

**Submission of specific instance under the OECD Guidelines  
for Multinational Enterprises to the New Zealand National  
Contact Point**

**concerning**

**Facilitation by the Australia and New Zealand Banking Group  
Limited of illegal and environmentally and socially destructive  
forestry operations in Papua New Guinea**

October 1, 2007

Submitted by:

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Submitted to:

The New Zealand National Contact Point

OECD Guidelines for Multinational Enterprises

Regulatory and Competition Policy Branch

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# **Submission to the New Zealand National Contact Point for the OECD Guidelines for Multinational Enterprises concerning Australia and New Zealand Banking Group Limited**

## **Introduction**

This specific instance is raised under the OECD Guidelines for Multinational Enterprises (the “Guidelines”) regarding certain conduct of the Australia and New Zealand Banking Group Limited (“ANZ”) in Papua New Guinea (“PNG”).

The individual raising this specific instance is Dr. Russel Norman, co-leader of the Green Party of Aotearoa New Zealand. This specific instance draws heavily<sup>1</sup> on the specific instance claim raised by the Australian Conservation Foundation (ACF) and cooperating parties to the Australian National Contact Point (ANCP) in 2006, as well as the supplementary evidence to the claim submitted by ACF’s Legal Advisor, Charles Berger, but includes updated and further supplementary evidence. We believe that the judgement made by the ANCP in dismissing the specific instance was incorrect, especially in light of the precedents of other claims of specific instance overseas. Furthermore, new information since that claim was laid has added to the case against ANZ.

## **Summary of specific instance**

This specific instance concerns ANZ’s support, through financing and provision of other financial services, of forestry businesses in Papua New Guinea that engage in systematic serious human rights abuses, environmentally devastating logging practices and repeated, serious illegal conduct. By actively facilitating and supporting these businesses, ANZ is complicit in the environmental and social damage they are causing in PNG.

In particular, ANZ has acknowledged a longstanding commercial relationship with Malaysian forestry company Rimbunan Hijau (“RH”). This relationship includes foreign exchange dealings, debt financing services and provision of bank guarantees.

Rimbunan Hijau’s PNG operations are notorious for their disregard of environmental sustainability, human rights, labour standards, and legal requirements. Documented practices include corrupt and/or illegal acquisition of logging concessions and extensions, unsustainable exploitation of natural forests, intimidation and violence against local landowners and protestors, regular violations of labour laws and safety standards, and other abusive behaviour.

ANZ’s continuing financial support for RH’s operations breaches a number of the Guidelines, including:

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<sup>1</sup> Sections of the original submission have been reproduced here with permission.

- Article II, Section 1 – obligation to contribute to economic, social and environmental progress. By facilitating RH's operations, ANZ is detracting from, rather than contributing to, these goals.
- Article II, Section 2 – respect for human rights. By failing to take basic steps to ensure that its clients respect human rights, ANZ becomes closely associated with violations of those rights.
- Article II, Section 10 – encouragement of compliance by business partners. While ANZ has discussed community concerns with RH on these issues, this engagement has not demonstrated positive outcomes and is likely to be ineffective, as it does not occur within an articulated and binding framework of acceptable minimum environmental and human rights standards required as a condition for doing business with the bank.
- Article V, Section 1 – appropriate environmental management. ANZ has not adopted a system of environmental management appropriate to its business in that it has not adopted forestry and human rights policies that set acceptable minimum standards for client engagement, in contrast to a number of other multinational financial institutions.

We seek commitments from ANZ to ensure its compliance with the Guidelines, including:

- The adoption of meaningful forestry and human rights policies that set basic standards for ANZ clients across all business operations, in accordance with international best practice for financial institutions;
- Immediate disengagement from socially and environmentally destructive forestry operations in PNG;
- Support for using carbon credit associated financial instruments to protect old growth forests in PNG;
- Commitment to explore and actively foster community-based forestry operations conducted on a sustainable basis in PNG;
- Commitment to advocate for positive solutions to forestry and human rights issues in New Zealand and in PNG.

ANZ has made significant advances in recent years in recognising the importance of some environmental and social concerns, and has shown positive leadership in some areas, such as financial literacy in New Zealand and Australia. In spite of some recent developments vis-à-vis human rights and environmental policies, processes still fail to adequately take into account human rights and environmental impact of ANZ's operations and funding relationships. We hope that this progress can be accelerated through the OECD specific instance process and extended to ANZ's operations in PNG, and looks forward to working with ANZ and the New Zealand National Contact Point to resolve these concerns in a constructive manner.

# Part I – Factual circumstances

In this section we will introduce the facts of the case. We will begin by examining ANZ's operations in PNG and ANZ's relationship with Rimbunan Hijau. We will look at the practises of Rimbunan Hijau's operations in PNG and the international human rights standards relevant to forestry operations like Rimbunan's. Then we will consider ANZ's response to concerns that have been raised about Rimbunan's forestry operations and ANZ's approach in general to human rights and environmental issues.

## A. ANZ's operations in Papua New Guinea

The Australia and New Zealand Banking Group Limited is a public corporation headquartered in Australia and listed on the New Zealand and Australian Stock Exchange. Reaching a record profit after tax for the year ended 30 September 2006 of \$3.688 billion<sup>2</sup> ANZ is among Australia's 5 largest companies, and the fourth largest company in New Zealand.<sup>3</sup>

ANZ's operations are global, but with a primary focus on Australia, New Zealand, and the Pacific Rim. ANZ is the leading bank and one of the largest employers in the South Pacific region.<sup>4</sup> It claims first or second position in all 10 of the Pacific jurisdictions in which it operates, including PNG.<sup>5</sup>

There are only four licensed commercial banks in PNG.<sup>6</sup> Locally-owned Bank of the South Pacific is the largest due to an extensive retail network, but ANZ and Westpac dominate the institutional and corporate financial services market.<sup>7</sup> The fourth, Malaysian headquartered Maybank, maintains a much smaller presence; one recent report suggested that it could cease operations in PNG altogether.<sup>8</sup>

ANZ opened its first branch in PNG in 1953, and expanded through purchases of the PNG subsidiary of Lloyd's Bank in 1990 and that of the Bank of Hawaii in 2001. Today, its PNG operations are conducted through a wholly-owned subsidiary, ANZ Banking Group (PNG) Limited, and encompass eight branches and 21 ATMs, plus

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<sup>2</sup> ANZ 2006 Annual Results (available at <http://www.anz.com/aus/shares/finance/pdfs/MediaReleaseHighlightsCommentary.pdf>, last visited 13 September 2007).

<sup>3</sup> NZX 50 Portfolio Index (available at [http://www.smartshares.nzx.com/products/fonz/NZSX50\\_index\\_port](http://www.smartshares.nzx.com/products/fonz/NZSX50_index_port), last visited 13 September 2007).

<sup>4</sup> ANZ 2005 Concise Annual Report, pages 28-29 (available at <http://www.anz.com/Documents/AU/Investor/agm/2005/ConciseAnnualReport2005Part1of2.pdf>, last visited 13 September 2007).

<sup>5</sup> ANZ Concise Annual Report 2006, Part 1, page 23 (available at [http://www.anz.com/Documents/AU/Investor/agm/2006/ANZ06\\_Concise\\_Pt1\\_131106.pdf](http://www.anz.com/Documents/AU/Investor/agm/2006/ANZ06_Concise_Pt1_131106.pdf), last visited 14 September 2007).

<sup>6</sup> Bank of Papua New Guinea, *Banks & Licensed Financial Institutions*, 30 April 2007 (available at [http://www.bankpng.gov.pg/images/stories/banks\\_finance\\_companies.pdf](http://www.bankpng.gov.pg/images/stories/banks_finance_companies.pdf), last visited 20 September 2007).

<sup>7</sup> CM Media Consulting, *Business Advantage: Papua New Guinea*, May 2006, pp. 23-24 (available at <http://www.cmmc.com.au/png.shtml>, visited 7 August 2006).

<sup>8</sup> CM Media Consulting, *Business Advantage: Papua New Guinea*, May 2006, p. 24 (available at <http://www.cmmc.com.au/png.shtml>, visited 7 August 2006).

internet and telephone banking facilities.<sup>9</sup> ANZ offers a full range of retail and commercial financial services in PNG.

It is fair to say that ANZ is one of only two or perhaps three institutions that are capable of fulfilling the banking, foreign exchange, advisory, debt financing and other financial services needs of a complex, export-oriented multinational business in PNG, such as that of Rimbunan Hijau.

Despite this, ANZ claims that the banking sector in Papua New Guinea is very competitive, limiting its power and influence over the actions and business practices of RH. In its response to the submission of specific instance to the Australian National Contact Point (ANCP), the ANZ claimed that it has little capacity to influence RH's behaviour, and that RH would be likely to shift to another financial services provider if ANZ were to impose higher social and environmental standards on RH.<sup>10</sup> The implication of this is that competition by less scrupulous institutions would render ineffectual any moves by the ANZ to achieve change in the PNG forestry industry.

However, such an approach is at odds with the purpose of the Guidelines and the reality of providing banking services in PNG.

Firstly, this attitude is inconsistent with the fundamental purpose of the Guidelines of "encouraging convergence toward good practice".<sup>11</sup> Were concerns about competition by non-adhering companies used to justify rejection of a specific instance submission, the Guidelines would in effect do nothing more than ratify bad practice. The fundamental purpose of the Guidelines is to establish principles underpinning corporate conduct *in competitive market conditions*. Violations of human rights, for example, cannot be justified on the basis that others are doing the same, or would do the same if they had the chance. The Guidelines override such perverse pragmatism by specifying minimum levels of acceptable conduct, regardless of the competitive context. In short, the threat of competitive pressure should not be used to reject outright a specific instance submission, when a competitive "race to the bottom" is the very ill the Guidelines were designed to cure.

Secondly, the claim that another commercial bank could simply step in if ANZ were to impose higher social and environmental standards is highly problematic. As noted above, there are only four licenced commercial banks operating in PNG; ANZ, Bank of the South Pacific (BSP); MayBank, and Westpac.<sup>12</sup> Of these, ANZ and Westpac

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<sup>9</sup> List of ATMs and branches available at <http://www.anz.com/PNG/importantinfo/default.asp>, last visited 31 August 2007.

<sup>10</sup> Response of ANZ to Australian specific instance claim, 21 September 2006 (available at [http://www.ausncp.gov.au/content/docs/333\\_378\\_Letter%20to%20Mr%20Antioch%20-%2021%20September%202006.pdf](http://www.ausncp.gov.au/content/docs/333_378_Letter%20to%20Mr%20Antioch%20-%2021%20September%202006.pdf), last visited 25 September 2007).

<sup>11</sup> OECD, "Promoting corporate responsibility: the OECD Guidelines for Multinational Enterprises", May 2004, OECD document reference DAF/IME/RD(2004)6.

<sup>12</sup> Bank of Papua New Guinea, *Banks & Licensed Financial Institutions*, 30 April 2007 (available at [http://www.bankpng.gov.pg/images/stories/banks\\_finance\\_companies.pdf](http://www.bankpng.gov.pg/images/stories/banks_finance_companies.pdf), last visited 20 September 2007). In the view of the ACF, it is only banks licensed to operate in PNG that should be considered in this context. Section 98(a) of the Forestry Act provides that a performance bond or guarantee for a forestry operation must be with a bank approved by the Managing Director of the PNG Forestry

are both headquartered in Australia and are thus subject to the Guidelines. MayBank is headquartered in Malaysia, but also has operations in the United States and the United Kingdom, thus bringing it too within the scope of the Guidelines.<sup>13</sup> It follows that Maybank and Westpac will be bound to apply the same level of social, human rights and environmental standards as ANZ would under the Guidelines.

That leaves BSP, which operates only in the non-adhering jurisdictions of PNG and Niue, as the only of ANZ's competitors not formally falling within the scope of the Guidelines. So is BSP a viable alternative for RH?

BSP is the largest bank in PNG, with a market share of over 50%, although its share of the commercial lending market is lower, at 42%.<sup>14</sup> BSP is a relative newcomer to the market, lacking the longstanding reputation and commercial strength of ANZ. BSP is a local bank operating solely within PNG, except for overseas branches in Niue, Fiji and the Solomon Islands. In contrast, ANZ operates in 22 countries, including 11 in the Pacific region.

The difference between the two banks is further underlined by their relative credit ratings. BSP's Standard and Poor's credit rating is below investment grade at B+/Stable/B and is constrained by PNG's sovereign risk rating. BSP has a Fundamental Strength Rating of D/--/-. By comparison, ANZ's Standard & Poor's rating is a full five grades higher at AA/Stable/A-1+, with a Fundamental Strength Rating of A/--/-.<sup>15</sup>

BSP cannot offer RH the services and benefits that ANZ offers. ANZ is a highly reputable multinational enterprise, with sophisticated operations across many of the jurisdictions in which RH operates, and a firm international commercial reputation and credit rating. The association with a reputable financial institution like ANZ bolsters RH's own reputation in developing countries. The ability to attract finance from a major multinational bank is a mark of legitimacy and prestige that would not be the same if RH utilised a lesser-known local bank. BSP is no substitute for ANZ.

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Authority. While foreign banks not licensed in PNG are not expressly excluded, the ACP at the time of their supplementary submission made to the Australian National Contact Point were not aware of any instance in which a guarantee provided by a non-PNG bank was presented or accepted. There is reason to doubt whether such a guarantee would be accepted, since the ultimate ability of the Forestry Authority to collect on the guarantee could depend on complex overseas enforcement actions, rather than enforcement and collection through the PNG courts. A local guarantee presents none of these difficulties. Further, as a practical matter it would be a considerable inconvenience and additional cost for RH to secure letters of credit and guarantees and to process foreign exchange transactions using a bank with no operations on the ground in PNG.

<sup>13</sup> Using the wording of clause 1:2 of the Guidelines, Maybank is "operating on the territory" of the U.S. and the U.K., even though the parent entity is based in a non-adhering country. Under that clause, Maybank's operations in OECD countries trigger the applicability of the Guidelines to the entire worldwide operations of the multinational entity.

<sup>14</sup> Based on BSP's total commercial/corporate loan book of K593 million as of 30 June 2005 (source: Standard and Poors Rating Report for BSP, available at [www.bsp.com.pg/shareholders/BSP\\_Dec-2005\\_FA.pdf](http://www.bsp.com.pg/shareholders/BSP_Dec-2005_FA.pdf), p. 7), as a proportion of Total Advances to Business by commercial banks in PNG of K1409.6 million as of the same date (source: Bank of Papua New Guinea, Statistical Tables, <http://www.bankpng.gov.pg/publications/geb/index.htm>, Table 3.6: Advances Outstanding: Classified by Borrower.)

<sup>15</sup> [www.standardandpoors.com.au](http://www.standardandpoors.com.au), checked 3 September 2007.

ANZ's strong market position and international reputation puts it in a position to be a significant force for positive change in PNG. Rather than participating in a "race to the bottom", the ANZ could become part of the solution by collaborating with its peers in PNG to ensure that banking activities are conducted uniformly in accordance with the Guidelines. One can only agree with the stated approach of ANZ in Cambodia and wish that would apply the same standard to their work in PNG:

We encourage and support collaboration within the industry and are working with our peer banks and the Cambodian Bankers' Association to raise the standards of the banking industry as a whole.<sup>16</sup>

## **B. ANZ's relationship with Rimbunan Hijau**

ANZ has confirmed its commercial relationship with Rimbunan Hijau in PNG, referring to it as a "longstanding ANZ client".<sup>17</sup> ANZ's commercial dealings with RH group companies in PNG include foreign exchange transactions, debt financing services and bank guarantees.<sup>18</sup>

The relationship between ANZ and RH goes well beyond the mere provision of occasional transactional services. The two companies are in regular consultation on a range of issues, including environmental concerns. ANZ staff have even undertaken site visits to RH field operations.

What is particularly significant in this respect is that ANZ perceives that it has some influence over RH. This is evidenced by the substantive discussions held by the two companies about a range of issues, including concerns about environmental and social issues. Consultation appears to be a regular feature of a major and profitable commercial relationship between the two companies.

### *Supporting information*

- In a January 2006 document, the ANZ referred to the PNG subsidiary of RH as a "longstanding ANZ client".<sup>19</sup> In addition, ANZ's repeated references in this document to engagement with RH indicate an acceptance by ANZ that it has the capacity to influence RH's behaviour.

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<sup>16</sup> ANZ Corporate Responsibility Report 2005, p. 20 (available at <http://www.anz.com/aus/values/resources/default.asp>, last visited 3 September 2007).

<sup>17</sup> Australia and New Zealand Banking Group, "Information on ANZ and forestry in Papua New Guinea", 20 January 2006 (Appendix J). Note: The updated version of this release from June 2007 has changed the statement that RH is a "longstanding ANZ client", referring to them merely as a client (Appendix K).

<sup>18</sup> Response of ANZ to Australian specific instance claim, 21 September 2006 (available at [http://www.ausncp.gov.au/content/docs/333\\_378\\_Letter%20to%20Mr%20Antioch%20-%2021%20September%202006.pdf](http://www.ausncp.gov.au/content/docs/333_378_Letter%20to%20Mr%20Antioch%20-%2021%20September%202006.pdf), last visited 25 September 2007).

<sup>19</sup> Australia and New Zealand Banking Group, "Information on ANZ and forestry in Papua New Guinea", 20 January 2006 (Appendix J).

- The document from January 2006 states “ANZ representatives ... have undertaken site visits to Rimbunan Hijau operations periodically, and have had open discussions with the company about the concerns raised by environmental groups.” In response to the ACF’s submission of specific instance under the OECD Guidelines to the Australian NCP in 2006, the ANZ asserted that it “has no capacity to direct or control RH operational decisions.”<sup>20</sup> In light of this denial of any influence over RH, it is fair to ask what the bank expects to achieve through its efforts at engagement with RH through site visits and discussions.
- Interestingly, the updated document of June 2007 neglects to mention the site visits undertaken by ANZ staff, perhaps indicating that ANZ is retracting from any scrutiny of RH’s business practices. ANZ’s apparently unquestioning acceptance of RH’s self-serving assurances that no illegal logging is occurring is also concerning.
- ANZ is in regular communication with RH about sustainability concerns. A glimpse of the tenor and level of detail of these communications is given in a recent public relations report commissioned by RH,<sup>21</sup> which refers to a letter from Mr. Axel Wilhelm, Liaison Manager, Rimbunan Hijau Group PNG, to Mr. Jim Yap at ANZ Banking Group in Port Moresby in late 2005. The subject of the letter is given as “Re: Forest Sector / Intimidation by anonymous web site publications”, and the letter ran to at least 21 pages.
- ANZ has provided bank guarantees to RH forestry projects in the past. Typically, such a bank guarantee is an essential prerequisite for a logging permit to be granted. An example of one such guarantee is provided as Appendix A. The company in respect of which this guarantee was granted, G.L.Niugini Limited, was at the time a subsidiary of Rimbunan Hijau. Before granting such a guarantee, ANZ undertakes a full credit review of the counterparty, as it would for any financing proposition.
- ANZ admitted in the case before the Australian National Contact Point that it provided debt financing for Rimbunan Hijau.<sup>22</sup>
- The website “Masalai-i-Tokaut” has reported the specific details of 28 foreign exchange transactions between RH and ANZ that are said to have occurred in September and October 2005.<sup>23</sup> Those records disclose transactions totalling US\$1,924,469 over that two-month period. While we do not

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<sup>20</sup> ANZ response to ANCP, 21 September 2006, pp.1 (available at [http://www.ausncp.gov.au/content/docs/333\\_378\\_Letter%20to%20Mr%20Antioch%20-%2021%20September%202006.pdf](http://www.ausncp.gov.au/content/docs/333_378_Letter%20to%20Mr%20Antioch%20-%2021%20September%202006.pdf), last visited 25 September 2007).

<sup>21</sup> ITS Global, *Masalai-i-Tokaut and Rimbunan Hijau Watch: A political and deceptive campaign against Rimbunan Hijau*, July 2006, p. 29 (available at [www.rhpng.com.pg](http://www.rhpng.com.pg), last visited 13 September 2007).

<sup>22</sup> Response of ANZ to Australian specific instance claim, 21 September 2006 (available at [http://www.ausncp.gov.au/content/docs/333\\_378\\_Letter%20to%20Mr%20Antioch%20-%2021%20September%202006.pdf](http://www.ausncp.gov.au/content/docs/333_378_Letter%20to%20Mr%20Antioch%20-%2021%20September%202006.pdf), last visited 25 September 2007).

<sup>23</sup> Masalai-i-Tokaut No. 42, “Profiting from Destruction – the ANZ Bank and the PNG logging industry”, January 2006, (available at [www.Masalai-i-Tokaut.com](http://www.Masalai-i-Tokaut.com), last visited 26 September 2007).

necessarily rely on the accuracy of *all* information provided on that website, ANZ has not disputed the accuracy of the foreign exchange transaction records in its subsequent publications and engagement on the issue. Furthermore, in discussions with ANZ, they have accepted that they provide bank guarantees and foreign exchange services to RH.

### **C. Rimbunan Hijau's operations in PNG**

PNG's natural forests are being cleared at an alarming rate. A research paper published in the *International Forestry Review* in 2004 noted that PNG's forestry industry relies heavily on natural forests (as opposed to plantations), most of which have already been allocated for logging. The report states "PNG is expected to have fully allocated its forestlands within 3 to 6 years and essentially exhausted its natural forest timber resources after another 10 years of harvesting at current rates."<sup>24</sup> In other words, PNG's natural forests will be completely depleted by around 2020 if current trends persist.

Much of this logging is illegal. According to an August 2007 report commissioned by the New Zealand Ministry of Agriculture and Forestry (MAF), 75% of logging in PNG is illegal.<sup>25</sup> Greenpeace estimate that 90% is illegal.<sup>26</sup> Rimbunan Hijau, a Malaysian logging giant, is the largest of these illegal loggers in PNG. With five of the 12 largest logging projects, as well as the only veneer mill and the largest sawmill in PNG, it is the country's largest logging operator by far. According to the MAF report, RH accounts directly for one half of PNG's raw log exports.

Aside from forestry, RH has extensive business interests in PNG, which give them enormous influence. This includes ownership of *The National*, one of PNG's two major newspapers, and RH Hypermarket, one of the country's largest supermarket chains. The MAF report concludes:

[Rimbunan Hijau] enjoys an almost monopolistic position, which provides for undue influence with local administration, PNGFA and national government, and in view of the comments on PNG tolerating such behaviour, significant opportunities to extract preferential treatments and super profits.<sup>27</sup>

As detailed below, RH's operations in PNG are characterized by repeated and flagrant disregard for PNG law and human rights, political corruption, brutality towards local communities and those opposed to its operations, and environmentally, socially and culturally destructive practices.

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<sup>24</sup> Center for International Forestry Research website *International Forestry Review Vol. 6(3-4), 2004* (available at [www.cifor.cgiar.org/publications/pdf\\_files/articles/AKatsigris0401.pdf](http://www.cifor.cgiar.org/publications/pdf_files/articles/AKatsigris0401.pdf), last visited 26 September 2007).

<sup>25</sup> James Turner, Andres Katz and Joseph Buongiorno, Implications for the New Zealand Wood Products Sector of Trade Distortions due to Illegal Logging; A Report prepared for the Ministry of Agriculture and Forestry, August 2007 (available at <http://www.maf.govt.nz/forestry/illegal-logging/trade-distortion-implications/>, last visited 26 September 2007).

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid*, pp.22

RH's unethical and often illegal conduct has been well documented in numerous reports over many years. Significantly, these reports are not limited to NGO commentary but include a range of official PNG government reviews, as well as independent reviews commissioned by the World Bank, independent media investigations, and other credible sources.

The following list includes some of the most important recent findings against RH. We would be pleased to provide further details or particulars to allay any doubts as to the veracity or seriousness of these findings.

#### *Supporting information*

- In 2002-03, the PNG Government in conjunction with the World Bank authorized an independent review of six disputed logging concession extensions, including three to RH subsidiaries (Wawoi Guavi, Vailala Blocks 2&3, and Passismanua). A summary of the findings of that review is attached (Appendix B). The review, which was funded by the World Bank, addressed the legality of these extensions. It concluded that the grants of timber permits and extensions were in each case "highly irregular" and/or "unlawfully granted". The review also found a range of breaches of landowner rights, environmentally unsustainable management practices, and grave procedural irregularities.
- The concerns raised in the independent review were sufficiently credible and serious that the World Bank suspended the Forestry Conservation Project loan in late 2003.
- In January 2004, Greenpeace published *The Untouchables: Rimbunan Hijau's world of forest crime and political patronage* (Appendix C). This report outlines the close connections between Rimbunan Hijau and PNG's political elite, and alleges that RH often obtained corrupt and illegal advantages from such relationships. In addition, the report details a range of human rights violations and damaging social and environmental impacts.
- In August 2004, the independent review team funded by the World Bank released a further report on 14 ongoing logging projects in PNG. The review noted "seriously deficient" performance at three specific operations (Vailala Block 1, Vailala Blocks 2 & 3, and Wawoi Guavi), all of which are RH facilities. The final report, together with the individual site reports for those three operations, is attached (Appendix D); these documents describe in detail a litany of serious environmental and social violations, including repeated legal breaches.
- A 2003-04 review of logging operations conducted by the PNG Department of Labour and Industrial Relations and the Department of Community Development revealed appalling work conditions and illegal labour practices. A copy of the inspection report regarding RH's Wawoi Guavi Timbers subsidiary is attached (Appendix E). Among other findings, the report noted

that only 31 of 112 non-citizens employed by the company in PNG were legally employed. The review concluded that the company's

responsibilities towards their employee's welfare, safety and hygiene and employment conditions are appalling and cannot be measured against any standard. The company's treatment towards citizen employees in many aspects of their employment reflects labour exploitation and slavery, and should be condemned at all levels.

- A further report by the PNG Department for Community Development in April of 2004 revealed a pattern of exploitation and abuse of women at RH's Panakawa mill (Appendix F). The report found very poor working conditions and documented allegations by workers of physical abuse, sexual discrimination, sexual coercion and termination of workers who became pregnant as a result.
- In May 2004, Lumberbank, a New Zealand subsidiary of RH, was expelled from the New Zealand Timber Importers Association on the basis of RH's illegal and/or unsustainable logging activities in PNG. Lumberbank sought to challenge the decision, but in December 2004 the New Zealand High Court upheld the expulsion, finding that the Association acted reasonably in concluding that Lumberbank failed to demonstrate that the lumber it was importing was sourced from sustainably managed forests in PNG. A copy of the judgment is attached as Appendix G.
- In November 2004, the news program Dateline aired a segment entitled *Jungle Justice*, a transcript of which is attached (Appendix H). The segment included testimony by a member of the "Southern Command Taskforce", a PNG police unit. The member described how the unit acted as private security for RH, received bribes from named RH officials, and on the direct instructions of the company "bashed up" protestors at RH's Panakawa mill. This evidence is consistent with the accounts given by landowners in the ACF/ Centre for Environmental Law and Community Rights (CELCOR)<sup>28</sup> report referred to below.
- In May 2005, following the above further investigations, the World Bank cancelled the \$30 million Forestry Conservation Project loan altogether. A primary reason was the inability or unwillingness of the PNG government to ensure that logging companies operate legally.
- In August 2006, ACF and CELCOR released a report detailing human rights abuses in connection with the PNG forestry industry (Appendix I). Based on firsthand interviews with affected landowners, the report chronicles the often brutal response to opposition to logging company practices. For example, according to the courageous testimony of Mr. Ben Harevela, he and others

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<sup>28</sup> CELCOR (Centre for Environmental Law and Community Rights Inc) is a public interest law NGO based in Port Moresby, PNG.

were bashed by police, their village was burnt and their crops and livestock destroyed following their complaint about the conduct of RH in Vailala logging concession operated by RH. Mr. Harevela alleges that RH flew the police task force up from Port Moresby to deal with the “troublemakers”. Allegations that police are in the pay of logging companies are common in PNG.

#### **D. International human rights standards relevant to industrial forestry operations in PNG.**

Significant human rights guarantees are included in the PNG Constitution and in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In addition, PNG has ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); the Convention on the Rights of the Child (CRC); and the Convention on the Elimination of Racial Discrimination (CERD).

Human rights abuses in PNG thus occur in a context of formal legal recognition of universal human rights standards. Examples of serious breaches of human rights’ laws in the PNG forestry industry include the following:

- There are numerous instances of physical brutality and arbitrary detention by police against landowners closely associated with logging operations. According to the ACF and CELCOR report mentioned above, police forces are sometimes paid by logging companies, and may even act on the direct instruction of company officials (Appendix I). Such conduct violates the guarantees of life, liberty and security of person in Article 3 of the UDHR, the protection against arbitrary detention in Article 9 of the UDHR, and section 42 of the PNG Constitution.
- The officially documented sexual coercion of women and discrimination against women at logging operations, including at RH’s Panakawa facility, constitutes violence against women in breach of General Recommendation 19 of the CEDAW, as well as the prohibitions against degrading treatment in Article 5 of the UDHR and discrimination in Article 7 of the UDHR, and the constitutional equality of men and women set out in section 55 of the PNG Constitution.
- The serious flaws in the process of allocating and approving logging permits results in the denial of the rights of landowners to access accurate information, make informed decisions, and participate effectively in decisions about their land. Agreements with landowners frequently do not reflect true informed consent about what is being agreed to. Such conduct breaches the guarantees against arbitrary deprivation of property set out in Article 17 of the UDHR and section 53 of the PNG Constitution.

- The clearing of natural forest habitat and other deleterious environmental effects of logging operations, such as pollution of rivers, has a range of negative effects on food sources, health and culture of traditional PNG communities. These impacts constitute a denial of the right to a standard of living adequate to health and well-being protected by Article 25 of the UDHR.

A fuller account of human rights standards in PNG, and breaches by forestry companies including RH and its subsidiaries, is set out in Appendices C and I.

### **E. ANZ's response to concerns about forestry operations in PNG.**

Following concerns raised about its association with Rimbunan Hijau, ANZ released a one-page response (Appendix J). A revised version of this response was released in June 2007 (Appendix K). Some of these revisions are noteworthy and are discussed below. In both documents, ANZ states that it has visited Rimbunan Hijau's operations periodically, and has discussed concerns with the company and with some community groups.

The core of the response in the original document is as follows:

In discussions with ANZ, Rimbunan Hijau has refuted claims of illegal logging activity and human rights abuses. ANZ has also received written assurance from the PNG Government that the logging activities of Rimbunan Hijau are legal and comply with Papua New Guinea's Logging Code of Practice, which incorporates key standards of sustainable forest resource management.

The response also refers, with apparent approval, to a number of RH initiatives said to be underway, including "investigating" external certification. The June 2007 document states that:

Stakeholder concerns about whether the activities of the PNG timber industry are legal will now be addressed by an independent assessment process. RH is playing a leading role in the development of this process. Under this system, an independent and internationally recognised verification and inspection company will audit the log and timber production practices of all PNG timber industry association members to ensure they are operating under valid permits and in compliance with all laws and regulations.

Like the ACF, we are concerned that ANZ is apparently willing to accept uncritically the self-interested assurances of RH and the PNG Forestry Authority that RH's logging activities are legal. At a meeting with representatives of ANZ in May 2006, ACF representatives drew to the bank's attention independent evidence that calls into question the assurances of the company and the PNG government, including many of the sources referenced in Section C above. ACF was disappointed and concerned that ANZ was highly selective in which PNG government reports it relied upon, and that the bank seemed to discount or call into question information from

credible sources such as PNG Government departments and a World Bank-funded review when such information contradicted RH and official assurances.

ACF expressed its view that PNG government expressions of support for RH must be treated sceptically, given the well-documented ties between the logging industry and senior government officials. Indeed, ANZ analysts have in other contexts publicly noted that PNG is among the most corrupt countries in the world.<sup>29</sup> It is therefore most troubling that ANZ nevertheless chooses to accept at face value such superficially self-interested statements. It seems that to date such concerns have not been adequately addressed.

It is useful to contrast ANZ's approach to that of the New Zealand High Court in a recent case involving the decision of the New Zealand Timber Importers Association to expel The Lumberbank (a Rimbunan Hijau subsidiary) on the basis of alleged illegal and unsustainable logging in PNG. Presented with evidence of company and government assurance about the legality of PNG forestry operations, the Court noted that the company's statements were "self-serving" and "less than convincing", and characterised a PNG Ministerial statement about the legality of forestry operations as having "the air of a document issued for the consumption of the press and for political purposes."<sup>30</sup> The Court upheld the expulsion.

ANZ has consistently stated that they have "engaged and are willing to continue to engage concerned environmental groups about forestry issues in Papua New Guinea generally."<sup>31</sup> Without disputing this, it is concerning that such engagement does not entail a balanced and fair appraisal of all available evidence by ANZ. The bank's conduct provides no reassurance that the matter is being treated with any sense of priority, or that the bank is actually prepared to change its business practices as a result of such engagement.

Following ACF's claim of specific instance to the ANCP last year, the ANZ promised to implement a Forests and Biodiversity Policy, to be made public in March 2007. This is still in the consulting stages (Appendix L). The draft currently allows ANZ to support client operations in Critical Habitat and High Conservation Value Forests if it is satisfied that certain conditions are met. Furthermore, it allows engagement with clients which are involved in activities in areas containing species listed in CITES (Convention of International Trade in Endangered Species of Wild Flora and Fauna), provided these activities do not *threaten* the species.

It is useful to contrast ANZ's approach with that of the HSBC banking group. HSBC's more rigorous "Forest Land and Forest Products Sector Guideline" (Appendix M)

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<sup>29</sup> ANZ Pacific Quarterly, February 2006, p. 4 (available at <http://www.bcpng.org.pg/Documents/ANZ%20Pacific%20Quarterly.pdf>, last visited 13 September 2007).

<sup>30</sup> *The Lumberbank New Zealand Limited v The New Zealand Timber Importers Association Incorporation*, NZ High Court, case AK CIV 2004404003058, judgment of Cooper J, 9 December 2004 (Appendix G), see especially paras. 36 & 116125.

<sup>31</sup> "Bank defends lending to RH", 23 January 2006, PostCourier Online (available at [www.postcourier.com.pg/20060123/business04.htm](http://www.postcourier.com.pg/20060123/business04.htm), last visited 13 September 2007).

precludes HSBC from any involvement with companies engaging in commercial logging in High Conservation Value Forest, in Primary Tropical Moist Forest and in areas containing species listed in CITES *regardless of the scope or impact of such activities*. Furthermore, 'commercial involvement' is broadly defined in the policy to include the provision of "facilities and other forms of financial assistance, including any involvement in debt and equity capital markets activities and advisory roles".

In addition to these comparative weaknesses, ANZ's Forest policy as it stands is rather toothless. Under its Implementation Guidelines it states:

If ANZ becomes aware that a client is operating outside the requirements of this policy, we *may* engage with the client, relevant stakeholders and appropriate authorities to clarify and resolve the situation to ANZ's satisfaction. In a situation where a client is operating outside the requirements of this policy and is unable to demonstrate a commitment to continuous improvement, ANZ *may* consider discontinuing the business relationship (emphasis added).

The weak implementation procedures of the policy requirements fail to commit ANZ to take seriously breaches of the guidelines. These issues are discussed in more detail below under Part III - Desired Outcomes.

## **F. ANZ's approach to human rights issues generally**

Despite the release of a statement on human rights entitled "ANZ and human rights" in June 2007, this falls far short of what is needed. In this document, ANZ congratulates itself on having signed the Equator Principles. While this is a step in the right direction, the Equator Principles apply only to project financing and do not cover other banking services, such as the essential banking services ANZ provides RH. Furthermore, ANZ's human rights statement refers to their Forests Policy as providing "a framework for the identification and management of human rights issues relating to forest activities." We believe that the framework for management of human rights and social issues provided in the Forests Policy is vague at best.

## **G. ANZ's approach to environmental issues generally**

ANZ has adopted an overarching Environment Charter (Appendix N), which addresses in general terms the bank's role in assessing environmental consequences of its business, including effects stemming from the clients and transactions it chooses to engage. Particularly relevant to this specific instance are commitments 3 through 5:

We are committed specifically to....

3. Maintaining processes and guidelines to assess the environmental impacts in the design and distribution of our products and services.

4. Identifying and monitoring the environmental issues associated with our business and our products and services; and resolving these effectively.

5. Integrating environmental considerations into the appraisal of customers' financing or advisory propositions ahead of credit approval, including specific measures to manage environmental considerations as a condition of doing business.

While this is perhaps a useful start, in practice the Environment Charter is limited in several important ways. To begin with, the commitment to integrate environmental considerations extends only to "financing or advisory" propositions, not to all client engagements. Thus, it does not apply for example to foreign exchange dealings, even if those are part of a substantial and ongoing commercial relationship with a major client.

It is unclear to what extent the Environmental Charter is being integrated into ANZ's Asia-Pacific operations. ANZ's latest corporate responsibility report notes that the bank has achieved a "complete assessment of both *Institutional and Corporate's lending portfolios*" and sets a goal of increasing "the environmental and social impact screening of all new transactions and annual client reviews *in our Institutional lending business* to 100%" (emphasis added).<sup>32</sup> No information is provided about how the environment charter is being applied in the Asia Pacific Division. The Corporate Citizenship Company, which was commissioned to provide ANZ with external assurance and commentary on its Corporate Responsibility Report 2005, stated that the bank should extend its reporting to its Pacific Island operations.<sup>33</sup> It is deeply concerning that ANZ has adopted one standard of reporting and transparency for its Australia and New Zealand operations, while failing to report in the same way on its operations in the Asia Pacific region.

ANZ's approach to the extension of credit (through a performance guarantee) to an RH subsidiary in connection with the East Awin forestry project gives a good indication of the weakness of its lending criteria in PNG, in environmental and social terms. On 11 September 2003, a timber permit was granted to GL Niugini Ltd. ("GL Niugini"), an RH subsidiary, over the East Awin forest area. A February 2004 compliance audit of the project prepared for the PNG government outlined a host of major doubts about the validity of the permit and the process used to obtain it, and suggested that the permit was void in its entirety.<sup>34</sup> For instance, the Minister for Environment and Conservation had not sought the advice of his Department when approving the project, and there was inadequate consideration of the environmental impact of the sawmill, veneer mill, and treatment plant that were effectively granted

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<sup>32</sup> ANZ Corporate Responsibility Interim Report 2006, p. 4 (available at [www.anz.com/aus/values/resources/default.asp](http://www.anz.com/aus/values/resources/default.asp), last visited 13 September 2007).

<sup>33</sup> ANZ Corporate Responsibility Report 2005, "External assurance statement and commentary" by The Corporate Citizenship Company, 24 November 2005, p.47 (available at [www.anz.com/aus/CorporateResponsibility/assurance/LookingAhead.asp](http://www.anz.com/aus/CorporateResponsibility/assurance/LookingAhead.asp), last visited September 20 2007).

<sup>34</sup> Audit of Compliance of the East Awin Forestry Project with the Requirements of the Forestry Policy, the Forestry Act and Other Requirements and Guidelines, prepared by the 2003/2004 Review Team, February 2004, p. ii.

by the approval of the logging permit.<sup>35</sup> The annual allowable cut for the area was set far too high to be sustainable, a violation of both the National Forestry Policy 1991 and the Forestry Act 1991. The 2003/2004 Review Committee estimated that the timber allowance issued under the permit was over four times more than the actual sustainable allowable cut figures for the area. According to the Review Committee's figures, if the environmental analysis had been done correctly, the project would be unsustainable under the minimum PNG Forestry Authority standards for a stand-alone log export operation. The problems with the environmental analysis (or lack thereof) were mentioned as early as 2001, when the 2000/2001 Review Team conducted its review of the then-prospective project.

Significantly, four clans then chose to withdraw their land from the proposed project in late 2002.<sup>36</sup> This both reduced the land available for harvesting, making the project even less viable than before, and indicated opposition by area indigenous communities for this use of the land. Despite this parade of legal, environmental and social questions hanging over the project, ANZ chose to issue a performance bond in the amount of PGK467,700 (NZ\$222,085 at current exchange rates) on 29 October 2003 (Appendix A), effectively giving the project a green light.

This case also highlights the very general nature of ANZ's Environment Charter. While it may have some utility as an overarching statement of principles, it provides little operational guidance on specific environmental issues.

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<sup>35</sup> *Ibid.*

<sup>36</sup> See letter of 4 November 2002 from Paise Company Pty. Ltd. chairman David Kayo, subject: "Withdraw from the East Awin FMA Area," (available at <http://www.masalai-i-tokaut.com/Masalai%2014%20East%20Awin%20Landowners%20withdraw%20support.htm>, last visited 13 September 2007).

## Part II – Breaches of the OECD Guidelines for Multinational Enterprises

ANZ's conduct, as outlined above, is in breach of the following Guidelines:

- **Article II, Section 1:** *“Enterprises should ... contribute to economic, social and environmental progress with a view to achieving sustainable development.”* Rather than contributing to economic, social and environmental progress, ANZ's facilitation of RH's operations hinders those goals. The bank's failure to maintain a specific human rights policy, and the failure of the draft Forests Policy to outline specific and stringent minimum environmental and sustainability requirements with real and certain consequences for prospective or current clients who violate them works against sustainable development.
- **Article II, Section 2:** *“Enterprises should ... respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.”* ANZ does not appear to be taking reasonable steps to ensure that its provision of financial services in PNG is dissociated from operations that violate fundamental human rights. In particular, it has not undertaken meaningful scrutiny of RH's activities in PNG, despite credible evidence of breaches being presented to it. By not implementing reasonable policies and practices to ensure that its clients respect human rights, ANZ is itself failing to respect human rights.
- **Article II, Section 10:** *“Enterprises should ... encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines.”* ANZ has stated that it has raised concerns with RH and has encouraged RH to undertake improvements, for example seeking external certification. There is little information available about the substantive content of such encouragement. The ANZ's human rights statement and draft forestry policy are vague and fail to convincingly establish that ANZ is prepared to forego the business if minimum standards are not met. Much more thorough and meaningful “encouragement” within the meaning of the Guidelines is practicable, given ANZ's strong market position in PNG.
- **Article V, Section 1:** *“Enterprises should ... establish and maintain a system of environmental management appropriate to the enterprise ....”* An environmental management system for a financial institution, especially one operating in a weak governance area such as PNG, is not appropriate unless it sets specific and stringent minimum social and environmental requirements for acceptable client engagement. Many multinational financial institutions have implemented specific forestry and human rights policies that impose meaningful requirements on their clients (see “Desired Outcomes” below for more details). Without stringent binding policies, it is difficult to see how a

bank can reliably manage the downstream social and environmental consequences of its provision of financial services. A sound and specific policy framework, with thorough implementation should be the cornerstone of a bank's environmental management system.

### ***Existence of an “investment nexus”***

ANZ's lack of appropriate environmental and human rights screening policies for prospective and current clients is sufficient on its own to constitute a violation of the Guidelines.

Nonetheless, in some claims of specific instance, OECD National Contact Points have required demonstration of an “investment nexus”, particularly in cases involving supply chain issues. In this specific instance, the existence of an investment nexus, if one is indeed required, is demonstrated by the following:

- ANZ has invested very substantially in developing and operating its network of branches and other activities on the ground in PNG, as the second-largest bank in that country.
- ANZ has acknowledged a “longstanding relationship” with RH, which includes periodic site visits by ANZ staff and “open discussions” with RH regarding environmental and social issues. In its communications on forestry issues, ANZ implies that it has influence over RH and the ability to affect RH's activities. Further, it has actively defended RH's operations, rather than taking a position that ANZ as a bank is a mere passive provider of financial services.
- The foreign exchange dealings between ANZ and RH are regular, ongoing and involve substantial amounts of funds. RH's ability to conduct its operations in PNG depends on the capacity to move financial resources easily in and out of PNG, and it is not clear that any institution other than ANZ would be both capable of and willing to handle such transactions.
- ANZ's provision of bank guarantees to RH operations is a form of direct investment, functionally equivalent to a loan. A guarantee can be called upon by the Principal (in this case, the PNG Forestry Authority) at any time, and the bank would be required to pay it unconditionally. In that event, a debt between the beneficiary (RH) and the bank (ANZ) would come into being, just as if the bank had simply granted a loan to the beneficiary. No doubt for these reasons, ANZ's website indicates that the bank's “normal credit assessment criteria”<sup>37</sup> apply equally to guarantees. ANZ categorises guarantees as a type of financing, rather than a transactional service.

Assuming usual commercial practice, a bank will require security and/or attach conditions to a guarantee, to ensure that the beneficiary of the

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<sup>37</sup> ANZ Indemnities and Guarantees; Guaranteed Payment to a Third Party (available at <http://www.anz.com/australia/business/prdsrv/finance/indemnities.asp>, last visited 17 September 2007).

guarantee undertakes its operations in a manner that minimises the chance that the guarantee will be called upon and ensures that, if called upon, the beneficiary is able to repay the debt. A guarantee has all of the characteristics of an investment relationship, including the assumption of a substantial degree of ongoing *risk* by the bank, the ability to tailor a rate of return and contractual conditions to suit specific operations, the undertaking of due diligence in connection with the transaction, the existence of a degree of trust among the parties, and monitoring of the client by the bank in the course of the bank's management of its outstanding financial commitments.

- ANZ has provided debt financing to Rimbunan Hijau, as was revealed in their letter to the Australian National Contact Point (Appendix Q). Debt financing is clear evidence of an investment nexus and involves an element of residual risk for ANZ. Residual risk was indicated as a defining element of an investment nexus by the ANCP (see Appendix R). Unfortunately this debt financing relationship was overlooked by the ANCP.
- It would not be surprising to find, given the number and extent of other ties, that ANZ's relationship with RH extends to direct lending or investment arrangements as well.
- Finally, ANZ's involvement in RH's activities must be viewed in light of the highly concentrated nature of PNG's banking sector. The fact that there are few if any market alternatives for RH mean that ANZ has much greater influence over its clients in PNG than it might in a country like Australia, where clients may have the choice of a dozen or more sophisticated, full-service financial institutions.

Taken together, these factors indicate that a sufficient investment nexus exists between ANZ and RH for purposes of the Guidelines.

### ***Relevant precedents***

We note that the NZNCP may consider, at this stage, "how similar issues have been, or are being, treated in other domestic or international proceedings."<sup>38</sup> There are two cases that we would urge the NZNCP to consider.

Belgian NCP – KBC, ING, Dexia

There is one specific instance raised under the OECD Guidelines involving a financing relationship that is particularly pertinent to the case at hand. This is the submission made by Proyecto Gato in 2004 regarding the involvement of Belgian commercial banks KBC, ING and Dexia in the financing of the Baku-Tbilisi-Ceyhan pipeline.

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<sup>38</sup> Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, paragraph 14, pp.51.

The Belgian NCP accepted the eligibility of this specific instance under the Guidelines, (although the UK NCP is taking the lead on its resolution because of a concurrent specific instance filed in the UK).<sup>39</sup> In the Belgian case, the involvement of the banks was far from essential to the project as at least 12 other banks were involved,<sup>40</sup> and no doubt other sources of financing could have been located. The acceptance of the specific instance thus occurred in a context where the three banks did not necessarily have the leverage to demand any specific alteration in the project they chose to finance.

#### Swedish NCP – Nordea Bank

The second case is the acceptance<sup>41</sup> by the Swedish NCP of a specific instance involving Nordea Bank's financing the construction of a pulp and paper mill on the Argentine – Uruguayan border. Nordea were one of the possible financiers of the proposed pulp mill.

#### Australian NCP - ANZ

In his 13 October 2006 ruling on the specific instance raised by the Complainants vis-à-vis ANZ's relationship with RH, the Australian National Contact Point, Gerry Antioch, violated the procedural requirements invoked above by not referencing the Belgian case. These procedural requirements state that in ruling whether an issue is relevant to the implementation of the Guidelines, an NCP will take into account "how similar issues have been, or are being, treated in other domestic or international proceedings."<sup>42</sup>

In his ruling, the Australian NCP drew a new distinction when ruling on the potential existence of an investment nexus, namely that "risk was a requirement for a financial institution's service to be considered an investment."<sup>43</sup> The bank guarantees that ANZ supplied to RH were considered to comprise a 'fee for service' relationship with no degree of risk.<sup>44</sup> While lack of residual risk may perhaps be used by an NCP to

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<sup>39</sup> See OECD Watch, *Five Years On: A Review of the OECD Guidelines and National Contact Points*, September 2005, p.58 (available at [www.oecdwatch.org/docs/OECD\\_Watch\\_5\\_years\\_on.pdf](http://www.oecdwatch.org/docs/OECD_Watch_5_years_on.pdf), last visited 20 September 2007).

<sup>40</sup> See Banktrack, "Principles, Profits or just PR?: Triple P Investments under the Equator Principles", 4 June 2004, p.14 (available at <http://www.strategyguide.org/Pdfs/PrinciplesProfitsorjustPRTriplePInvestmentsundertheEquatorPrinciples.pdf>, last visited 20 September 2007).

See also Center for Human Rights and Environment (CEDHA): *Supplement to Nordea Bank AB Specific Instance: The Investment Nexus and Request for Urgent Initial Assessment*, December 2006, p.5-6, (available at [http://www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/norda\\_sup.pdf](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/norda_sup.pdf), last visited 20 September 2007).

<sup>41</sup> <http://www.sweden.gov.se/content/1/c6/07/24/89/286c1d82.pdf>

<sup>42</sup> Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, Paragraph 14, pp.51. [www.ois.oecd.org/olis/2000doc.nsf/4f7adc214b91a685c12569fa005d0ee7/d1bada1e70ca5d90c1256af6005ddad5\\$FILE/JT00115758.PDF](http://www.ois.oecd.org/olis/2000doc.nsf/4f7adc214b91a685c12569fa005d0ee7/d1bada1e70ca5d90c1256af6005ddad5$FILE/JT00115758.PDF), last visited 17 September 2007).

<sup>43</sup> Center for Human Rights and Environment (CEDHA): *Supplement to Nordea Bank AB Specific Instance: The Investment Nexus and Request for Urgent Initial Assessment*, December 2006, p.6, (available at [http://www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/norda\\_sup.pdf](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/norda_sup.pdf), last visited 17 September 2007).

<sup>44</sup> Antioch, Gerry, *Statement by the Australian National Contact Point: ANZ Specific Instance*, 13 October 2006 (available at

dismiss a claim of the existence of an investment nexus, in this case such reasoning would be flawed. In his dismissal of the existence of an investment nexus between ANZ and RH, the Australian NCP offered no response to the fact that the invocation of Bank Guarantees is functionally equivalent to a loan whereby RH would be indebted to ANZ. As noted by the Center for Human Rights and Environment, “The functional equivalence of a bank guarantee to a loan was not disputed by the Australian NCP, such that the business dealing exposes ANZ to a substantial risk and facilitates the beneficiary’s illegal logging and Guideline breaches.”<sup>45</sup>

The ANCP also failed to account for the debt financing that ANZ offered to RH.

We suggest then, that the ruling of the Australian NCP was faulty and violated procedural obligations. We suggest that the Belgian NCP’s decision to accept the case was correct. Even if the Belgian banks were nominally powerless to change the specific outcomes for that project, their adoption of improved practices could help to define the standards that are expected of financial institutions generally, and will increase pressure on non-adhering financial institutions to behave similarly. In both the Belgian case and the ANZ case, the core allegation is the same: a multinational enterprise has chosen to finance activities that entail breaches of the Guidelines. Following the acceptance of the Belgian case, consistency of application of the Guidelines would suggest that the ANZ specific instance should be accepted as well.

### ***Illegal logging and breaches of the Guidelines***

The facts set out in Part I include a range of credible findings related to the illegality of a range of RH’s activities. While RH’s disregard for PNG law is well documented, the question whether ANZ has breached the Guidelines (as set out above) does not hinge on the formal legal characterisation of RH’s activities. This is because the Guidelines go beyond requiring mere legal compliance; they set out generally applicable substantive standards which are not tied to specific national laws. Thus, even if (hypothetically) all of RH’s conduct were permitted under PNG law, ANZ’s facilitation of such conduct would still form a valid basis for this specific instance, because it would still contravene the basic environmental and human rights principles embodied in the Guidelines.

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[www.ausncp.gov.au/content/docs/331\\_376\\_20061013AncplInitialAssessmentStatement.pdf](http://www.ausncp.gov.au/content/docs/331_376_20061013AncplInitialAssessmentStatement.pdf), last visited 20 September 2007).

<sup>45</sup> Center for Human Rights and Environment (CEDHA): *Supplement to Nordea Bank AB Specific Instance: The Investment Nexus and Request for Urgent Initial Assessment*, December 2006, p.7, (available at [http://www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/norda\\_sup.pdf](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/norda_sup.pdf), last visited 20 September 2007).

## Part III – Desired outcomes

### A. Adoption of a meaningful forestry policy

We would be pleased to explore with ANZ the full range of actions that may assist in ensuring full compliance with the Guidelines in the future. However, it may be useful to outline a number of steps that would, in our opinion, significantly improve performance. The following solutions are, at this point, intended to be starting points for a dialogue, and we remain open to other possible solutions.

To contribute to that goal within the framework of the Guidelines, it strikes us as highly desirable for a financial institution to specify the cases where it will engage with its clients to improve performance, as well as to clarify which activities and practices it regards as so unacceptable as to preclude a client relationship. Suitably specific policies on forestry and human rights issues, and divestment from fundamentally unsustainable activities, are credible ways of doing this.

An appropriate environmental management system for a financial institution must go beyond general statements of commitment and processes. To comply with the Guidelines, the system should be capable of providing clear and specific guidance to decision-makers in the institution on concrete environmental concerns, and should clearly articulate the bank's expectations and requirements of clients and specific projects and transactions.

Many institutions have begun to achieve this through the adoption of sector-specific policies relating to key environmental issues, such as forestry. In the opinion of the parties to this specific instance, a credible and effective forestry policy should at a minimum:

- Require independent certification of forestry operations by the Forest Stewardship Council (FSC);
- Provide for progressive extension of certification requirements to downstream users of forestry products, including manufacturers and retailers of furniture, paper and other forestry product derivatives;
- Prohibit involvement with logging in areas of high conservation value forests, primary moist tropical forests, habitat for threatened or endangered species, and protected or other sensitive areas;
- Establish training, monitoring, enforcement and reporting processes, and ensure that compliance is a contractual condition in financial services agreements;

- Apply to all clients across all business lines, including lending, investment, advisory, nominee and transactional relationships; and
- Require FSC certification for all of the bank's own procurement of paper and other forestry products.

As a response to the ACF's claim of specific instance to the ANCP last year, the ANZ promised to implement a Forests and Biodiversity Policy, to be made public in March 2007. As at September 2007, this is still in the consulting stages. The draft currently allows ANZ to support client operations in Critical Habitat and High Conservation Value Forests if it is satisfied that certain conditions are met. Furthermore, it allows engagement with clients involved in activities in habitat areas of species listed in CITES (Convention of International Trade in Endangered Species of Wild Flora and Fauna) as long as these activities are not considered to *threaten* the species. These stipulations are comparatively weak compared with the HSBC's "Forest Land and Forest Products Sector Guideline" (see Appendix M) which prohibits HSBC from any involvement (including underwriting, lending, advising) with companies engaging in commercial logging in High Conservation Value Forest and logging operations that include any species listed in CITES *regardless* of the scope or impact of such activities. Moreover, HSBC's guidelines preclude involvement with any company undertaking commercial logging operations in Primary Tropical Moist Forest. Bank of America also commits to use due diligence measures to assure that lending proceeds are not used to finance commercial projects or operations that result in resource extraction from, or clearing of Primary Tropical Moist Forests. Various other forestry and environmental policies of other financial institutions are included in Appendix O for comparison.

In addition to these comparative weaknesses, the implementation guidelines of ANZ's Forests Policy as it stands are rather toothless.

The policy states:

"If ANZ becomes aware that a client is operating outside the requirements of this policy, we *may* engage with the client, relevant stakeholders and appropriate authorities to clarify and resolve the situation to ANZ's satisfaction. In a situation where a client is operating outside the requirements of this policy and is unable to demonstrate a commitment to continuous improvement, ANZ *may* consider discontinuing the business relationship" (emphasis added).

These weak guidelines on implementation of the policy requirements fail to commit ANZ to take seriously breaches of the Guidelines.

Finally, we understand that ANZ is a large and geographically diverse organisation, and that the development and implementation of consistent standards across all of ANZ's businesses may require time. We will not act unreasonably with respect to

timelines for addressing these issues, and conversely would expect that ANZ treat the matter as a high priority, on par with other major commercial decisions.

## **B. Adoption of a meaningful human rights policy**

ANZ declared publicly in May 2007 its support for the OECD Guidelines, which is a step in the right direction in theory, but seems to have accomplished little in practice as demonstrated by the continuing breaches of the Guidelines and lack of tangible progress on these issues as detailed above. ANZ issued a statement on human rights in June 2007. In outlining the implementation of its screening processes and industry advisory notes, the statement refers to the implementation vis-à-vis institutional lending decisions. This fails to cover the other essential banking services ANZ provides clients.

Commitment to the Equator Principles is the second major component of ANZ's human rights statement. Again, the Equator Principles only cover project financing, rather than other essential banking services that ANZ may provide a client. Furthermore, the document lacks credible procedures for monitoring, enforcement and reporting processes. We acknowledge that the document promises to report on progress in implementing and adhering to the OECD Guidelines in ANZ's 2007 Corporate Responsibility Report and urge that measurable goals and commitments be developed to provide accountability and clarity with regard to enforcement and monitoring of the policy.

At a minimum, a human rights policy should endorse the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the ILO Conventions. It should also explicitly prohibit involvement with clients who have breached fundamental human rights standards, where the company cannot provide substantial evidence that a fundamental change in business practice has occurred to put it in compliance with human rights standards.

One example of a human rights policy adopted by a major international financial institution is Westpac's human rights policy, which commits to and supports:

- The UN Global Compact
- The United Nations Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The United Nations Convention on the Rights of the Child
- The International Labour Organisation Declaration on Fundamental Principles and Rights at Work
- The International Labour Organisation Tripartite Declaration Concerning Multinational Corporations and Social Policy

- The Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises<sup>46</sup>

Furthermore, Westpac is signatory to the UN Global Compact.

Many other international financial institutions have adopted explicit human rights policies. As examples of a variety of approaches, copies of the policies and statements of the Cooperative Bank, Lloyds TSB, Rabobank and Westpac are attached (Appendix P). The Cooperative Bank's practice of specifically disclosing business they have rejected as incompatible with human rights and other ethical standards, and openly discussing how they have addressed human rights and other issues in specific transactions, is particularly noteworthy.

### **C. Disengagement from unsustainable logging in PNG**

In light of the serious issues raised in this specific instance, ANZ should suspend all involvement with forestry operations in PNG that are not being conducted in accordance with basic environmental and human rights standards. Independent certification by FSC, or meaningful and steady progress towards certification on a definite and reasonable timeframe, should be required of forestry clients.

With regard to clients with a significant history of abusive conduct in PNG, such as Rimbunan Hijau, ANZ should additionally refrain from any further involvement until the company compensates the victims of past abuse.

### **D. Support for community forestry in PNG**

ANZ has demonstrated that it is capable of being a strong force for socially just financial services; for example, its work on financial literacy programs in New Zealand and Australia has been widely recognised. It should undertake a similar level of commitment in other countries in which it operates. In PNG, active investigation and support for community-based forestry projects and other sustainable alternatives to destructive large-scale logging would be a positive contribution to environmental and social progress. Specifically, ANZ could investigate creating low-interest loans to establish and grow eco-forestry businesses, advocating for more responsible forestry policies with the PNG Government, and supporting NGOs addressing sustainability issues in PNG.

There are a number of successful community-based forestry projects in PNG whose methods are more sustainable and socially just than the prevailing abusive conduct of foreign logging giants. These organisations include the Foundation for People and Community Development, Village Development Trust, Madang Forest Resource

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<sup>46</sup> Westpac, *Corporate Responsibility; Human rights* (available at <http://www.westpac.com.au/internet/publish.nsf/Content/WICRCS+Human+rights>, last visited 17 September 2007).

Owners Association, Turubu EcoForestry Development Program and the Aitape Conservation Programme as well as education institutions and private businesses.<sup>47</sup>

In particular, the Village Development Trust, in partnership with donor organizations and commercial lenders, provides assistance to qualifying operators for the securing of loans required to establish and operate small-scale eco-timber businesses.<sup>48</sup>

### **E. Support for using carbon credits to protect old growth forests**

ANZ is in a strong position to connect international carbon markets with indigenous communities responsible for old growth forests. These old growth forests store large quantities of carbon, which many investors in the voluntary carbon market would be interested in supporting. Projects of this nature are already underway in a number of Pacific Island countries. It would be a much more beneficial use of ANZ's undoubted financial skills and resources to encourage and nurture the use of such carbon markets to protect, rather than destroy, the forests of Papua New Guinea. We would be very happy to connect ANZ to people with expertise in this area.

### **F. Advocacy for positive solutions to forestry and human rights issues in New Zealand and PNG**

Finally, ANZ can play a positive role in fostering positive solutions in PNG and New Zealand. Examples may include working with New Zealand traders and consumers, including ANZ's customer base, to increase awareness of the problem of illegal logging and encourage responsible purchasing practices; encouraging the New Zealand government to support sustainable forestry in PNG and to ban imports of illegally logged forestry products; and working with the PNG government directly and through PNG business associations to protect landowners' interests and prevent further destructive logging practices.

### **Acknowledgements**

I would like to thank the Australian Conservation Foundation Inc and the other contributing parties of the 2006 specific instance submission made to the Australian National Contact Point. Special thanks to Charles Berger of the ACF for his help and advice. In New Zealand I would especially like to thank my research assistant Anne Heins for all her work on this submission.

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<sup>47</sup> "Community Based Sawmilling at [www.ecoforestry.org.pg/sawmilling.html](http://www.ecoforestry.org.pg/sawmilling.html) (last visited 22 August 2006).

<sup>48</sup> "Village EcoTimber Project" at [www.global.net.pg/vdt/](http://www.global.net.pg/vdt/) (last visited 22 August 2006).

## **Appendices (attached separately)**

- Appendix A** Australian and New Zealand Banking Group (PNG) Limited Bank Guarantee for East Awin forestry project (29 October 2003)
- Appendix B** Summary of Review of Disputed Forest Allocations (May 2003)
- Appendix C** Greenpeace, *The Untouchables: Rimbunan Hijau's world of forest crime & political patronage*, (January 2004)
- Appendix D** Towards Sustainable Timber Production – A Review of Existing Logging Projects (August 2004)
- Individual Project Review Report 7 – Vailala Block 1 (April 2004)
- Individual Project Review Report 8 – Vailala Blocks 2&3 (April 2004)
- Individual Project Review Report 14 – Wawoi Guavi (April 2004)
- Appendix E** PNG Department of Labour and Employment Inspection Report, Wawoi Guavi Timbers (May 2004)
- Appendix F** PNG Department for Community Development Draft Individual Project Review Report, Wawoi Guavi & Panakawa (April 2004)
- Appendix G** *The Lumberbank New Zealand Limited v The New Zealand Timber Importers Association Incorporation*, NZ High Court, case AK CIV 2004404003058, judgment of Cooper J, 9 December 2004.
- Appendix H** Transcript, SBS *Dateline* segment “Jungle Justice” (November 2004)
- Appendix I** Centre for Environmental Law and Community Rights & Australian Conservation Foundation, *Bulldozing Progress: Human Rights Abuses and Corruption in Papua New Guinea's Large Scale Logging Industry* (August 2006)
- Appendix J** Information on ANZ and forestry in Papua New Guinea (ANZ Company document, January 2006)
- Appendix K** Information on ANZ and forestry in Papua New Guinea (ANZ Company document, updated June 2007)
- Appendix L** ANZ Social & Environmental Management Policies & Guidelines DRAFT FOR COMMENT; Forests & Biodiversity (ANZ Company document, December 2006)
- Appendix M** HSBC, Forest Land and Forest Products Sector Guideline (May 2004)

**Appendix N** ANZ Environment Charter (ANZ Company document, June 2005)

**Appendix O** Environment and forestry policies of other financial institutions

**Appendix P** Human rights policies of other financial institutions

**Appendix Q** Letter from ANZ to Australian National Contact point September 21 2006.

**Appendix R** Statement by the Australian National Contact point: ANZ specific instance. 13 October 2006.