

The NPRF and Responsible Investment

Submission by Trócaire to the Interdepartmental Committee to Consider the Appropriateness of an Ethical Investment Policy for the NPRF, June 2009.

1 Introduction

Trócaire is the Irish Catholic Church's overseas development agency. Informed by Catholic Social Teaching, we endeavour to tackle the effects of inequality and underdevelopment in the developing world. We also educate and inform the Irish public about the causes of these and press for policy changes through advocacy and campaigning work. Working through a partnership network of local church and development organisations we assist the poorest and most vulnerable communities across 39 countries in Africa, Asia, the Middle East and Latin America.

Trócaire believes that business plays a pivotal role in the fight against poverty and has a crucial role to play in the development process through much needed investment, job creation and training. However not all such investments are uniformly positive. Our experience has shown that in countries with weaker governance systems, business actors, in particular trans-national corporations (TNCs) may play an unconstructive role, where they contribute to environmental degradation and human rights abuses. A key factor underpinning such behaviour is the funding for TNC investments secured through the global financial marketplace. It is in this context that the responsible management and oversight of the investments of the National Pension Reserve Fund (NPRF) are of major concern to Trócaire and its partners.

Trócaire welcomes this opportunity to make a submission to the Inter-departmental Committee tasked with advising the Minister on the appropriateness and possible nature of an ethical investment policy for the NPRF. In this submission we will outline the necessity of such a policy, the gaps in the current system, and the parameters of an appropriate model for the NPRF with its four interdependent elements: *active ownership, exclusion, negative screening and positive selection*. In doing so we will demonstrate how it is both appropriate and feasible to develop a suitable policy whereby the beneficial owners, i.e. Irish citizens, can be assured of profitable returns on their investments, and that these are not gained at the expense of respect for human rights or the environment.

2 Violations of Rights: Trócaire's Experience

2.1 Environmental degradation and human rights violations

The negative impact of TNCs on both local communities and the environment arising from their misconduct has been well documented. One example is the actions of Royal Dutch Shell plc in Nigeria relating to oil extraction. Shell has been severely criticised for its business practices in the Niger Delta, where environmental degradation, human rights violations, loss of livelihoods, corruption and violent conflict are among the effects on the local communities and environment.¹

¹ See various reports from Human Rights Watch (www.hrw.org/en/publications/reports?filter0=686&filter1=116), International Crisis Group (www.crisisgroup.org/home/index.cfm?id=4272&l=1), and shareholder resolution to Shell 2006 AGM by Trócaire partners (www.eccr.org.uk/dcs/ShellShareholderResolution.pdf).

Trócaire has supported a number of organisations in the Delta in their attempt to publicise the issues and persuade both the Nigerian Government and Shell to change their practices and address these negative outcomes. Shell has been accused of complicity with the then Nigerian Government and military in the execution of environmental activists, including Ken Saro-Wiwa, in 1995. In June this year Shell agreed to settle a court case in New York related to these allegations. The settlement of total \$15.5 million is one of the largest payouts agreed by a multinational corporation charged with human rights violations. Shell's ongoing gas flaring in the Delta is subject to opposition from local communities who claim severe adverse health effects as a result of the practice. The recent NPRF annual report showed it had holdings in Royal Dutch Shell worth Euro 60 million.²

Another such company is Goldcorp Inc.³, which is undertaking gold mining in San Martin, Honduras. Goldcorp's practice of gold mining through open pit mining using cyanide heap-leaching⁴ is considered responsible for severe water pollution, environmental degradation and serious health problems in the areas around the mine. Goldcorp's activities in San Martin were subject to unfavourable ruling and fines by the Honduran Secretariat of Natural Resources for pollution and damage to the environment in 2007. Research carried out by the Honduran Department for the Environment in 2008 found high levels of heavy metals used and produced in the process of extracting gold, such as arsenic, lead and mercury, in blood samples taken from villagers living close to the mine. In 2007, the Latin America Water Tribunal ruled on a complaint filed by members of the Siria Valley communities, finding Goldcorp accountable for damage to the environment and unreasonable use of water in the Siria Valley.⁵ Trócaire has been supporting a number of church organisations in Honduras over the last decade in their attempt to ensure that the exploitation of gold in San Martin is carried out in a responsible and fair manner, which does not incur human rights abuses and environmental degradation. These organisations, including Bishop Santos of Santa Rosa, have reported harassment, intimidation, attempted kidnapping and death threats as a result of their work. The recent NPRF annual report showed it had holdings in Goldcorp worth Euro 2.1 million.⁶

In the Philippines, BHP Billiton are the sole financier of the exploration and drilling programme of the Romblon nickel project and have exclusive rights to purchase the laterite nickel in the Philippines. Despite it being considered best practice, to date no Strategic Environmental Assessment has been carried out to examine the cumulative impacts of the proposed mines targeting this up-to-now remote island. Mining applications cover 42% of the island and overlap 32% of the management area of the National Park, including 14 sq km of the Protected Area, 32% of mangrove, primary lowland and secondary lowland forests, 45% of rice lands, 56% of coconut lands and 43% of the Sibuyan Mangyan Tagabukid ancestral domain. Mining on the island will undermine its ability to feed itself and to develop its eco-tourism potential. The local communities are experiencing significant obstructions to their attempt to assemble and demonstrate their concerns. In October 2008, Armin Marin, a former World Wildlife Fund employee and local councillor was shot and killed by a mine security guard while leading a peaceful protest against the mining operations. BHP Billiton is taking a case against the local

2 National Pensions Reserve Fund Commission, June 2008, Annual Report and Financial Statement, 2007.

3 Goldcorp Inc, a Canadian registered company, acquired Glamis Gold Inc. in November 2006.

4 Cyanide heap-leaching is an industrial mining process whereby gold is extracted from low-grade deposits inexpensively using irrigation and chemical compounds such as cyanide. Piles of crushed gold ore are soaked in a solution of cyanide which filters down leaching out the gold deposits and releasing other toxic heavy metals such as arsenic, mercury and lead.

5 'San Martin mine in the Siria Valley, Honduras - the issues', CAFOD, April 2009 and 'Mining for Justice: The struggle of Honduran civil society for responsible mining', Canadian Catholic Organization for Development and Peace, September 2007.

6 National Pensions Reserve Fund Commission, June 2008, Annual Report and Financial Statement 2007.

schoolteachers for their role in organising protests to protect their environment. The recent NPRF annual report showed it had holdings of €48 million in BHP Billiton.

2.2 Violations of Humanitarian Law

The Irish Government has repeatedly stated that it is firmly opposed to the nuclear industry and has called for the speedy and total elimination of nuclear weapons. It is a signatory and active supporter of the nuclear non-proliferation treaty.⁷ In 1996, the International Court of Justice issued an Advisory Opinion concerning the legality of the threat or use of nuclear weapons.⁸ The Court examined current treaty law, customary rules and State practice with regard to nuclear weapons and concluded that the use of nuclear weapons would generally be contrary to the principles and rules of international humanitarian law. Following this, in 1999, the Irish Government joined a group of states in tabling a UN resolution calling for a Nuclear-Weapon-Free World⁹. The resolution was passed. However, the recent NPRF annual report showed it had investments in a number of companies which the Norway State Pension Fund, the Government Pension Fund – Global (GPF), has actively chosen to divest from due to their involvement in nuclear weapons.¹⁰ These companies include BAE Systems plc, Boeing Company, Honeywell International Inc, Northrop Grumman Corp, Safran SA, United Technologies Corp and EADS Co.

2.3 EU and UN Sanctions

Ireland, through its EU and UN membership, is party to a number of legal instruments enforcing sanctions on various states. For example, in the case of Burma, Ireland has given effect to European Council regulation No 817/2006 which prohibits certain economic and financial engagement with various aspects of Burmese society¹¹. In such cases it is necessary to ascertain that sanctions are not inadvertently being breached through NPRF investment in companies engaging in the sanctioned activities.

2.4 Addressing Policy Incoherence

These examples highlight incoherence in State policy and practices which must be addressed. Incoherence occurs where government departments, such as the Department of Finance, the Department of Foreign Affairs and the Department of Enterprise, Trade and Employment, work at cross purposes with the State's human rights obligations and the agencies charged with implementing them. Achieving policy coherence requires systematic and coordinated promotion of mutually reinforcing policy actions across government departments and agencies, which aim to achieve common agreed objectives. For the NPRF, policy coherence implies that its actions will not contravene or undermine the various international human rights obligations the State has undertaken through ratification of the international human rights treaties, international labour standards and environment protection commitments.

7 Frank Aiken, Minister for External Affairs in 1958, brought the original proposal for a nuclear non-proliferation treaty to the UN.

8 International Court Of Justice, 'Legality of the Threat or Use of Nuclear Weapons', Advisory Opinion, 8 July 1996.

9 Omnibus resolution, 'Towards a nuclear-weapon-free world: a new agenda' tabled in 1998 by the New Agenda Coalition, consisting of Egypt, Ireland, Mexico, New Zealand, Sweden and Brazil, included A/C.1/53/L.45, 'Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons'.

10 NBIM Annual Report 2007, <http://www.norges-bank.no/upload/nbim/reports/2007%20part4.pdf>.

11 Council Regulation (EC) No. 194/2008 of 25 February 2008 and Statutory Instrument, Financial Transfers (Burma/Myanmar) (Prohibition) Order 2007.

3 The NPRF in the Global Context: The UN Special Representative

In announcing the establishment of an Inter-Departmental Committee tasked with advising the Minister on the appropriateness and possible nature of an ethical investment policy for the NPRF, the Minister for Finance noted that “there has been significant debate on the issue [of responsible investment] within institutional and sovereign investors as to how they should be expected to invest the funds they manage on behalf of the ultimate owners of those funds”.¹² The most pertinent and relevant of these debates has been occurring within the United Nations. In 2005 the UN General Assembly created the position of UN Special Representative of the Secretary General (SRSG) on Business and Human Rights, and appointed John Ruggie. Ireland, in its position as President of the EU in 2004, played an important and supportive role in the creation of this mandate.¹³

3.1 A Framework for the Business and Human Rights Debate

The SRSG has outlined the serious threats to globalisation presented by the imbalance in power between nation states and global corporations. It is in areas of the world experiencing or emerging from conflict and where governance and respect for human rights is weak, where the greatest challenges lie for TNCs in carrying on their business in a responsible manner. To frame and regulate the relationship between businesses, the state, and communities the SRSG proposes three broad principles. Firstly, there is the need to ensure that states fulfil their duty to protect citizens against human rights abuses by companies. Secondly, the need for corporations to respect human rights by including human rights perspectives in their policies, in particular developing and conducting human rights due diligence. Finally, the SRSG proposed more effective access to remedies through various judicial and non-judicial grievance mechanisms to provide redress to those negatively impacted by TNCs. The SRSG seeks a progressive engagement by States which he believes should give serious consideration to the important issues and innovative approaches he illustrates. Importantly, this framework has been accepted by all States, including Ireland.¹⁴ This framework, and the work of the SRSG, is the focal point internationally for shaping best practice and driving future actions in these areas. As such, this must be taken into account by the Inter-departmental Committee and carefully analysed in terms of its policy implications.

3.2 Ireland’s State Duty to Protect

The first element of this framework - the State duty to protect citizens - is the most salient for the challenges faced by the NPRF in creating a responsible investment policy. The State duty to protect is an obligation of conduct, not result. States are not automatically responsible for abuse by a corporation that is not acting under their control. But they do have a responsibility to implement systems of due diligence to prevent, investigate, punish, and redress interference with rights by all types of corporations.¹⁵ The SRSG outlines in some detail the notion of complicity. In the business and human rights context complicity refers to the indirect involvement of

12 Minister for Finance, Brian Lenihan in Dáil Éireann March 3rd 2009.

13 Ireland negotiated and presented the Commission on Human Rights Decision 2004/116 requesting the Office of the High Commissioner for Human Rights to compile a report setting out the scope and legal status of existing initiatives and standards relating to the responsibility of transnational corporations and related business enterprises with regard to human rights. This report formed the basis for the establishment of SRSG mandate in 2005.

14 8th Human Rights Council Resolution 8/7, “Mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises”, 18 June 2008, Adopted without a vote.

15 John Ruggie, “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises”, Human Rights Council Eighth session A/HRC/8/5 (7 April 2008), Para. 18,82 and 83.

companies in human rights abuses. The SRSG identifies that the “fostering of a corporate culture respectful of human rights at home and abroad should be viewed as an urgent policy priority for governments - necessitated by the escalating exposure of people and communities to corporate-related abuses”.¹⁶

Referencing States sovereign wealth funds, the Special Representative notes that any human rights harms caused through acting on behalf of or under orders from the State reflects directly on that State’s reputation. There is, he asserts, an incentive in the national interest to exercise greater oversight.¹⁷ Additionally, governments should not assume they are helping business by failing to provide adequate guidance for, or regulation of, the human rights impact of corporate activities. On the contrary, the less governments do the more they increase reputational and other potential risks to business such as litigation and loss of investors. The SRSG identifies “the growing exposure of companies to social risks they clearly cannot manage adequately on their own”.¹⁸

4 A Critique of Current NPRF Practices

4.1 Pressure for Change

A number of supportive initiatives have put ethical investment centre-stage. In June 2006, the Green Party introduced a Bill that would amend the law and oblige the NPRF to adopt an ethical investment policy.¹⁹ This bill was unsuccessful. Later, following Ireland’s high-profile support for, and ratification of, the international treaty prohibiting cluster munitions²⁰, a decision was taken to divest the NPRF from companies involved in cluster munitions production. This was affected through legislation in 2008²¹ and received public support and media attention.

4.2 The NPRF’s mandate and the UNPRI

In 2006 the Minister of State for Development Cooperation and Human Rights stated that the NPRF Commission “has ambitious plans to provide greater scrutiny and oversight of companies in which it invests, from an environmental, ethical and human rights perspective”.²² In attempting to develop responsible investment, the NPRF has undertaken some initiatives. However, any initiative of the NPRF is fundamentally restricted by its founding statute. Section 19 of the National Pensions Reserve Fund Act 2000 states the NPRF is to “secure the optimal total financial return provided the level of risk to the moneys held or invested is acceptable to the Commission”.²³ Legislative and policy reform is needed to facilitate the Commission in implementing an effective and responsible investment policy.

16 John Ruggie, “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises”, Human Rights Council Eighth session A/HRC/8/5 (7 April 2008). Para 27, Pg. 9.

17 John Ruggie, “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises”, Human Rights Council Eighth session A/HRC/8/5 (7 April 2008). Para 32, Pg. 11.

18 John Ruggie, “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises”, Human Rights Council Eighth session A/HRC/8/5 (7 April 2008). Para 27, Pg. 9.

19 The National Pensions Reserve Fund (Ethical Investment) (Amendment) Bill 2006.

20 The International Convention on Cluster Munitions (CCM).

21 Cluster Munitions and Anti-Personnel Mines Bill 2008.

22 Press statement 18/12/2006 <http://www.foreignaffairs.gov.ie/home/index.aspx?id=27253>.

23 Website of the NPRF <http://www.nprf.ie/ResponsibleInvesting/responsibleInvesting.htm>.

In 2006 the NPRF signed up to the United Nations Principles for Responsible Investment (UNPRI).²⁴ The UNPRI is a code of conduct sponsored by the investment community in a process convened by the UN Secretary General. The Principles are voluntary and aspirational, with a focus on innovation, collaboration and learning by doing²⁵. Through signing and upholding the Principles the NPRF would “integrate consideration of environmental, social and governance issues into investment decision-making and ownership practices and thereby improve long-term returns”.²⁶

The UNPRI needs to be assessed and understood in the context of its role and function, as it is a voluntary mechanism and has inherent limitations. There is no enforcement of the commitments which signatories undertake. It is a learning and sharing network for considering environmental, social and governance issues. Like many company and industry codes of conduct it does create greater awareness and sensitivity to new challenges facing business. It constitutes a form of active ownership whereby shareholders actively engage and monitor companies on their conduct. However, active ownership can take many guises; the key question is the manner in which this active ownership is carried out.

4.3 The Use of Hermes

While the NPRF purports to be an active owner, Trócaire is concerned about the level of engagement undertaken. This concern relates to the degree of scrutiny of company policies and practices, and the NPRF’s level of support for responsible investment initiatives. Trócaire is also concerned about the lack of transparency, and the dearth of publicly available information on the NPRF’s activities relating to responsible investment.

In 2007, to commence fulfilment of its commitments to the UNPRI, the NPRF Commission engaged Hermes Equity Ownership Services²⁷ to conduct on the NPRF’s behalf the role of active ownership, i.e. proxy voting at company AGMs and engaging with companies on ESG issues. Hermes has based its voting and engagement programme on a set of principles they have named as the ‘Hermes Principles’²⁸ which the NPRF believes represents the essential elements of good governance.²⁹ The Hermes Principles are focused on issues of good corporate governance and an approach to investment that encourages long-term shareholder value as opposed to a culture of short-term profit maximisation.

Hermes stated that the overriding concerns are that companies should be run in the long-term interest of shareholders and, amongst various related issues, behave ethically. The concept of ‘ethical’ is not explicitly defined by Hermes. Rather, their interpretation is limited by its focus on corporate governance such as executive remuneration and the independence of directors. This is borne out by an examination of issues which they reported taking up a voting stance upon in 2007³⁰. These related to board structure, capital structure, remuneration and auditors. Nowhere do the Hermes Principles and associated background descriptive documents reference human rights

24 www.unpri.org.

25 The Principles for Responsible Investment - <http://www.unpri.org/files/pri.pdf>.

26 NPRF, Annual Report, 2006.

27 A corporate advisory service owned by the British Telecom pension scheme.

28 Hermes Principles - [http://www.acga-asia.org/public/files/\(2008\)%20Hermes_Principles.pdf](http://www.acga-asia.org/public/files/(2008)%20Hermes_Principles.pdf).

29 NPRF, Annual Report ,2007.

30 http://www.hermes.co.uk/eos_vot_disc.aspx.

or the International Labour Organisation core labour standards. The NPRF has recently begun to publish details of their voting record. An examination of the April 2008 report³¹ shows how on the four occasions where human right-related motions were proposed, the NPRF voted against³². Beyond citing “Resolution proposes enhanced shareholder rights” there was no further information or rationale provided for the NPRF’s votes.

At the request of the NPRF, in 2007, Sudan was taken on as an active engagement theme for its role in the conflict in Darfur. Given the extent of the international outrage at what was happening in Darfur, and the blatant disregard for international human rights, humanitarian and criminal law, it is questionable why this was not considered prior to this by the NPRF Commission and Hermes. Similarly in 2008, it was only following significant NGO advocacy, Oireachtas engagement and media coverage relating to the NPRF’s investments in companies with links to the regime in Zimbabwe³³ that the NPRF Commission declared Zimbabwe its next major priority for engagement by Hermes.

5 What is Needed?

Trócaire holds that responsible investment by the NPRF would provide a sound return and contribute to long-term sustainable development. In order to achieve this, a responsible investment policy based on four interdependent elements is needed.

- active ownership
- exclusion
- negative screening
- positive selection

5.1 Active ownership / engagement

Definitions of active ownership vary. The European Social Investment Forum describes it as shareholders making use of their rights in order to monitor, and sometimes influence, how the companies they invest in manage ESG issues.³⁴ It is accepted practice by the NPRF to play its role as an active shareholder and to have this engagement conducted through Hermes. Trócaire believes that the current model and practice of active ownership as undertaken by the NPRF needs review and revision.

For active engagement it is necessary to identify key focus themes or countries where the NPRF is mandated and compelled to play an active role as a responsible investor. The Norwegian State Pension Fund (GPF) has chosen child labour, climate change and corporate governance as the principal areas for engagement. It is worth noting that they have identified these not purely as ethical issues but also as market issues which could be detrimental to its portfolio over the long

31 Proxy Voting Record: May 2008 Report, www.nprf.ie.

32 Bank of America Corp. 23/04/2008 AGM Agenda Item 25 Amend Bylaws to Establish a Board Committee on Human Rights, Citigroup Inc.

22/04/2008 AGM Agenda Item 23 Report on Human Rights Investment Policies, Cooper industries 29/04/2008 AGM Agenda Item 4 Shareholder

Proposal requesting Copper to Code of Conduct based on International Labour Organization Human Rights Standards and

E.I. Du Pont De Nemours & Co. 30/04/2008 AGM 6 Amend Human Rights Policies .

33 Sunday Tribune, 8/7/08. ‘Revealed: our €1/2 bn national pension reserve funds invested in Zimbabwe.’ (Report on Progressio research into the NPRF’s investments in companies with operations in Zimbabwe).

34 European Social Investment Forum, Active Share Ownership in Europe, 2006 European Handbook. www.eurosisf.org/content/download/355/2519/version/1/file/eurosisf-ActiveShareOshipEurope2006.pdf.

term.³⁵ This focussing on key areas allows the GPFG to play a much more active role and achieve greater results from its engagement while also demonstrating to the public that it is seeking to act responsibly. In the case of Ireland similar issues should be identified in consultation with relevant actors.

The Special Representative of the Secretary General has identified that the majority of cases of reported abuses relate to companies in extractive industries.³⁶ Trócaire would suggest the conduct of extractive industries, with all the related issues of disregard for the rights of indigenous people, human rights abuses, environmental damage, lack of transparency in contracts and taxation agreements as a possible theme. A second potential theme is climate change. The NPRF can play a role in pressing for greater mandatory transparency in companies' disclosure of their environmental footprint.

Having identified the focus themes and countries it is necessary to review how the NPRF conducts active engagement. Trócaire believes this significant function should not be left to external agencies, such as Hermes, alone. While it may be practical to utilise the services of a specialist agency the NPRF must also develop some in-house capacity to address environmental, social and governance issues as part of a broader understanding of business and human rights. There is a need for greater transparency on the active engagement process, including publishing details of engagements undertaken and the rationale for them, and the explanation of choices regarding voting.

5.2 Exclusion

Where engagement with a company has not been successful, exclusion or exiting from the investment may be a necessary step. This can arise where a company is unwilling to engage in a dialogue related to its practices or is unwilling to adapt or change its practices. Under current legislation this is not possible. The NPRF must be equipped with a mandate that allows it to exit from an investment under particular circumstances.

In order to facilitate exclusion, the GPFG has established a Council on Ethics. The role of the Council on Ethics is to provide guidance and evaluation on whether or not investment in specified companies is consistent with the established ethical guidelines. The Council makes recommendations to the Minister of Finance, who takes the final decision regarding negative screening and exclusion of companies. The Council issue recommendations on companies which, through acts or omissions, contribute to:

- Serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other child exploitation;
- Serious violations of individuals' rights in situations of war or conflict;
- Production of weapons that through normal use may violate fundamental humanitarian principles;
- Severe environmental damages;
- Gross corruption.

³⁵ Albright Group and Chesterman, Report to the Norwegian Ministry of Finance - Assessment of implementation of articles 3 and 4 of the ethical guidelines for the government pension fund - global. May 2008.

³⁶ John Ruggie, "Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises", U.N. Doc. E/CN.4/2006/97 (2006).

Trócaire believes that a similar Ethics Council, based on the Norwegian model should be created in Ireland with the mandate to conduct reviews of companies allegedly complicit in these abuses. Such a Council would be in a position, through sharing of research and knowledge, to benefit from the work already undertaken by other similar state agencies, and non-governmental organisations. This Council would form a key component of the implementation and roll-out of the Government's commitment to ensuring the State is not complicit in gross abuses through its investments and demonstrate its commitment to ensuring that state policies are coherent with each other in terms of their impact on developing countries.

The GPFG currently has investments in over 7,000 companies. As of January 2008, it had divested itself of eight companies for cases of gross abuses³⁷. The effect of divesting can be seen clearly from the impact of divestment from Wal-Mart in 2006. In 2006 the GPFG chose to divest from Wal-Mart.³⁸ The Albright and Chesterman evaluation in 2008 of the GPFG pension fund guidelines³⁹ highlights how this decision to divest carried with it the approval of the Government of Norway, therefore giving the decision particular weight. Since the divestment Wal-Mart has re-engaged with the GPFG and is working to address labour issues in its supply chain. The divestment sent out a strong signal to Wal-Mart, and others, that new normative conditions are underway which are leading to systemic change in the way business is conducted.

5.3 Negative Screening

Negative screening refers to the practice whereby investments in certain products are excluded / avoided because they do not meet agreed criteria. An example of this is the recent decision to divest the NPRF from companies involved in cluster munitions production. Beyond this, however, the NPRF still does not have a clear mandate that would allow it to carry out any further negative screening based on the State's positions taken in pursuit of our international commitments.

As with exclusion, a Council on Ethics would have a role in carrying out relevant investigations to facilitate the decisions on negative screening. The GPFG undertakes negative screening of companies that either themselves, or through entities they control, produce weapons that through normal use may violate fundamental humanitarian principles.

5.4 Positive Selection

Positive screening involves actively seeking and investing in companies which meet agreed criteria. The GPFG has over the last year conducted a major evaluation of its ethical guidelines, including a study to examine the use of positive screening. This research examined the literature on what are termed Socially Responsible Investment Funds over the last decade. It concluded "that SRI funds that narrow their investment universe with many positive and complex restrictions tend to under-perform relative to funds that operate on the basis of simpler negative principles".⁴⁰ As a result of this, the GPFG has decided to embark on limited positive screening. The Government of Norway has decided to create a fund roughly equivalent to 1% of the GPFG

³⁷ *ibid.*

³⁸ Ministry of Finance, Norway, Press release 44/2006 <http://www.regjeringen.no/en/dep/fin/press-center/Press-releases/2006/Two-companies---Wal-Mart-and-Freeport---.html?id=104396>.

³⁹ Albright Group and Chesterman, "Report to the Norwegian Ministry of Finance - Assessment of implementation of articles 3 and 4 of the ethical guidelines for the government pension fund – global", May 2008.

⁴⁰ Johnsen and Gjolberg, Ethical Management of the Government Pension Fund – Global: An updated Analysis. May 2008.

to invest pro-actively in investments that will have indisputable environmental benefits.⁴¹ Proposed investments include renewable energy, carbon capture, water management and other pro-environmental initiatives. These were chosen out of strong concerns about climate change raised over the course of the evaluation process which had much public engagement.

Trócaire recommends that the NPRF be mandated to direct a percentage of its investments in a positive manner through targeting support to the Green New Deal⁴² agenda by focusing investment into renewable sources of energy, energy conservation initiatives and public transport, amongst other activities to promote a low carbon economy.

6 Actions

There has been considerable criticism of the NPRF investments. A range of NGOs and academic institutions have taken an active interest in this,⁴³ and there has been considerable media interest and scrutiny. Investments in countries such as Burma, Sudan and Zimbabwe have received particular attention. Concurrently, there has been significant growth in the Irish socially responsible investment market with an increasing number of investment funds providing dedicated responsible investment funds.⁴⁴ In March this year there was a major conference of faith-based investors drawing investors from across the differing denominations determined to align their faith values with their investments.⁴⁵ Finally there is a growing interest from the business community in responsible investment as demonstrated by IBEC's recent policy report on sustainability.⁴⁶

Since the financial crisis in 2008, many questions are being asked around the ethics, standards and regulations governing the market. This presents a key opportunity for reframing the rules and standards around international investment policy. Building on United Nations thinking on business and human rights, models currently in existence in other countries, and our experience of industry voluntary initiatives, there is now an opportunity to redraw the investment landscape and demonstrate commitment to ethical globalisation. This would promote standards of behaviour and operation that reflect the desire of the great majority to see a globalisation built on respect for human rights, the environment and international humanitarian law.

Trócaire calls on the Inter-Departmental Committee to recommend the following to the Minister for Finance:

The Dáil should:

41 Ministry of Finance Press Release No.: 33/2009. Government Pension Fund: Climate Change on the Agenda.

42 UNEP Launches Green Economy Initiative to Get the Global Markets Back to Work
www.unep.org/Documents/Multilingual/Default.asp?DocumentID=548&ArticleID=5957&l=en.

43 There has been a range of related reports, media commentary, resolutions by Amnesty International, Christian Aid, Debt and Development Coalition, Irish Congress of Trade Unions, Just Forests, Stop Climate Chaos Coalition, Transparency International and the International Institute for Integration Studies in Trinity College Dublin.

44 See article on investing with a conscience by Laura Latham in *The Investor*, Vol 6, No. 10, January 09 and presentation by L&P Financial http://www.lpgroup.ie/User_Uploads/ECCR_Socially_Responsible_Investment_Presentation_5Mar09.pdf.

45 Conference convened by Ecumenical Council for Corporate Responsibility, Trocaire, Christian Aid, Columban Missionaries, and Quakers. Conference report on http://www.eccr.org.uk/dcs/Companies_Communities_and_Religious_Investors-Dublin_conference_report.pdf.

46 [http://www.ibec.ie/IBEC/DFB.nsf/vPages/Social_affairs-Key_issue~sustainability-03-11-2008/\\$file/sustainability%20statement.pdf](http://www.ibec.ie/IBEC/DFB.nsf/vPages/Social_affairs-Key_issue~sustainability-03-11-2008/$file/sustainability%20statement.pdf).

- Reform the current legislation mandating the NPRF to implement an effective four-pronged responsible investment policy (active ownership, exclusion, negative screening and positive selection).
- Pass legislation to include the creation of an independent Ethics Council with a capacity to support the active engagement work and to investigate issues of concern regarding investments breaching the negative screening or exclusion criteria.
- Pass legislation to mandate the NPRF to direct a percentage of its investments in a positive manner through targeting support to the Green New Deal agenda.
- Direct the NPRF regarding the focus themes it should actively engage on.
- Review the criteria for the selection of Commissioners of the NPRF so as to include Responsible Investment.

The Department of Finance should:

- Ensure that, at a minimum, one member of the NPRF commission has experience of Responsible Investment.
- Network and engage with other Finance Ministries in the EU and beyond with a view to sharing experiences and learning on responsible investment.
- Develop expertise on issues of responsible investment, remaining engaged and up to date on developments within the sector.
- Engage with the Department of Foreign Affairs, to support and engage the UN Special Representative of the Secretary General on Business and Human Rights.
- Ensure the Irish public are informed and engaged on these issues over time.

The NPRF should:

- Publish in its annual report its responsible investment policy, and details of progress regarding its implementation.
- Further develop expertise on issues of responsible investment, remaining engaged and up to date on developments within the sector.
- Systematically engage with other State pension funds with responsible investments practices, with a view to learning from their experiences, and sharing intelligence on companies and actions taken by these.
- Undertake a review of its current active ownership practices, with particular regard to addressing the lack of transparency and deficiency of publicly available information.
- Direct those providing Shareholder Voting & Engagement Services (Hermes) to pursue greater levels of transparency by publishing details of their engagements with companies, and comprehensive explanations of votes, specifically on behalf of the NPRF.