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STORY KAREN ABPLANALP

BLOOD MONEY

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Some might say it is just the inevitable cost of doing business bad things happen. The New Zealand Superannuation Fund (NZSF) doesn’t take that view. Its job is to invest New Zealand taxpayers’ money to help secure our retirement incomes, and it is proud of its status as a “responsible investor”.

But the Grasberg mine in West Papua, just north of Australia, presents it with a major challenge. Other UNPRI signatories, including the second-largest public investment fund in the world, the Norwegian Superannuation Fund, with assets of USD600 billion, have severed their ties with Grasberg. But not the NZSF.

“We are immensely proud of what we do around our responsible investing programme,” says Adrian Orr, chief executive of the fund. He believes that by retaining their investment in the mine, they can play a role in improving the situation in West Papua.

Yet, on the face of it, the Grasberg investment appears to be in breach of the NZSF’s own guidelines. Is the fund doing good, as Orr believes, or simply helping to prop up activities that would be illegal in this country — activities that most New Zealanders would be horrified to support, let alone make money from, if they were happening here? Do we want our pensions paid for in this way?

“FABULOUS UNTAPPED WEALTH”

West Papua is the western part of the large island of New Guinea. Freeport-McMcM into has been mining there since 1967, when it bought the exclusive concession from the Indonesian government, then led by the military dictator President Suharto.

Although Indonesia has claimed territorial control of West Papua since 1961, most Papuans are Melanesian Pacific Islanders and have mainly Christian or animist spiritual beliefs. Indonesian migrants who also live there are mostly Muslim and have an Asian culture, and look towards Java as their heartland.

There has been an active Papuan independence movement for decades. In 2003, the Yale Law School’s Lowenstein International Human Rights Clinic found what it called strong evidence of genocide against indigenous Papuans. “The historical and contemporary evidence set out strongly suggests that the Indonesian government has committed proscribed acts with the intent of destroying the West Papuans as such, in violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the customary international law prohibition this convention embodies.”

International journalists and human rights organisations are banned by the Indonesian government from entering West Papua. In October, the New Zealand-based Pacific Journalism Review produced a special media freedom report, in which it stated that in one year, there had been “two killings of journalists, five abductions or attempted abductions, 18 assaults (including repeated cases against some journalists), censorship by both the civil and military authorities and two police arrests (but no charges)”.

Comparisons with East Timor are commonly made: in that territory, according to its current government, the Indonesian military killed up to a third of the population during the war of independence from 1975 to 1999. In 2006, the US embassy in Wellington described West Papua in a cable as a “war zone”.

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"The divestment is a form of failure" "Responsible investing", as the UN calls it, is big business and growing fast: Adrian Orr says it’s hard to keep count of the investors signing up to the UNPRI. The current figure is 900, and between them they manage assets of up to $US30 trillion. That’s $13,000,000,000,000,000. In Orr’s words, it’s “a lot of dough”.

The NZSF, like many funds, invests on the basis of a global portfolio list which it customises to its own requirements. The UNPRI guidelines provide ethical tools that help with this. The first is legality: whether it is legal for the company to make the things it makes. Orr explains that the fund has no money in cluster bombs, for example, because they are illegal.

A second test relates to whether engagement with the company might realistically lead to ethical improvements. The fund no longer has exposure to tobacco companies; it has been accepting that in ethical terms there has money in tobacco companies either, ethical improvements. The fund no longer

Anne-Maree O’Connor, head of responsible investments with the fund, says that the ethical “clean” investments — it also impure world, the UNPRI doesn’t favour just prejudice to New Zealand’s reputation.”

"Legally, we are mandated to have concern for New Zealand’s reputation in the global community," he says. "We are not here with engagement, you may choose to divest. If there is an action that is clearly in breach of what your environmental, social or governance standards are and you are in a situation where you can’t get them to change, or you see you are not going to be able to make the change, or that it is just illegal outright, then you divest.”

And that’s the fourth test: once you’ve engaged, you need to know you really can make a difference. How does the NZSF do this?

When the fund makes a decision on engagement, it applies its own standards, notably, at Grasberg, relating to human rights, corruption and the environment.

"The hard core troops of Indonesia" NZSF standards on human rights: To support and respect human rights; no complicity in abuse. In September this year, around 8000 Grasberg miners went on strike, asking for a pay increase. Although the strike was legal under Indonesian law, Freeport responded on October 8 by bringing in other workers to replace the miners — an act that was illegal under the same law. The miners tried to blockade the mine and that is when the Indonesian paramilitary police, who receive payments from Freeport, opened fire and killed two of the workers. It is unclear whose orders the troops were following. West Papua is currently in a state of widespread unrest and there have been many other recent instances of paramilitary action against groups of civilians, including, on October 19, an attack on the unarmed third Papuan People’s Congress. On that occasion, six people were killed and hundreds more detained. Seventeen people are still missing and presumed dead, and allegations of torture are currently being investigated.

The Yale Law School report in 2003, three years before the NZSF invested in Grasberg, had already documented human rights abuses in the region. "The Indonesian military and security forces have engaged in widespread violence and extrajudicial killings in West Papua. They have subjected Papuan men and women to acts of torture, disappearance, rape, and sexual violence, thus inflicting serious bodily and mental harm."

Amnesty International Indonesian researcher Joseph Reocardt says: "The Indonesian military have a history of committing human-rights abuses and should not be involved in providing security for the Grasberg mine." Dr Denise Leith, who spent five years researching Freeport’s activities for her book The Politics of Power, Freeport in Indonesia’s Papua, agrees. She says the relationship between the mine and the state security forces is difficult. Those involved at Grasberg include "the hard-core battle-trained troops of Indonesia", trained in unconventional warfare and counter-insurgency.

"If Freeport now tried to distance themselves from the Indonesian military, or tried to withdraw payments [to it] the Indonesian military, I would imagine (the military) would do what they have always done, and they would cause trouble for Freeport, whether it is killing traditional people, or cutting the slurry line... There are many ways they can do it and these are the ways they usually do it."

The reason? The region has enormous untapped wealth. "The reason? The region has enormous untapped wealth."

In 2010, the mine produced 5777 ounces of gold and 167,2 tons of copper a day. It owned and operated by a company called PT Freeport Indonesia, a subsidiary of Freeport-McMoRan, a giant American company, and Rio Tinto, the British/Australian conglomerate (which also owns the BHP aluminium smelter). The Indonesian government retains a 9.4 per cent interest.

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So, the problem is not just that Freeport’s security forces have been involved in killings, but that it is likely Freeport does not have control of those forces.

I asked Adrian Orr and Anne-Maree O’Connor if the killings changed anything for them. Orr: “They work in an incredibly volatile area.” O’Connor: “It shows the situation they work in is really difficult.”

But doesn’t the company pay the police and military for security? Orr: “The company doesn’t have a contract to say, ‘Do and do this behaviour’... The company has a security contract.”

Later, O’Connor provided a further response. “Because an issue is particularly challenging, and seemingly intractable, is not in itself a reason to avoid engaging with companies. In fact, it may be the very issues that investors should focus more on, within their own resource constraints.”

But, she added, “We expect Freeport-McMoRan to itself act in compliance with..."
THE POLICE AND THE MILITARY ARE ENGAGED IN A TURF WAR OVER WHO WILL CONTROL THE ILLEGAL ACTIVITY, AND THAT DRIVES THE VIOLENCE.

Joseph Benedict from Amnesty International adds that there are allegations the military and police create security incidents in order to secure payments, and that this further compromises the safety of the people of West Papua. “The Indonesian military act with impunity,” he says.

Freeport has recently come under Indonesian media pressure for illegal payments, forcing the police to admit receiving “lunch money” of $14 million a year from the company. Freeport has responded with a statement that the funds are legal under the Voluntary Principles on Security and Human Rights.

Given that legality is a core issue for the NSIF, I asked Orr to comment on Freeport’s payments to the Indonesian military, which, despite the company’s claim, appear to breach Indonesian and Indonesian law, and would not be legal here either.

On Orr’s behalf, the fund’s head of PR, Paulowny, provided a circumspect response: “The is it in New Zealand?” one is we apply when we are considering excluding or divesting a company from the fund. This decision is based on what the company does — its product or service. Freeport’s service is mining, which is clearly legal in New Zealand.

“View of what good practice is for any given company is driven by international standards relevant to the company’s activity. What is legal or otherwise in New Zealand, or any other country, is of limited use when considering good practice. Not least because practices vary between countries.”

O’Connor noted that Freeport now recovers payments to the state forces in its annual reports. She says this is another improvement in the company’s practices.

THIS PROCESS IS IRREVERSIBLE

NZSF standards on the environment: A company’s damage is such that it is “inherently irreversible”, and “not just because the process has been initiated, it is irreversible and may go on for centuries.”

The Norwegian Superannuation Fund executive Anne Marie O’Connor says: “Because an issue is particularly challenging is not a reason to avoid engaging.”

Among the UN standards and where it is able, to encourage security forces involved in the protection of the mine to act according to UN standards. O’Connor says several factors give him hope. One is that Freeport has signed up to the Voluntary Principles on Security and Human Rights (VPSHR). “The issue of security forces and human rights is a challenging issue particularly for the mining sector in Indonesia,” O’Connor says, “For many critics, Freeport’s new-found human rights awareness is little more than further evidence of the company’s ability to pay lip service to corporate social responsibility and human rights principles.” Nevertheless, O’Connor insists that the VPSHR and related agreements “establish a sound basis for companies in high-risk regions to manage the associated environmental, social and governance risks to the companies themselves, to their workers and to the communities where they operate.”

Another cause for NZSF optimism is Freeport’s establishment of a “whistle-blowing” system, under which sta...
from the fund reflects our unwillingness to run an unacceptable risk of contributing to grossly unethical conduct. The [Norwegian] Council on Ethics has concluded that Rio Tinto is directly involved, through its participation in the Grasberg mine in Indonesia, in the severe environmental damage caused by that mining operation. There are no indications... the company’s practices will be changed in future.”

I asked why the New Zealand Fund did not pull out when the Norwegians did. O’Connor replied that different ethical principles and laws apply to New Zealand from those in Norway.

“A NICE SET OF HIGH-LEVEL PRINCIPLES”

Less than $20 million: why do they bother? Because there are bigger issues at stake.

On November 15 this year, the New Zealand Trade Minister, Tim Groser, and his Australian counterpart, Craig Emerson, welcomed a new member to the ASEAN-Australia-New Zealand Free Trade Area: Indonesia.

Groser called Indonesia “one of our most important trading partners” and Emerson said, “Indonesia’s importance to Australia and New Zealand will only grow.”

Does that help explain the reluctance of the NZSF to divest from Grasberg? Right through the 24 years of East Timor’s struggle for independence, the New Zealand government was loath to criticise Indonesia, even when New Zealanders were known to have been murdered by Indonesian troops. Is the same thing happening here?

Not according to Adrian Orr: “It is important that you separate matters of government — nation states, laws, trade, etc — and our operation within those laws... We do not make laws, or trade negotiations, or anything else. We are simply an investment institution operating with the highest integrity within current laws and abiding by international UNPRI standards.”

Not to mention New Zealand law. As Orr mentioned earlier, he and the other Guardians of the Fund are required (under the New Zealand Superannuation and Retirement Income Act) to manage the funds in a way that “avoids prejudice to New Zealand’s reputation as a responsible member of the world community”.

I asked Prime Minister John Key if he thought the Grasberg investment could damage that reputation. He replied: “NZ Super Fund investment decisions are matters for the Guardians of the Fund. I believe ethical or responsible investment policies are important for organisations like the NZSF, and I am advised that their approach is regarded as best practice.”

Best practice? Orr: “The United Nations’ Principles for Responsible Investment give us this nice set of high-level principles that we can say globally, these are agreed global best practices.”

Dr Robert Howell, chair of the Council for Socially Responsible Investing, says that’s meaningless. “The problem with the UNPRI is that you can be signed up for this, and yet still be invested in a whole variety of companies that I would consider to be unethical, and yet you get the tick from the UNPRI... It doesn’t actually mean anything.”

The NZSF’s stake in Grasberg is a touchy subject. Several leading investment experts, including commentators and responsible-investment experts, told me they were “unable to assist with inquiries about the Super Fund and Freeport-McMoRan and Rio Tinto”, or were simply unwilling to speak publicly.

The fund, they said, was simply too large and the investment community here too small: “No one will go on the record,” said one fund manager, “because they all want the Super Fund’s business.”

Even some NGOs were unwilling to comment publicly.

“THIS IS JUST TOO HARD”

Adrian Orr doesn’t argue that the mine is run well, from an ethical standpoint, and has no real answer to the charges that it fails the NZSF’s own standards on human rights, corruption and environmental harm. But he values our status as a Pacific nation and he believes in engagement.

And yes, there has been progress. But it is only in the sense that more things are being reported — which, in the absence of independent auditing, is not at all the same thing as transparency. The NZSF has not been able to point to practical gains.

I talked to Brother Budi Hernawan, a Franciscan friar who has lived in West Papua for 14 years and whose friary was attacked on October 19 by security forces hunting for members of the Papuan People’s Congress who had escaped the shootings earlier in the day.

“I don’t see any significant progress on human rights compliance by Freeport. Violence and death remain a puzzle for many people. Let alone the environmental degradation and social destruction resulting from the dynamics of a mining town.” That sounds like an argument for divestment.

But, when I asked if him if he thought the NZSF should pull out of Grasberg, he replied: “Many West Papuans around Freeport mine called on the company to leave a long time ago. But nobody listened to them... If New Zealand can persuade Rio Tinto to pull out, that might have a bigger impact on Freeport.”

Which sounds more like an argument for engagement. Except that investing in Grasberg in order to persuade its owners to pull out or close the mine is not on the agenda of the NZSF.

Orr: “At some point, if there is a clear breach and you are not getting the changes needed, over a period that you think is meaningful, then of course eventually you have to say, ‘We’re out, this is just too hard.’”

Not there yet, apparently.