

The Grasberg mine in West Papua contains the largest single gold reserve in the world, and the largest copper deposit as well.

BLOOD MONEY

On October 10 this year, Indonesian police assigned to protect the world's largest gold and copper mine opened fire on striking miners, killing two. The miners were unarmed and their strike was legal.

Since this incident, five more miners have been killed in suspicious circumstances.

It was the latest incident in a long line of human rights abuses, not to mention ongoing environmental devastation, associated with the mine.

The New Zealand Superannuation Fund, which is a signatory to the United Nations Principles for Responsible Investing (UNPRI) charter, has shares in the enterprise. Why?

STORY KAREN ABPLANALP

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 \$US6.40 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-McMoRan 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 to destroy 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 in many places”, noting also: “It has all the makings of the next East Timor, except that this time Jakarta will not let go.”

The reason? The region has enormous investment potential and “fabulous untapped wealth”. The cable added that “the huge Freeport gold and copper mine is the largest taxpayer in Indonesia”. Grasberg’s annual tax bill is \$US1.4 billion.

In 2010, the mine produced 5377 ounces of gold and 1651 tons of copper a day. It’s 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 Bluff aluminium smelter). The Indonesian government retains a 9.4 per cent interest.

“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 \$US30,000,000,000,000. 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 tests 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 is whether engagement with the company might realistically lead to ethical improvements. The fund no longer has money in tobacco companies either, having accepted that in ethical terms there is no such thing as a good cigarette.

A third test relates to our own reputation. “Legally, we are mandated to have concern for New Zealand’s reputation in the global community,” says Orr, “so we invest to avoid prejudice to New Zealand’s reputation.”

Assuming these conditions are met, the UNPRI approach is to “engage”. In an impure world, the UNPRI doesn’t favour just the ethically “clean” investments — it also encourages investments where it’s possible to effect positive change. “Typically,” says Anne-Maree O’Connor, head of responsible investment for the NZSF, “engagement activity involves making a company aware of relevant international standards and encouraging them to adapt their activities accordingly.”

The NZSF approach has its critics. Green Party leader Russel Norman, who has campaigned on NZSF investments, says: “In order for engagement to be effective, it needs to carry a credible threat of divestment, which the NZSF has shown time and again it does not have. The divestments they have

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made in regard to tobacco, cluster munitions and nuclear weapons manufacturers have only come as a result of an enormous amount of public pressure.”

Freeport is important to the NZSF, although not because of the money: it’s got less than \$20 million invested in the mine. There are bigger issues at stake.

Adrian Orr: “This issue is in what we consider our own backyard, which even though it is a small amount of dough, as a proportion of our fund, we are saying, ‘Well, this is the type of thing that we could take a lead on and be engaged directly with this company.’”

It’s not, says Orr, “us turning up to Freeport with a wet bus ticket [saying], ‘Hey, we own 0.001 per cent of your company, you be warned.’” Instead, they value the strength in numbers they gain through the UNPRI.

“You have some meaningful big-hitters who you can collaborate with to influence positive change. It’s the only way. The alternative is to walk away. Mining is still going to be mining, we don’t know what capital will replace our capital, and we don’t know what standards that capital will bring with it. Walking away is an admission of ‘We can’t make a difference.’”

In other words, he believes a goldmine in the developing world can be a very good option for a relatively small responsible investor like NZSF, because it provides an



Striking Grasberg miners and police confront each other on October 10, shortly before the police shot and killed two miners, including Petrus Ajamiseba, below.

opportunity to join with others to make the world a better place.

The NZSF has supported a move to have an environmental expert appointed to the board of Freeport McMoRan, but the bid gained only 30 per cent support and failed.

Sometimes, Orr acknowledges, walking away can be the right thing to do. “We see divestment as a form of failure,” he says, “but at some point, if we are just not getting there 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 that?

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 abuses.

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 10 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 causing serious bodily and mental harm.”

Amnesty International Indonesian researcher Joseph Benedict 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 Suharto’s Indonesia*, 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] 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.”

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.”

Didn’t those killings breach the fund’s own standard of legality? O’Connor: “It is not the company [doing the shooting].”

But doesn’t the company pay the police and military for security? Orr: “The company doesn’t have a contract to say, ‘Go 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 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 them 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 resources sector and has therefore been the focus of considerable attention from NGOs [non-governmental organisations], companies, investors and government bodies. One outcome has been the VPSHR, which has companies, including Freeport, and NGOs working constructively together.”

Those NGOs are not all as keen on the VPSHR as she is. Patrick Holmes from Amnesty International: “Voluntary principles on security and human rights are great in terms of providing a platform to guide the operation of companies to the promotion and protection of human rights. However, it is voluntary to sign up to the principles and voluntary to fulfil them. We should be able to hold these companies to account for breaching people’s fundamental human rights, [but] the voluntary principles do not provide the legal mechanism to do so.”

Shell Oil, recently accused by a British *Guardian* investigation of fuelling human rights abuses by paying “huge contracts” to Nigerian armed militias, is a VPSHR signatory.

Dr Chris Ballard, who has studied human rights in the mining sector in Indonesia, 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: Freeport has established a “whistle-blowing” system, under which staff can complain to the company about abuses.

In 2009, only two cases were reported. O'Connor: “Once they got the protection of the whistle blower more enforced, they had more cases coming through.”

The next year, there were five complaints. I asked Frans Okoseray, a member of

NZ Superannuation Fund executive Anne-Maree O'Connor and CEO Adrian Orr. O'Connor says: “Because an issue is particularly challenging is not a reason to avoid engaging.”

the PT Freeport Union Board, about this. He said: “There is a human rights officer in PT Freeport Indonesia, but they are not independent. They are employed by Freeport. We can only ask for assistance from human rights protection agencies outside the company.”

O'Connor is also pleased Freeport provides human rights training to employees.

Okoseray is sceptical about that too: “Human rights training is often done in Freeport Indonesia, but it is just a formality, there is no real practice in the field.”

The last independent human rights audit on Freeport was in 2007.

“A LONELY, HORRIBLE EXISTENCE”

NZSF standards on corruption and bribery: to be anti-corruption; to work against corruption. The Freeport contract for security is with the police and includes the use of their paramilitary wing, known as the Mobile Brigade or Brimob. Freeport has also made payments for security to the military.

Denise Leith points out that it is illegal in

Indonesia “for people of a foreign country, as it would be in any country, to pay money to its police or military, and it is illegal under US law for US citizens to be paying money to the police or military of another country”.

It’s possible Freeport doesn’t choose to hire state forces for security, but that its hand is forced by the government. Leith: “I believe Freeport would dearly love the Indonesian military to go. They cause them a huge amount of trouble and cost them a huge amount of money. But they won’t go, because to be posted around the Freeport concession is a very, very lucrative position.”

The region is rife with illegal activity, including stealing from the company, illegal gold panning in the tailings, prostitution, drugs and the export of exotic animals. Leith says military and police personnel are heavily involved in all this, and the company cannot complain because there is no one to complain to.

“It is a lonely, horrible existence there. The Indonesian military personnel have this mind-set that Freeport owes them, and Freeport needs to pay them.”

To make matters worse, Brimob and the military are engaged in a turf war over who will control the illegal activity, and that drives a lot of the violence.

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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 \$US14 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 NZSF, I asked Orr to comment on Freeport’s payments to the Indonesian military, which, despite the company’s claim, appear to breach Indonesian and American law and would not be legal here either.

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

“Our 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 records 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 precautionary approach; act to promote greater responsibility; encourage environmentally friendly technologies.

The Yale Law School report linked environmental destruction and its effects on West Papuan people: “Systematic resource exploitation, the destruction of Papuan resources and crops, compulsory (and often

uncompensated) labor, transmigration schemes and forced relocation have caused pervasive environmental harm to the region, undermined traditional subsistence practices and led to widespread disease, malnutrition and death among West Papuans.”

Dealing with waste is just one of the environmental issues confronting the mine. Freeport uses “riverine disposal”: 230,000 tonnes of tailings, much of it toxic, is discharged into a natural river system every day. This practice is not accepted internationally, and according to the Norwegian Superannuation Fund, Indonesia and Papua New Guinea are the only countries that still allow it.

The Norwegian fund found that “waste rock overburden is forecast to reach three billion tonnes during the mine’s lifecycle. This waste rock results in the generation of acid water containing heavy metals, which may lead to considerable pollution of groundwater and water systems. Once this process has been initiated, it is irreversible and may go on for centuries.”

O'Connor says they have made gains. “This raised an issue for us — if copper is the most toxic to aquatic life, then the company should publish copper levels in its effluent in its main public reporting. In the 2008 report, they report effluent indicators for Europe and North America but not Indonesia. We then raised the issue with the company. If you then look at Freeport’s 2009 report, they included Indonesia. A partial but not full step toward what we raised with them.”

O'Connor notes that Freeport is now a signatory to the ISO 1400 environmental standard, but whether it meets the standard (to be decided in 2012) will be largely based on its own internal assessment. “Reputable third-party audits are not required.”

Actually, that’s true for most things at Grasberg. “It is good practice if a company gets their reports independently audited or verified,” says O'Connor, “but it is not the role of a shareholder like us, who have very small holdings in that company, and it is impossible in fact for us to get verification of their report.”

She says we should remember Freeport is working under Indonesian environmental standards, and Orr adds that “what is legal in Indonesia may not be legal here”.

The Norwegian Superannuation Fund considered this view, and noted: “Lenient legislation in a country does not automatically justify a heavy environmental burden if the damage is considerable.”

It was environmental damage that spurred the Norwegians, after years of investigation, to divest from both of Grasberg’s principal owners, Freeport in 2006 and Rio Tinto in 2008. Announcing the latter decision, the Norwegian Finance Minister, Kristin Halvorsen, said: “Exclusion of a company



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

Thousands of workers from Freeport-McMoRan's Grasberg mine protest in April 2007 in the town of Timika, Papua.

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

NO ONE WILL GO ON THE RECORD, SAID ONE FUND MANAGER, BECAUSE THEY WANT THE SUPER FUND'S BUSINESS.

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.