

Dutch Banking Sector Agreement
on international responsible business conduct regarding human rights

Monitoring Committee
Final Monitoring and Progress Report
13 July 2020

I.	Introduction	01
A.	Acknowledgements	01
B.	Timeline	01
II.	Adhering Banks	04
A.	Preliminary considerations	04
B.	Banks' key and non-key deliverables 2019	05
III.	Joint Commitments and Working Groups	16
A.	Joint Commitments	16
B.	Working Groups	20
IV.	Parties	24
A.	Nederlandse Vereniging van Banken	24
B.	Government	27
C.	CNV	33
D.	FNV	35
E.	Amnesty International	37
F.	Oxfam Novib	40
G.	PAX	44
H.	Save the Children	48
V.	Concluding observations and recommendations	51

I. INTRODUCTION

A. Acknowledgements

1. This is the final report of the independent Monitoring Committee for the Dutch Banking Sector Agreement on international business conduct regarding human rights ('DBA'). In this report, the Monitoring Committee reviews the results of the DBA that entered into force on 7 December 2016 and expired on 6 December 2019.
2. According to par. 13.2 DBA, it is the task of the Monitoring Committee to monitor the quality and quantity of the input and the progress made by the parties and the adhering banks in carrying out the activities as agreed upon, based on the principles of reasonableness and fairness (*redelijkheid en billijkheid*) and to report on a confidential basis to the Steering Committee on its findings.
3. The Monitoring Committee was composed of Ms Christiane Colinet, Attorney at Law at the Bar of Brussels and the Bar of Florence, Mr Hans Voortman, retired banker and supervisor, and Mr Cees van Dam, Professor of International Business and Human Rights at the Rotterdam School of Management, Erasmus University. They were appointed by the Minister for Foreign Trade and Development and the Minister of Finance upon a binding nomination by the Steering Committee.
4. The Monitoring Committee would like to commend the parties, the adhering banks, the Steering Committee and its Independent Chair, professor Jacqueline Cramer, on the considerable time and energy they have invested in completing the deliverables under the DBA. It would also like to thank the parties and the adhering banks for their detailed reports, which was as seriously time consuming as it was for the Monitoring Committee to digest them in order to draw its conclusions and recommendations.
5. A special word of thanks goes to the SER secretariat as the quintessential and indispensable part of the IRBC Agreements, for its generous, knowledgeable and kind support for the parties, the adhering banks, the Steering Committee and the Monitoring Committee.

B. Timeline

6. The Agreement holds provisions on measuring the progress the parties and the adhering banks make by carrying out three annual surveys and a final monitoring report on the overall progress. After signing the Agreement, the parties and the adhering banks agreed to carry out an additional baseline survey ('nul-meting'), in order to document the state of affairs at the parties and the banks as on 7 December 2016.
7. In November 2017, the Monitoring Committee submitted its report regarding this baseline survey.
8. In Q1 2018, the Steering Committee agreed the survey questions for Year 1 reporting, introducing a distinction between Deliverables and so-called Thermometer Questions, i.e. commitments for which the deadline was set for later than 2017. In order to facilitate the reporting of Parties and Adhering Banks, a webtool was conceived to collect the answers and documents given as support

to answers. Parties and Adhering banks received the survey and submitted their answers on the webtool in March and April 2018 to be assessed.

9. The Year 1 Draft Monitoring and Progress Report, with its recommendations, was delivered by the Monitoring Committee on 28 May 2018. After answering questions asked by the Parties and Adhering Banks, the Monitoring Committee sent its final report, as well as a summary for publication to the Steering Committee on 5 July 2018.
10. On 9 August 2018, the Year 1 report was published on the DBA-site (part of the IRBC Agreements site), including a summary of the Monitoring Committee's report, answers by the Steering Committee to the Monitoring Committee's recommendations, as well as an analysis of the cocoa sector value chain and the first results of the palm oil value chain.
11. On 2 November 2018, a stakeholder meeting on the DBA and its progress report was called by the SER. Two workshops were organised on the basis of the work done in the working groups: one on the cocoa sector value chain and one on increasing leverage.
12. After its annual evaluation meeting in September 2018, the Parties and Adhering Banks decided to have an Assessment Framework developed by an independent consultant appointed by the SER on behalf of the Parties and Adhering Banks.
13. The scope of this Assessment Framework, developed in Q1 2019 and relating to the DBA requirements for Adhering Banks, was to identify sufficiently objective criteria based on the DBA and agreed by all relevant DBA Stakeholders, to streamline the evaluation process, allowing banks to self-assess their fulfilment with DBA requirements, and providing them practical guidance.
14. The agreed Assessment Framework reviewed the Survey questions, removed redundant questions and reformulated questions not sufficiently aligned to the text of the DBA (section 5). The Assessment Framework further distinguished between key and non-key deliverables among the DBA requirements to be progressively fulfilled by Parties and Adhering Banks (section 3). It provided guidance by offering indications to interpret the criteria of reasonableness and fairness to be applied by the Monitoring Committee in monitoring the progress made by the Parties and Adhering Banks. It especially introduced a distinction between two type of banks: Type 1 and Type 2 (section 3.3.1). Type 1 banks are banks active in project finance whereby the projects financed are located outside the EU and/or provide corporate loans to clients that operate in high risk sectors outside the EU and/or are having extensive value chains outside the EU. Type 2 banks do not meet these criteria. This distinction implies different actions through which banks achieve DBA requirements, as explained in the tables reported in section 6 of the Assessment Framework.
15. The final version of the Assessment Framework was communicated in late March 2019. In April 2019, the webtool was amended. In early May 2019, the Parties and Adhering Banks filed their answers, providing a self-assessment of the progress they made in implementing their DBA commitments, using the guidance given in the Assessment Framework.

16. The Monitoring Committee submitted its Year 2 report in July 2019. It was published online by the Steering Committee in September 2019.¹
17. The reporting for this final report was carried out using the same webtool and the same procedure as for the Year 2 reporting.
18. The Monitoring Committee accurately analysed the quality and the quantity of the answers given to the questionnaire and the supporting documents. The analysis of the deliverables completed by each single party and adhering bank in the fulfilment of the DBA requirements has been made through the lens of reasonableness and fairness according to par. 13.2.a DBA, and as further developed in the DBA Assessment Framework.
19. This final report of the Monitoring Committee provides assessments of the achievements by the Adhering Banks (II), the Joint Committees and Working Groups (III), and the Parties (IV). The last chapter holds the general observations and conclusions (V).

¹ <https://www.imvoconvenanten.nl/en/banking/news/banking-second-annual-report>.

II. ADHERING BANKS

A. Preliminary considerations

20. Of the original 13 banks who signed the DBA in 2016 and actively participated in the review, ASN Bank incorporated into the Volksbank, FGH into Rabobank (see 2018 MC Report n° 19), ASR Bank (a 100% subsidiary of ASR insurance company) quit its participation in the DBA as a consequence of ASR's participation in the IMVO agreement for the insurance sector (cf. 2018 MC Report n°20) and Intesa Sanpaolo Bank Luxembourg - Amsterdam Branch interrupted its active participation in the Agreement and its requirements (cf. 2019 MC Report n°18). This Year questionnaire has thus been completed by 10 banks. These 10 adhering banks actively participated in all the activities of the DBA during its working period.
21. The Assessment Framework developed in Q1 2019 (cf. 2019 MC Report § 2) introduced a distinction between two types of banks: Type 1 and Type 2 (section 3.3.1. of the Assessment Framework). This distinction does not imply for any of the Adhering Banks that they do have to meet the DBA requirements but it grants T2 banks some more flexibility in the process of achieving the DBA requirements. As stated in last year's monitoring report (§ 20), this distinction is, in any case, not exclusive of other exercise of reasonableness and fairness in the monitoring process.
22. Generally speaking, the way adhering banks have been implementing the DBA requirements varies according to different factors. First, this regards the more or less advance starting point, which was observed in the Monitoring Committee Baseline Survey (November 2017). Second, factors like the size of the bank, the range of activities and the number of staff dedicated to human rights policies and practices enter into consideration. Third, all Banks have their specific identities and ways of working, which colour their approach and way of handling questions, problems, challenges and dilemmas.
23. This Year 3 monitoring focuses obviously on the achievements of DBA Year 3 key and non-key deliverables as formulated in the survey questions agreed by the Steering Committee and reviewed by the Assessment Framework. Moreover, as it was also DBA's last year, it is essential to make an overall evaluation of the work done over the three years' period of DBA, the mission of the Monitoring Committee being to "monitor the quality and the quantity of the input and the progress made by the Parties and the adhering Banks in carrying out the activities as agreed upon" (par. 13.2.a DBA).
24. After considering Year 3 reporting and documents produced by the Adhering banks, the Monitoring Committee is pleased to note the significant efforts made and underlines the evident progress reached by all Adhering Banks in the fulfilment of the commitments they agreed upon when signing the Agreement. This does not mean adhering banks have now reached a full compliance with their commitments under the DBA. It is indeed recommended to keep well in mind that the level of commitment to respect human rights should never be static and that respect of Human rights is not a question of formal proclaims with fancy words but always needs to be kept alert and effectively embedded in all aspects of the banks' operations.

B. Banks' key and non-key deliverables 2019

a. Introduction

25. The Key Deliverables for 2019 relate to all DBA commitments. According to the *Assessment Framework* and the essentially progressive implementation of the DBA commitments, Key Deliverables are indeed cumulative and last years' Key Deliverables are thus also reviewed this year.
26. Substantially, Key Deliverables that are subject to the monitoring are: (a) the human rights policy commitment (par. 3.1 DBA); (b) the existence of whistle Blowing mechanism (par. 3.4 DBA) and complaints' procedure (par. 3.5 DBA); (c) the human rights due diligence & client engagement (par. 4.3 DBA); (d) preparatory work for reporting to enhance transparency (par. 6.4 DBA) and (e) to enable remediation bank's leverage for grievance mechanism at client level (par. 7.3 DBA).
27. Non-Key Deliverables, which are less prescriptive questions that allow more open answers, complement the Key Deliverables. They will thus be analysed under the relative DBA commitments and their deliverables.

b. Human Rights Policy Commitment (par. 3.1 DBA)

Public Policy statement to respect Human Rights (par. 3.1.a DBA)

28. According to par. 3.1.a DBA, the adhering banks should reflect their commitment to respect human rights, in conformity with the OECD Guidelines and the UNGPs.
29. According to the UNGPs and OECD Guidelines, statements of policies should be approved at the most senior level of the business enterprise. They should be informed by relevant internal and/or external expertise. They should stipulate the human rights' expectations of personnel, business partners and other parties directly linked with bank's operations and services. These statements are supposed to be publicly available and communicated internally and externally to all personnel and relevant parties or business partners. The policy commitment should be reflected in operational policies and procedures embedded throughout the business enterprise.
30. This provision was a key deliverable in 2018. All adhering banks did already comply with the provision except for three T2 banks, declaring last year that some aspects of the provision were not applicable to them. The following considerations sum up the situation taking into consideration this year's updates.
31. According to par. 3.1.a, all adhering banks have a policy commitment to respect human rights. This commitment is generally part of the banks' more general sustainability policy. While some banks formulate their human rights policy as a chapter of their sustainability policy statement, the other adhering banks have a stand-alone human rights policy statement. In formulating their statements, some banks focus more on the need for their clients to respect human rights than on their own responsibility. The Monitoring Committee would recommend each Adhering Bank to pay major attention to formulating its Human Rights Policy commitment as this kind of statement is a flag that identifies the Bank's position.
32. These policy commitments expressly refer to UNGPs and OECD Guidelines, except for one bank

that does not expressly refer to UNGPs and for one bank that does not expressly refer to OECD Guidelines. Seeing that UNGPs and the OECD Guidelines are aligned standards (cf. MC Year 2 Report § 22), the Monitoring Committee has considered such difference to be not relevant as to the substance of the expressed commitments. A formulation including express reference to both UNGPs and OECD Guidelines would however be more coherent with par. 3.1 DBA.

33. All Banks active in project finance, except for one bank due to her kind of clients and geographical range of action, have expressly committed to the application of Equator Principles. One bank which is not yet a member of Equator Principles, declares to apply IFC PS 7. As to the importance of a common understanding on concepts, it has to be noted that the former uses the term “project finance” for a financing technique applied for financing projects of stand-alone entities (SPV's).

Information on activities individual banks will not finance or invest in (par. 3.1.b DBA)

34. According to DBA 3.1.b, in their policy statements all adhering banks must give information on activities they will not finance or invest in. Some focus on major risks sector (such as controversial weapons, tobacco manufacturing) or activities (such as production and/or trade or use of unbounded asbestos fibres). All banks refer to very sensitive human rights issues, like child labour and modern slavery, living wages, healthy and safe work environments. Some banks also publish very detailed lists of companies with whom business is excluded or avoided. This key deliverable was already completed last year by all adhering banks.

Public policy statement on human rights due diligence procedure (par. 3.1.c DBA)

35. The policy statements refer basically to the existence of internal due diligence procedures in order to check clients' compliance with banks' commitments and that is applied to existing or new clients. Human rights due diligence has become part of clients' due diligence. It is generally part of the Environmental & Social risks' assessment according to the bank's sustainability framework. Reference is also made to clients' suppliers (most probably after the outcomes of DBA value-chains working groups). Adhering banks expressly commit to extend the application of their Human Rights' standards to their suppliers or their business partners. As for themselves, the commitment is generally focused on employees' rights. Some banks also stress the importance of stakeholders' engagement and of protection of human rights defenders. Several policy statements have been updated recently. This year all adhering banks meet the par. 3.1.c DBA requirement.

Public policy statement on sector/theme policies for high risk sectors (par. 3.1.d DBA)

36. All banks have some statement on sector/theme policies with specific screening for adverse impacts of human rights violations. Not all banks refer to them as “high risk”. three T2 banks declare the provision not applicable, explaining they do not do business in high risk countries; they do not seem to have developed further indications on the standards or parameter they would follow, but for a general reference to their due diligence assessment. In these policy statements, sectors showing potential high human rights as well as Environmental & Social risks are energy (oil, gas, coal, dams and hydro-power), Agri-commodities, chemicals, defence, extractive industries (mining and metals), manufacturing (such as textile, wood products, electronic devices), ship recycling and transportation. Results from the working groups' value-chain studies have helped focus some human rights themes to keep under close watch: unfair wages, child labour, unsafe working conditions, exploitation or forced labour, gender discrimination, land expropriation. Banks are developing more specific policies in these sectors in direct relation to their core business. A specific theme policy statement developed by all T1 banks relates to land governance and indigenous peoples' rights.

Observations Monitoring Committee

37. Even if the way banks communicate their policy commitment is very different, they certainly reflect an embedment of the commitment in the day to day functioning of the banks, seemingly proportionate to their nature, dimension and range of action. More detailed policy statements usually reflect more developed due diligence procedures.
38. Over the three years running time of the DBA, even though the initial differences in formulating their policy commitment were rather big between adhering banks, it is interesting and encouraging to note the positive evolution versus a more articulated expression of their policy commitment by all adhering banks. Banks that last year did not fulfil the DBA requirements in relation to their human rights policy commitment have worked toward adapting it in order to better comply with the requirements of par. 3.1 DBA. Earlier advance statements still do not follow precisely the wording of par. 3.1 DBA. For instance, they did not use both references to UNGPs and OECD Guidelines on RBC or using terms like ‘sensitive’ sectors instead of high-risk sectors or “theme policies with high risk transactions”, whereas theme is more related to projects (as Hydro-power plants). In the perspective of sending a common message from all DBA adhering banks and contribute to reinforce their common leverage playing field, the Monitoring committee would recommend an updating of the phrasing of the Banks’ Human rights policy statements in order to show an international policy coherence.
39. In the open *non-key deliverable question about eventual improvements to the bank's human rights policies* (par. 3.2 DBA), most banks state to have improved or completed their policy statements on the basis of the exchanges having taken place, especially in the different working-groups. This is an expression of the mutual learning process developed under the DBA.

c. Complaints and Whistle Blowing mechanisms (par. 3.4 and 3.5 DBA)

Whistle Blowing mechanism for staff (par. 3.4 DBA)

40. All banks have a whistle blowing mechanism for their staff. If the adhering bank has subsidiary companies, the mechanism is extended to its staff. One bank specifies, however, that its subsidiaries outside the Netherlands will develop their own whistle blowing policies (based on local regulations). Four banks have recently updated their mechanism. Three banks clearly insist on the difference to be made between work related complaints (and their specific handling) and whistle blowing mechanism.

Complaint procedure publicly accessible for employees, clients and third parties (par. 3.5 DBA)

41. Even though with different levels of quality, all banks have been complying with this DBA provision since DBA Year 1. The complaint procedure is either under a pre-set or a free format and the banks' site provide different channels of access: email address, telephone number and mailing address. It is sometimes difficult to find the link: some banks have it on *the homepage* or under *home/contact*, other under *particulieren/klachten*, others under *corporate responsibility*, others under *governance/reporting irregularities*. Not all banks provide information on the various steps of the complaint handling procedure and a timetable for answering. Only 3 banks mention expressly a violation of human rights as a ground for complaints. One bank makes a distinction between general complaints (treated internally) and project related complaints for which this bank, together with the *Deutsche Investitions- und Entwicklungsgesellschaft* (DEG),

has created a specific *Independent Complaints Mechanism (ICM)*, operational since January 2014.

Observations Monitoring Committee

42. It is certainly not necessary to point out the importance of these complaint and whistle blowing mechanism as ingredients in the working of due diligence procedures. Quality of complaints handling also offers a good opportunity to facilitate the identification of malpractices and rights' violations and alert the corporate structure of recurrent or systemic problems. Reporting on the working of these grievance mechanisms would also enhance transparency and send a positive message to personnel, clients and third parties.

d. Human rights due diligence & client engagement (par. 4.3 DBA)

Implementation of human rights due diligence in adhering banks' operations

43. One of the more significant deliverables of DBA is the implementation of human rights due diligence in adhering banks' operations (DBA 4.1) It is important to recall that Human Rights Due Diligence is an on-going, proactive and reactive process. This working process is certainly reflected in the adhering banks' reportage. All banks show having integrated a human rights due diligence check in their clients' due diligence, sometimes distinguishing clearly lending and finance activities. One bank specifies it applies its human rights due diligence to assets not to clients but in its human rights report shows having a human rights due diligence. All banks extend their human rights due diligence to their business relationships/providers or in their role as employers, even if it is not always clearly mentioned (for instance one bank in its document on human rights policy does not refer directly to human rights violations by suppliers).
44. As acknowledged in par. 4.2 DBA, this procedure can vary in complexity with the size of the business enterprises of bank's clients, with the risk of severe human rights impacts and with the nature and the context of its operations. This is not only relevant in relation with the difference between T1 and T2 banks. A human rights due diligence is not a static nor a one fits for all standard procedure. It is not like a simple documents' check. It is a complex procedure that implies internal specific expertise and proactive engagement not only with clients but also with external stakeholders.
45. At a minimum, as indicated in par. 4.3 DBA, a human rights due diligence procedure should include the following three steps: (a) identify and assess actual and potential human rights impacts; (b) integrate the findings from impact assessments across relevant internal functions and processes and take appropriate action; (c) tracking and assessing responses. The fact that T2 banks might achieve DBA requirements through different actions than T1 banks does not imply that these 3 steps should not be materially implemented. It appears however that sometimes the 3 steps have not been clearly enucleated which leads some T2 banks declare wrongly step 2 or step 3 not applicable. This shows that the human rights due diligence process is maybe formally adopted (in the commitment) but not yet internalized at the operational level: generally speaking, effective implementation is only on the way.

Procedure to identify & assess human rights risks & impacts (par. 4.3.a DBA)

46. The procedure to identify and assess human rights risks and impacts (par. 4.3.a DBA) is, according to UNGPs, the core element of a good Human Rights due diligence procedure. It provides the

basis for understanding how to translate the human rights policy commitment into practice and it is necessary to define appropriate measures to prevent, mitigate and remedy adverse impacts. This assessment is also a continuous process due to the dynamic nature of human rights and the manifold situations in which they can be put at risk.

47. As seen in the policy commitments, most banks have developed sector specific policies in which major attention is given to some salient human rights risks and specific requirements have been set. These sector policies are often linked to core activities of the bank. Attention to specific salient human rights themes is also recurrent, like child labour or modern slavery. All banks have set a list of activities they will not finance or invest in. Some banks working abroad also have a country risk assessment.
48. Some banks have developed or are developing a specific human rights assessment tool, one bank has a Global Sustainability Risk Index, one bank uses Sustainability Criteria and one bank has dedicated HR sustainability toolkit. One bank is also trying to develop an AI tool to better assess human rights risks by small and medium enterprises. Such tools help screening standard to high risks cases in order to better focus the assessment. It appears that dialogue with stakeholders has been organized in this respect. It is the case with one bank's High risk assessment tool.
49. The important collaborative work done in the DBA value-chain working groups on palm oil, cocoa, gold and oil and gas has certainly been useful in disseminating knowledge and develop attention on the complexities of the assessment process.
50. In the assessment process, all banks declare to have an interactive and periodical client's screening, to use different sources of information and to ascertain that the client processes involves meaningful and effective consultations with potentially affected groups and relevant stakeholders.
51. The mapping of clients whose activities are potentially associated with most severe human rights is a work in progress as shown by some pilots set by T1 banks.
52. When applicable banks active in project finance declare to require their clients to ensure FPIC is carried out. In its Human Rights Report 2019 one bank acknowledges that “only a small number of companies engaged in the application of FPIC” and declares to have it added to the agenda of engagement of its clients, using its leverage proactively, during its engagement program.
53. Banks active in corporate loans declare to require the application of FPIC or the VGGT in case of land violations. As seen in the policy commitments, T1 banks have all developed specific policies on land governance or indigenous people’s rights. As for project finance the question remains the effective implementation these procedures in single cases. FPIC can be carried out in a more or less restrictive way according also to the definition given to “potentially affected groups and other stakeholders” (UNGP 18b) and the DBA focus is on promoting a broader application of FPIC (cfr. DBA 4.6). According to the Monitoring Committee, supportive data provided did however not illustrate the effective implementation of these procedures. It only evidenced that it is not at all easy to effectively have meaningful engagement with potentially affected communities conducted by bank’s client. And, as stated by one bank in her Human rights Report 2018, “it is impossible for the bank to conduct meaningful engagement with all the affected communities or the supply chain workers of all our clients”. The dilemma is that banks can be linked or contribute to adverse

human rights impacts through their financing activities. The revised EP Principle 5 (EP4) might offer some guidance where it suggests the evaluation of the consultation requirement of IFC PS 7 by a qualified independent consultant.

54. Seeing the importance of gathering external correct information, some banks are giving specific attention and care at Human Rights Defenders.

iii. Process to integrate from impact assessments across relevant internal functions and processes & take appropriate action (par. 4.3.b DBA)

55. The human rights due diligence procedure results implemented in the decision-making process of most adhering banks, with differences according to bank's nature and dimension, some bigger banks having dedicated ESR teams. In this context training of the staff to disseminate awareness of the human rights risks and develop expertise at all levels is very important.
56. The human rights due diligence is applied to new clients and to existing clients usually in the course of review of their position or when asking for new financial services.
57. It can be translated into the contractual relationship or in a special action plan, timeline bound. Most banks declare being ready to stop the relationship in case the client doesn't meet the agreed commitments or doesn't react.
58. Some interesting tools are being developed in order to better check the client's progress, as an ESG Performance Tracker, a Client Photo Process or an Impact Prism and Impact metrics. One bank has created a Watch List for clients presenting potential severe human rights risks. Another bank is developing a tool to continuously assess human rights risks at clients, matching company-level human rights violations' data with the bank's salient human rights risks.

Tracking & assessing response (par. art. 4.3.c DBA)

59. This third step implies dialogue with the client and periodical review of its commitments as well as stakeholders dialogue in order to verify if the negative impacts have effectively and successfully been mitigated. It seems that all banks focus on an active dialogue with clients.
60. Some reports on clients' engagement illustrate the positive impact of the procedure.
61. Some banks work on pilots in order to better focus their clients' engagement and increase its leverage.

Non-Key Deliverables on performing of human rights due diligence

62. On the question as to the tools used for identification of human rights risks and impacts, the answers show maturity of adhering bank as there is a mix of tools used by all banks and specific research of third parties' data sources. Apart from desk research and review of documentation given by the client, public information is taken into account, NGOs reports and specialized databases (such as *Sustainanalytics*, *RepRisk* and *BHRRC*). Field trips are organized. Research of external data happens through stakeholders' dialogue, consultation with other banks, specialists, NGOs, human rights defenders.
63. As regards the mapping of human rights' risks, all banks have been making not only sectorial mapping but often also a geographical one. It also differs according to the kind of activities

(project finance, lending, other financial service).

Non-Key Deliverable on changes induced by DBA in the bank's way of performing due diligence, and whether there has been (measurable) impacts on client's activity due to such changes

64. One bank notes that the responsibility for conducting due diligence has been transferred to the risk department, which will lead to much more capacity to conduct HR due diligence. One bank has integrated human rights due diligence in the workflow of credit processes leading to greater awareness by account managers. Another bank developed and integrated Human rights due diligence guidance, training and awareness-raising activities; through Human Rights Risk Assessment pilots it has seen that human rights risks are prioritized in terms of mitigation measures; more emphasis on stakeholder engagement and grievance mechanisms with consequent more attention and resources of clients on community engagement. One bank uses open stakeholder process to update its ESR framework, with more concrete and stronger guidance for co-workers; ESR client assessment has been expanded for corporate clients. One bank is now focused on salient risks instead of material ones; it finds it however difficult to know if its positive change is due to its own actions or to DBA as a whole. One bank has now a compliance officer reporting directly to the Chair of the managing board. One bank has increased attention and specificity to land governance issues. One bank has developed an impact management tool for further understanding and monitoring impact and has more sector specific metrics.

Observations Monitoring Committee

65. Where specific human rights reports have been produced it is easier to see that some aspects of the procedure have been implemented: often these reports evidence challenges and dilemmas, showing that implementing a full human rights due diligence is not at all an easy process.
66. Some banks limit the information to their policy framework, leaving the impression of having only formally stated the commitment to proceed.
67. The overall picture given on the effective implementation of a human rights due diligence procedure by adhering banks is more that of a puzzle slowly taking shape. Considering the short period of three years that was agreed in the DBA, it shows in any case progress made by all in trying to meet the commitments taken. Not only by the front runners who already had developed, often before signing the DBA, a specific attention to the Human Rights risks of their activity and a human rights due diligence. Adhering banks who, for the nature of their activities or the limits of their means of actions, had problems in promptly meeting the DBA requirements, implying new approaches and new activities, have shown their capabilities and progresses. Hopefully will these efforts not remain vain once the pressure of the DBA commitments has disappeared. All the more so as human rights due diligence is an ongoing process.

e. Transparency and reporting (par. 6.4 DBA)

Overview

68. In order to be more transparent on the way they fulfil their commitment to respect human rights according to UNGPs, adhering banks are supposed to prepare reporting in line with the UN Guiding Principles Reporting Framework (including the eight overarching questions of the UN Guiding Principles Reporting Framework) or some equivalent. All adhering banks are in a mature

state. One bank follows the pattern of the 8 overarching questions of UN Guiding Principles Reporting Framework, one bank has started using GRI reporting. Two banks have been reporting in line with GRI Tables (and UNGP Reporting Framework). Four banks have a specific Human Rights report in line with UNGP Reporting Framework. . For one bank it is part of its sustainability report and is further developing. One bank has integrated some Human Rights data in its annual report.

69. According to par. 6.4.b DBA, all banks publish detailed information on exposure to economic sectors. Some adhering banks, in accordance with the NVB Reference for Reporting on Loans. Two banks publish a list of enterprises with which the bank has a credit or investment relationship. One bank is fully transparent (“*Know where your money goes*”).
70. In line with par. 6.4.c DBA, six banks (of which four are still in preparation) publish a list of listed companies excluded from their investment universe on the basis of Corporate Social Responsibility criteria or the bank’s investment universe for asset management. One bank states that it intends to publish all assets under its management. The provision is not applicable for four banks.
71. Among DBA commitments, adhering banks have several internal reporting commitments, among reporting the annual report to the secretariat of the Steering Committee on the implementation of the commitments taken under DBA 3 and 4 (par. 6.5a DBA). They are supposed to give meaningful information on the proceedings and results of human rights due diligence and, with respect to their impact assessments some quantitative data, like the number of engagements at high level on the most severe human rights topics completed annually with general information on the nature, purpose and results of these interactions. On these internal reporting commitments, there are several non-key deliverables.
72. As regards providing meaningful information on the proceedings and results of human rights due diligence, including indications on the identification of the most severe human rights impacts three banks refer to their annual human rights reports, one bank refers to its sustainability reports. One bank refers to its annual report. One bank refers to its position paper on human rights but says that there are no cases as the potential borrowers who violate human rights are excluded by the bank. Another bank refers to one of its published document but says it has not identified severe human rights impacts. One bank states that in 2019 for 308 clients in its portfolio E&S due diligence including human rights was performed and that it has, identified 35 A and B+ clients that are not managing their Environmental & Social risks in line with expectations or that are materially behind schedule. One bank declares not having identified cases of Human rights violations. One bank indicates the use of its high-risk assessment not only for screening on customers, but also other business related activities.
73. As indications of salient human rights impacts, one bank indicates labour rights violations, forced labour in supply chain, land rights and rights of local communities, health & safety impacts. Another bank indicates wages in garment and ethics in pharma. One bank refers to an E&S issue list annexed to its Annual Report 2019. Another bank states that deposits sector is somewhat under more intensive review. One bank indicates potentially salient risks at the low levels in the supply chain of their clients but transparency at that level seems to be a challenge for mid-sized business on which said bank is working with its clients. Finally, one bank indicates recurrent labour rights issues.

74. As to the efforts made to mitigate severe human rights impacts (DBA 6.5.a) one bank indicates setting up a platform. It also publishes a report on living wages. One bank refers to its client engagement pilot. Another bank mentions the Responsible Ship Recycling Standards in lending agreements which aim to create the conditions for good human rights practices in ship dismantling (implemented in more than 90% of its shipping portfolio). It applies such standards also in the offshore energy sector. One bank gives several examples of its initiatives among which working on de-risking of NGOs and civic freedoms, engagement against modern slavery and human trafficking.
75. As regards the publication of a list with the number of high-level engagements on the most severe human rights topics, most banks already individually publish such lists of engagements related to E&S impact within their annual report non-financial data. It is the case for Three T1 banks. One T1 bank has published a list of E & S issues in its annual report. It didn't however provide a number in its answer, it only stated: no more than regular structural engagement. Said bank should be transparent about the number of high-level engagements. One T2 bank refers to its sustainability report but states that it is difficult to answer as it also engages with companies that are not clients. Especially in relation to responsible ship recycling agreements, this bank engages with every client in shipping sector, thus the number of companies where there has been a high-level engagement on severe human rights topics is a large number. One publishes its engagements in a special report and indicates having had engagement with 17 companies but the cases discussed were not really severe. Three T2 banks declare that they do not have cases of high human rights impacts.

Observations Monitoring Committee

76. Due diligence involves information and exchange of information. Reporting on due diligence represents an important element of the process of “knowing and showing” to demonstrate that every reasonable step to avoid involvement in negative impacts has been made and to show the accuracy of the response or eventual remedy. In par. 6.4 DBA, public reporting commitments are set in a very progressive way and, accordingly, banks are only beginning to show their human rights due diligence process in their reporting. Reluctance as regards transparency is evident.

f. Bank's leverage for grievance mechanism at client level to enable remediation (par. 7.3 DBA)

77. Grievance mechanisms are important in order to enable remediation to affected persons or groups in case of human rights violations. In relation to grievance mechanisms, it seems important to recall the experience of one bank's Independent Complaint Mechanism (cf. *b. Complaint mechanism, par. 3.5 DBA*). The working group on remediation has done an important exploratory study on the question and made recommendations to the banks, especially as regards their role in promoting and enabling the grievance process and supporting a robust and effective grievance mechanism infrastructure. Probably as a consequence another bank states that it is exploring the options for a bank-level grievance mechanism or to facilitate an independent mechanism accessible to third parties.
78. As regards the commitments expressed in DBA 7 entitled *enabling remediation*, adhering banks have agreed to use their leverage on their clients in cases of project finance or of corporate loans

in order to have them establish or participate in a grievance mechanism at client's level. In case of project finance, par. 7.3.a DBA foresees that adhering banks should require their clients to establish or participate in a grievance mechanism through which grievances concerning the client's human rights performance can be raised by affected communities in line with the UNGPs (Principle 31) and international standards such as the IFC PS or the Equator Principles (Principle 6). Adhering banks active in project finance and members of Equator Principles all declare to comply with this provision one bank, not yet an EFPI, has been voluntarily applying the Eps for project finance transactions. Three banks, for the nature of their activities and as T2 banks, declare the provision not applicable.

79. For corporate loans, according to DBA 7.3.b, adhering banks will, in case of severe human rights violations known to the banks, actively promote their clients to establish, participate in or enable access to a grievance mechanism in line with the UNGPs (Principle 31) and international standards such as the IFC PS or the Equator Principles (Principle 6). Adhering banks members of the Equator Principles and active in corporate loans all declare complying with this commitment. Two banks, for the nature of their activities and as T2 banks, declare the provision not applicable.
80. The survey questions and relative answers do not highlight how far this compliance is effective in practice. In both cases banks have to use their leverage on their clients.
81. In the case of project finance banks have to use their leverage on their clients to give a forum to affected communities, which implies an assessment that the external impacts of the project have affected surrounding communities and that these affected communities have the opportunity to express their grievances.
82. In the case of corporate loans, the commitment implies an assessment of severe human rights violations done by the client and known to the bank.
83. In both cases all the process depends first of all on the quality of the human rights due diligence procedure conducted by the client and by the bank.
84. It also depends on the kind of leverage the banks tries to exercise on the client. Here it is important to recall UNGP 19: leverage exists when the company has the ability to effect change in the wrongful practice of an entity.

g. Working groups

Non-Key Deliverable on WG Increase leverage

85. Banks are asked if they used the outcomes of the increasing leverage study as input for their continuous constructive efforts to increase their leverage when engaging with clients when, for example, the bank address the findings of the value chain mapping exercises.
86. One bank is working with Shift on a broader project to build and increase leverage in its client engagements. One bank has developed and finalized (after discussion with NGOs) a specific guideline on human rights defenders' safety which looks at the whole investment cycle. Another bank has been collaborating with NGOs, in client's engagements in order to increase leverage.
87. As regards the other working groups and their outcomes, One T2 bank mentions interesting

outcomes of the value chains groups, as well as one T1 bank (specific attention in client relations in the sectors analysed). Said T1 bank also uses the topic cards as reference.

88. Five T2 banks take note of these studies but consider them little relevant for their kind of activities.

Observations Monitoring Committee

89. The answers given to this question show a very different stance between banks who actively participated in the working groups and the other banks. The latest seem to back away from the findings and recommendations of the working groups while the first ones are developing some experimental activities on the basis of the outcomes of the working groups.

h. Non-Key Deliverable on the Human rights commitment (par. 1.2 DBA)

90. Following the wording of par. 1.2 DBA, adhering banks were finally asked if their organization implement and embed their responsibility to respect human rights in their operations and confirm to act in conformity with the OECD Guidelines and UNGPs in the full scope of a bank's business activities, in particular: i) for new client, ii) existing clients; iii) the bank's own operations and staff; and the bank's subsidiary companies. All banks have answered positively. Some have better explained through reference to their policies and Human Rights Due Diligence procedures, others have simply referred to their general commitment. The guidance to the *Assessment Framework* states that to be considered mature the DBA expects a bank to confirm its commitment to respect HR across its operations. By signing the agreement, the adhering banks have committed to this basic « responsibility ». The fact the adhering banks have all answered positively is expression of the responsibility they all have taken. In so far, they all should be considered mature. The question is more whether the commitment of the adhering banks is further fulfilled in all its aspects according to DBA provisions. This is the object and substance of each year's reporting and monitoring.

III. JOINT AGREEMENTS AND WORKING GROUPS

A. Joint agreements

a. Transparency and performance indicators

Reporting

91. According to par. 6.10.a DBA, the parties will jointly explore options for greater transparency and to report on the results, including the development of meaningful and effective performance indicators to report on business and human rights (in 2016).
92. This was a key deliverable for 2017 and in its Year 2 Report, the Monitoring Committee concluded that this deliverable was still not completed in 2018. The parties reported that the main challenge was to make practical KPIs that would be applicable to every bank. The aim was to further develop the existing document (with the help of Shift) into a financial sector supplement to the UNGP Reporting Framework.
93. For the final year, it was reported that this topic was addressed in Q3 2019 by publishing the white paper ‘Performance Indicators Human Rights’. In this paper, for each principle one or more performance indicators were formulated, based on the UNGP Reporting Framework. This draft was discussed in the Working Group, and based on the feedback provided, as well as input from third parties like Shift, the draft was finalised.
94. The aim of the paper was to provide a financial supplement to the UNGP Reporting framework. It provides small, medium-sized and large banks with examples of meaningful and effective performance indicators to report and steer on business and human rights.
95. The Working Group Transparency, with one bank and one NGO in the lead, expressed the hope that this document would guide banks when developing their own performance indicators and that it would be used as a starting point for individual banks to develop their own meaningful and effective performance indicators, and to work towards human rights performance transparency.
96. The parties reported on the outcome of the White Paper at the Conference Banking and Human Rights in November 2019.
97. However, prior to publication the NVB insisted in the insertion of a legal disclaimer at the end of the document, which, according to an NGO, essentially reads like a denouncement of the content of the paper. The NVB also insisted in adding the words ‘White Paper’ in the title of the paper, according to the NGO to further play down its significance.

Observations Monitoring Committee

98. The paper ‘Performance Indicators Human Rights’ is one of the signature DBA reports, the fruit of effective cooperation between NGO’s and banks. It is therefore disappointing that this success is overshadowed by NVB actions to play down the report’s significance by adding a disclaimer and by framing the paper’s status. This is all the more remarkable where individual banks were actively involved in drafting of the paper. The Monitoring Committee regrets that the NVB neither explained this action in its reporting, nor provided information about it.

b. Transparency and geographical breakdown of sector data

Reporting

99. According to par. 6.10.b DBA, the parties will jointly explore options for greater transparency and to report on the results, including a meaningful geographical breakdown of sector data.
100. The parties reported that, due to other priorities, they did not explore options to fulfil this deliverable.

Observations Monitoring Committee

101. It was not clear to the Monitoring Committee why this part of the DBA was abandoned by the parties, as they gave no further explanation than other priorities were pursued. This still does not explain why a geographical breakdown of sector data was not worth the parties while.

c. Transparency and client confidentiality

Reporting

102. According to par. 6.10.c DBA, the parties will jointly explore options for greater transparency and to report on the results, including discussions on how client confidentiality and mutual competition relate to the increased expectations (from society and international business and human rights standards) that enterprises show how they put their responsibility to respect human rights into practice.
103. This was a project that kept the parties and adhering banks divided until the end of the DBA on what could be achieved on client confidentiality. The start of the process was the legal advice by law firm Nauta Dutilh in 2017, concluding that sharing client information is only possible with the client's approval, provided that none of the disclosure prohibitions under the *Market Abuse Regulation* and the *Wet ter voorkoming van witwassen en financieren van terrorisme* are applicable.
104. The NGOs expressed the expectation that, on the basis of the Nauta Dutilh report, the adhering banks could use their leverage to ask their existing business clients to accept sharing individual client-related information pertaining to the due-diligence steps and results undertaken with third parties. The NGOs also asked the adhering banks to adjust the contracts for new business clients to allow such information to be shared with third parties.
105. On the other hand, the NVB indicated that (a) Dutch banks finance large international clients primarily through syndicated loans, which makes it difficult for them to distinguish themselves from the other syndicate members, (b) the Dutch banks were not successful in influencing the LMA to change the financing contracts template, and (c) the Dutch banks consider that they already provide sufficient transparency through the 'client dialogue tables', through Human Rights reports and Annual Reports. According to the NVB, it remains the decision of each individual bank to respond to NGO requests to obtain client consent to share information.
106. The NVB also stated that it had encouraged the banks to seek a maximum of transparency in other ways by (human rights) reporting, client engagement dialogue tables, and individual discussions

with NGOs. This contributed to more transparency and positively deviates from the current general international practice.

107. The government would have welcomed examples of collective efforts of increasing leverage by the DBA parties. The government is currently evaluating the RBC Agreements and will assess barriers for cooperation within the Agreements, such as client confidentiality. The government looks forward to see examples of cooperation between individual banks and NGOs, labour unions or other parties on increasing leverage in the future.
108. The Parties were free to individually submit their views on client confidentiality in their own reporting to the Monitoring Committee. There has also been a discussion between NGO's and the banks on various topics including client confidentiality.
109. The Unions stated that client confidentiality should not be an obstacle for a bank's due diligence process. They have started to map and rank collective bargaining agreements, in the palm oil sector. The aim of the database is to enable banks to carry out due diligence while maintaining client confidentiality.
110. The CSOs observed on various grounds that they had experienced client confidentiality as an obstacle for cooperation. First, they argued that banks did not sufficiently use their leverage to obtain consent from clients to share information. Second, it was not clear whether and if so how specific information shared by CSO's and Unions in order to identify opportunities for joint steps, was used by banks as they did not disclose it with reference to client confidentiality. This meant that the discussions remained at a very general level. Third, the specific information provided by CSOs and Unions in the working groups were included in the conclusions from the various reports but generally it was not disclosed whether and if so how these conclusions had an impact on the banks' policies and practices. Fourth, it was not clear whether and if so how the banks followed up the conclusions in the various reports on ground level, again referring to client confidentiality. Fifth, the CSOs reported that banks did share information about clients with government representatives at the DBA.

Observations Monitoring Committee

111. Client confidentiality was one of the main clashing points between the NGOs on one hand, and the NVB and the adhering banks on the other. It has turned out to be a barrier to increasing transparency in the framework of the DBA.
112. As set out in the Nauta Dutilh report, banks are in principle bound by client confidentiality clauses and are not in a position to share information with third parties without a client's consent. This report has been the starting point of the discussion. This subsequent discussion in the DBA has focused on the question whether there are ways to circumvent these obstacles or whether alternatives could be found.
113. The NVB and the adhering banks have argued that banks have shown creativity to overcome the obstacle of client confidentiality through client dialogue tables (about which the reporting contains scant information), and by providing information in human rights reports and annual reports.

114. NGOs considered the client dialogue tables as a step forward but overall expressed their discontent about the progress made in terms of transparency. They do not consider human rights reports and annual reports to be a sufficient and effective way to provide transparency.
115. The response to the Nauta Dutilh report by the NVB has been mainly to defend the status quo rather than bending over backwards to find creative solutions within the current framework. The idea for dialogue tables came from individual banks, not from the NVB. A defensive approach is also apparent from the NVB's remark that it remains the decision of each individual bank to respond to NGO requests to obtain client consent, rather than the NVB encouraging banks to find solutions and ways forward.
116. The banks can be commended for trying to influence the LMA to change the financing contracts template even though they were not successful. The area of syndicated loans remains problematic for banks to exercise leverage to increase transparency. However, this does not exclude that in some instances sufficient leverage may be created, enabling step-by-step changes. Setting an agenda for this may be useful but the NVB and the banks have not set out whether they have developed such an agenda or are in the process of doing so.
117. The Monitoring Committee refers to its Year 2 report, where it observed that achieving an international level playing field is important and should be a priority. This can go hand in hand with protecting the banks' commercial interests. The Monitoring Committee therefore encouraged the NVB and adhering banks to play an active role in this respect and to create leverage, nationally and internationally, to push this topic and make real progress. The final reporting by the NVB and the adhering banks do not provide convincing evidence that this happened or a clear plan how this will happen.
118. NGO's also expressed their discontent in this respect by asserting that banks did not do enough to use their leverage to obtain client consent. This argument coincides with remarks made by NGO's regarding the Working Group Increasing Leverage where they state that the conclusions of its final report were low in ambition by considering confidentiality and competition law to be barriers for effective exchanges in the context of the DBA but not sufficiently seeking ways to overcome them.
119. The Monitoring Committee does not have enough information to judge whether the banks' efforts showed sufficient ambition. However, what is clear is that the banks did not make a serious effort to convince the Monitoring Committee of their actions in this respect. The banks' reluctance to push this agenda may also be part of a deeper rooted problem of the DBA, namely a lack of trust between the parties and the adhering banks. See also below under 'Client confidentiality' in 'Concluding observations and recommendations'.
120. This emphasises the importance of a substantive follow-up of the DBA. Client confidentiality is pivotal to further transparency and accountability and to achieve better reporting. The OECD due diligence guidance requires companies to communicate externally relevant information on due diligence processes and activities, with due regard for commercial confidentiality. Client confidentiality is not a blanket norm or a fixed concept but its meaning may be developed and, over time, adjusted in scope in order to improve transparency, accountability and better reporting as regards respecting human rights. These are important aims of the UNGPs and the OECD

Guidelines and they are essential for the effectiveness of multistakeholder projects like the RBC Agreements.

B. WORKING GROUPS

a. Working group ‘Enabling remediation’

Reporting

121. In par. 7.4.a DBA, the parties and the adhering banks agreed to set up a working group to explore when a bank is deemed to be ‘linked to’, ‘contributing’ or ‘causing’ to adverse impacts following their financing activities in specific cases and how the adverse impact in these instances could be addressed or remediated in conformity with the OECD Guidelines and the UNGPs. This was a key deliverable for 2017 but it was only delivered in the spring of 2019. The discussions appeared to take much longer than expected and sometimes expectations of the parties and the adhering banks differed.

Observations Monitoring Committee

122. The Monitoring Committee concluded in its Year 2 report that this deliverable was successfully completed.

b. Working group ‘Increasing leverage’

Reporting

123. In par. 9.1 DBA, parties and the adhering banks committed themselves to publishing a study on good practices of how to increase leverage when supporting companies, to improve responsible business conduct regarding human rights for the different types of financial services, including corporate lending and project finance.
124. This deliverable was set for 2017. A first draft was based on the SILA study and working group discussions, the report was published in August 2018.

Observations Monitoring Committee

125. In its Year 2 Report, the Monitoring Committee concluded that this deliverable was successfully completed. In this final report, the Monitoring Committee welcomes the updated report, including lessons learned, that was published in September 2019.
126. The parties appear to have mixed feelings about the outcome of this deliverable, where some of the NGOs noticed a lack of ambition in the conclusions and recommendations. This discontent also spilled over in and is connected to the discussion on confidentiality and banks should use and increase their leverage to obtain consent from clients to share information with third parties, in particular NGOs.

c. Working Group ‘Matrix/Database’

Reporting

127. This working group was dissolved and merged into the value chain working group when it became apparent that much of the required information is partly publicly available and integrated by banks in their financing decision making, and partly cannot be collected in a matrix database.

Observations

128. The Monitoring Committee observed in its Year 2 report that this deliverable was not completed due to a ‘supply and demand’ gap. It appeared not to be possible to draft a database that banks could use to browse without the need for sharing client information.

d. Working Groups ‘Value Chains’

129. In par. 5.2 and 5.2.a DBA, the parties and adhering banks agreed to jointly carry out value chain mapping exercises of high-risk sectors that are material to the banks and jointly commission a third party to facilitate this process. For all value chain analyses the assistance of professional third parties was commissioned.

Working Group Palm oil value chain

130. The final palm oil value chain report was published in August 2019. This report highlights a number of human rights related issues for this particular value chain. In the interim report, published in 2018, various follow-up actions were formulated and they were completed and published in the final report.
131. As the DBA has reached the end of its lifespan, further follow up actions will be taken up individually by the relevant parties or banks, as stated in the value chain analyses.

Working Group Gold value chain

132. The gold value chain report was published in November 2019. The report highlights a number of human rights related issues in this value chain and makes several recommendations, including on land and water related rights, women’s rights, community health and safety, transparency and on the relation LSM-ASM.
133. Due to the late completion of this task a follow up on the outcome was not possible within the DBA lifespan. However, it was agreed that follow up actions will be taken up individually by the relevant parties or banks, as stated in the value chain analyses.

Working Group Oil and gas value chain

134. The oil and gas value chain report was published in August 2019. This report also highlights a number of human rights related issues for this particular value chain and makes several general and specific recommendations.
135. As the DBA has reached the end of its lifespan, further follow up actions will be taken up individually by the relevant parties or banks, as stated in the value chain analyses.

Observations Monitoring Committee

136. In its Year 2 Report, the Monitoring Committee observed that out of four value chain reports only the one on cocoa was published (in July 2018). An interim report was published on palm oil, but the mapping exercises were not completed.
137. In Year 3, the parties and adhering banks have managed to catch up on their deliverables. All three remaining value chain analyses were completed. This is a remarkable achievement for which the Monitoring Committee would like to commend the Parties and the Adhering Banks.

e. Lessons learned by parties

138. Reflecting on the value chain analyses, the parties and adhering banks rightly emphasised that this is a process of learning by doing and that each value chain asks for a different approach. Initially, some time was spent on finding the format for carrying out the analysis. Working in a smaller group may contribute to the effectiveness and efficiency of the process. This format was applied to the gold, palm oil and oil and gas value chain analyses.
139. Another lesson learned was the presentation of the findings. A full report does not always cater to the needs of the adhering banks. An alternative format was to work with slides and publish the final report in that format, with recommended and follow up actions in a more detailed annex.
140. Parties and adhering banks noticed the limitations competition law imposes. This hampered adhering banks to discuss due diligence challenges in the cocoa supply chain in a common setting. The solution found was to split the discussions into separate sessions with individual banks. On the basis of these discussions, the NGOs provided the banks with a document with recommendations on cocoa and due diligence.
141. Mapping the palm oil value chain appeared to have challenges that were particularly due to the many severe human rights issues that have existed for a long time. Another challenge was the diverse level of sector knowledge among the participants and the need to represent all views in the final report.

f. Observations on Working groups

142. All Working groups envisaged in the DBA have completed their tasks, bar the Working group 'Matrix/Database' that was dissolved for the reasons set out above.
143. In its Year 2 Report, the Monitoring Committee expressed its concern about the lack of progress made in the value chain working groups. However, thanks to a combined effort by the parties and the adhering banks, all four envisaged value chain analyses were completed and published. The Monitoring Committee is very pleased to see the completion of these DBA key deliverables.
144. That said, the Monitoring Committee regrets that most value chain reports were only completed towards the end of the DBA (August and November 2019). This suggests that parties and adhering banks either did not give the work enough priority or struggled to reach joint conclusions and recommendations.

145. The true value of these reports is not that they are completed and published but that they are put to use in the daily work of the banks in a multistakeholder setting. These reports are also per definition work in progress because their use in practice may further develop and fine tune the conclusions and recommendations.
146. It is therefore all the more regrettable that because of the late delivery of the value chain analyses (apart from an interim report on the palm oil value chain) it was not possible to test (parts of) them, put them into practice and document experiences in a multistakeholder setting, so that further lessons could be learned and knowledge could be developed. Although this was not a deliverable, the Monitoring Committee encourages the parties to follow up on this post DBA.
147. Parties and adhering banks have individually expressed their intentions to follow up on the findings of the various working groups. The Monitoring Committee would encourage the parties and adhering banks to ensure that the valuable work done in the working groups is operationalised in a structured way and a multistakeholder setting. This would also provide the very much needed revenue on the extensive investment in time and effort that has been put in these reports by the parties and adhering banks.

IV. PARTIES

A. Nederlandse Vereniging van Banken (NVB)

a. *DBA Working Groups*

148. The NVB reported that it had actively participated in the DBA Working Groups, either directly or by proxy where representatives of adhering banks participated on behalf of the NVB (with an 'NVB hat').
149. The NVB representative coordinates the collection of relevant information from banks. In general, the NVB is responsible for all the coordination between the Dutch Banking Agreement (DBA) parties and the banks.

b. *Level playing field*

150. The NVB stimulated its members and other banks to endorse the DBA by signing the declaration of adherence or launch similar initiatives in their countries.
151. The current adhering banks represent nearly all relevant lending and financing under the DBA. The NVB contributed to a level playing field by sharing DBA good practices at various international events, including an international Conference on Banking & Human Rights and a session with the International Banking Federation on Responsible Business Conduct (both in November 2019), and at the Conference 'No more (time to) waste!', organised by the Dutch Embassy in Madrid in June 2019.

c. *Independent expert mechanism*

152. The NVB set up and appointed members of an independent voluntary advisory expert mechanism (DBA par. 7.6-7.8). This part of the deliverable was completed in 2018.
153. As to the panel members, the NVB reported for 2018 that it had carefully considered the experts suggested by the Trade Unions and CSOs but that it had chosen other candidates who it thought were more suitable.
154. In its Year 2 Report, the Monitoring Committee considered it important that the NVB report on how the expert panel will use the recommendations of the Working Group Enabling Remediation as input for its mechanism. For 2019, the NVB reported that where relevant, the lessons from the paper Enabling Remediation are considered in the first case. The advice of the working group Enabling Remediation will be included in the review of the mechanism. Lessons will also be learned from other existing mechanisms and experts active in the field.
155. The Panel is currently dealing with its first case ('How to deal with clients that either have faced or still face (quasi-)judicial procedures, as well as with clients that have promised to improve their behaviour after having been condemned for (gross) human rights violations') for which the panellists will present three opinions to be discussed with interested banks and stakeholders, with the aim to formulate recommendations for the sector. The Panel will be evaluated before it continues with a second case.

d. Promoting OECD/UNGP

156. The NVB actively promoted the OECD Guidelines and UNGPs among its members, in meetings of the NVB Sustainability Platform and conferences. It also asked for more attention for human rights in the EU Sustainable Finance Action Plan and in the Principles for Responsible Banking. The NVB took the lead in organising the first international Conference on Banking and Human Rights in 2019 with over 100 guests, at which also international banks were represented.

e. Policy commitment

157. The NVB encouraged the adhering banks to fulfil the expectations set out in par. 3.1 DBA. The NVB actively engaged with the adhering banks in regular bilateral and monthly meetings of the NVB's Working group IMVO, to fulfil the expectations in paragraph 3.1 and to provide guidance where necessary.

158. The NVB supported the adhering banks in implementing paragraph 3.1 in a meaningful and practical way, stating that the Monitoring Committee's advice and the DBA Assessment Framework proved valuable guidance for the banks in the further implementation of the DBA.

f. Human rights due diligence

159. The NVB supported the adhering banks in implementing the human rights due diligence process by providing guidance on the individual deliverables of the DBA and progress overviews for each bank, based on the Year 2 Report of the Monitoring Committee. It provided specific support to smaller banks and it engaged with sustainability commissions, boards of banks and individual sustainability officers to explain the practical implementation of the Agreement.

g. Promoting FPIC

160. The broader application of FPIC was not addressed by the NVB, as it does not have direct access to the various forums. In 2019, together with LANDDialogue, the NVB organised a workshop on FPIC and land rights, including the dilemmas concerning the broader application of FPIC.

161. The NVB also addressed the broader application of FPIC at the OECD, EP and IFC PS. However, this seems hard to reconcile with the NVB's statement in the previous paragraph that NVB does not have access to these forums.

h. Transparency and reporting

162. The NVB did not use the information as provided on the basis of the NVB Reference for publications about the banks' activities, as this is not relevant to the NVB. As a trade association, the NVB only advises its members to publish sufficiently detailed information on exposure to economic sectors in accordance with the Protocol.

i. Monitoring Committee's observations

163. The Monitoring Committee concludes that the NVB has completed its deliverables. This conclusion is based on the questions asked in the assessment framework and the self-reporting by the NVB. Therefore, the Monitoring Committee's conclusion is neutral on the quality of how the NVB completed its deliverables.

164. Many deliverables under the DBA were commitments of means rather than ends. In most cases, the latter would be unrealistic considering the challenges that parties and banks are facing, particularly at an international level. However, in many situations the commitment is not one of

either/or but rather more/less. For example, promoting the application of FPIC can be formally done by presenting the topic at one or more conferences. It can also be done by making it an element of a general policy, setting goals and assess the progress along the way.

165. Hence, it is up to the parties and adhering banks to decide about the quality of the answers. Over the past years, the Monitoring Committee repeatedly observed a lack of substantiation in NVB's reporting. This was not helpful for the work of the Monitoring Committee in particular and the progress of the DBA in general. In its final reporting, the NVB made little progress and hardly provided references to underlying documentation.
166. The Monitoring Committee observes the hybrid role of the NVB. On one hand, the NVB played an important role in coordinating banks' efforts and particularly in supporting smaller banks with less capacity. On the other hand, the NVB is a business association that is accountable to all its members, aiming to protect the interests of frontrunners and laggards. It is well-known that there is a tension between representing all members on one hand and taking the lead to change on the other. Whilst the NVB as such also encourages change, for which it is to be commended, it is important to reflect on the precise role of the NVB when drafting plans to build upon the achievements of the DBA.
167. That said, the Monitoring Committee has no doubt that NVB was most valuable in supporting its members, particularly the smaller banks, in complying with the DBA commitments and in coordinating the communication between the banks. That was a time consuming task for which the Monitoring Committee would like to commend the NVB's representative.

B. Government

a. DBA Working Groups

168. The Government actively participated in the DBA Working Groups and sub-groups and actively contributed to draft texts and final reports.

b. Level playing field

169. The Government stimulated the NVB members and other banks to endorse the DBA by signing the declaration of adherence. When needed the Ministries of Finance and of Foreign Affairs contacted banks at board level to stress the importance of signing the declaration of adherence.

170. The Government shared the results and progress of the DBA at OECD at meetings of OECD Working Party on Responsible Business Conduct. At EU level, the Minister for International Trade and Development Cooperation called for an EU Action Plan on Responsible Business Conduct at the Trade Council and the Development Cooperation Council in November 2019. In 2019, Dutch officials participated in several panels at the UN Forum on Business and Human Rights, sharing results of the RBC Agreements, including the DBA. This way the Government encouraged other EU and OECD member states to stimulate their banks to act in line with the OECD guidelines and UNGPs.

c. Policy commitment

171. The Government supported the adhering banks in implementing par. 3.1 DBA and actively participated in their stakeholder consultations. The Ministry of Foreign Affairs sponsored the Dutch translation of the OECD Guidance on RBC that provides further guidance on policy statements. The Government also gave feedback on the human right reports of some banks.

d. Human rights due diligence

172. The Government supported the adhering banks in implementing the human rights due diligence process through participation in the Working Groups Value Chain and Increasing Leverage. The Government also regularly offered support to adhering banks to fill in information gaps in their due diligence processes.

e. Promoting FPIC

173. The Government promoted the broader application of the FPIC. In 2014, the Ministry of Foreign Affairs set up a LANDdialogue, a multistakeholder platform on land rights. Dutch banks actively took part in these series of sessions in 2016/17. In 2017, this led, inter alia, to a document published by FMO, Hivos, Tropenbos and KIT, with recommendations on the broader application of FPIC as a means to increase the impact of land related investment. Through its delegation at the World Bank the Dutch government gave advice on FPIC in relation to the revision of the World Bank safeguards.

174. The Government also addressed the topic of broader application of FPIC at international forums including the OECD and the IFC PS. It supported the creation of the OECD-FAO Guidance for Responsible Agricultural Supply Chains, which builds explicitly on the CFS Voluntary Guidelines on Land Governance; these guidelines of the Committee on World Food Security underline the importance of the broader application of FPIC. The Dutch government promoted the OECD-FAO guidance at the OECD level and in its contacts with the food industry and agricultural sector.

f. Promoting value chain exercises

175. The Government did not promote similar value chain mapping exercises in other agreements on international responsible business conduct. As businesses in other sectors differ from the banking sector these value chain mappings will take different forms and are usually more focused on a certain theme, such as living income.
176. The Government did not request the Parties to other agreements to publish the outcomes of the mapping exercises. The purpose of the value chain mapping by other RBC agreements may differ from that of the banking sector agreement. However, the government requests all RBC agreements to publish progress reports in which the results, such as the outcomes of value chain mapping projects, are incorporated.

g. Transparency and reporting

177. The Government did not use the information as provided on the basis of the NVB Reference for publications about the banks activities, as this was not relevant to the work of the Government in relation to the implementation of the DBA or other policies.

h. Financial sector

178. The Government called upon pension funds, insurers and other institutional investors to work together with stakeholders to draft an agreement on international responsible business conduct. The RBC Agreement of the insurance sector was signed in July 2018 and the RBC Agreement of the pension sector in December 2018.

i. Sharing information

179. The Government received requests for information on actual and potential human rights impacts from the other Parties. Not only in the framework of the Value Chain Working Groups but the Government also received bilateral request from several banks to support their due diligence regarding specific projects or clients. These banks were referred to the relevant departments and/or embassies, which provided further information and advice.

j. Support to increase leverage

180. The Government did not receive specific requests to support Parties and adhering banks to increase leverage. Dutch embassies provide support ad hoc and on request if a Dutch bank has questions regarding investments in a particular country or region and use their leverage where possible and appropriate.

k. Diplomacy

181. The Government assisted the Parties and adhering banks in implementing this agreement through diplomacy on human rights as part of economic relations. In order to participate in trade missions or in order to receive technical or financial support, Dutch banks should meet several criteria, amongst which RBC criteria based on the OECD Guidelines and UNGPs.
182. In November 2019, the Government renewed RBC guidance for its embassies, consulates and permanent representations. They are requested to support companies, including banks, with RBC and to put RBC on the agenda in the host country.

l. Competition law

183. The Government clarified to enterprises how competition policy affects mutual agreements in the area of RBC, such as on the ACM website as regards its policies on competition and sustainability, and sustainability agreements.
184. The Government is preparing legislation "Wetsvoorstel Ruimte voor duurzaamheidsinitiatieven". At the moment, the scope of this legislation does not include RBC Agreements but this may change at a later stage.
185. The Government representatives explained the competition policy and the relation to the RBC Agreements at the meeting of the DBA Steering Committee in September 2019. At this meeting, banks and other parties mentioned two instances where they could not cooperate due to competition policy. The Government representatives encouraged the parties to share their views on the relationship between competition policy and RBC Agreements with the Royal Tropical Institute that is conducting the evaluation of the RBC Agreements.
186. The amended Policy Rule on Competition and Sustainability was put into effect on 30 September 2016.
187. The Government has put the issue of competition law in relation to sustainability on the European agenda: officials of the Ministries of Economic Affairs and Foreign Affairs and of ACM have had several meetings with EU counterparts on this issue.

m. Responsible Business Conduct (RBC)

188. The Government incentivised RBC in general. For example, for participation in trade missions or to receive technical or financial support businesses should meet several criteria, amongst which are RBC criteria based on the OECD Guidelines and UNGPs.
189. The Government has policies to incentivise RBC through public procurement such as the CSR/RBC framework for public procurement, over and above the EU procurement threshold. In this framework, the criteria are aligned with the OECD Guidelines. The cabinet remains committed to the implementation of current RBC agreements.
190. The Government's ambition is that in 2023, 90% of large Dutch companies adhere to the OECD Guidelines. In 2019, intermediate monitoring was conducted and based on its results a communication strategy will be launched to further stimulate adherence to the OECD Guidelines.
191. The Government is currently reviewing and evaluating its RBC policy to assess whether mandatory measures need to be taken and if so, what kind of measures. Several research projects have been conducted and stakeholders, such as companies and civil society, are actively involved in this process. Part of this process is the evaluation of the RBC Agreements.
192. Departments also aim to lead by example by incorporating RBC in their internal processes. For example, the Ministry of Finance reviewed RBC within their state-owned enterprises and has renewed RBC for these enterprises.

n. Export Credit Agency

193. The Export Credit Agency (ECA) has a human rights policy and conducts human rights due diligence in accordance with the Common Approaches of the OECD.

194. The ECA provides guidance to business enterprises on how to respect human rights throughout their operations. The ECA also provides training for exporters on various relevant RBC topics.
195. The ECA encourages, and where appropriate requires, business enterprises to communicate how they address their human rights impacts. This is part of the standard due diligence practice. Exporters are required to inform Atradius DSB on relevant environmental and social impacts.
196. The government determines the policies of the ECA. Human rights are an explicit part of these policies. Furthermore, the ECA has its own human rights statement which is endorsed by the government. In 2018 the ECA revised its complaints mechanism in accordance with the UNGPs.
197. The ECA applies the IFC PS, endorses the UNGPs and implements its principles in the business process.
198. The Government supports further cooperation between the ECA and adhering banks in client and project due diligence processes where both the ECA and adhering bank are involved. Banks are important stakeholders for the ECA.

o. Regulations

199. The Government has not internally consulted on the implementation of the Council of Europe Recommendation on human rights and business of 2 March 2016. The report to the Council of Europe on the implementation of the Recommendation is not expected before March 2021. For the evaluation of the Dutch RBC policy and for the review of the Dutch National Action Plan on Business and Human Rights internal consultations are being conducted. Additional internal consultations are therefore currently not necessary.
200. The Government has not been made aware of regulations proving to be an obstacle for the fulfilment of the OECD Guidelines and the UNGPs.

p. Appointment of Monitoring Committee

201. The Minister of Finance and the Minister for Foreign Trade and Development appointed the independent Monitoring Committee in Q2 of 2017.

q. Publishing agreement

202. The Government published the DBA in the Dutch Government Gazette (Staatscourant) on 7 December 2016.

r. Observations Monitoring Committee

203. The Government did not complete the following deliverables: promoting value chain exercises, using the information as provided on the basis of the NVB Reference for publications about the banks activities, and internally consulting on the implementation of the Council of Europe Recommendation on human rights and business of 2 March 2016. The Government provided sufficient explanation for not completing these deliverables.
204. The Monitoring Committee concludes that the Government completed all of its other deliverables under the DBA. This conclusion is based on the questions asked in the assessment framework and

the self-reporting by the Government. Therefore, the Monitoring Committee's observations are neutral as regards the quality of how the Government completed its deliverables.

205. Many deliverables under the DBA were commitments of means rather than ends. In most cases, the latter would be unrealistic considering the challenges that parties and banks are facing, particularly at an international level. However, in many situations the commitment is not one of either/or but rather more/less. For example, promoting the application of FPIC can be formally done by presenting the topic at one or more conferences. It can also be done by making it an element of a general policy, setting goals and assess the progress along the way.
206. Hence, it is up to the parties and adhering banks to decide about the quality of the answers. The answers provided by the Government were generally sufficient with references to further online documentation. That said, the Monitoring Committee would like to make the following remarks.
207. First, supporting adhering banks on their policy commitment (art. 3.3 DBA) was a key deliverable for the Government in 2018. For that year the Government reported that it had repeatedly offered support, but that the adhering banks did not accept it and/or did not ask for support. In the final reporting the Government stated that it actively participated in stakeholder consultations and provided feedback on the human rights reports of some banks.
208. Second, in its Year 2 report the Monitoring Committee observed a hands-off approach by the Government with respect to competition law issues and encouraged the Government to be provide more tailored and active support on what is and what is not possible for banks to cooperate, also because the ACM guidance apparently was not sufficient. The Monitoring Committee also encouraged the Government to take on a clarifying, sector specific, position. In its final reporting, the Government mentioned that its representatives explained competition policy and its relation to the RBC Agreement at the Steering Committee in September 2019. This was very late in the day, at which point two instances occurred in which banks and other parties could not cooperate due to competition law and policy. According to the Government, it never became entirely clear what the problem exactly was and what more needed to be done from the Government's side.
209. Third, the Government reported that it was not made aware of regulations that are obstacles for the implementation of the UNGPs and the OECD Guidelines. However, according to the Monitoring Committee, the government should have been aware that competition law and standard loan documentation (including confidentiality clauses) pose obstacles for banks to communicate on human rights impacts. The latter (the confidentiality clauses) are not regulations, but standard market documentation made by industry bodies and these bodies might be susceptible for government influence. A letter was sent to the LMA, also on behalf of the Government, but it was not successful.
210. The Government argues that client confidentiality and competition law are as such not obstacles for individual banks to implement the OECD Guidelines and the UNGPs, as they do not ask companies and banks to share client information. This is, however, disputable. As mentioned above, the UNGPs and the OECD Guidelines require companies to communicate externally relevant information on due diligence processes and activities, with due regard for commercial confidentiality. However, client confidentiality is an unclear term, the meaning of which needs to be assessed in a multistakeholder setting and not unilaterally by the companies or the government. Client confidentiality is neither a blanket norm nor a fixed concept but it can be developed and

adjusted over time in order to improve transparency, accountability and better reporting as regards respecting human rights. These aims of the UNGPs and the OECD Guidelines are essential for the effectiveness of multistakeholder projects like the RBC Agreements.

211. Competition law issues are also obstacles for implementing the UNGPs and the OECD Guidelines if companies need to increase leverage by cooperating with other companies, as the Government rightly acknowledges.
212. Finally, the Monitoring Committee observes that the Government's position in the DBA was rather hybrid. On one hand, it has special obligations under international law and under the first pillar of the UNGPs. On the other hand, the Government stated in its reporting that the DBA parties agreed on considering the Government as a regular party with no special status. For this reason, the Government representatives decided not to take on a specific leadership role, even though the outcome of the DBA was entangled in and intertwined with the Government's international law obligations.
213. After concluding the DBA in 2016, the Government Coalition Parties agreed in 2017 that if no sufficient results are made with the IRBC Agreements, including the DBA, legislative intervention may be on the agenda.² This made the Government both a participant in the DBA and the judge of its outcome.
214. To some extent this hybridity is inevitable, particularly in the Dutch consultative governance system. However, declaring the Government to be just one of the parties to an IRBC Agreement, does not reflect the legal and political reality. One may accept this for practical reasons, the Government still has a different responsibility than the other parties and adhering banks and may therefore choose to use its (soft) power in order to discharge it.
215. In its previous reports the Monitoring Committee encouraged the Government to take on a stronger leadership role, particularly after Year 2, when the progress made by the parties and the adhering banks gave reasons for great concern that the DBA deliverables would not be achieved in time. Particularly at that stage and in that respect the leadership role for the Government became apparent.

² 2017-2021 Coalition Agreement, *Confidence in the Future*, section 4.3: 'Work on voluntary agreements on international corporate social responsibility will be continued. After two years, the government will consider whether to adopt binding obligations and, if so, what the nature of such obligations should be.'

C. CNV

a. DBA Working Groups

216. CNV actively participated in the Value Chain Working Groups on Palm oil and Gold and in the Working Group Matrix/Database and attended all or almost all of the meetings.

b. Level playing field

217. CNV did not stimulate NVB members and other banks to endorse the DBA. However, it talked with unions in other countries about involving their banks in a similar initiative.

c. Policy commitment

218. CNV supported the adhering banks in implementing par. 3.1. DBA in a meaningful and practical way.

d. Human rights due diligence

219. CNV supported the adhering banks in implementing the human rights due diligence process by actively participating in reflex meetings of various banks.

e. Promoting FPIC

220. CNV did not promote the broader application of FPIC. This topic only slightly affects the union's field of activity, since unions are mainly concerned with labour relations working conditions, and the terms of labour. For the same reason, CNV did not address this topic at international forums including the OECD, Equator Principles and IFC PS.

f. Transparency and reporting

221. CNV used the information as provided on the basis of the NVB Reference for publications about the banks' activities on the website of CNV International.

g. Sharing information

222. CNV shared with parties or the adhering banks existing and tailor-made expertise. This regarded risk assessments with a human rights focus, ways to overcome obstacles to the fulfilment of human rights, including violations of labour rights, in repressive contexts, the protection of human rights defenders, and collecting local evidence.

223. CNV provided the parties and the adhering banks with information and/or perspectives that CNV has easier or better access to. It did so with a focus on labour rights. Through its international ties, CNV is connected to unions in most countries of the world and it shared information it received from other unions and workers abroad.

224. CNV contributed to the prioritisation of risks, based on the knowledge of international standards and its global and international overview, perspective and network. It did so on the basis of knowledge it received from its partners in the production chains.

225. CNV interacted with the Parties and the adhering banks on selected specific themes, in order to enhance mutual learning with a view to improving human rights situation of affected communities. It did so by focusing on workers' rights. It shared expertise on this theme and on workplace practices within various chains. It also indicated how these could be improved within the possibilities of the covenant.

h. Civil society worldwide

226. CNV contributed to the improvement of the space for civil society worldwide by supporting and when necessary empowering its counterparts abroad to hold their own government and companies/investors to account. It did so by discussing the DBA and its functioning in international consultative bodies of trade unions.

i. Requests from Parties/Banks

227. CNV received requests by parties and/or adhering banks and provided suggestions for solutions to problems.

228. According to the Unions, client confidentiality should not be an obstacle for a bank's due diligence process. They carried out a project to map collective bargaining agreements, first in the palm oil sector. Ranking these collective agreements created greater clarity about the quality of the social dialogue at company level. This database of collective agreements is available for banks find information on companies with which it is does or plans to do business. It enables banks to carry out due diligence while maintaining client confidentiality.

j. Observations Monitoring Committee

229. The Monitoring Committee concludes that CNV completed its deliverables under the DBA. This conclusion is based on the questions asked in the assessment framework and the self-reporting by CNV. Therefore, the Monitoring Committee's conclusion is neutral on the quality of how CNV completed its deliverables.

230. Inasmuch as CNV did not complete their deliverables, it provided sufficient explanation for not doing so.

231. The Monitoring Committee notes that the CNV report was not signed off at the designated level of the organisation.

232. The Monitoring Committee would like to commend CNV and FNV for setting up a database on the quality of collective bargaining agreements, thus supporting banks in carrying out their human rights due diligence process.

D. FNV

a. DBA Working Groups

233. FNV actively participated in the Value Chain Working Groups on Cocoa and Palm oil but acknowledged it did not attend 90% or more of the meetings, due to lack of capacity.

b. Level playing field

234. FNV did not stimulate NVB members and other banks to endorse the DBA due to lack of capacity.

c. Policy commitment

235. FNV supported the adhering banks in implementing par. 3.1. DBA in a meaningful and practical way. It reported that it did so by supporting adhering banks in organising the Human Rights and Banking conference. However, it is not clear to the Monitoring Committee how this 2019 conference relates to the banks' policy commitments.

d. Human rights due diligence

236. FNV supported the adhering banks in implementing the human rights due diligence process by providing feedback.

e. Promoting FPIC

237. FNV did not promote the broader application of FPIC due to a lack of capacity. This topic is not at the heart of the union's field of activity. For the same reason, FNV did not address this topic at international forums including the OECD, Equator Principles and IFC PS.

f. Transparency and reporting

238. FNV did not use the information as provided on the basis of the NVB Reference for publications about the banks' activities, due to lack of capacity.

g. Sharing information

239. FNV shared with parties or the adhering banks existing and tailor-made expertise. This regarded risk assessments with a human rights focus, ways to overcome obstacles to the fulfilment of human rights, including violations of labour rights, in repressive contexts, the protection of human rights defenders, and collecting local evidence. shared information on palm oil plantations (number of workers, etc.) for the purpose of the palm oil value chain analysis.

240. FNV provided the parties and the adhering banks with information and/or perspectives that FNV has easier or better access to, with a focus on labour rights. Through FNV's local partners and Mondiaal FNV, it shared information on palm oil plantations and human rights issues taking place on these plantations.

241. FNV contributed to the prioritisation of risks, based on the knowledge of international standards and its global and international overview, perspective and network.

242. FNV did not interact with the Parties and the adhering banks on selected specific themes, due to lack of capacity.

h. Civil society worldwide

243. FNV contributed to the improvement of the space for civil society worldwide by supporting and when necessary empowering its counterparts abroad to hold their own government and companies/investors to account. It did so by starting a database project in the palm sector, together with CNV, one adhering bank and NVB. Through this project the local partners will also attend capacity building trainings.

i. Requests from Parties/Banks

244. FNV did not receive requests by parties and/or adhering banks.

j. Observations Monitoring Committee

245. The Monitoring Committee concludes that FNV completed most of its deliverables under the DBA. This conclusion is based on the questions asked in the assessment framework and the self-reporting by FNV. Therefore, the Monitoring Committee's conclusion is neutral on the quality of how FNV completed its deliverables.

246. The Monitoring Committee notes that FNV reported that it was not able to carry out part of its deliverables due to lack of capacity. Although the Monitoring Committee appreciates that the DBA has asked a lot from the parties and adhering banks in terms of capacity, FNV took an informed decision when signing the DBA and FNV's should have planned its participatory capacity accordingly by allocating sufficient means in terms of time and money.

247. The Monitoring Committee also notes that the FNV report was not signed off at the designated level of the organisation.

248. Additionally, the Monitoring Committee notes that FNV reported about its deliverables in a rather minimalistic way, with little substantiation of what it actually did. Neither did FNV's reporting refer to other sources to clarify its activities. The Monitoring Committee regrets this.

249. On a more positive note, the Monitoring Committee would like to commend CNV and FNV for setting up a database on the quality of collective bargaining agreements, thus supporting banks in carrying out their human rights due diligence process. The Monitoring Committee notes that this important achievement was, unfortunately, not acknowledged by the NVB and the adhering banks in their final year reporting.

E. Amnesty International

a. DBA Working Groups

250. Amnesty International ('Amnesty') actively participated in the Working Groups Enabling remediation, Value Chain Oil and Gas and Palm Oil, and Increasing leverage.
251. Together with PAX, Amnesty provided input to the discussions and drafts of the paper on Enabling Remediation. It specifically looked at the right to remedy and the ecosystem approach to avoid situations where responsibilities lay with many but no party is held responsible.
252. In the Working Group Value Chain Oil & Gas, Amnesty, together with PAX, provided information based on its own reports and research, reports of other NGOs and research institutions, as well as databases.
253. In the Working Group Value Chain Palm Oil, Amnesty, together with Oxfam Novib, shared knowledge and expertise based on its research on severe labour rights abuses on palm oil plantations in Indonesia. It also shared expertise in the field of human rights defenders, particularly in the palm oil sector. Based on its engagement experience with various companies in the palm oil value chain, it provided advice on strengthening human rights due diligence procedures, including in the context of the field trip that some DBA parties made to Indonesia.
254. Together with Oxfam Novib, one adhering bank and an external expert on human rights defenders, Amnesty organised a meeting for DBA parties and banks to provide input for a policy statement and due diligence process related to human rights defenders and civic freedoms. The resulting document was shared within the DBA but Amnesty does not know what banks did with it.
255. The final report on Increasing Leverage, published in September 2019, concluded that despite all efforts client confidentiality and competition law have proven to be barriers for effective exchanges between parties and banks in the context of the DBA. For Amnesty, it had become obvious that if banks do not share client information, the expertise that NGOs and other DBA parties might have regarding a client could not be used effectively and prevent parties and banks from meaningfully exploring ways to (jointly) increase leverage.

b. Level playing field

256. Amnesty stimulated NVB members and other banks to endorse the DBA. During and after the negotiation phase, the CSOs made it a priority that banks would sign the declaration of adherence. Additionally, Amnesty stressed the importance of signing the declaration of adherence at a meeting with another bank that was still unsure whether to sign or not.

c. Policy commitment

257. Amnesty supported the adhering banks in implementing par. 3.1. DBA in a meaningful and practical way. It participated in (consultation) meetings with banks regarding their human rights reports, it provided feedback to (draft or published) documents, and made recommendations related to both human rights policies and procedures. In the working groups Amnesty had obviously many conversations with banks on how to improve their policies and practices.

d. *Human rights due diligence*

258. Amnesty supported the adhering banks in implementing the human rights due diligence process, in the first place in the various working groups. As a follow-up to the Value Chain analysis on Cocoa, Amnesty participated in a meeting with banks. Amnesty and other NGOs were not triggered to provide specific input into human rights due diligence processes because banks did not share information about specific clients. In other working groups, discussions were more substantial but still not client specific, so tailor-made suggestions could not be given.
259. As member of the Fair Bank Guide, Amnesty provided a number of banks with an overview of unresolved cases of human rights infringements committed by companies they financed. It also drafted recommendations for engagement with local stakeholders on this topic.

e. *Promoting FPIC*

260. As part of the NGO-delegation Amnesty supported Oxfam Novib's efforts in promoting the broader application of FPIC. It did not address the topic at international forums such as the OECD, Equator Principles and IFC PS but not for any specific reason.

f. *Transparency and reporting*

261. Amnesty did not use the information as provided on the basis of the NVB Reference for publications about the banks' activities. It considered the information to be on such an abstract level that it does not provide insights in the actual activities of the bank.

g. *Sharing information*

262. Amnesty shared with Parties and adhering banks existing and tailor-made expertise. This included empowering ways of interaction with local stakeholders, risk assessments with human rights focus, ways to overcome obstacles to the fulfilment of human rights in repressive contexts, protection of human rights defenders, and collection of local evidence.
263. Amnesty shared research reports documenting human rights violations/abuses, specifying the involvement of particular companies, which could be or were clients of the banks and providing an analysis regarding human right due diligence, including reports on Shell Nigeria, palm oil and engagement experiences. Amnesty also shared its expertise of the international business and human rights standards in the working groups, such as regards the severity analysis in the working groups on palm oil and oil & gas.
264. Amnesty also developed a draft theory of change for parties and banks to better understand the workings of the DBA. Although some banks provided feedback, there was no agreement on it in the Steering Committee.
265. Amnesty also provided the parties and the adhering banks with information and/or perspectives that it has easier or better access to. Based on its own research, it shared detailed information on what is happening on the ground in terms of human rights violations/abuses and how they need to be addressed. According to Amnesty the information shared by the government and banks remained very general while banks referred to client confidentiality. As a result, Amnesty argues that its specific expertise has not been used in the most effective way.
266. Amnesty contributed to the prioritisation of risks, based on the knowledge of international standards and its global and international overview, perspective and network. It actively took part

in the salience/severity analysis of human rights risks and impacts in the palm oil and oil & gas working group. A challenge that it observed was that the salience/severity exercises took place at sector level and not at the level of a bank's individual value chain. The latter would have been in line with the approach in the UNGPs where Amnesty also has the most expertise. Due to the banks' claim on client confidentiality, Amnesty could not apply this expertise within the DBA.

267. Amnesty interacted with the parties and the adhering banks on timely selected specific themes in order to enhance mutual learning with a view to improving human rights situation of affected communities. Especially within the value chain working groups Amnesty worked together on specific themes and risks relevant to those chains. Also here, due to client confidentiality, it was not possible to discuss actual negative impacts to which the banks are directly linked or contributing to. As a result, Amnesty was not able to improve the situation of affected communities, even though this was one of the two overarching goals of the DBA.

268. Over 2019, the NGOs shared their concerns about the lack of progress and impact by the DBA with other parties, banks and the independent chair. However, the other parties and adhering banks did not share those concerns. Amnesty had particularly expected the Government to be more supportive, as positive impact for affected people was one of the RBC Agreements' objectives.

h. Civil society worldwide

269. Amnesty contributed to the improvement of the space for civil society worldwide by supporting and when necessary empowering its counterparts abroad to hold their own government and companies/investors to account. This is the core of Amnesty's work. This increasingly includes struggles against companies causing or contributing to human rights violations. Amnesty has a global campaign focused on reversing the trend of closing civil space.

i. Requests from Parties/Banks

270. Amnesty received requests by Parties and/or adhering banks and provided suggestions for solutions to problems. It provided comments on draft human rights policies of banks. At a human rights defenders conference, organised by an adhering bank in 2019, Amnesty's director underlined the importance of businesses, including banks, to better protect human rights defenders. More interaction was crucial, as the information human rights defenders have about a situation in a country could be very valuable for a bank's due diligence process.

j. Observations Monitoring Committee

271. The Monitoring Committee concludes that Amnesty completed its deliverables under the DBA. This conclusion is based on the questions asked in the assessment framework and the self-reporting by Amnesty. Therefore, the Monitoring Committee's conclusion is neutral on the quality of how Amnesty completed its deliverables.

272. The critical remarks expressed by Amnesty in its reporting, will be addressed in the concluding observations.

F. Oxfam Novib

a. DBA Working Groups

274. Oxfam Novib actively participated in the Working Groups Value Chain on Cocoa and Palm oil, the Working Group Increasing leverage and Transparency.
275. In the Working Group Value Chain on cocoa Oxfam Novib shared its experience and expertise in West-Africa and Indonesia, and provided tailored advice to banks on their cocoa sector policies by producing, with other NGOs, a document that was shared with the NVB. However, the NGO's did not receive a response on their recommendations.
276. Oxfam Novib and other NGOs requested the NVB and the banks information about how they incorporated the lessons learnt from the cocoa value chain analysis. The NVB replied that the recommendations would be incorporated in a list made available to whichever bank 'would want to pick these up in the future' and that 'the banks would individually report back on the specific actions they may have committed themselves to'. Oxfam Novib considered this approach as an apparent lack of commitment by banks and the NVB to take ownership of the action needed in the cacao value chain.
277. Oxfam Novib was also disappointed in the low level of involvement and ambition of the Government representatives in this working group. It had hoped that the government would establish a minimum level of ambition for the banks, in line with the SER advice of 2014.³ Oxfam Novib observe that the government has taken a very passive stance, most often siding with the NVB and the banks when the NGOs asked for more progress.
278. In the Working Group Value Chain Palm Oil, Oxfam Novib actively contributed with its expertise on land rights, living income and human rights defenders. It also explored the option to develop a model policy on human rights defenders and civic freedoms for banks as an official DBA document. However, the banks indicated that they needed more time and wanted to discuss this further face to face, which so far has not materialised.
279. In the final phase of the palm oil value chain analysis, Oxfam Novib was surprised by the position of the NVB and the banks, that the conclusions should be seen as 'general conclusions', not specifically addressed to the involved banks, a conclusion supported by the Government. Additionally, the NVB and the banks strongly reduced the scope of their action on palm oil to a minimal set of "follow-up actions", which according to Oxfam Novib do not do justice to the severity of the human rights issues affecting the palm oil sector, and to which Dutch banks provide significant financing.
280. In the Working Group Increasing leverage Oxfam Novib contributed with expertise and knowledge to the drafting of the final report in September 2019.
281. Oxfam Novib stated that banks did not enough to explore the recommendation in the Nauta Dutilh report of 2017, by increasing their leverage towards high-risk clients by engaging with their clients to change the client confidentiality clauses. Oxfam Novib also considers the conclusions of the final report of the Increasing leverage Working Group too low in ambition and finds it

³ <https://www.ser.nl/-/media/ser/downloads/adviezen/2014/imvo-convenanten.pdf>, specifically p. 23-26.

disappointing that the Working Group concludes that ‘client confidentiality and competition law have proven to be barriers for effective exchanges in the context of the DBA’, without presenting any specific commitments to seek ways to overcome these.

282. Oxfam Novib also observes that NGO’s requested the NVB and the banks to speed up their work on addressing human rights violations related to asset management and that the NVB replied that banks were waiting for developments in the other covenants. Oxfam Novib considers this passive attitude to be very concerning, given the amounts of money invested by Dutch banks through asset management in many high-risk projects abroad.
283. In the Working Group Transparency, Oxfam Novib together with an adhering bank, put together a document on Performance Indicators for banks (published in November 2019). In a first draft, Oxfam Novib proposed, tailored for the banks, one or several possible performance indicators based on the UNGP Reporting Framework. Oxfam Novib considered the final result to be a good step in the right direction. However, the NVB insisted in the insertion of a legal disclaimer, which according to Oxfam Novib reads like a denouncement of the paper’s content. The NVB also insisted in adding the words “White Paper” to the title of the paper, thus further reducing its significance. Oxfam Novib is disappointed in the role the NVB took in this process, which otherwise was one of the few examples of good cooperation between NGOs and banks within the DBA.

b. Level playing field

284. Oxfam Novib stimulated NVB members and other banks to endorse the DBA, such as by actively participating in the Banking and Human Rights conference organized by the DBA in November 2019 in Amsterdam.

c. Policy commitment

285. Oxfam Novib supported the adhering banks in implementing par. 3.1 DBA in a meaningful and practical way. Together with the other NGOs, it provided the banks with specific advice on their human rights due diligence policies in the cocoa and palm oil sector. It provided tailored advice to individual banks on their cocoa sector policies and practices, as well as in a final NGO document that was shared with the NVB to which the NGO’s have yet to receive a reply.
286. Oxfam Novib actively contributed with expertise and knowledge on the topics of land rights, living income and human rights defenders during several rounds of discussions as part of drafting the palm oil value chain analysis in August 2019.

d. Human rights due diligence

287. Oxfam Novib supported the adhering banks in implementing the human rights due diligence process by providing feedback. It provided tailored advice to banks on their due diligence policies and practices, particularly in relation to the cacao value chains.
288. Oxfam Novib states that the banks’ reluctance to share information about their engagement with clients and other stakeholders made it very difficult to provide the banks with meaningful advice about the implementation of their due diligence process. Oxfam Novib had expected that by signing the DBA confidentiality protocol, the banks would use this safe space to discuss specific challenges they encounter. Due to client confidentiality, it remains unclear to Oxfam Novib if and how the banks are actually using the information and advice it is provided with.

289. Oxfam Novib also considers it disappointing that throughout the DBA the NVB has very often acted as a guardian of the competition law restrictions rather than seeking ways to overcome these limitations.

290. Nevertheless, in addition to the tailored advice Oxfam Novib provided to the banks part of the cocoa and palm oil value chains working groups, it also supported and advised the adhering banks in implementing their Human Rights Due diligence process in a number of instances.

e. Promoting FPIC

291. Oxfam Novib promoted the broader application of FPIC, such as by publishing a paper in 2019, formulating recommendations for several banks, contributing to the FPIC discussions in the Working Group Value Chain palm oil, and collaborating with LANDdialog and the NVB to provide tailor-made workshops for adhering banks, with a specific focus on FPIC.

292. Oxfam Novib also promoted the broader application of FPIC at international forums by submitting feedback on the revision of the Equator Principles, and by engaging at a World Bank conference with specific banks on the topic of FPIC, and its implementation by the financial sector.

f. Transparency and reporting

293. Oxfam Novib did not use the information as provided on the basis of the NVB Reference for publications about the banks' activities. It recognises this as a step in the right direction but the information is not specific enough to provide meaningful information on the banks' activities.

g. Sharing information

294. Oxfam Novib shared with Parties or the adhering banks existing and tailor-made expertise. This included empowering ways of interaction with local stakeholders, risk assessments with human rights focus, ways to overcome obstacles to the fulfilment of human rights in repressive contexts, protection of human rights defenders, and collection of local evidence.

295. Oxfam Novib shared experience and expertise with banks on the cocoa value chain from main producing countries (West-Africa, Indonesia) on cocoa production, farm gate prices, farmer income, farmer organization and value distribution across the value chain. It also provided tailored advice to banks on their cocoa sector policies and practices during separate sessions dedicated to due diligence in the cocoa sector.

296. Oxfam Novib also provided the Parties and the adhering banks with information and/or perspectives that it has easier or better access to. With other parties, it shared its experience and expertise, amongst others in the cocoa value chain from main producing countries (West-Africa, Indonesia) on cocoa production. It also provided tailored advice to banks on their cocoa sector policies and practices during separate sessions dedicated to due diligence in the cocoa sector. Oxfam Novib also contributed with expertise and expert knowledge on the topics of land rights, living income and Human Rights Defenders. Oxfam Novib also contributed with expertise and knowledge on the way the OECD guidance on increasing leverage can be applied in relation to local stakeholders, the meaningful engagement thereof and the meaningful application of FPIC in due diligence processes.

297. In its paper ‘Consent is everybody’s business’ (August 2019), Oxfam Novib discussed the topic of FPIC in great detail. When drafting this paper, it engaged directly with banks. The paper’s content will inform Oxfam Novib’s continuing engagement with financial institutions and other organisations like the OECD, Equator Principles and IFC on the topic of FPIC.
298. Oxfam Novib contributed to the prioritisation of risks, based on the knowledge of international standards and its global and international overview, perspective and network. It contributed insights during sessions with banks on due diligence in the cocoa sector and in a final document drafted by the NGOs active in the cocoa working group.
299. Oxfam Novib also actively contributed with expertise and expert knowledge on the topics of land rights, living income and human rights defenders to drafting the conclusions of the palm oil value chain analysis in August 2019. The paper ‘Consent is everybody’s business’ contains advice on how banks should go about implementing meaningful stakeholder engagement as part of their risk prioritization efforts.
300. Oxfam Novib interacted with the Parties and the adhering banks on timely selected specific themes in order to enhance mutual learning with a view to improving human rights situation of affected communities. It provided a large bank with detailed feedback on its human rights report.
301. Within the coalition of the Fair Finance guide, Oxfam Novib reached out to adhering banks regarding a violation of labour rights in Asia by a client, with a request to engage said client about this in a meaningful way.

h. Civil society worldwide

302. Oxfam Novib contributed to the improvement of the space for civil society worldwide by supporting and when necessary empowering its counterparts abroad to hold their own government and companies/investors to account. It works together with local NGO coalitions to advocate progressive legal frameworks to guarantee their right to freedom of association. Oxfam Novib’s strategy to strengthen local civil society to deal with shifting civil space, includes increasing accountability and strengthening local constituencies, and investing in creating coalitions and networks on civic space.
303. As part of Oxfam Novib’s engagement in the Palm Oil value chain working group, it provided the banks and parties with knowledge and expertise on human rights defenders and civic space, and the impact (positive and negative) that banks and business can have at national level.

i. Requests from Parties/Banks

304. Oxfam Novib did not receive requests by parties and/or adhering banks.

j. Observations Monitoring Committee

305. The Monitoring Committee concludes that Oxfam Novib completed its deliverables under the DBA. This conclusion is based on the questions asked in the assessment framework and the self-reporting by Oxfam Novib. Therefore, the Monitoring Committee’s conclusion is neutral on the quality of how Oxfam Novib completed its deliverables.
306. The critical remarks expressed by Oxfam Novib will be addressed in the concluding observations.

G. PAX

a. DBA Working Groups

307. PAX actively participated in the Working Groups on Value Chain (Gold and Oil and Gas), Working Group Enabling remediation, and Transparency.
308. In the Working Group Enabling Remediation, PAX took the lead on the NGO side. It participated in the drafting committee that finished the second part of the paper. wrote the recommendations to the banks, together with the Government and the NVB.
309. Together with Save the Children, PAX participated in the Value Chain Gold. It coordinated the input of CSOs in cooperation with the members to the Gold agreement and it finished this analysis in cooperation with one of the adhering banks.
310. Together with Amnesty International, PAX was involved in the Value Chain analysis on Oil and Gas. It took the lead in finishing this analysis right before the DBA expired. Drafting recommendations involved many conversations with two adhering banks.
311. Together with Oxfam Novib, PAX was involved in drafting the transparency paper on performance indicators, aligning it with the UNGP Reporting Framework. The paper provides good direction to banks to develop (K)PI's on human rights. PAX was disappointed that the banks came up with a disclaimer that could be read as a way to downgrade the recommendations.

b. Level playing field

312. PAX stimulated NVB members and other banks to endorse the DBA. Over the first year, it endorsed the agreement publicly, inter alia by a statement on its website. It also cooperated with the NVB in drafting the programme for the Banking and Human Rights conference and organized a panel on client confidentiality.

c. Policy commitment

313. PAX supported the adhering banks in implementing par. 3.1 DBA in a meaningful and practical way. It participated in consultation meetings with three banks on their due diligence process and in several meetings with banks on specific themes and policies, such as mining, oil and gas, remediation, human rights defenders and controversial weapons. It also provided feedback on banks' human rights reports.
314. As a member to the Fair Banking guide, PAX published a report on the connection of Dutch banks to controversial arms trade. It found that some banks invest in arms producers supplying military goods to states with a risk that these weapons being used in violation of human rights and international humanitarian law.
315. PAX also submitted a case to the advisory panel of the NVB. The case has been accepted but the panel's final statement has not yet been published.

d. Human rights due diligence

316. PAX supported the adhering banks in implementing the human rights due diligence process by providing feedback. It engaged with the banks, on their request and pro-actively. It took part in

the stakeholder consultations of two large banks and had several (bilateral) meetings with large banks. It also participated in a session with the smaller banks, organised by the NVB.

317. By the end of 2018, NGO's shared their concern with the steering committee that it was unclear how banks would make use of the information that they provided. In April 2019, NGO's sent a letter to the banks and parties to the agreement, to flag the lack of progress on two fundamental objectives of the DBA: to achieve a positive impact for people and to solve issues a bank cannot solve on its own. These concerns were not shared by the other parties.
318. NGO's also observed a lack of ambition in the value chain analyses because banks did not implement the recommendations of the working groups. PAX acknowledges the responsibility of each individual bank to assess what should be done, but found it difficult to support banks in their due diligence process because it was not clear what worked for them.
319. In various working groups (value chain, transparency, remedy), PAX provided information about an adequate human rights due diligence process, by raising questions about current processes, and by providing specific input to improve banks' engagement with companies.
320. As part of the coalition of the Fair Finance guide, PAX reached out to adhering banks about a news item, regarding a violation of labour rights in Asia by a client, with a request to engage with said client about this in a meaningful way.
321. PAX also contacted adhering banks with a list of companies that were financed by these banks and that were involved in human rights violations. It provided recommendations for follow-up engagement with the stakeholders involved in those cases.
322. PAX intended to give more specific input into specific human rights due diligence processes but due to client confidentiality, banks do not share information about specific clients. This means that PAX' input remained at a general level. It was not possible to determine the effects of the banks' efforts on the situation of people whose rights are violated.

e. Promoting FPIC

323. PAX promoted the broader application of FPIC in its engagement with banks and companies, even though it is not the main subject of PAX' engagement. It also promotes the broader application in other RBC Agreements, as well in the Value Chain analyses of the DBA. PAX did not explicitly promote the broader application of FPIC in international forums.

f. Transparency and reporting

324. PAX did not use the information as provided on the basis of the NVB Reference for publications about the banks' activities, as it is on a too abstract level.

g. Sharing information

325. PAX shared with Parties or the adhering banks existing and tailor-made expertise. This included empowering ways of interaction with local stakeholders, risk assessments with human rights focus, ways to overcome obstacles to the fulfilment of human rights in repressive contexts, protection of human rights defenders, and collection of local evidence.

326. In working groups, bilateral meetings and by doing research and sharing reports, PAX provided the banks and the Government with relevant information on a broad range of themes. PAX regrets that it does not know if and how banks use this information, as they do not share information on specific cases because of client confidentiality.
327. PAX provided the parties and adhering banks with information that PAX has easier or better access to. In the working groups and at bilateral meetings with banks, PAX shared its expertise on topics such as remediation, controversial weapons, arms trade and on sectors such as the gold and oil and gas industry. It also provided tailor made information on specific clients of several banks but it did not have substantive conversations with banks due to client confidentiality.
328. The banks' claim on client confidentiality has hindered cooperation within the DBA. However, PAX has observed progress with two specific banks after the DBA expired. PAX concludes from this that client confidentiality is not absolute, and that severe human rights violations should be a valid reason for banks to discuss more in detail engagement with their clients.
329. PAX also observed that banks were willing to share client information with the Government it did not share with NGO's. At the same time, the Government was not supportive of PAX' request for more transparency. Client confidentiality prevented PAX from contributing to achieving the overarching goals of the DBA: a material positive impact for people (potentially) facing adverse human rights impacts and a search for solutions to address problems that companies cannot solve themselves.
330. PAX contributed to the prioritisation of risks, based on the knowledge of international standards and its global and international overview, perspective and network. It did so in several working groups (Value chains and Enabling remediation) by sharing its perspectives on the interpretation of international standards and on specific impacts. During the value chain analyses, PAX participated in mapping the most common risks. However, actual risks and impacts banks are related to were not looked into, as banks did not share information about their clients.
331. PAX interacted with the Parties and the adhering banks on selected specific themes. In the Gold and oil & gas value chain working groups, PAX identified specific themes and risks and had valuable sessions in which all parties shared their thoughts and expertise. All working groups included an element of mutual learning.
332. However, according to PAX, the banks were not willing to commit to incorporating the recommendations of the working groups in their operations and policies. PAX is not aware of any policy improvements based on the recommendations of the working groups. It has flagged this issue throughout the year but did not receive sufficient support. Therefore, PAX does not know of any actions taken by banks to improve the situation of affected communities.

h. Civil society worldwide

333. PAX contributed to the improvement of the space for civil society worldwide by supporting and when necessary empowering its counterparts abroad to hold their own government and companies/investors to account. This is the core of PAX' work as a peace organisation. It supports local communities in 15 countries, it holds companies accountable for their role in conflict affected areas and it lobbies and campaigns, together with local partners, governments

and international organisations, such as the UN and the EU to protect the civil space and the people fighting for this.

i. Requests from Parties/Banks

334. PAX did not receive requests by Parties and/or adhering banks.

j. Observations Monitoring Committee

335. The Monitoring Committee concludes that PAX completed its deliverables under the DBA. This conclusion is based on the questions asked in the assessment framework and the self-reporting by PAX. Therefore, the Monitoring Committee's conclusion is neutral on the quality of how PAX completed its deliverables.

336. The critical remarks expressed by PAX will be addressed in the concluding observations.

H. Save the Children

a. DBA Working Groups

337. Save the Children actively participated in the Value Chain Working Groups on Cocoa and Gold. In both value chain analyses it provided its expertise on the risks of children's rights violations, based on input from Save the Children's country offices in Ivory Coast and Uganda. It also provided background information with regard to the prioritization of salient risks.
338. Save the Children took part in discussions on drafting recommendations and gave input on specific aspects, e.g. on existing multistakeholder platforms in the cocoa sector, on developments in formalising small-scale gold mining in different countries, on the interlinkages between large-scale and small-scale mining, on projects about the elimination of the use of mercury in small-scale mining and the role that large-scale mining could play in this regard.
339. With regard to the cocoa value chain analysis, Save the Children took the lead in following up on the implementation of the recommendations formulated in the report. However, a joint meeting with two banks did not lead to any next steps. Save the Children noted that there did not seem to be a positive spirit to create a collective engagement towards the cocoa sector to tackle salient issues like living income, deforestation and child labour. At a later stage, three respective meetings with large banks were held in which the due diligence policies and implementation processes on cocoa were discussed. This resulted in a written recommendation by the NGO's to the three Banks.

b. Level playing field

340. Save the Children indirectly stimulated NVB members and other banks to endorse the DBA, by giving presentations to other Save the Children offices in Europe, explaining the covenants as an instrument to foster responsible business within the Banking Sector. Other Member offices have used this for a lobby towards their Banks.

c. Policy commitment

341. Save the Children supported the adhering banks in implementing par. 3.1 DBA in a meaningful and practical way. Together with the other NGOs, it provided specific advice on the due diligence policies in relation to the cocoa sector. As the NGO's did not receive a response to their recommendations, it is unclear whether the banks made any adjustments to their policies as regards the cocoa sector.
342. Within the Value Chain Working Group on gold, Save the Children provided input on possible improvements of the due diligence policies in relation to the gold-mining sector. It is not clear to Save the Children whether this has led to any adjustments in banks' policies.
343. Save the Children also participated in a session with smaller banks, organised by the NVB, on their due diligence processes and reporting, in which it provided feedback. Save the Children supported the banks by providing its expertise, and elaborating on possible ways to respect human rights in general, and specifically children's rights.

d. Human rights due diligence

344. Save the Children supported the adhering banks in implementing their human rights due diligence process. It did so especially in the Working Group Value Chains. The Value Chain analysis on

Cocoa was followed up by three meetings with three Banks about their due diligence process and implementation as regards the cocoa sector. In Save the Children's view, the discussion remained quite general because of the issue of client confidentiality. For the same reason the NGO's were not able to notice an improvement in time in the implementation process. Although banks stated that they were taking the outcomes of the DBA discussions into account, they were not prepared to provide more information, despite the NGO's having signed the DBA confidentiality protocol.

345. Save the Children and other NGO's were disturbed to learn that the banks and the Government did discuss individual cases. It is also Save the Children's opinion that the Government as a party to the DBA could have played a more prominent role. It took a position as a facilitator, rather than giving its point of view on human rights risks, due diligence obligations of the banks, and their engagements. According to Save the Children, the impact of this passive role of the Government on the outcome of the DBA should not be underestimated.

e. Promoting FPIC

346. Save the Children did not promote the broader application of FPIC. This topic is not part of Save the Children's expertise. For the same reason, Save the Children did not address this topic at international forums including the OECD, Equator Principles and IFC PS.

f. Transparency and reporting

347. Save the Children did not use the information as provided on the basis of the NVB Reference for publications about the banks' activities, as it considers it very abstract and does not provide the information Save the Children needs about banks' activities.

g. Sharing information

348. Save the Children shared with Parties or the adhering banks existing and tailor-made expertise. This included empowering ways of interaction with local stakeholders, risk assessments with human rights focus, ways to overcome obstacles to the fulfilment of human rights in repressive contexts, and collection of local evidence.
349. Within the Working Group Value Chains, Save the Children shared information and reports on the topics like child labour, living wage, labour conditions in small-scale mining and on gold mining and its environmental impacts. It also played a role on more specific topics: outside the working group, it offered its expertise on children's rights and to work together on a children's rights impact assessment to improve the banks' policies. The banks did not take up this offer.
350. Save the Children provided the parties and adhering banks with information and/or perspectives that it has easier or better access to. See previous paragraph.
351. Save the Children contributed to the prioritisation of risks, based on the knowledge of international standards and its global and international overview, perspective and network. It did so by playing an active role in the Working Group Value Chains on Cocoa and Gold. The identification and prioritisation of risks were extensively discussed, and Save the Children provided input, also based on information from its country offices. It emphasised the value of the Children's Rights and Business Principles as international standard to base the impact on children's rights on.

352. Save the Children did not interact with the parties and the adhering banks on timely selected specific themes in order to enhance mutual learning with a view to improving human rights situation of affected communities. Apart from its efforts in the Working Group Value Chain it did not interact on other specific themes. It offered its expertise on children's rights impact assessments, but there did not seem to be a specific interest to work on this. In 2019, Save the Children contacted a smaller Bank about child labour and proposed the idea of collective engagement but this did not result in any follow up activities.

h. Civil society worldwide

353. Save the Children contributed to the improvement of the space for civil society worldwide by supporting and when necessary empowering its counterparts abroad to hold their own government and companies/investors to account. This is an important part of the work of Save the Children worldwide. In several programmes civil society empowerment is core, both towards governments as towards companies.

i. Requests from Parties/Banks

354. Save the Children did not receive requests by parties and/or adhering banks.

j. Observations Monitoring Committee

355. The Monitoring Committee concludes that Save the Children completed its deliverables under the DBA. This conclusion is based on the questions asked in the assessment framework and the self-reporting by Save the Children. Therefore, the Monitoring Committee's conclusion is neutral on the quality of how Save the Children completed its deliverables.

356. The Monitoring Committee notes that the Save the Children report was not signed off at the designated level of the organisation.

357. The critical remarks expressed by Save the Children will be addressed in the concluding observations.

V. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

a. Introduction

358. Following the specific observations made in sections II-IV, the Monitoring Committee would like to make some general observations regarding a number of overarching and intertwining aspects. They do not focus on individual banks and parties but on the DBA, its functioning and its added value. These observations concern an overall assessment of the deliverables, reporting issues, working groups, competition law, confidentiality clauses and an assessment of overall progress.
359. An important caveat as regards the Monitoring Committee's conclusions and recommendations is that they are based on the questions asked in the assessment framework and the self-reporting by the parties and the adhering banks.
360. This means, first, that the Monitoring Committee has not fact-checked the provided information. The data provided were limited and were usually not explicitly asked for. The reports have not been internally or externally audited. The Monitoring Committee trusts that parties and adhering banks have reported in good faith and assumes that their reporting was accurate.
361. Second, the types of questions asked in the assessment framework, and more generally the way the DBA was framed, means that the Monitoring Committee only gained a fairly superficial picture of what happened over the past three years, both in terms of creating a dynamic environment between the parties and the adhering banks, as well as in terms of real change on the ground for affected individuals and communities. Part of the Monitoring Committee's observations are therefore based on assumptions derived from the provided information and what it read between the lines of the various reports.

b. Assessment of overall progress

362. In its Year 2 report, the Monitoring Committee expressed its concern about the considerable number of deliverables that was not yet completed. Over the final year of the DBA, however, the parties and adhering banks have done an impressive job to complete virtually all deliverables.
363. In the previous chapters the Monitoring Committee has indicated where parties and adhering banks fell short of completing their tasks under the DBA. It did not find structural shortcomings by the parties or the adhering banks as regards the deliverables set out in the DBA and as translated in the assessment framework.
364. This means that the adhering banks (inasmuch as they had not already done so) have made the United Nations Guiding Principles (UNGPs) part of their core business by having a human rights policy commitment and a human rights due diligence and client engagement. The awareness of the importance of complying with the UNGPs has considerably increased, also at board level. It is questionable whether this would have been achieved without the DBA.
365. Considering the above-mentioned caveats, this conclusion does not imply an assessment of the quality of the UNGP compliance, the level of engagement and the quality of the way human rights due diligence is carried out. Banks differ in size and in their engagement with human rights and are in different phases of transition. It is, however, crucial that they have all committed to a direction of travel in order to respect human rights of individuals and communities.

366. In this respect it is also important to mention that at a global scale, many Dutch banks are frontrunners when it comes to respecting human rights and complying with the UNGPs and OECD Guidelines. The Monitoring Committee compliments these Dutch banks on their world leading position and on providing excellent examples as to how banks can implement respect for human rights. The downside of this position is that the lack of a European and international level playing field leads to extra challenges. It is therefore all the more important to continue building partnerships with other banks, clients and NGOs. The Monitoring Committee is glad to observe that the frontrunner's role of Dutch banks is not leading to complacency but is rather taken as an incentive to continue implementing the UNGPs and the OECD Guidelines.
367. Similar observations can be made about the general role of the Government for having been a global frontrunner in this area for some time. The IRBC Agreements policy is a unique way of encouraging companies to implement the UNGPs and the OECD Guidelines, in a more substantive way than legislation alone can achieve. The multistakeholder approach with the important role of the Unions and the NGOs is also a powerful way to create real change on the ground.
368. In completing the deliverables of the DBA, the parties and adhering banks have shown their preparedness and determination to contribute to the Dutch model that is looked at with admiration by many in the business and human rights world.
369. Protecting and respecting human rights is a continuing process and, as financial institutions know quite well, past results are no guarantees for the future. And where the parties and adhering banks have already embarked on discussing a follow up to the DBA, the Monitoring Committee would like to provide some encouraging and critical remarks in this respect. These remarks are, of course, not intended to diminish the value of what has been achieved over the past three years.

c. Working groups

370. The joint commitments and working groups reflect the best part of the DBA's implementation in terms of cooperation. Although not without problems, the parties have completed and published a number of valuable reports, all with considerable added value, not only for the parties and the adhering banks but also beyond the DBA. This is a very important tangible achievement with the effect of disseminating knowledge.
371. Unfortunately, some important reports were only published in the last month of the DBA running time. This made it impossible to test the result and further develop the conclusions and recommendations in a multistakeholder setting.
372. The relative success of the working groups suggests that the parties and adhering banks were able to work together at a more abstract level but that cooperation was not fruitful when it came to practical applications. It also makes it difficult for the Monitoring Committee to establish whether and if so how, the DBA has led to real change on the ground for individuals and communities (see also under client confidentiality).

d. Reporting issues

373. Reporting by banks showed a certain reluctance to exchange of information and transparency. Generic or piecemeal information seems to be privileged and show that banks are not yet

effectively managing the human rights due diligence process, which is fundamentally very different from the kind of risks assessment banks usually lead.

e. Competition law

374. A continuous issue for cooperation between banks is the actual and perceived limitations imposed by competition law rules. Indeed, competition law is a pain when it comes to bringing the business and human rights agenda forward. A key problem is that it is often unclear what is and what is not allowed.
375. The DBA's purpose was to implement the UNGPs in a multi-stakeholder framework. It was therefore essential that issues such as competition law risks were identified and taken head on to prevent them from becoming obstacles to achieving the DBA goals. Before signing the DBA and on the initiative of the Government, the parties discussed general competition law issues with the ACM. In the framework of the DBA, the parties found practical solutions to prevent competition law issues, for example by arranging separate meetings with each bank on the same topic.
376. The Government reported that the competition law topic has been several times discussed by the Steering Committee but that it had not become clear what other specific problems needed to be addressed. At the same time, it seems that adhering banks have not been actively seeking Government advice on competition law related matters either. An explanation for this may be that adhering banks have not actively sought to cooperate with each other, for example to create leverage. Therefore, the ins and outs of competition law issues were initially not tested for lack of specific cases. However, competition law issues appeared at the DBA's final stages and it is likely that they will keep appearing in the future. It is therefore important to keep a close eye on this topic to prevent competition law from an effective implementation of the relevant parts of the UNGPs and OECD Guidelines.

f. Confidentiality clauses

377. A similarly thorny issue is client confidentiality. The Nauta Dutilh report provided a helpful picture of the state of affairs but it was more or less taken as a given by the NVB, the adhering banks, and the Government, rather than as a starting point for further development. The Monitoring Committee observes a lack of ambition to find ways to get around the status quo. This is regrettable for several reasons.
378. First, the Monitoring Committee is convinced that there are many instances in which banks do have sufficient leverage to obtain client consent. In such instances, the argument of client confidentiality is invalidly used to prevent transparency and accountability.
379. Second, at a more general level the adhering banks have used confidentiality arguments to refuse discussing how conclusions from the working groups were implemented in banks' policies and practices. The Monitoring Committee observes that this could have been done without affecting client confidentiality.
380. Third, transparency is not only a matter for CSOs and Unions. A bank is also accountable to its shareholders, to clients holding bonds and deposits (providing the money that is lend or invested), and to other stakeholders. In this respect client confidentiality is a relative concept, as explained above.

381. Fourth, client confidentiality, particularly used in the rather blanket way by banks, hampers a fruitful cooperation with CSOs and Unions. The latter will not be able to provide sufficient and tailor-made information to banks and are put off to cooperate. In the end, it leads to less effective ways of respecting and protecting human rights.
382. Fifth, the DBA required an innovative approach to remove the obstacles, if only partially. The NVB has been pursuing this issue but apart from its correspondence with the LMA, it did not provide specific data or other information indicating that they have played a substantive role in creating leverage, nationally and internationally, pushing this topic and making material progress. It is nonetheless encouraging that the NVB, adhering banks and NGOs are still in the process of discussing how they can work together to overcome the obstacle of client confidentiality and the Monitoring Committee is hopeful that the parties and adhering banks will make progress on this topic when building upon the DBA's results.
383. The Monitoring Committee observes that the NVB and the adhering banks have not taken up or considered the suggestion of a clearing house between a bank and an NGO to protect confidentiality (company X receives advice from an NGO by making use of an independent intermediate between the company and the NGO(s)). Another option NVB and banks remained silent on was for a bank to advise its client-company to directly engage with an NGO to assist in a specific way in its human rights policies and practices without having to disclose its relationship with the bank.
384. Although many of the DBA deliverables were unaffected by the client confidentiality issue, in a general sense it remained an important stumbling block for cooperation between the parties. However, the final year also showed some encouraging signs. NGOs and adhering banks reported about cases, where NGOs (DBA parties) asked banks to obtain client consent for sharing specific information and being able to feed information into the client engagement trajectories of the bank, a process that was mutually satisfactorily. At case level and in a smaller setting, client confidentiality issues seem easier to overcome. This observation may help to move on with this topic in a practical way, encouraging both banks and their clients to consider the benefits of giving up client confidentiality in exchange for advice and engagement by an expert NGO.

g. Creating a dynamic environment for cooperation and mutual support

385. Over the past years, the Monitoring Committee expressed its concern that insufficient progress was being made on what can be considered to be the spirit of the DBA: creating a dynamic environment for cooperation and mutual support for the implementation of the UNGPs. Understandably, much of the focus of the parties and the adhering banks was on the formal deliverables. However, the DBA was not only about its formal deliverables but also its scope and spirit, as expressed in the Preamble: 'By means of this agreement, the Parties and the adhering banks aim to achieve a material positive impact for people (potentially) facing adverse human rights impacts (related to the activities of clients of the Dutch banking sector) and to search for solutions to address problems that an adhering bank cannot solve by itself.' Moreover, '... Parties and adhering banks jointly aim to contribute to the protection of and respect for human rights and wish to strengthen each other's efforts in this regard.' Even though at the end of the DBA the key deliverables have been completed, some at the very last moment, this does not seem to have been the fruit of a generally dynamic environment for cooperation and mutual support.

386. Already in its Year 1 report, the Monitoring Committee invited the Steering Committee to take measures ensuring that the dynamics of the DBA were kept alive or even get a new impetus, whilst respecting the responsibilities of the parties and the adhering banks.
387. In its Year 2 report, the Monitoring Committee noted that NGOs asked to meet the Monitoring Committee to discuss its concerns regarding the lack of progress in the process. It was decided not to conduct such a meeting (which would have had to be complemented by meetings with all others involved in the DBA) at that stage but it was another sign that trust between the parties was in scarce supply.
388. The reporting in Year 2 by the Unions and the CSOs have not given the Monitoring Committee reason to believe that the tensions between the parties and adhering banks had diminished or that trust was starting to be restored. On the contrary, most CSOs expressed their concerns about the lack of progress in no unclear terms.
389. The final year reporting has not provided information indicating that substantial changes have occurred in this respect. On the contrary, the reporting continued to indicate points of tension between the parties and the adhering banks. Although tensions are a natural (and often indispensable) feature in multistakeholder settings like the DBA, the reported issues seemed to be related to a more general lack of trust between the parties. The Monitoring Committee concludes that the parties and the adhering banks have not been able to create a fertile ground for cooperation and mutual support as indicated in the DBA's Preamble.
390. This conclusion does not diminish the parties' and adhering banks' achievements on delivering on their commitments as set out in the body of the DBA. However, more could have been achieved if trust between the parties had been available in larger supply. Whether this would have been possible, is not something for the Monitoring Committee to judge. However, for any follow up of the DBA, this is a point to seriously reflect on. It is also important to consider that the lack of trust seems to have been at the more collective level of the DBA and that smaller settings did create trust and a dynamic environment for cooperation and mutual support.
391. In the next paragraphs, the Monitoring Committee will reflect on some underlying issues that may have been obstacles for building trust and creating a dynamic environment for cooperation and mutual support for the implementation of the UNGPs. This analysis may also inform the discussion between parties and adhering banks about life after the DBA.

h. DBA format

392. In its Year 2 report, the Monitoring Committee already mentioned the DBA's format as a stumbling block for proper cooperation. The DBA is drafted as a corporate multi party contract, apparently not because the parties did not know each other but because they knew each other too well. Banks, CSOs and Trade Unions had a longer history of engaging with each other, both in terms of cooperation and confrontation. The parties and banks took this luggage with them and the DBA format was apparently deemed necessary to bind each other into a quasi-legal framework with a considerable input from lawyers. The result was that the DBA got off to a start based on a lack of mutual trust.
393. This way, the focus of the DBA turned into discharging listed commitments rather than a process to learn from each other (in every direction) in order to achieve better and more sustainable results

in protecting human rights. For this process to be effective and fruitful, trust between the parties is indispensable.

394. The Monitoring Committee understands that the personal relations between the representatives of the parties and adhering banks was generally good and respectful. However, their mandates were limited or not always clear, depending on how much leverage they had in their own organisations. It seems that there was a certain mismatch between CSOs and Unions with a broad mandate on one hand and banks with a more limited mandate on the other.
395. The Monitoring Committee also observes the hybrid role of the NVB. On one hand, the NVB played an important role in coordinating banks' efforts and particularly in supporting smaller banks with less capacity. On the other hand, the NVB is a business association that is accountable to all its members, aiming to protect the interests of frontrunners and laggards. It is well-known that there is a tension between representing all members on one hand and taking the lead to change on the other. The Monitoring Committee's observations on the NVB report illustrate this. Whilst the NVB as such also encourages change, for which it is to be commended, it is important to reflect on the precise role of the NVB when drafting plans to build upon the achievements of the DBA.
396. Trust is needed before anything can be gained in terms of cooperation and mutual support. The DBA framework clearly did not provide a fertile ground for trust to grow and thrive. This should be another lesson learnt for future cooperation.
397. Trust is also a matter of scale. The more players are involved, the harder it may be to create trust. The DBA may have been instrumental to get everyone at the start and complete the first round but it is not necessary to keep a format in which all adhering banks and all Unions and CSOs are working together on the same projects. A diversification of projects in which the composition of the players involved varies may make it easier to build trust.
398. Over the past years, the challenges for banks to respect human rights have intensified with climate change rising on the agenda and covid-19 creating even more concerns. This must not be a reason to limit the human rights agenda but rather to keep it part of the banks' core business. Human rights issues are strictly interrelated with environmental and health problems. Banks cannot and should not deal with these issues on their own but create or maintain a strong multistakeholder basis to steer through the uncertain times ahead.

i. Accountability

399. The Monitoring Committee already expressed its reservations on the chosen evaluation method to measure progress made by the DBA parties. On one hand, this was a logical consequence of the DBA format. On the other hand, an extensive number of questions asked on all sorts of details, generating hundreds of hours of work for the parties, the adhering banks, the SER and the Monitoring Committee, although useful, clearly did not serve DBA's purposes in the best way.
400. Moreover, the reporting provided a picture of the DBA bones but it did not show its flesh and spirit. Rather, it moved attention away from the flesh and spirit, which is, or at least should be, the DBA's driving force. From the reporting the Monitoring Committee gets the impression that too much flesh and spirit is missing in the DBA's process.

401. The upside of the assessment framework is that it provided the basis for accountability. The parties and the adhering banks made themselves available for criticism and encouragement by the Monitoring Committee. And generally, they responded to the criticism and encouragement to make changes for the better.

402. The Monitoring Committee notes that building upon the results of the DBA by further implementing the UNGPs in a multistakeholder setting requires an appropriate form of accountability. It encourages parties and adhering banks to think about ways in which this can be done in a meaningful and less bureaucratic way, with a focus on content and substance rather than on procedure.

j. Outlook

403. The Monitoring Committee would like to once again commend the parties and adhering banks for their achievements and thank them for their cooperation. It would also like to encourage the parties and adhering banks to build upon the results achieved, to create mutual trust to enhance the effectiveness of multistakeholder cooperation, to find ways in which all sides commit to binding, meaningful and substantive commitments, in order to improve the position of individuals and communities on the ground, and for which they make themselves accountable to their stakeholders and the public at large.