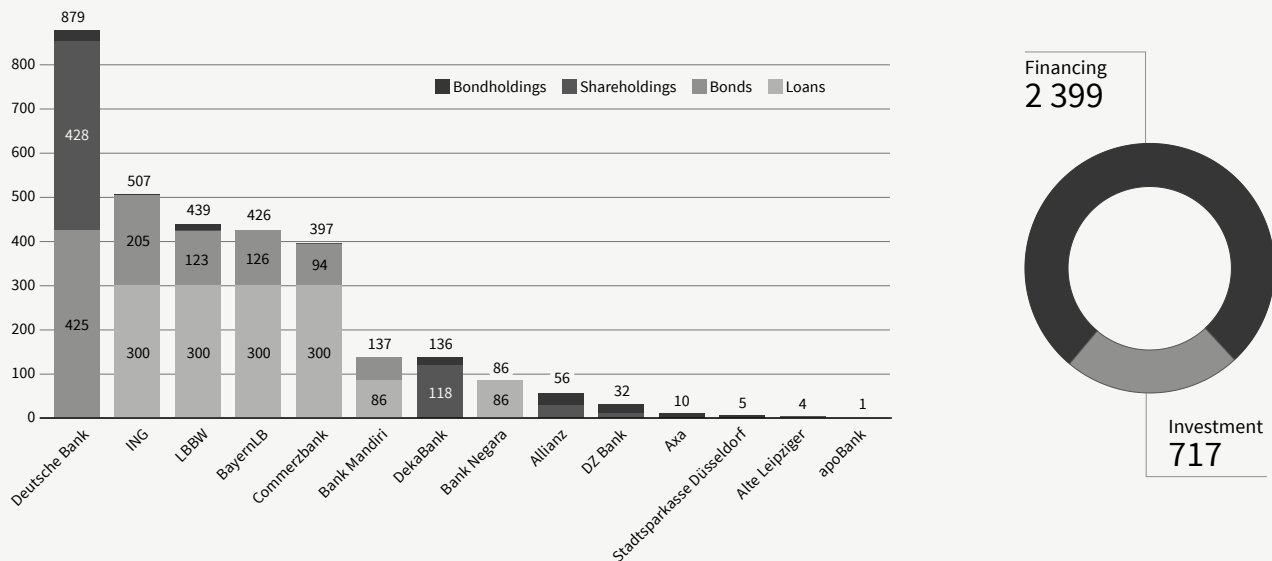
The case study was provided by the Indonesian civil society organization The PRAKARSA, which is part of the ResponsiBank Indonesia coalition (Fair Finance Guide Indonesia) and a partner in the Fair Finance International project. Two Indonesian banks, Bank Mandiri and Bank Negara, were additionally included in the financial research.

An important step in strengthening corporate accountability is to address the human rights concerns of communities affected by a company's operations as well as those of other stakeholders. Facing Finance stresses that HeidelbergCement has taken the opportunity to address matters prior to publication.

#### HUMAN RIGHTS RISKS



TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN PT SEMEN, HEIDELBERGCEMENT AND ITS SUBSIDIARY PT INDOCEMENT in millions of euros



Note: All figures in the charts are rounded.

## THE ORIGIN OF THE CONFLICT

As early as 2008 and 2009, the Indonesian community united in the People's Movement Kendeng (JM-PPK) was confronted with plans of the PT Semen Gresik (SG) company to mine and produce cement in Rembang. However, after the Semarang State Administrative Court (PTUN Semarang) won a community's lawsuit, PT SG withdrew its investment in 2009. Only three years after, in 2012, the Governor of Central Java, Bibit Waluyo, issued an environmental permit for mining activities and in turn allowed the construction of PT SG's cement plant in Rembang (Gubernur Jawa Tengah 2012). Shortly after the start of construction, the JM-PPK erected a "Struggle Tent" on the road leading to the factory site in response. The community also filed a lawsuit against the Governor's decree at PTUN Semarang. In April 2015, the court dismissed JM-PPK's request on the grounds that it had expired. As a result, the lawsuit was filed at the cassation level in order to have the judicial decision overturned. Although the Supreme Court accepted and granted the request in 2016, the next Governor of Central Java, Ganjar Pranowo, issued once again another decree on February 23, 2017, granting PT Semen Indonesia (SI) a new environmental permit for its mining and operational activities (Direktori Putusan Mahkamah Agung Republik Indonesia 2016).

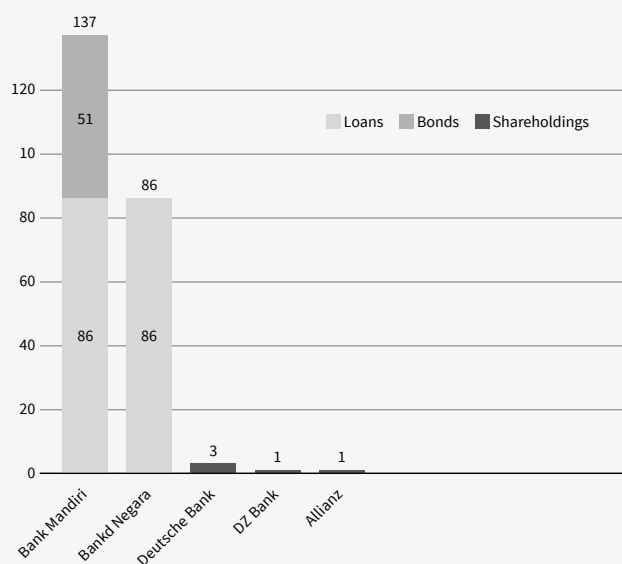
In the meantime, the company PT Sahabat Mulia Sakti (PT SMS) had also planned to invest in Pati. On 8 December 2014 the Regent of Pati, Haryanto, issued an environmental permit. The community expressed its opposition through a lawsuit and a series of peaceful protests. In the lawsuit, residents argued that their participation in the decision-making process of building the factory was a mere formality and did not represent all those affected. PTUN Semarang allowed the complaint in 2015 and cancelled the environmental permit for the construction of the cement factory and limestone mining (Direktori Putusan Mahkamah Agung Republik Indonesia 2015). However, after 13 days, PT SMS, together with the Regent of Pati, sent a letter of appeal to Surabaya State Administrative High Court (PTTUN Surabaya), which rejected PTUN Semarang's the decision.

### HeidelbergCement's involvement to the PT SMS case

PT Sahabat Mulia Sakti (PT SMS) is a wholly owned subsidiary of PT Indocement Tunggul Praksara (PT Indocement). In 2001, HeidelbergCement acquired 61.7% of PT Indocement through its fully owned subsidiary Kimmeridge Enterprise Pte. Ltd. In 2008, ownership changed from one wholly owned subsidiary of HeidelbergCement to another: Birchwood Omnia Ltd. In 2009, the new majority holder reduced its stake in the company through the sale of shares. However, Birchwood Omnia and thus HeidelbergCement retain a controlling interest of 51% (Refinitiv Eikon 2022; PT Indocement 2021). As such, HeidelbergCement has a significant influence over key decisions of the companies, which always goes hand in hand with a high level of responsibility.

### TOTAL FINANCING (2018–2022) AND INVESTMENTS (2022) IN PT SEMEN

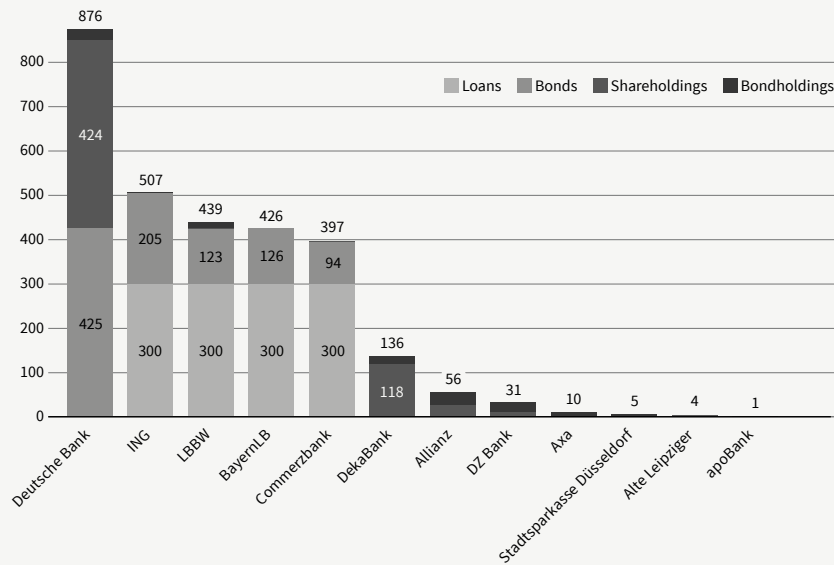
in millions of euros



The research for financing from the beginning of 2018 to 2022 and investments as of February 2022 shows a volume of business for two German and two Indonesian banks as well as one life insurance company vis-à-vis PT Semen, amounting to 228 million euros. The financing share clearly predominates: it amounts to 98%. In particular, Bank Mandiri has increased the financial resources of PT Semen with 137 million euros in bonds and loans, as has Bank Negara with 86 million euros in the participation of loans. While the two Indonesian banks have financed the company directly, Deutsche Bank holds 3 million euros in shares of PT Semen. The smallest investors are DZ Bank and Allianz, who hold shares amounting to less than one million euros.

**TOTAL FINANCING (2018–2022) AND INVESTMENTS  
HEIDELBERGCEMENT AND ITS SUBSIDIARY PT INDOCEMENT**

in millions of euros



By far the largest share of the total 3.1 billion euros that flowed into the companies of this case study went to the German parent company HeidelbergCement – money that could potentially also benefit its Indonesian subsidiaries Indocement and PT Sahabat Mulia Sakti. In total, Deutsche Bank, ING, LBBW, BayernLB, Commerzbank, DekaBank, Allianz, DZ Bank, Axa, Stadtsparkasse Düsseldorf, Alte Leipziger, and apoBank provided the global cement giant with a financing and investment volume of 2.9 billion euros, of which roughly 8 million euros was in the form of shares held in Indocement. Exactly 75% of the sum was spent on financing and the remaining 25% on investments.



PT Semen Indonesia. © Narasi TV.



## THE CEMENT INDUSTRY AND INDIGENOUS RIGHTS

Limestone mining and cement manufacturing in Rembang, as well as small-scale limestone mining and the proposed cement industry in Pati, deprive people of their economic, social, and cultural rights, including the rights of the Sedulur Sikep Indigenous community. Kendeng people in Rembang and Pati, whose livelihoods depend on agriculture, have to bear the ecological impact caused by the industry's operations. The Kendeng Mountains, which support their livelihoods by serving as water catchment, are gradually being damaged by mining activities.

One of the human rights violated foremost by the cement industry is the right to participate in the process of decision-making. In both Rembang and Pati, the planning process regarding the mine and cement production was carried out without proper consultation with the community. One root cause of this failure is the dispossession of the public and the disregard of the rights of Indigenous Peoples, as business interests and regional development objectify people. Particularly in the case of Indigenous Peoples, the operations of the cement industry in the Kendeng Mountains without proper community consultation is at odds with the goodwill of the local government to increase peoples' participation in corporate licensing processes.

Corporate planning accompanied by a comprehensive consultation process is indispensable to avoid adverse environmental, social, and cultural impacts of a company's activities. Vulnerable and more affected groups such as women should always be included in such consultation processes, as environmental damage usually has a greater impact on them. Kendeng women, who are predominantly farmers, also bear the responsibility of household duties. From the time they wake up to the time they go to bed, the women are constantly interacting with water: for cooking, washing, cleaning, farming, animal husbandry, and so on. Therefore, the deterioration of water quality and quantity will significantly affect women. These aspects were neglected in the formulation of the *Environmental Impact Analysis* (AMDAL). Mining is often intensively carried out for an extended period of time. In this case, people would lose water resources that they previously received for free.

Limestone mining and cement factories are counterproductive to government efforts to protect women's rights to work and a life in dignity. As a logical consequence of the industry's activities, environmental degradation displaces and threatens women's ties to the lands and leads to the loss of agricultural jobs. Notwithstanding, the government has committed in the *National Action Plan for Human Rights 2021–2025* to strengthen efforts to fulfill and protect women's rights in business activities and opportunities initiated by state and regional-owned enterprises and private parties.

An overarching impact of limestone mining in the karst mountains is the marginalization of farmers. In Rembang, mining activities have reduced the community's agricultural productivity due to the dust covering the leaf membranes of agricultural crops. The decline in agricultural production has forced some landowners to sell their lands. The change from farming to other occupations can create new problems. Some former farmers work as miners for the cement raw material company that supplies PT SI; others worked as guards at PT SI; some became peasants for other landowners; and others bought trucks hoping that their vehicles would be rented by mining companies as a mode of transportation, although in reality this is not so easy. Former landowners who bought trucks with the money from the sale have reported, that they were then abandoned and spoiled.

In addition to the loss of livelihoods, the cement industry has significantly affected the social cohesion of the community. The social rifts are due to the divergent attitudes of community members toward the cement industry – between those who support it and those who oppose it. The inclusiveness of social cohesion, previously maintained through a culture of caring, is now divided. The social divide has also emerged within households and families.

Alongside the gradual disappearance of a culture of mutual care, the presence of the cement industry has affected the continuity of cultural rituals. One example is the fading tradition of the *brokohan*, the release of cows in a field called *oro-oro* where they are left to graze. The ritual is becoming less common due to the lack of land that can be used as *oro-oro*. Another dying tradition is the *pisoanan* where people gather and discuss on the land where the cows graze. For the community, the *brokohan* and *pisoanan* traditions are not just aesthetic practices, but sacred rituals. They express people's gratitude to the universe.



Kendeng women farm in the village of Tambakromo in Pati. © Narasi TV.

The Kendeng Mountains are a source of livelihood for the people in its vicinity, including the Sedulur Sikep Indigenous community. For the Sedulur Sikep, the Kendeng Mountains are not just mountains that exude the charm of beauty, but also nurturers, guardians of nature and “houses of cultures” that allow them to live according to their value system. Mining limestone for cement raw materials in the Kendeng Mountains will have a destructive impact on the Sedulur Sikep way of life. The indigenous community traditionally performs a single profession: that of farmers. The accelerating scarcity of agricultural land due to mining and the reduced availability of sufficient water would radically disrupt their agricultural production. But for the indigenous community, farming is not just about working on a farm, it is sacred work, because farming also means preserving nature and protecting Mother Earth, who always provides a livelihood.

A large-scale cement industry would also disrupt the traditional education system of the Indigenous Sedulur Sikep. Sedulur Sikep children are not taught in formal educational institutions, but by their parents who make use of the natural environment as learning material and tools. The destruction of nature is tantamount to the eradication of the indigenous educational system.

There is a close relationship between the Kendeng Mountains and the Sedulur Sikep’s philosophy of life; therefore, it is only natural to ensure the preservation of the mountains. Mining in the Kendeng Mountains will have multiple impacts, harm the environment, as well as erode the value system and philosophy of life of the agricultural Sedulur Sikep community. A mine and the planned establishment of a cement industry in the Pati region will deprive the Indigenous Peoples of Sedulur Sikep of their rights. This is based on normative considerations referring to Article 12(1) of the *UN Declaration on the Rights of Indigenous Peoples*, which states that they have the right to maintain and develop their political, economic and social systems or institutions to ensure the enjoyment of an adequate livelihood, to develop and to enjoy all traditions and other economic activities to the full extent.

Another, no less critical impact of the cement industry on Rembang and Pati is pollution. Air pollution is caused by mining activities, factory production processes, and transportation. It affects the economy and people’s health. As for the economy, the dust from mining covers farmers’ crops and disrupts their fertility. In addition, dust covers the grass normally used as animal feed. As a result, the quality of crop yields decreases. Farmers have to bear the cost of buying feed that was previously available for free. As far as health is concerned, the dust afflicts the respiratory system and eyesight. This poses a great risk to children and the elderly. In addition, the mobility of transport trucks lifting the dust from the road and scattering it from the transported limestone endangers local residents due to the risk of the trucks’ loads falling.

As subjects of national law, companies must respect human rights by overcoming the impacts associated with their operations. Otherwise, the people in the Kendeng Mountains in Rembang and Pati who are affected by the cement industry should be given the status of “victims of human rights violations.” The rationale is based on the definition of victims that refers to the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, which consists of the following elements:

- ▶ A person or group is a victim if they suffer harm or loss, regardless of whether the perpetrators are identified or whether the victims have a special relationship with the perpetrators.
- ▶ There are various forms and types of damage or loss that can be caused, and these can be related either by positive action or omission.
- ▶ Victims may be directly or indirectly affected by the violation, and indirect victims are also entitled to reparation.
- ▶ The person who suffers the damage may bear it individually or collectively.

Without properly exercising the principle of free, prior and informed consent (FPIC) in activities relating to local and indigenous communities, corporate development will ultimately lead to resistance from the people whose aspirations and objections have been ignored. The JM-PPK, who opposes the cement industry, thus carried out a series of actions against the cement industry and the political policies that supported it. Demonstrations have been carried out repeatedly. During these actions, it was noted that people had repeatedly faced repressive actions by the security forces, e.g. in the form of criminalization. These repressions by security forces, carried out in the name of the law, reflect the politics of development in Rembang and Pati that favor corporate interests over those of farmers and environmental sustainability.

#### HOW ELSE DO COMMUNITIES IN THE KENDENG MOUNTAINS MAKE THEIR VOICES HEARD: AN OECD COMPLAINT AGAINST HEIDELBERGCEMENT

The communities affected by the cement industry, united in the Kendeng Mountain’s Movement (JMPPK), were supported by the German civil society organizations FIAN and Heinrich-Böll-Stiftung to voice their demands regarding the adverse impacts on their environment. On 9 September 2020, the community filed a complaint about how the cement industry threatens the water supply and mountain biodiversity, triggers social conflicts, and disregards the rights of Indigenous Peoples. The complaint, filed through the German National Contact Point for the OECD Guidelines, alleges that HeidelbergCement violated the *OECD Guidelines for Multinational Enterprises*. HeidelbergCement’s alleged breaches are listed in the complaint as follows:

Lack of disclosure and transparency	<p><i>“Despite the local communities’ vocal expression of concerns over the destruction of the Kendeng mountains, the company has not meaningfully consulted them regarding these concerns and provided them with relevant information to address them. HeidelbergCement subsidiary, PT SMS, apparently hired consultants to conduct an environmental assessment of the project, but according to the Complainants, the impact assessment was never publicly disclosed or explained to the affected communities.”</i></p>
No public environmental impact assessment and risk management system	<p><i>“The Complainants have never been meaningfully consulted as part of the impact assessment process and have yet to learn of the outcome of the assessment. The Complainants report that while the company did engage consultants to conduct meetings between 2012 and 2014, the process was severely flawed and did not amount to meaningful engagement with project-affected communities.”</i></p>
Failure to conduct comprehensive human rights due diligence	<p><i>“An appropriately rigorous human rights due diligence procedure would have uncovered the significant risks inherent in the project. Further, HeidelbergCement’s local subsidiary, PT SMS, began exploration in Pati District soon after a similar cement project, sponsored by Semen Gresik, had been subject to legal challenges by local communities. The case against Semen Gresik went all the way to the Supreme Court, and ultimately ended the company’s plans to exploit karst in Pati District. This should have been flagged as evidence of serious risks.”</i></p>
Absence of meaningful engagement and the free, prior and informed consent of Indigenous Peoples	<p><i>“The Complainants believe that the project, and particularly the mine, will have direct and significant adverse impacts on [their] land and natural resources [...]. The agricultural land located around the prospective project site is depended upon by [the local communities] for their survival, and the Kendeng Mountains are considered by [the Indigenous peoples] as having deep cultural and spiritual value. The Complainants’ believe that the open pit limestone mining at the project site will destroy the mountain almost entirely, and jeopardize the community’s vital water source. [...] HeidelbergCement has failed to engage local communities [...] in a manner consistent with these standards. Instead, an air of intimidation and deception surrounds the project.”</i></p>
Failure to avoid causing anticipated human rights abuses	<p><i>“Special consideration must also be given to the concerns of [the Indigenous communities] with respect to rights to food and water, as the realization of these rights is inextricably linked to their access to and control over the natural resources on their ancestral lands. [They] have their own perception of what constitutes an adequate standard of living, including perceptions of livelihood security and access to food and water, and their aspirations are different from mainstream and conventional economic development criteria. The confiscation of sacred [Indigenous peoples] land for development without their free, prior and informed consent poses a serious obstacle to the realization of the rights to an adequate standard of living, as well as the rights to health and life.”</i></p>

Note: The names of Indonesian indigenous communities and complainants were obscured by linguistic insertions for security reasons.

There are four major concerns if limestone mining and the establishment of a cement factory are carried out in Pati: (1) lives and livelihoods of local communities, (2) subterranean river system supplying water for households and agriculture, (3) ancestral territory of the Indigenous Samin People, and (4) protected animal species.

### WHAT DOES HEIDELBERGCEMENT SAY?

In its written response to Facing Finance, HeidelbergCement emphasizes that it was aware of the allegations related to the company’s business activities in the Rembang and Pati regions of Indonesia. The company stresses that the German Government’s National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises rejected the violation of collective rights of the Samin ethnic group, hence accepted the complaint only in part. HeidelbergCement commits to refrain from any business activities that would create new facts on the ground in Indonesia during the planned mediation process between the company and the complainants under the direction of the NCP.

## CONCLUSION

The cement industry in the Kendeng Mountains affects the economic, social, and cultural rights of local people. The dust generated by mines and factories covers plant membranes, thereby disrupting the quality of agricultural crop growth. The dusty grass is no longer suitable for animal feed. The dust impedes breathing and is predicted to cause long-term health effects. In addition, limestone mining will result in the degradation of viable water resources. The impacts now felt by the community in Rembang are likely to occur in Pati as well, as the main causes are similar: limestone mining and the cement production.

The social impact of the cement industry, both in Rembang and in Pati, is the fracturing of social cohesions. Although violent conflicts have not occurred, the social rifts between supporters and opponents of the cement industry are palpable. In addition, the cement industry also had an impact on the fading of local traditions. In Rembang, sacred practices such as *brokohan* and *pisonian* have been marginalized by the loss of ritual sites as a result of mining expansion.

The cement industry's negative economic, social, and cultural impacts in the Kendeng Mountains in the Rembang and Pati areas are mainly due to the fact that proper FPIC was not carried out in the planning of the industrial development. This was reflected in the AMDAL preparation process, which was conducted without a thorough consultation of the residents. The neglect of the local community's rights in the process of granting permission to start operations is a severe violation of human rights by the companies and local government.

## RECOMMENDATIONS

- ▶ The Government of Indonesia, in this case, the Ministry of Home Affairs, should order the Governor of Central Java to revoke the Decree of the Governor of Central Java Number 660.1/30 of 2016 concerning the environmental permit for PT Semen Indonesia, because the Governor's Decree was based on the obsolete AMDAL which proved to be problematic;
- ▶ The Government of Indonesia, in this case, the Ministry of Home Affairs, should order the Regent of Pati Regency to revoke the Decree of the Regent of Pati No. 660.1/4767 of 2014 concerning the environmental permit for PT SMS, because it did not comply with the proper participation principle, as evidenced by 67% of residents who objected, as stated in the AMDAL document;
- ▶ PT Semen Indonesia should stop its production activities in Rembang and instead conduct a proper consultation process with the local community and mitigating the environmental, social, economic, and cultural impacts caused;
- ▶ PT Indocement should stop the planned production activities of its subsidiary PT SMS in Pati and instead carry out a proper consultation process with the local community to avoid the environmental, social, economic, and cultural impacts it may cause;
- ▶ Financial services institutions and investors should stop lending to and investing in mining and cement companies involved in environmental damage and human rights violations in the Kendeng Mountains, Rembang, and Pati areas of Indonesia.

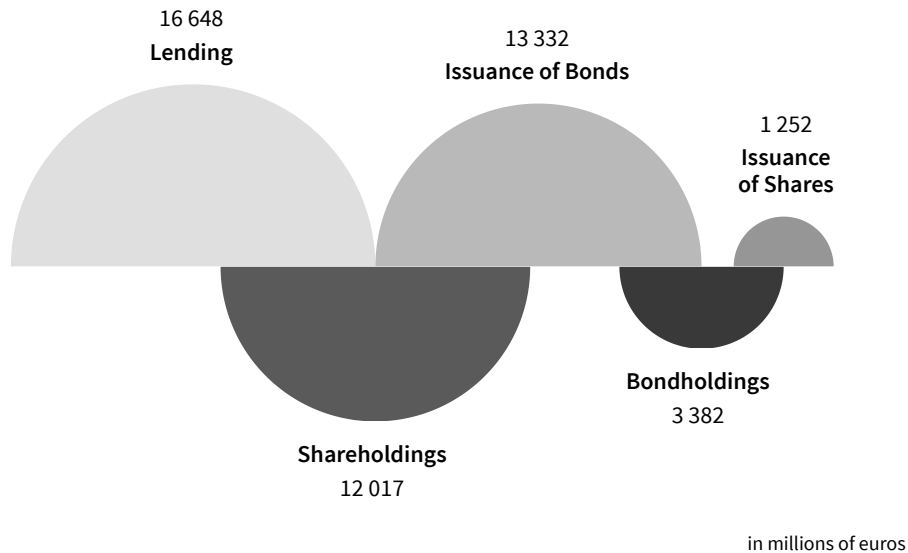
# Harmful Investments



Frankfurt, the financial capital of Germany (September 2020). Paul Fiedler, unsplash.

## MANY PROMISES, LITTLE CHANGE

The sheer amount of funding and investment in companies known to abuse human rights is staggering. Between 2018 and 2022, ten of the 18 banks and four of the six life insurance companies active on the German market had financial relationships corresponding to a total of **about 47 billion euros** with the controversial companies in this report. About 67 percent, or more than **31 billion euros**, is attributable to corporate **financing** through participation in loans and issuance of bonds. The issue of shares accounts for only a small part. The **investment volume**, mainly in the form of shares and, less frequently, in the form of bonds held, amounts to over **15 billion euros**.



The voluntary measures or paper commitments to international standards such as the *Equator Principles*, *IFC Standards* or the *UN Global Compact* do not achieve the desired impact, especially not among leading financial institutions. Deutsche Bank, UniCredit (HypoVereinsbank), Commerzbank and others continue to recklessly pour large sums of money into the criticized companies instead of preventing and mitigating harmful business practices.

Voluntary commitments are certainly a start. Yet, the gap between how financial institutions present themselves to the outside world and the fact that they continue to finance or invest in companies involved in serious human rights abuses remains substantial. Financial institutions also frequently fail to honor their commitments in all of their financial activities. While for example banks claim to respect free, prior and informed consent of Indigenous Peoples in project finance, they fail to apply the same principle to corporate finance or their investment activities.

Given the multiple crises that the world is facing today, from an increase in poverty and the rise of a new era of conflict and violence, to the disregard for planetary boundaries, financial institutions can no longer hide behind empty promises. It is time to put their commitments to international standards, as well as their own human rights guidelines, fully into practice (see table on the next page for an overview of financial institutions' commitments to international standards).

## OVERVIEW AND SCOPE OF A SELECTION OF FINANCIAL INSTITUTIONS' COMMITMENTS TO INTERNATIONAL STANDARDS

	Equator Principles	IFC Environmental, Health, and Safety Guidelines	IFC Performance Standards	OECD Guidelines for Multinational Enterprises	UN Global Compact	UN Principles for Responsible Investment	Principles for Responsible Banking
apoBank	x	x	x	x	Partially applied to asset management for the account of clients. UNGC violations are excluded for new products. Signing currently under review.	Signing currently under review.	x
BayernLB	x	Applied to Project Finance.	Applied to Project Finance.	x	Applied to bank's own operations.	Applied to asset management for the account of clients.	Signatory.
Commerzbank	x	x	x	Applied to bank's own operations and to all financing and investment activities.	Applied to bank's own operations and to all financing and investment activities.	Applied to asset management for the account of clients.	Signatory.
DekaBank	Applied to Project Finance.	x	x	x	Applied to bank's own operations.	Applied to asset management for the bank's own account and for the account of clients.	x
Deutsche Bank	Applied to Project Finance.	Applied to Corporate Credits and Project Financing in the area of human rights and mining.	Applied to Project Finance.	x	Applied to bank's own operations.	Applied to asset management for the account of clients.	Signatory.
DKB	x	x	x	x	Applied to asset management for the bank's own account and for the account of clients.	Applied to asset management for the bank's own account and for the account of clients.	Signatory.
DZ Bank	Applied to Project Finance.	Applied to Project Finance.	Applied to Project Finance.	x	Applied to Corporate Credits, Project Financing and to asset management for the account of clients.	Applied to asset management for the account of clients.	Signatory.
EthikBank	x	x	x	x	Applied to asset management for the bank's own account.	x	x
GLS Bank	x	x	x	x	x	x	Signatory.
UniCredit (HypoVereinsbank)	Applied to Project Finance.	Applied to Project Finance.	Applied to Project Finance.	x	Applied to bank's own operations.	x	Signatory.
ING	Applied to Project Finance.	Applied to Project Finance.	Applied to Project Finance.	Applied to Corporate Credits, Project Finance and to the asset management for the bank's own account.	Applied to bank's own operations and to all financing and investment activities.	Applied to asset management for the bank's own account and for the account of clients.	Signatory.

KD-Bank	x	x	x	x	Applied to bank's financing and investment activities.	Applied throughout the bank.	x
LBBW	x	x	Applied to Project Finance.	x	Applied to bank's own operations and to all financing and investment activities.	Applied to asset management for the bank's own account and for the account of clients.	Signatory.
Pax-Bank	x	x	x	Applied to bank's financing and investment activities.	Applied to bank's financing and investment activities.	x	x
Sparda-Bank West	x	x	x	x	x	x	x
Sparkasse KölnBonn	x	x	Applied to asset management for the bank's own account.	Applied to asset management for the bank's own account.	Applied to Corporate Credits, Project Finance and to asset management for the bank's own account.	x	x
Stadtsparkasse Düsseldorf	x	x	x	x	Partially applied to the bank's own asset management.	x	x
Triodos Bank	Applied to Project Finance.	Applied to Project Finance.	Applied to Project Finance.	Applied to bank's financing and investment activities.	Applied to bank's own operations and to all financing and investment activities.	Applied to asset management for the account of clients.	Signatory.
Allianz	x	x	x	x	Applied to asset management for the insurance company's own account.	Applied to asset management for the insurance company's own account.	x
Alte Leipziger	x	x	x	x	x	Applied to asset management for the insurance company's own account.	x
Axa	x	x	x	Applied to asset management for the insurance company's own account.	Applied to insurance company's own operations and to asset management for own account.	Applied to asset management for the insurance company's own account.	x
Debeka	x	x	x	x	Applied to asset management for the insurance company's own account.	Applied to asset management for the insurance company's own account.	x
R+V	x	x	x	x	Applied to insurance company's own operations and to asset management for own account.	Applied to asset management for the insurance company's own account.	x
Zurich	x	x	x	Applied to insurance company's own operations.	Applied to asset management for the insurance company's own account.	Applied to asset management for the insurance company's own account.	x

Source: fairfinanceguide.de



## FINANCING

LENDING in millions of euros

	BayernLB	Commerzbank	Deutsche Bank	DZ Bank	ING	LBBW	Stadtsparkasse Düsseldorf	UniCredit (Hypo-Vereinbankk)	TOTAL
Airbus	396	938		396	396			1 217	3 343
Anglo American		391						391	782
BAE		100							100
BASF	236	236	498	85	734	236		236	2 260
Bayer		586	586		586			586	2 344
Glencore		994		692	1 233	381		1 078	4 378
HeidelbergCement	300	300			300	300			1 201
Leonardo		200						521	721
Raytheon								109	109
Rheinmetall		42		42			42	42	167
Syngenta								340	340
Thales		287						287	575
TotalEnergies								330	330
<b>TOTAL</b>	<b>932</b>	<b>4 074</b>	<b>1 084</b>	<b>1 215</b>	<b>3 249</b>	<b>917</b>	<b>42</b>	<b>5 136</b>	<b>16 648</b>

Note: Figures are subject to rounding differences.

Between 2018 and 2022, eight banks on the German financial services market **lent** a total of about **17 billion euros** to 13 of the companies studied. Italy's UniCredit, which operates in Germany through its HypoVereinsbank brand, was the largest lender granting more than 5 billion euros in loans to controversial companies during this period. The UniCredit Group is closely followed by Commerzbank and the Dutch ING, which operates in Germany through its ING-DiBa brand. Glencore, Airbus, Bayer, BASF, and HeidelbergCement were the largest borrowers, all receiving sums of billions of euros.

## ISSUANCE OF BONDS in millions of euros

	BayernLB	Commerzbank	Deutsche Bank	ING	LBBW	UniCredit (HypoVereinsbank)	TOTAL
Airbus		207	207			369	783
Anglo American		214					214
BAE		198	198				396
BASF		627	333	710			1 669
Bayer	249	249	1 749	468		1 968	4 682
Chevron			68			34	101
Glencore		368	701	504		120	1 692
HeidelbergCement	126	94	425	205	123		974
Leonardo						56	56
Raytheon			571			125	696
Rheinmetall	18						18
Syngenta						100	100
Thales		221	120			220	560
TotalEnergies			1 035			356	1 391
<b>TOTAL</b>	<b>392</b>	<b>2 177</b>	<b>5 406</b>	<b>1 886</b>	<b>123</b>	<b>3 347</b>	<b>13 332</b>

Note: Figures are subject to rounding differences.

Six banks active on the German financial services market supported 14 companies to place over **13 billion euros'** worth of **bonds** between 2018 and 2022. Deutsche Bank and the UniCredit Group (HypoVereinsbank) were the leading underwriters. Bayer, Glencore, and BASF raised the most capital through the issuance of bonds during the investigation period.

## ISSUANCE OF SHARES in millions of euros

	Commerzbank	Deutsche Bank	ING	UniCredit (HypoVereinsbank)	TOTAL
Bayer	300	300	300	300	1 202
Leonardo				50	50
<b>TOTAL</b>	<b>300</b>	<b>300</b>	<b>300</b>	<b>351</b>	<b>1 252</b>

Note: Figures are subject to rounding differences.

Four banks participated in equity issues of two companies, Bayer and Leonardo, between 2018 and 2022. However, the issuance of shares was the smallest of the three types of financing examined. It accounted for just over **one billion euros**.

## INVESTMENTS

SHAREHOLDINGS in millions of euros

	Allianz	Alte Leipziger	Axa	BayernLB	Commerzbank	DekaBank	Deutsche Bank	DZ Bank	ING	LBBW	Stadtsparkasse Düsseldorf	UniCredit (Hypo-Vereinbank)	Zurich	TOTAL
Airbus	11		35		9	482	830			1		18		1 387
Anglo American	141		3			141	160	580		22			54	1 101
BAE	37		2		6	3	32	6	5				6	97
BASF	105	5	19		15	395	1 248	300		28	1	4		2 120
Bayer	5	1	18		14	327	672	359		4		9		1 408
BEL	2						4							5
Chevron	105		32		2	47	708	626	63					1 584
Dassault			1			35	3							38
Glencore	21		13			23	81			1				139
HeidelbergCement (incl. Indocement)	27	4			2	118	424	10		3				588
Leonardo	3						2							5
ONGC							6							6
Posco (incl. Posco Int.)	14		1				32	8						55
PTT (incl. PTTEP, PTTOR)							6							6
Raytheon	8		5				577	14	9					614
Rheinmetall	3					42	5			1				50
Semen Indonesia	1						3	1						4
Sinotruk HK			3				2							5
Thales	2		9			67	16							94
TotalEnergies	313		51	1	14	317	1 363	544		13	1			2 618
Vale	6					21	66							93
<b>TOTAL</b>	<b>804</b>	<b>10</b>	<b>191</b>	<b>1</b>	<b>64</b>	<b>2 018</b>	<b>6 240</b>	<b>2 447</b>	<b>77</b>	<b>73</b>	<b>2</b>	<b>31</b>	<b>61</b>	<b>12 017</b>

Note: Figures are subject to rounding differences.

As of February 2022, the nine banks and four life insurance companies hold **shares** of over **12 billion euros** in 21 companies. Deutsche Bank's holdings correspond to over 6 billion euros – more than half of the total investment volume – DZ Bank and DekaBank follow next. TotalEnergies and BASF, closely followed by Chevron, Bayer, Airbus, and Anglo American account together for 85% of the banks' shareholdings.

**BONDHOLDINGS** in millions of euros

	Allianz	Alte Leipziger	apoBank	Axa	BayernLB	DekaBank	Deutsche Bank	DZ Bank	ING	LBBW	Stadtsparkasse Düsseldorf	TOTAL
Airbus							1					1
Anglo American	48				1	6	34	4		3		96
BAE	128						15					144
BASF	9	1		2		1	17	40		2		72
Bayer	740			11		44	132	46		4		978
ChemChina (incl. Syngenta)	226			16	6	16	30	37				330
Chevron	139						69					208
Glencore	20				1	29	23			3		76
HeidelbergCement	29		1	10		19	26	22	1	13	5	125
Leonardo	2			4		19	4			2		31
ONGC Videsh	3					1	5	11				20
Posco	7				2	35	30					74
PTT	1				1							2
Raytheon	240						82	3				325
Thales	1			3		1	6	1		1		11
TotalEnergies	202		3	47	2	31	119	103	1	13		522
Vale	362					3	3					369
<b>TOTAL</b>	<b>2 157</b>	<b>1</b>	<b>5</b>	<b>94</b>	<b>12</b>	<b>205</b>	<b>595</b>	<b>266</b>	<b>2</b>	<b>40</b>	<b>5</b>	<b>3 382</b>

Note: Figures are subject to rounding differences.

As of February 2022, eight banks and three life insurance companies on the German financial services market hold more than **3 billion euros** in **bonds** issued by the companies studied. The German life insurer Allianz accounted by far for the largest share. Overall, the largest amount invested is in Bayer and TotalEnergies bonds.

# TURNING A BLIND EYE? FINANCIAL INSTITUTIONS FAILURE TO ENGAGE WITH COMPANIES

There are various ways in which financial institutions can take responsibility for sustainability issues in their financing and investments. Indeed, a divestment decision is often the last resort. In many cases, there are steps a financial institution can take before deciding to exclude a company from its investment or financing universe. To this end, financial institutions must regularly review both existing and potential new financial relationships to identify companies that do not meet the expectations set in their policies and run counter to their human rights or environmental principles. Clients who fail such a screening, if not divested, must go through a predefined engagement process.

However, engagement is not a panacea. When financial institutions do not disclose data about these processes by invoking confidentiality, it creates the impression that they are using engagement as an excuse to avoid divesting from socially and ecologically harmful companies. Transparency is key to promoting accountability. At the very least, financial institutions should, therefore, publish with which companies they engage, why, for how long and what are the goals of this engagement. In cases of particular concern, or in relation to individual sectors such as mining and cross-cutting issues such as climate change, they should also consider engaging with the companies in question collectively, in collaboration with other financial institutions.

A transparent corporate dialogue should be in the financial institutions' own interest, as relationships with controversial companies can significantly damage their own reputation. In the long run, companies that stick to non-sustainable business models face a high risk of becoming stranded assets, which in turn significantly increases financial risk for their investors. In this respect, direct company engagement also has a risk-mitigating effect. Costly controversies can be avoided if the financial institution acts transparently according to social and ecological business principles.

## SURVEY AMONG FINANCIAL INSTITUTIONS

The four high-risk companies Bayer, Glencore, Airbus, and TotalEnergies were selected from the case population in this report for an engagement survey across financial institutions. To assess the extent of their engagement with the above companies, financial institutions were asked to describe, among other things, whether they were aware of the controversies in which these companies were involved, how many dialogues they conducted with them, whether they had set specific, measurable, and time-bound goals for these dialogues, and whether they worked with other investors to increase their leverage.

The results of the survey were disappointing, as most of the responses fell into one of the following two categories: poor or insufficient. Only Union Investment, DZ Bank's asset manager, presented a record of current and past engagement activities, setting an example in the otherwise opaque banking and life

insurance landscape on the German financial services market. Others, such as apoBank and the life insurer Alte Leipziger also responded in detail to the survey. However, at least for the four cases in the sample, they could not demonstrate solid engagement processes. Most of the conventional financial institutions invoked the banking secrecy and merely provided a general response to the request, failing to fill out the company-specific questions. Less than a handful of banks, BayernLB, DKB, and Sparda-Bank West, as well as most of the life insurers, Allianz, Axa, R+V, and Zurich did not respond at all to the request.

Surveyed but excluded from the evaluation below were financial institutions that had no financial relationships to any of the companies. This involves DKB, EthikBank, GLS Bank, KD-Bank, Pax-Bank, and Triodos Bank as well as the two life insurance companies Debeka and Zurich. Still, almost all of these financial institutions participated in the survey, except the first and the last.

## IT'S A START: FINANCIAL INSTITUTIONS PERFORMING WEAKLY

### Union Investment

DZ Bank's asset manager Union Investment responded to the survey in detail. In terms of transparency on demand, it is ahead of almost all financial institutions. However, there is still room for improvement: Union Investment does not yet publicly disclose detailed and company-specific information about its engagement.

For Bayer and TotalEnergies, in which the asset manager is invested, Union Investment stated the topic of engagement, the number of dialogues with the companies and whether it participates in collaborative engagement to increase its leverage. Not so positive is the lack of clear and time-bound objectives of the process. In the case of Glencore and Airbus, in which Union Investment is not invested, it explained why it divested from these companies and that it notified them of the reason for their exclusion. Such feedback to companies is imperative to reflect on the consequences of their actions. Union Investment does not publish a list of excluded companies.

## NOT ENOUGH: FINANCIAL INSTITUTIONS PERFORMING INSUFFICIENTLY

### Allianz

Allianz did not respond to the request.

### Alte Leipziger

Alte Leipziger responded to the survey in detail. However, the insurance company could not demonstrate any engagement activities vis-à-vis the companies which are part of the portfolio of its mutual fund AL Trust.

### apoBank

The cooperative apoBank responded to the survey in detail. In terms of transparency on demand, it is ahead of almost all financial institutions surveyed. However, the bank does not publicly disclose company-specific information about its engagement or a list of excluded companies. While it is positive that apoBank parted ways with Airbus due to its involvement in a company that produces controversial weapons, it has never informed Airbus of this decision or the reasons behind it. This is a missed opportunity to make clear to companies that harmful business models will not be tolerated in the long run.

#### **Axa**

Axa did not respond to the request.

#### **BayernLB**

BayernLB did not respond to the request.

#### **Commerzbank**

Commerzbank responded to the request, but it did not provide any information about the companies or the bank's engagement processes.

#### **Deutsche Bank / DWS**

Deutsche Bank and its asset manager DWS have commented separately on the request. Instead of addressing the company-specific questions in the survey, both referred in their responses to general sustainability efforts and policies and provided only non-specific information about their engagement with businesses. Although the financial institutions did not comment on Bayer, Glencore and Airbus, Deutsche Bank stated that it is closely monitoring the situation in Myanmar, referring indirectly to TotalEnergies. The bank conducts enhanced risk-based due diligence on transactions with Myanmar to identify and prevent transactions linked to the Myanmar military complex and the companies it owns. However, it remains unclear whether or how Deutsche Bank engaged with TotalEnergies about its corporate activities in Myanmar.

#### **DekaBank**

DekaBank responded to the request, but did not provide any information about the companies or the bank's engagement processes.

#### **ING Group**

ING responded to the request, but it did not provide any information about the companies or the bank's engagement processes.

#### **LBBW**

LBBW responded to the request, but provided only general information about the bank's human rights sustainability activities.

#### **UniCredit (HypoVereinsbank)**

UniCredit and its brand HypoVereinsbank responded to the request, but provided only general information about the Group's human rights and environmental sustainability activities.

#### **DZ Bank**

While DZ Bank did not provide an answer about the bank's engagement activities with the companies in question, its asset manager Union Investment responded to the survey in detail (see above).

#### **Stadtsparkasse Düsseldorf**

The savings bank Stadtsparkasse Düsseldorf responded to the request, but did not provide any information about the companies or the bank's engagement processes.

#### **Sparkasse KölnBonn**

The savings bank Sparkasse KölnBonn responded, but provided only general information about the bank's human rights and environmental sustainability activities.

## **NARROWING THE GAP BETWEEN PRACTICE AND THEORY: AN ASSESSMENT OF FINANCIAL INSTITUTIONS' POLICIES**

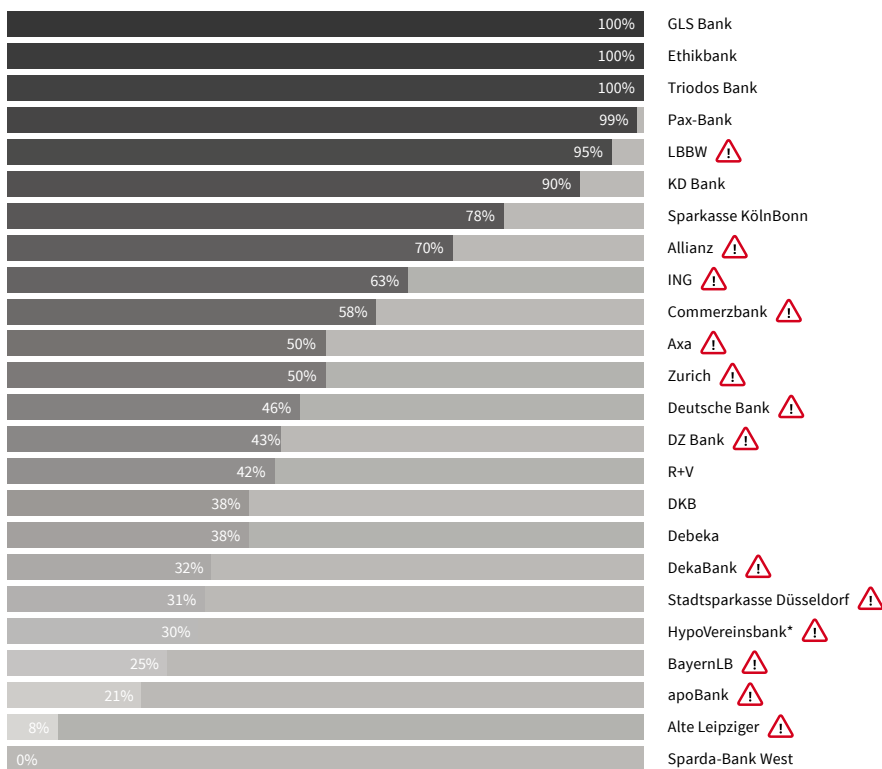
The case studies in this report have not only described corporate human rights violations in the mining, arms, and food sector, but also highlighted the underlying involvement of financial institutions. Yet not all of them were equally involved. Some banks and life insurance companies have strict policies that prevent financial exposure to critical companies. However, voluntary commitments should always be measured against reality. There are examples of financing and investments where financial institutions are associated with controversial companies despite their voluntary commitments. In the ranking below, such cases are marked with a warning sign. The symbols refer only to cases considered in this report.

The policy assessments are based on the methodology of *Fair Finance International*, a common civil society project in 14 countries led by *Oxfam Novib*. The *Fair Finance Guide Germany* assesses the policies that banks and life insurance companies have adopted on their own initiative regarding their business activities in sensitive sectors as well as various cross-cutting issues. These guidelines may relate to lending (corporate loans and project finance), their own investments (proprietary investments) or asset management (e.g. launch of funds). In each of the areas examined, there is a large number of individual criteria based on international norms and standards such as the *UN Human Rights Charter* or the ILO core labor standards. Financial institutions should consider these norms and standards in their policies. The analysis of a financial institutions' commitments is based on publicly available documents such as specific policies, information on their websites, annual and sustainability reports or press releases. Further information on the methodology can be found at [fairfinanceguide.de](https://www.fairfinanceguide.de).

## **A COMPARISON OF HUMAN RIGHTS POLICIES OF GERMAN FINANCIAL INSTITUTIONS**

The rights of women, children, Indigenous groups or Peoples, but also refugees and migrants are subject to particularly frequent and serious violations. Transnational companies have a strong influence on the lives of local or regional communities, but often cannot be held accountable by those affected due to insufficient national laws or close ties to governments. Although international law primarily invokes the obligation of states to ensure respect for human rights, this does not exempt companies from their duty to take independent responsibility for human rights violations resulting from their activities. This also applies to the violation of human rights by business partners and suppliers.

In order to prevent and rule out involvement in human rights violations, banks and life insurance companies must therefore follow a set of clear guidelines meant to ensure that their financing or investment business does not support companies, states, projects or activities that cause human rights violations. In this context, establishing a clear exclusion list that describes customers, projects, and states with which business is not desired is crucial. Treaties, international norms, and standards should serve as the basis for this list.



\*As part of the UniCredit Group

### GLS Bank

GLS Bank's policies on the protection of human rights are very good (100%). The bank expects companies to protect human rights and take appropriate measures to comply with them. Businesses are required to have due diligence processes in place that ensure the prevention and mitigation of human rights abuses. This includes an explicit obligation for companies to establish grievance-mechanisms to identify and remediate potential adverse human rights impacts. In addition, GLS Bank has regulations in place that exclude involvement in land grabbing, i.e. the acquisition of land without the free, prior and informed consent (FPIC) of the affected populations. Likewise, it requires companies to pay special attention to the rights of women and children in the course of their business activities.

### EthikBank

EthikBank's policies for the protection of human rights are very good (100%). The bank expects companies to protect human rights and enforce appropriate measures for their observance. The rating of companies scrutinizes whether they have implemented a process to remedy adverse human rights impacts for which the company is responsible. In addition, EthikBank has established regulations that exclude involvement in land grabbing, i.e. the acquisition of

land without FPIC of the affected populations. It also obliges companies to pay particular attention to the rights of women and children in the context of their business activities.

### Triodos Bank

Triodos Bank's policies for the protection of human rights are very good (100%). The bank excludes companies that operate in industries where there is a high-risk of human rights violations and that do not have processes in place to enable the remediation of adverse human rights impacts that they cause or contribute to. Companies must further demonstrate an effective grievance mechanism at the operational level. The Triodos Bank's guidelines consider, among other things, land rights and the rights of women, children and other vulnerable groups. These requirements also extend to the companies' supply chains.

### Pax-Bank

Pax-Bank's human rights policies are very good (99%). In addition to comprehensive guidelines that include women and children rights, the bank also requires comprehensive audits, grievance and remedy mechanisms, and the inclusion of local and Indigenous Peoples in planning processes.

### LBBW

LBBW's human rights policies are very good (95%). A clear commitment to apply the principles of the *UN Global Compact* in financing and investments and the *IFC Performance Standards* in project finance form the basis for the good rating. The bank obliges companies whose activities affect land rights to obtain FPIC of land users including Indigenous Peoples. Children's rights have also been included in the requirements for companies. Companies must include human rights criteria also in their contracts with suppliers.

### KD-Bank

KD-Bank's policies on the protection of human rights are good (90%). The bank expects businesses to protect human rights and take appropriate measures to ensure compliance. Companies are required to implement human rights due diligence procedures that include aspects of grievance and remedy. KD-Bank's sustainability filter also requires companies in its investment universe to exclude land grabbing of Indigenous Peoples. However, the principle of FPIC is only applied to Indigenous Peoples and does not extend to people with customary tenure rights. Companies or suppliers that massively violate internationally recognized principles are excluded – although the requirement for suppliers need not be contractually stipulated.

### Sparkasse KölnBonn

Sparkasse KölnBonn's policies on the protection of human rights are satisfactory (78%). The bank is committed to human rights standards such as the *UN Global Compact*. In its implementation, it is guided by the *UN Guiding Principles on Business and Human Rights*. The bank expects the same from companies it finances or invests in. This includes establishing company-level grievance mechanisms for individuals and communities who may be adversely affected by a company's operations. In addition, companies are obliged to address conflicts with indigenous and local communities over land use and include criteria to protect human rights in their contracts with suppliers. However, Sparkasse KölnBonn does not impose the same requirements for asset management as it does on the companies it finances.

## ING

ING's policies on the protection of human rights are satisfactory (70%). The bank is committed to the *Universal Declaration of Human Rights* and the *UN Guiding Principles on Business and Human Rights*. The bank's voluntary commitment to apply the *OECD Guidelines for Multinational Enterprises* and the *UN Global Compact* also in its lending activities implies that ING's business partners are also required to comply with and actively protect human rights. Human rights policies that go beyond the framework of the *UN Global Compact*, in particular with regard to the topics of land use, natural resources and the involvement of the indigenous or local populations, are only partially in place. Although the protection of indigenous land rights is implicitly demanded through the implementation of the *IFC Performance Standards* for project finance, the requirement for the protection of the land rights of local populations in general is missing, as is the demand that companies take measures to protect human rights in their supply chain.

## Allianz

Allianz Lebensversicherung's policies on the protection of human rights are satisfactory (63%). The *UN Guiding Principles on Business and Human Rights* (UNGPs) serve as a reference point both for Allianz's own business activities and for the assessment of invested companies. However, companies are not explicitly expected to make further commitments in the sense of the UNGPs, such as meaningful processes of human rights due diligence, measures to remedy harmful impacts or the establishment of grievance mechanisms for affected persons, but only as part of Allianz's membership in the *UN Global Compact*. Allianz should use its strong market position to strengthen enforcement of the UNGPs. It is positive that Allianz requires companies to obtain FPIC from land users, including Indigenous Peoples, in human rights-sensitive transactions where land rights are affected.

## Commerzbank

Commerzbank's policies on the protection of human rights are weak (58%). The bank has made a commitment to human rights in line with the *UN Guiding Principles on Business and Human Rights* and it expects its corporate customers to comply with the *OECD Guidelines for Multinational Enterprises*

and the *UN Global Compact*, which is a step in the right direction. Although the protection of Indigenous Peoples and their land rights is explicitly mentioned in the bank's policies, there is no obligation regarding the FPIC principle.

## Axa

Axa's policies on the protection of human rights are weak (50%). Axa recognizes its own responsibility as an investor in terms of the *UN Guiding Principles on Business and Human Rights* and also aligns its own business activities accordingly. Axa therefore also requires broader commitments from the companies in which it invests, such as meaningful human rights due diligence processes, measures to eliminate harmful impacts, or the establishment of grievance mechanisms for affected parties. However, respect for land rights is severely lacking. The rights of land users and indigenous groups are only considered in the palm oil sector, but not in any of the other risk sectors.

## Deutsche Bank

Deutsche Bank's policies on the protection of human rights are weak (50%). Deutsche Bank is committed to human rights and makes rudimentary reference to various international standards such as the *OECD Guidelines*, the *UN Global Compact* and the *UN Guiding Principles on Business and Human Rights*. In part, Deutsche Bank is too vague in its requirements for clients: While it expects clients to obtain FPIC from Indigenous Peoples, it does not expect the same for land users in general. On children's rights, which Deutsche Bank explicitly mentions, the scope remains unclear. Deutsche Bank does not provide publicly available information on whether it requires companies to integrate human rights into their supply chains.

## Zurich

Zurich's policies on the protection of human rights are weak (46%). Zurich explicitly commits to the *UN Guiding Principles on Business and Human Rights*, the *UN Global Compact* and the *OECD Guidelines for Multinational Enterprises* when interacting with shareholders and other stakeholders on human rights. This has a positive impact on the life insurance companies' assessment. Insufficient, however, is Zurich's handling of land rights. Although the life insurer makes a reference to the relocation of local communities, it does not

preemptively expect clients to obtain FPIC from land users such as Indigenous Peoples.

## DZ Bank

DZ Bank's policies on the protection of human rights are weak (43%). The commitment to the *UN Global Compact* has a positive impact on DZ Bank's assessment, as the principles include the protection of human rights and apply to both financing and the bank's asset management via its subsidiary Union Investment. In its financing activities, DZ Bank excludes companies that violate the *UN Guiding Principles on Business and Human Rights*. Union Investment, the bank's asset manager, seeks dialogue with companies to support them in implementing the *UN Guiding Principles on Business and Human Rights*. However, there is still a lack of policies that go beyond the framework of the *UN Global Compact*, particularly in the areas of land use, natural resources and the involvement of indigenous and local populations.

## R+V

R+V Versicherung's policies on the protection of human rights are weak (42%). A reference to the *UN Guiding Principles on Business and Human Rights* has not yet been made explicitly. For capital investments, R+V has not yet formulated any concrete requirements for companies to protect human rights. However, the commitment to the *UN Global Compact* has a positive impact on the assessment of R+V Versicherung, as the protection of human rights is included here.

## Debeka

Debeka's policies on the protection of human rights are very weak (38%). For companies in which investments are to be made, an exclusion criterion on violations of human rights has been formulated. Here, Debeka's commitment to the *UN Global Compact* has a positive effect on the life insurer's rating, as it includes the protection of human rights. More specifically, Debeka points out that information on the *UN Global Compact* is included in the company rating process by Debeka's service providers. Beyond this standard, there are no specific provisions for the protection of human rights.



## DKB

DKB's policies on the protection of human rights are very weak (38%). The bank has been a signatory of the *UN Global Compact* since September 2021 and has committed to the *UN Human Rights Charter*. In addition, DKB plans to introduce a new human rights policy in line with the *UN Guiding Principles on Business and Human Rights*, which should go beyond German legal provisions, in particular through its requirements for complaints procedures and compensation mechanisms: The bank grants loans only to German companies. Companies invested in through the three DKB funds need to follow the *UN Global Compact*, which contains similar, though not quite as stringent, requirements as the *UN Guiding Principles on Business and Human Rights*. Policies that go beyond the *UN Global Compact* and would be useful for the protection of human rights are missing from the guidelines of DKB; however, such guidelines would be necessary since on the one hand DKB funds invest worldwide and on the other hand the supply chains of German companies are not limited to Germany. Examples of missing guidelines include respect for the rights of children and the land rights of indigenous and local populations.

## DekaBank

DekaBank's policies on the protection of human rights are very weak (32%). While DekaBank explicitly states to comply with the principles of the *UN Global Compact*, it does not commit to the more far-reaching requirements of the *UN Guiding Principles on Business and Human Rights*. In the area of project finance, some criteria are met due to the adoption of the *Equator Principles*. In the area of asset management, the bank requires companies to review their supply chains for compliance with human rights. Beyond that, there are no further requirements for eligible companies.

## Stadtsparkasse Düsseldorf

In the area of human rights protection, Stadtsparkasse Düsseldorf scores very poorly (31%). Progress can be seen in corporate lending and project finance: Stadtsparkasse Düsseldorf requires the companies it finances to comply with international human and labor rights standards, referring in particular to the *Universal Declaration of Human Rights* and the *UN Guiding Principles on Business and Human Rights*. However, Stadtsparkasse Düsseldorf is still not explicitly committed to respecting human

rights in its own banking operations, nor to the more extensive requirements of the *UN Guiding Principles on Business and Human Rights* or any other recognized framework. Nor are there any guidelines requiring companies to ensure FPIC or to integrate human rights criteria into companies' supply chains.

## UniCredit (HypoVereinsbank)

The Italian UniCredit Group, including its German brand HypoVereinsbank, scores very poorly on the protection of human rights (30%). The Group commits itself to the *UN Guiding Principles on Business and Human Rights* and promises to respect human rights in its area of operations. However, the Group has not taken any measures that go beyond the requirements of international standards such as the *Equator Principles* for project finance and related environmental, social, and health standards. While the Group itself is committed to the *UN Global Compact*, it does not require companies to adhere to its principles, but merely refers to it as a suggestion. Consequently, there is a lack of policies that address specific human rights issues related to land use, natural resources, and Indigenous Peoples.

## BayernLB

BayernLB's policies on the protection of human rights are very poor (25%). The bank is a signatory to the *UN Global Compact* but it is not committed to respecting human rights in accordance with the guidelines of the *UN Guiding Principles on Business and Human Rights*. BayernLB has not implemented any policies that go beyond the requirements of the *IFC Performance Standards* applicable to project finance and the environmental and social standards of the World Bank. There are no policies that address specific human rights issues such as land use, natural resources, the protection of Indigenous Peoples' rights, or the need for grievance mechanisms for individuals and communities that may be affected by the business practices of financed companies.

## apoBank

apoBank's policies on the protection of human rights are very poor (21%). While the bank is committed to respecting human rights, it makes no reference to the requirements of the *UN Guiding Principles on Business and Human Rights* or any other recognized framework in its policies. With regard to its financing decisions, there are no requirements for eligible companies, while in the case

of investments, reference is made to violations of the *UN Global Compact* as a reason for exclusion. However, this only applies to new business relationships. Nevertheless, the bank is taking steps in the right direction. apoBank is currently considering signing both the *UN Global Compact* and the *Principles for Responsible Investment*.

## Alte Leipziger

The ALTE LEIPZIGER-HALLESCHE Group's human rights policies are extremely poor (8%). Although the life insurance company refers to the *ILO Fundamental Conventions* and the *UN Human Rights Charter* in its sustainability report, it remains unclear how exactly human rights violations are to be prevented in the portfolio companies. Alte Leipziger also makes no reference to the *UN Guiding Principles on Business and Human Rights*. Through the third-party provider *BMO Global Asset Management* human rights are addressed in the portfolio companies, but beyond that there are no own requirements for the companies to protect human rights.

## Sparda-Bank West

Sparda-Bank West's human rights policies are extremely poor (0%). The bank has not yet published any guidelines for dealing with the issue of human rights and their protection. The bank explicitly denies the relevance of human rights issues for its business, as it operates locally.

# Recommendations

## HOW CAN FINANCIAL INSTITUTIONS LIVE UP TO THEIR PROMISES?

Credit transactions do not take place in a vacuum. They are requested, reviewed, authorized, and granted. The same holds true for investments. As part of their decision-making process, financial institutions thoroughly investigate or ‘vet’ a company as a prospective investment or credit customer. This procedure is also commonly referred to as due diligence. While economic performance is one criterion, it should not be the only one. The decisions made within the financial ecosystem have real consequences. They can cement poverty, exacerbate environmental crises, and perpetuate serious human rights abuses caused or contributed to by their clients and investees. However, they can also dry up sources of pollution, cut funding for those who profit from crises and spur equitable and ecological solutions in thriving societies. Financial institutions play a central role in maintaining a system in which the few make a profit on the backs of the many and the planet. By disregarding human and environmental rights in their financing and investment decisions, financial institutions hinder and prevent much-needed change.

This report shows that the policies of major banks and life insurance companies active on the German financial services market have so far been insufficient to adequately address and respond to human rights abuses by their corporate clients and investees. In practice, financing and investing in companies in the arms, food, gas, and mining sectors with a poor record of human and environmental rights violations remains widespread. Facing Finance recommends a multi-level model for financial institutions to deliver on their long-standing promises to respect and protect human rights in their business relationships:

### POLICIES

**Financial institutions should commit to zero tolerance for systematic and severe human rights abuses in all financial relationships. They should develop and implement robust human rights policies, including for critical sectors.<sup>1</sup>**

#### HUMAN RIGHTS FRAMEWORK

The *UN Guiding Principles on Business and Human Rights* are the most important globally accepted standard addressing adverse human rights impacts in the context of business activities. Their application is not limited to businesses enterprises, but also covers financial actors. Banks, asset managers and life insurance companies should **develop and implement a comprehensive human rights framework that meets the requirements of the Guiding Principles to prevent, address and remedy business-related human rights abuses in all of their financial activities.** The policies should not be limited to the provisions under which the financial institution must act, but should also address **how**

**the principles are translated into human rights due diligence** and applied to specific cases. Banks and life insurers must detail how they remedy human rights violations reported by communities affected by companies they invest in or finance. To this end, a human rights framework must establish an effective **grievance mechanism** at the operational level for both negatively impacted individuals as well as communities. Financial institutions should expect companies to have processes in place to **enable remediation of adverse human rights impacts** that they have contributed to or caused.

A recurring theme in the case studies at the nexus of business-related human rights violations are land and environmental rights, which are inextricably linked to the livelihoods of people living in communities where companies operate. To avoid conflicts, financial institutions should demand from companies to engage in meaningful consultations with local communities and obtain their **Free, Prior and Informed consent (FPIC)** for planned operations. It should be noted that women and men are often impacted differently by local business operations. Financial institutions should, therefore, demand from companies to ensure that **women are consulted and represented** in decision-making processes.

Since Indigenous Peoples have often been subject to discrimination, marginalization, criminalization, and intimidation, financial institutions should pay special emphasis to **indigenous rights**. Their role as defenders not only of their homeland, traditions, spirituality and culture, but also of nature, as well as the increasing threat they face when speaking out against harmful business practices, should generate immediate and sustained attention by financial institutions. Yet, the FPIC principle should not be limited to Indigenous Peoples only. Banks and life insurers should demand from companies that **communities with customary tenure rights** enjoy the same rights.

#### SECTORAL POLICIES: MINING

Mining is a particularly critical sector when it comes to human rights violations. The destruction of large areas of land and natural habitats, soil degradation, pollution, and water scarcity are only some examples of the extractive industry’s footprint. Financial institutions must consider potentially negative impacts of mining activities on **protected areas, biodiversity, and highly sensitive ecosystems** when entering into a financial relationship with a mining company. Financial institutions should also require companies to conduct and disclose **water scarcity** and **environmental impact assessments**. A common source of pollution, often associated with health risks, is the inadequate and risky storage of extractive waste. Also given the tragic legacy of tailings dam breaches in the past, financial institution should consider inadequate **tailings risk management** as a red line and demand transparency from companies about, among others, the locations and condition of tailings dams. Tracking, reviewing, and acting to improve storage facilities should be non-negotiable and demanded from companies by any financial institution. Similarly, companies must demonstrate how they **mitigate the likelihood of accidents and respond to crisis situations** with a contingency plan, as well as how they ensure the **recovery of ecosystems** after the closure of mines. In locations where large-scale and small-

<sup>1</sup> The Fair Finance Guide assesses bank and life insurance policies against international standards and norms on cross-cutting issues such as human and labor rights, and in the areas of mining, arms, food, oil and gas, among others. For a full list of relevant criteria, see the methodology at [fairfinanceguide.de](http://fairfinanceguide.de).

scale mining are practiced side by side, financial institutions must lay special emphasis to the situation of **artisanal miners**.

#### SECTORAL POLICIES: (OIL AND) GAS

In the oil and gas industry, there are similar risks to human rights like those mentioned under mining. Accordingly, the requirements of financial institutions for companies are comparable. For example, the protection of fragile ecosystems, the need for water scarcity and environmental impact assessments, mitigation of accident hazards and crisis management, the responsible disposal and processing of waste, including post-closure decommissioning, are also among the expectations that financial institutions should hold towards oil and gas companies. With regard to the case study in Myanmar, it must be added that companies operating in conflict areas must demonstrate that they are not causing or contributing to human rights abuses. **Banks and life insurance companies should exercise particular caution in these cases and divest from companies whose activities benefit dictatorial and corrupt regimes that violently oppress their population.**

#### SECTORAL POLICIES: ARMS

The physical destruction of Yemen and the deaths of civilians through the use of weapon systems and maintenance provided by Western companies, whose governments ironically pledge for a political solution of the conflict, show why financial institutions need decisive and clear arms policies. Even though an increasing number of financial institutions are excluding producers of nuclear, chemical and biological weapons, as well as landmines and cluster munitions, from at least parts of their financial activities, specifications on arms trading companies remain a blind spot in policies of most banks and life insurers. **Financial institutions should refrain from financial relationships with companies that supply weapons and military equipment to conflict parties if there is an overwhelming risk that they will be used to commit serious violations of human rights and humanitarian law.**

#### SECTORAL POLICIES: FOOD

The violation of the right to an adequate standard of living, particularly with respect to food, is a recurring topic among the cases studied in this report and it is not limited to the food sector. Financial institutions should expect all companies they do business with to respect and comply with the **right to food**. This includes expecting companies to **phase out so-called highly hazardous pesticides** and to **minimize the use of pesticides** in general.

## DUE DILIGENCE

Financial institutions need to regularly and carefully review both existing and potential new financial relationships with companies, taking each into consideration in the context of its wider corporate group, for potential direct and indirect human rights abuses. Such screening should identify companies that do not meet the criteria set by banks and life insurers and run counter to the principles of the *UN Guiding Principles on Business and Human Rights*.

Financial institutions should use all the resources at their disposal for a due diligence audit. They should draw on data from the companies themselves, but not exclusively. Information from research and rating agencies, experts, courts, and local and international civil society organizations or unions should be taken into account in financial institutions' human rights

assessments of companies. For both existing and new projects in the Global South, banks and life insurers should seek dialogue with impacted stakeholders, such as Indigenous Peoples affected by mining sites or workers handling highly hazardous pesticides and communities living nearby. Companies that repeatedly violate human and environmental rights, that fail to deliver on their promises or shift and dilute their targets should be subject to special monitoring. Any irregularity detected in the screening process should lead to a pre-defined follow-up within a limited timeframe. This could be a dialogue or, in serious cases, the termination of financial relations.

## ENGAGEMENT

**If companies do not meet the criteria required by banks and life insurers or do not meet them sufficiently, an engagement process should be triggered immediately.** To achieve the best possible results from such a dialogue, banks and life insurance companies should also consult external stakeholders. It makes sense to **form alliances with other investors and consortium members** to exert greater influence.

The engagement should take place within a limited, pre-defined time window. Financial institutions should communicate their expectations clearly and formalize the conditions for the continuation of the financial relationship. The objectives, measures and consequences in the event of non-compliance should be set out in an action plan and regularly reviewed. In consultation with the companies concerned, banks and life insurance companies should work to make the dialogue process as transparent as possible. At the very least, they should insist on public documentation that records the company, the theme, the timeframe, and the success – or failure – of the dialogue process. Banks should contractually stipulate that corporate lending can be made public.

## VOTING ON SHAREHOLDER RESOLUTIONS

Active voting is an important tool that can be used by institutional investors, major banks, and capital management companies to impose binding social and environmental measures on companies. However, it is still used far too rarely for such purposes. Even rejected shareholder resolutions can raise companies' awareness of important human rights issues. Investors who care about a socially just world and the role of their investments in it should use all the tools at their disposal and make active voting a central part of their engagement with companies.

## DIVESTMENT

In the event that a company breaches hard exclusion criteria or systematically violates human and environmental rights, the financial relationship must be terminated as quickly as possible with reference to unacceptable business models. In addition, if a company fails to meet the objectives defined in an engagement process within a predetermined period (e.g. 3 years), the respective bank or life insurer should announce the termination of the business relationship. In order to exert public pressure on the company in question, as well as any other company involved in controversial practices, the details and justification of the exclusion should be made public.

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## IS HISTORY REPEATING ITSELF IN CHILE?

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## DOES THE CEMENT INDUSTRY BURY HUMAN RIGHTS IN THE KENDENG MOUNTAINS IN THE REMBANG AND PATI REGIONS?

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