

**To Norges Bank**

08.01.2021

**Recommendation to exclude Oil & Natural Gas Corp Ltd from investment by the Norwegian Government Pension Fund Global**

Unofficial English translation

## Summary

The Council on Ethics recommends that Oil & Natural Gas Corp Ltd (ONGC) be excluded from investment by the Norwegian Government Pension Fund Global (GPF) due to an unacceptable risk that the company is contributing to serious violations of the rights of individuals in situations of war or conflict. At the close of 2019, the GPF owned 0.35 per cent of the shares in ONGC, worth approx. NOK 699 million.

ONGC is an Indian oil company engaged in the production of oil in South Sudan. The company participates in two joint ventures with, among others, South Sudan's state oil company Nilepet. In 2013, a civil war broke out in South Sudan, during which the civilian population has been subjected to acts of extreme violence, including mass killing, sexual assault and torture. Some of the abuse has been perpetrated by members of the military and the country's National Security Services (NSS). The United Nations Commission on Human Rights in South Sudan has recommended that those responsible be investigated for crimes against humanity and war crimes.

The Council takes the view that companies operating in situations of war and conflict must exercise a particular degree of care when there is a known risk of contributing to serious norm violations. Such care also applies to their choice of business partners. The requirement of care is reinforced by the militarisation of the oil industry in South Sudan, and by the fact that control of the petroleum resources in, among other places, the areas in which ONGC operates, is a key driver in the conflict.

The Council considers that ONGC, through its joint venture participation, has accepted the risk of contributing to serious abuses committed to enable oil production in Unity State. Furthermore, ONGC has entered into collaborations with actors who are directly or indirectly responsible for extremely serious abuses. The Council also takes into consideration that the security at the oil fields in which the joint ventures operate is provided by actors in the conflict. Reportedly, NSS staff also provides services at the head office of one joint venture, while this joint venture's head of security is an NSS brigadier general.

In the Council's opinion, the ONGC's links to parties to the conflict are further reinforced by the reported use of Nilepet to channel funds from the oil operations into military purposes. The Council considers that, through these business partnerships, ONGC may have contributed to providing parties to the conflict with revenues that could be used to finance violence against the civilian population. The collaboration may also have added legitimacy to parties to the conflict and may have been perceived as implicit acceptance of their behaviour.

In its response to the Council on Ethics, the company states that no incidents of human rights abuses have been reported within the joint ventures' areas of operation, and that there are no links between assaults on the civilian population and the company's operations. The company also points out that it has made investments, for example in healthcare and education, to improve the living conditions of South Sudan's civilian population. The Council acknowledges that such initiatives may have a positive impact but considers them insufficient to prevent or mitigate the consequences of the extremely serious norm violations perpetrated by parties with whom the company cooperates.

The Council considers that the company does not have the necessary influence to prevent the military or NSS from committing further violence against the civilian population. Nor has the company given any indication that it can or will make changes to or terminate its business relations. The Council notes that although South Sudan has now embarked on a peace process, serious assaults on the civilian population are still taking place. The Council considers that as long as the company continues to collaborate with key parties in the conflict, there is an unacceptable risk of it contributing to such abuse.

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# 1 Introduction

The Council on Ethics for the Norwegian Government Pension Fund Global (GPF) has assessed the fund's investment in Oil & Natural Gas Corp Ltd (ONGC)<sup>1</sup> against the provision relating to serious violations of the rights of individuals in situations of war or conflict in the Guidelines for Observation and Exclusion from the GPF, also referred to as the ethical guidelines.<sup>2</sup>

ONGC is an Indian oil company, over 70 per cent of whose shares are owned by the Indian state.<sup>3</sup> This recommendation relates to ONGC's operations in South Sudan, where a violent conflict has been ongoing for many years. ONGC's international arm, ONGC Vindesh, and its subsidiary ONGC Nile Ganga B.V. are engaged in the production of oil in South Sudan through two joint ventures. ONGC's business partners in these joint ventures include South Sudan's state-owned oil company Nile Petroleum Corporation (Nilepet), which reportedly has been used to defray the country's military expenses. The joint ventures also collaborate with South Sudan's National Security Services (NSS), which have carried out grave violations against the civilian population. For example, the NSS provides security at the oil fields.

At the close of 2019, the GPF owned 0.35 per cent of ONGC's shares, worth approx. NOK 699 million. ONGC is listed on the Bombay Stock Exchange.

## 1.1 Matters considered by the Council

The Council has assessed the GPF's investment in ONGC against section 3(b) of the Guidelines for Observation and Exclusion from the GPF, which states: "*Companies may be put under observation or be excluded if there is an unacceptable risk that the company contributes to or is responsible for [...] serious violations of the rights of individuals in situations of war or conflict*".

The Council has considered whether this case relates to a conflict situation in the sense meant in the guidelines. In this context, the Council attaches importance to whether the case relates to a violent situation, where different organised groups have engaged in fighting that goes beyond an internal disturbance or tense situation. In its assessment of what constitutes serious violations of the rights of individuals in situations of war or conflict, the Council relies on internationally recognised conventions and authoritative interpretations thereof. Of particular significance is the common Article 3 of the Geneva Conventions, which protects civilians in non-international armed conflicts.

In the Council's opinion, any assessment of whether the risk of a company contributing to norm violations is acceptable or not must be performed in light of the kind of norm violations it risks contributing to. In cases where the company operates in a context where there is a known risk of contributing to extremely serious norm violations, the Council therefore considers it necessary for the company to exercise a particular degree of due care.

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<sup>1</sup> Issuer ID: 169871

<sup>2</sup> Guidelines for Observation and Exclusion from the Government Pension Fund Global (GPF): <https://nettsteder.regjeringen.no/etikkradet3/files/2019/12/guidelines-for-observation-and-exclusion-from-the-gpfg-01.09.2019.pdf>

<sup>3</sup> ONGC, *Shareholding Distribution as on March 31, 2020* [https://www.ongcindia.com/wps/wcm/connect/a52398aa-f384-4095-8b25-d73dab24a017/Shareholding+Distribution+As+31.03.2020.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=ROOTWORKSPACE-a52398aa-f384-4095-8b25-d73dab24a017-n8oycap](https://www.ongcindia.com/wps/wcm/connect/a52398aa-f384-4095-8b25-d73dab24a017/Shareholding+Distribution+As+31.03.2020.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE-a52398aa-f384-4095-8b25-d73dab24a017-n8oycap)

Given the particular risk of contributing to serious norm violations in areas suffering from war or conflict, a number of international guidelines have been established to ensure that companies conduct the necessary due diligence and implement measures to address risks.<sup>4</sup> The more stringent standard of due care that the Council sets for companies operating in areas of war or conflict is also in line with recognised guidelines. Although these guidelines do not directly prescribe the steps a company must take to avoid contributing to serious norm violations, the Council considers that the particular care in question must also apply to the choice of business partners. However, not all norm violations carried out by a company's business partner will constitute grounds for a recommendation from the Council to exclude it or place it under observation. The extent to which the threshold for exclusion has been met will depend both on the seriousness of the norm violation itself and the company's links to it, and whether the company has implemented measures suited to prevent it from contributing to new norm violations.

This case relates to the company's participation in joint ventures. When participation in a joint venture presumes acceptance of the company's involvement in serious norm violations, the fact that it is a minority shareholder is not of significance for the Council's assessment of the company's contribution thereto.<sup>5</sup>

When assessing a company's contribution, the Council further emphasises that there must be a tangible connection between the company's business activities and the norm violations concerned. The company must either have contributed actively to the norm violations or known about them but failed to try and prevent them in an expedient fashion. In the Council's opinion, if it is not possible to prevent norm violations, the company must withdraw from the business. The GPF's ethical guidelines are also forward-looking. Norm violations must therefore be ongoing or there must be an unacceptable risk that abuses may occur in the future. When assessing the risk of new abuses, previous norm violations may be indicative of future patterns of behaviour.

## 1.2 Sources

In this case, the Council has made use of publicly available information, including that provided by UN bodies, the media, civil society organisations and government authorities. The human rights and humanitarian situation in South Sudan has been documented in several

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<sup>4</sup> See, for example: The report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, *Business, human rights and conflict-affected regions: towards heightened action*, <https://undocs.org/en/A/75/212> and Global Compact/PRI's *Guidance on Responsible Business in Conflict-Affected and High-Risk Areas: A Resource for Companies and Investors*, [https://d306pr3pise04h.cloudfront.net/docs/issues\\_doc%2FPeace\\_and\\_Business%2FGuidance\\_RB.pdf](https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FPeace_and_Business%2FGuidance_RB.pdf).

<sup>5</sup> The Council on Ethics' 2011 recommendation concerning Posco, Daewoo International Corporation, Oil and Natural Gas Corporation Ltd (ONGC), GAIL India, Korea Gas Corporation (Kogas), p. 2, <https://etikkradet.no/posco-daewoo-international-corporation-oil-and-natural-gas-corporation-ltd-ongc-gail-india-korea-gas-corporation-kogas-3/>

reports published by the UN Commission on Human Rights in South Sudan,<sup>6</sup> the United Nations peacekeeping mission in South Sudan (UNMISS)<sup>7</sup> and the UN Panel of Experts on South Sudan.<sup>8</sup>

The Council sent ONGC a request for information on 11 May 2020, to which the company gave no reply. On 22 June 2020, the Council sent the company a draft recommendation to exclude it from investment by the GPF. The company furnished its comments on the draft recommendation in a letter dated 23 July 2020.

## 2 Background

After many years of civil war in Sudan, South Sudan gained independence in 2011. Less than three years later, in December 2013, conflict between different groupings led the young nation into another violent civil war. Since South Sudan's economy is deeply dependent on revenues from its oil industry,<sup>9</sup> control of the company's petroleum resources has been a key driver in the conflict. In several phases of the conflict, the violence has been particularly intense in the oil-rich regions in the north of the country, including Unity State.<sup>10</sup>

The conflict has had enormous human consequences, and the country's civilian population has been subjected to extreme forms of abuse, including torture, mass rape and mass killing.<sup>11</sup> A great many children have become victims of the conflict, partly through their recruitment as child soldiers, but also through their killing, maiming and rape. Abuses against the civilian population have been perpetrated by different actors in the conflict, including members of the military, the NSS and the police force. Armed opposition groups and militias aligned with different sides in the conflict are also responsible for such abuses. The UN Commission on Human Rights in South Sudan has recommended that those responsible be investigated for crimes against humanity and war crimes.<sup>12</sup>

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<sup>6</sup> The UN Commission on Human Rights in South Sudan is an independent body with the following mandate from the UN Human Rights Council: "*The Commission's mandate is to determine and report the facts and circumstances of, collect and preserve evidence of, and clarify responsibility for alleged gross violations and abuses of human rights and related crimes, including sexual and gender-based violence and ethnic violence, with a view to ending impunity and providing accountability.*" The Commission's reports are available here: <https://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx>.

<sup>7</sup> United Nations Mission in South Sudan is a peacekeeping mission that was established in 2011 by the UN Security Council. The Mission's human rights reports are available here: <https://unmiss.unmissions.org/human-rights-reports>.

<sup>8</sup> The UN Panel of Experts on South Sudan assists the Security Council's committee to monitor the sanctions imposed on South Sudan. The Panel's reports are available here: <https://www.un.org/securitycouncil/sanctions/2206/panel-of-experts/reports>.

<sup>9</sup> The Government of South Sudan, Ministry of Finance and Planning, *National Budget*, p. ii, <http://www.mofep-grss.org/wp-content/uploads/2019/12/FY-2019-2020-Approved-Budget-Book.pdf>.

<sup>10</sup> See, for example: *The Human Security Baseline Assessment for Sudan and South Sudan, A project of the Small Arms Survey, The Conflict in Unity State, Describing events through 23 February 2016*, [http://www.smallarmssurveysudan.org/nc/de/facts-figures/south-sudan/conflict-of-2013-14/the-conflict-in-unity.html?sword\\_list%5B0%5D=unity&sword\\_list%5B1%5D=state](http://www.smallarmssurveysudan.org/nc/de/facts-figures/south-sudan/conflict-of-2013-14/the-conflict-in-unity.html?sword_list%5B0%5D=unity&sword_list%5B1%5D=state) and Crisis Group, South Sudan, *Compounding Instability in Unity State*, 17 October 2011, <https://www.crisisgroup.org/africa/horn-africa/south-sudan/south-sudan-compounding-instability-unity-state>.

<sup>11</sup> UN Human Rights Council, *Conference Room Paper of the Report of the Commission on Human Rights in South Sudan*, 21 February 2019, <https://undocs.org/en/A/HRC/40/CRP.1> and *Report of the Commission on Human Rights in South Sudan*, 31 January 2020, <https://undocs.org/A/HRC/43/56>.

<sup>12</sup> UN Human Rights Council, 31 January 2020 p. 20

Since the conflict escalated in 2013, different parties have signed more than ten peace agreements and cease-fires intended to bring it to an end, without success.<sup>13</sup> The internationally negotiated *Agreement for the Resolution of the Conflict in South Sudan* from 2015 collapsed in the summer of 2016. This agreement was resumed in September 2018, now under the name *The Revitalised-Agreement for the Resolution of the Conflict in South Sudan*. The new peace agreement has succeeded in reducing the level of violence between the main parties to the conflict,<sup>14</sup> while other armed factions have refused to sign it.<sup>15</sup>

In February 2020, the main parties to the conflict agreed to form a coalition government. Despite this progress, the peace process reportedly remains fragile, and some experts fear it will collapse in the same way as its predecessors.<sup>16</sup> Some armed groups have not joined the process at all, and there has been little or no progress on one of the most contentious issues in the peace agreement, the reform of the armed forces.<sup>17</sup> Implementation of the peace agreement has also been hampered by a lack of necessary funding and resources.<sup>18</sup>

While the peace agreement has helped to reduce the level of violence in South Sudan, in particular by curtailing armed clashes between the main parties to the conflict, violence and abuses continue to be carried out in the country.<sup>19</sup> A substantial increase in violent incidents was reported from 2019 to 2020.<sup>20</sup> The UN's arms embargo and sanctions on the South Sudan regime have been renewed twice since the peace agreement was signed. These measures remain in force.<sup>21</sup>

Serious human rights abuses perpetrated by the military and the NSS have persisted even after the peace agreement was signed. Examples of this include arbitrary detention and internment.<sup>22</sup> The UN Panel of Experts wrote the following in April 2020:

*Amid the implementation of the revitalized peace agreement, the National Security Service has expanded its unchecked security control to silence political and civic dissent. It has arbitrarily detained civilians at a prison known as "River side" and committed*

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<sup>13</sup> The Africa Center for Strategic Studies, *Timeline of South Sudan Peace Agreements and Violence*, 18 December 2019, <https://africacenter.org/spotlight/timeline-of-south-sudan-peace-agreements-and-violence/>

<sup>14</sup> UN Security Council, *Situation in South Sudan, Report of the Secretary-General*, 10 September 2019, p. 4, <https://undocs.org/en/S/2019/722>.

<sup>15</sup> UN Security Council, *Letter dated 9 April 2019 from the Panel of Experts on South Sudan addressed to the President of the Security Council, Summary* <https://www.undocs.org/S/2019/301>.

<sup>16</sup> See, for example: Foreign Policy, *Diplomats Fear a Collapse of South Sudan's Latest Peace Deal*, <https://foreignpolicy.com/2020/03/05/south-sudan-peace-deal-diplomats-fear-collapse/>.

<sup>17</sup> UN Security Council, *Situation in South Sudan, Report of the Secretary-General*, 8 September 2020, p. 2, <https://undocs.org/S/2020/890>

<sup>18</sup> UN Security Council, *Letter dated 20 November 2019 from the Panel of Experts on South Sudan addressed to the President of the Security Council, Summary* <https://www.undocs.org/S/2019/897>.

<sup>19</sup> UN Security Council, *Situation in South Sudan, Report of the Secretary-General*, 10 September 2019, p. 4, <https://undocs.org/en/S/2019/722>.

<sup>20</sup> United Nations Mission in South Sudan, Human Rights Division, *Quarterly Brief on Violence Affecting Civilians, January – March 2020*, [https://unmiss.unmissions.org/sites/default/files/unmiss\\_hrd\\_quarterly\\_brief\\_on\\_violence\\_affecting\\_civilians\\_-\\_jan-march\\_2020.pdf](https://unmiss.unmissions.org/sites/default/files/unmiss_hrd_quarterly_brief_on_violence_affecting_civilians_-_jan-march_2020.pdf).

<sup>21</sup> UN Security Council, *Resolutions of the South Sudan Sanctions Committee*, <https://www.un.org/securitycouncil/sanctions/2206/resolutions>.

<sup>22</sup> See, for example, Eye Radio, *NSS detains "Gurush wen?" activist*, 17 June 2020, <https://eyeradio.org/nss-detains-gurush-wen-activist/>.

*serious human rights violations. The military intelligence of the South Sudan People's Defence Forces has conducted similarly violent and extrajudicial activities.*<sup>23</sup>

### **3 ONGC's business activities in South Sudan**

#### **3.1 Joint ventures for the purpose of oil production**

ONGC became a partner in the Greater Nile Petroleum Operating Company (GNPOC) in Sudan in 2002. Since then, several oil companies have pulled out of the country due to the violent conflict and the uncertain economic situation. When South Sudan gained independence from Sudan in 2011, ONGC's oil interests were divided between the two countries. ONGC retained a share in GNPOC, which has operations in Sudan and, furthermore, became a partner in two newly established joint ventures for oil production in South Sudan.

Today, ONGC is a partner in two of the three joint ventures engaged in oil production in South Sudan. These are the Greater Pioneer Operating Company (GPOC) and Sudd Petroleum Operating Company (SPOC).

GPOC was established in 2012 and operates blocks 1, 2 and 4 in the northern part of Unity State.<sup>24</sup> The joint venture partners are ONGC (25 per cent), China National Petroleum Corporation (CNPC) (40 per cent), Petronas Carigali Overseas (30 per cent) and Nilepet (5 per cent). The joint venture's operations have gradually resumed since August 2018, after fighting destroyed much of the company's equipment in 2013. In January 2019, the joint venture resumed production at five oil wells in Unity State.

SPOC operates block 5A in Thar Jath, Unity State. It is expected that most of the remaining oil reserves in South Sudan are located within block 5A. SPOC is jointly owned by ONGC (24.1 per cent), Petronas (67.9 per cent) and Nilepet (8 per cent). The company is not currently in operation,<sup>25</sup> but further oil production forms part of the government's plans.<sup>26</sup> Since neither GPOC nor SPOC were operating between 2013 and 2018, most of the country's oil revenues in this period were generated by a third joint venture, Dar Petroleum Operating Company (DPOC), in which ONGC has no interests.

#### **3.2 The conflict in Unity State**

Unity State, where both GPOC and SPOC operate, has long been a crucible for the conflict in South Sudan.<sup>27</sup> Oil fields have made the area a strategic target for both the government and armed opposition groups. At the same time, the area is the point of origin for several lines of conflict between different tribes and ethnic groups. In its 2019 report, the UN Commission on Human Rights in South Sudan highlighted Unity State in its discussion of the oil industry's role in the conflict:

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<sup>23</sup> UN Security Council, *Letter dated 28 April 2020 from the Panel of Experts on South Sudan addressed to the President of the Security Council*, p. 2, <https://www.undocs.org/S/2020/342>.

<sup>24</sup> UN Human Rights Council, 21 February 2019, p. 128.

<sup>25</sup> UN Human Rights Council, 21 February 2019, p. 128.

<sup>26</sup> UN Security Council, *Letter dated 27 June 2018 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council*, p. 3 <https://undocs.org/S/2018/641>

<sup>27</sup> See, for example: European Coalition on Oil in Sudan, *The Legacy of Lundin, Petronas and OMV in Block 5A, Sudan 1997 – 2003*, [https://www.ecosonline.org/reports/2010/UNPAID\\_DEBT\\_fullreportweb.pdf](https://www.ecosonline.org/reports/2010/UNPAID_DEBT_fullreportweb.pdf).



*The armed conflict in South Sudan is being driven primarily by the need to control the oil-producing areas in Unity and Upper Nile states. That aim has been a major driver of the continuing ethnic violence, which has led to enormous human suffering and violations of human rights and international humanitarian law.*<sup>28</sup>

From April to June 2018, the military led an offensive in Unity State. Over a period of three months, around 40 villages were attacked. In a report published in July 2018, the UNMISS's Human Rights Division (HRD) described some of the abuses that had taken place:

*120 girls and women were raped or gang-raped. HRD also documented the killing of 232 civilians including 35 children, 50 women – including 25 who were killed by hanging, and 63 individuals comprising of children, elderly and persons with disabilities who were burned alive across these locations. UNMISS and humanitarian organizations documented that, as a direct result of these attacks, an estimated 1,995 people were forcibly displaced, including 1,350 children.*<sup>29</sup>

In its 2019 report, the UN Commission on Human Rights in South Sudan wrote the following about the motivation behind the offensive:

*The Government offensive in Unity State in April to June 2018, appears to have been undertaken to a large degree for the purpose of gaining control of the road going south from Bentiu to Koch and Leer Counties, leading to Adok Port on the White Nile river, and either pacifying or removing civilian population from the areas near the oil fields by using extremely violent methods.*<sup>30</sup>

While according to this statement the motivation for the offensive was linked in part to the oil production in Unity State, other political and military objectives also lay behind the attacks.<sup>31</sup> Even so, the government announced in the autumn of 2018 that oil production was to be resumed in northern Unity State, and a GPOC facility in the region restarted production after a halt of several years.<sup>32</sup>

### **3.3 The link between ONGC and the parties to the conflict**

The UN Commission on Human Rights in South Sudan describes the country's oil industry as militarised and strongly influenced by security interests. For example, the Commission has been informed that NSS contingents have been stationed at the joint venture's head office and production sites in the oil fields.<sup>33</sup> The UN Panel of Experts further points out that, in addition to the NSS, the military also provides security at the oil fields operated by GPOC and SPOC.<sup>34</sup> The joint ventures pay the Ministry of Petroleum for these security services. The Ministry then transfers these funds for the security services through the ordinary budget

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<sup>28</sup> UN Human Rights Council, 12 March 2019

<sup>29</sup> UNMISS, *Indiscriminate Attacks against Civilians in Southern Unity April-May 2018, Executive Summary* [https://unmiss.unmissions.org/sites/default/files/20180709\\_final\\_consolidated\\_version\\_of\\_unmiss\\_hrd\\_report.pdf](https://unmiss.unmissions.org/sites/default/files/20180709_final_consolidated_version_of_unmiss_hrd_report.pdf).

<sup>30</sup> UN Human Rights Council, 21 February 2019, p. 131.

<sup>31</sup> UNMISS, OHCHR; *Indiscriminate Attacks Against Civilians In Southern Unity April-May 2018*, [https://unmiss.unmissions.org/sites/default/files/unmissohchr\\_report\\_on\\_indiscriminate\\_attacks\\_against\\_civilians\\_in\\_southern\\_unity\\_april-may\\_2018.pdf](https://unmiss.unmissions.org/sites/default/files/unmissohchr_report_on_indiscriminate_attacks_against_civilians_in_southern_unity_april-may_2018.pdf).

<sup>32</sup> Bloomberg, *South Sudan Resumes Output in Key Oil Area After Five-Year Halt*, 26. august 2018, <https://www.bloomberg.com/news/articles/2018-08-26/south-sudan-restarts-unity-oil-output-at-45-000-barrels-a-day>.

<sup>33</sup> UN Human Rights council, 21 February 2019, p. 131.

<sup>34</sup> UN Security Council, *Letter dated 28 April 2020 from the Panel of Experts on South Sudan addressed to the President of the Security Council*, s. 27 <https://www.undocs.org/S/2020/342>.

process. This is the normal way in which the security of the country's oil operations is organised. In addition, the joint ventures have reportedly provided benefits-in-kind to the NSS and the military contingents which provide security at the oil fields.

The UN Panel of Experts also reports that the companies Sudd Security Services Co Ltd and Sudd Services and Investment Co Ltd, two companies controlled by the NSS, sell security services to GPOC.<sup>35</sup> For example, Sudd Security Services provides security personnel and drivers, and carries out maintenance at GPOC's head offices. GPOC's head of security is also a brigadier general in the NSS.

The UN Commission on Human Rights in South Sudan furthermore points out that ONGC's business partner Nilepet is a key actor in the war economy, and concludes that the authorities have used the oil company to finance the conflict by channelling funds from it to military purposes.<sup>36</sup> Nilepet is also mentioned in several reports published by the UN Panel of Experts, which has pointed out that the company contributes to oil revenues being used to finance government forces' acts of violence.<sup>37</sup> The head of the NSS is also said to have held a seat on Nilepet's board of directors since 2014.

In March 2018, the US Department of Commerce announced that it had included GPOC, SPOC and Nilepet on its list of companies subject to sanctions (the Entity List).<sup>38</sup> The US government explained the imposition of sanctions on the grounds that the companies contribute *"to the ongoing crisis in South Sudan because they are a source of substantial revenue that, through public corruption, is used to fund the purchase of weapons and other material that undermine the peace, security, and stability of South Sudan rather than support the welfare of the South Sudanese people."*

The inclusion of the companies on the US Entity List was commented on by the UN Commission on Human Rights in South Sudan in a report in 2019. The Commission wrote that the listing was a *"stark reminder that these companies have been found, as a consequence of their business activities, to have caused or contributed to the ongoing armed conflict and the violations against civilian in their areas of operation."*<sup>39</sup> With respect to ONGC's response to the critical human rights situation in South Sudan, the Commission referred to sources indicating that ONGC *"[has] not shown great concern for the legacy of human rights abuses linked to oil production in the areas where they have been operating."*<sup>40</sup> During the press conference marking the publication of the report, one of the Commission's members, Andrew Clapham, stated that: *"If you are involved in oil extraction in that area and you are asked to assist one side or the other, you could be accused of complicity in war crimes."*<sup>41</sup>

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<sup>35</sup> UN Security Council, 28 April 2020, p. 27.

<sup>36</sup> UN Human Rights Council, 21 February 2019, p. 203.

<sup>37</sup> See, for example, UN Security Council, *Letter dated 9 April 2019 from the Panel of Experts on South Sudan addressed to the President of the Security Council*, p. 16, <https://www.undocs.org/S/2019/301>.

<sup>38</sup> The Bureau of Industry and Security (BIS) of the U.S. Department of Commerce, *15 South Sudanese Entities Added to the Entity List*, <https://www.bis.doc.gov/index.php/regulations/1407-15-south-sudanese-entities-added-to-the-entity-list>.

<sup>39</sup> UN Human Rights Council, 21 February 2019, p. 138.

<sup>40</sup> UN Human Rights Council, 21 February 2019, p. 139.

<sup>41</sup> Reuters, *U.N. reports mass rape, killings, torture in South Sudan, seeks oil scrutiny*, 20 February 2019, <https://fr.reuters.com/article/us-southsudan-un-idUSKCN1Q917Q>.

## 4 Information provided by the company

In a letter dated 23 June 2020, ONGC confirmed that South Sudan's NSS provides security at the oil fields, and that NSS contingents are stationed at the joint ventures' locations through the Ministry of Petroleum. In its letter, ONGC emphasised that no human rights violations have been reported inside the joint ventures' areas of operation. The company also wrote that neither the company nor its subsidiaries have any direct or indirect links to the abuses mentioned in the recommendation.

The company further described the vandalism and destruction of the joint ventures' property that took place from 2013 to 2015, and explained that an important objective of the security measures surrounding the oil fields was to protect against such destruction. Since operations have been resumed, the joint ventures have, in conjunction with the government, appointed an independent third party which has performed an assessment of the security risk prevailing in the areas where GPOC and SPOC have licences to operate in Unity State. One of the issues investigated was the local population's attitude to the reopening of the oil fields. The independent inquiry found that *"the local population have a positive attitude towards the production resumption and were happy and hopeful for development of their areas with the resumption of operations."*

The company also wrote that it had endorsed the UN Global Compact Principles, and was committed to ensuring their implementation. Since ONGC is India's national oil company, it is also guided by rules and regulations following from India's human rights policies. ONGC also stated that the joint ventures play an active role in the development of the local communities in which they operate in South Sudan. The company pointed in particular to investments it had made in healthcare, education and the provision of clean drinking water. In conclusion, ONGC wrote that the joint ventures *"will play a vital role to tide over the financial difficulties of the nation and will cater to the critical needs of the society aiding in the community building and development of the South Sudan."*

## 5 The Council's assessment

The Council on Ethics has considered whether there is an unacceptable risk that ONGC, through its operations in South Sudan, is contributing to serious violations of the rights of individuals in situations of war or conflict.

A violent conflict has been ongoing in South Sudan for many years, and atrocities against the country's civilian population are well-documented. The violations are of an extremely serious nature, such as mass killings, sexual assault and torture. The violence has affected a great many people, and many of the victims are children. The violence has been perpetrated in part by the military and NSS on behalf of the government. As a result of the extremely serious nature of the abuses perpetrated, the UN Commission on Human Rights in South Sudan recommended that those responsible be investigated for crimes against humanity and war crimes.

The Council takes the position that any company must exercise a particular degree of due care when it operates in situations of war or conflict. This duty of care also applies to its choice of business partners, be they private sector or state-controlled entities. In this case, the requirement for due care is further reinforced by the militarisation of the oil industry in South Sudan, and that the conflict is to a great extent driven by the need to control the oil resources in the area in which ONGC operates. Despite this heightened duty to exercise due care,

ONGC has entered into collaborations with several of those who have been responsible for or contributed to serious abuses.

In general, the Council finds it difficult to envisage that a company can engage in oil production in South Sudan under the prevailing conditions without courting a high risk of contributing to serious norm violations. Furthermore, the Council considers that ONGC's operations in South Sudan depend on government control of the oil resources in Unity State. In the Council's view, by participating in the joint ventures, ONGC has accepted the risk of contributing to the serious violations perpetrated by the government in order to facilitate the production of oil in the region. When assessing the company's contribution, the Council gives weight to the fact that extensive information concerning these violations has been widely available for several years, and that this information must have been known to the company. In line with its previous practice, the Council does not attach importance to the fact that the company is a minority shareholder in the joint ventures.

Furthermore, the Council takes into consideration that the country's security services and armed forces, which have committed acts of extreme violence against the civilian population, provides security at the oil fields which GPOC and SPOC operate. The joint ventures pay the government for these services, as they are obliged to do. In addition, the joint ventures have reportedly provided direct support to the NSS and the military in the form of benefits-in-kind. The Council also takes into consideration that companies owned by the NSS is performing work at the joint venture's head office and that the GPOC's head of security is a brigadier general in the NSS.

ONGC's links to government-aligned parties in the conflict are further reinforced by funds from Nilepet reportedly being channelled into military purposes, outside the normal budget process. The NSS is also seemingly involved in Nilepet's operations. The Council considers that, through these business associations, ONGC may have contributed to securing revenues and resources which could be used to finance violent attacks on the civilian population. The collaboration may also have added legitimacy to parties to the conflict and may have been perceived as implicit acceptance of their behaviour.

The Council acknowledges that the company's efforts to help the civilian population may have a positive effect, but considers them unfit to prevent or mitigate the consequences of the extremely serious norm violations perpetrated by actors with whom the company still has a close collaboration. ONGC has given no indication that it can or will make changes to or terminate its cooperation with those engaged in the conflict, or that it has any other initiatives planned that could, in the Council's view, reduce the risk of the company contributing to norm violations. In any case, the Council presumes that the company does not have sufficient influence to prevent new abuses. The Council notes that even though the country is now engaged in a peace process, serious abuses of the civilian population continue to occur. As long as ONGC continues to collaborate with those responsible for them, the Council considers that there is an unacceptable risk that the company is contributing to such abuses.

## 6 Recommendation

The Council on Ethics recommends that Oil & Natural Gas Corp Ltd be excluded from investment by the Norwegian Government Pension Fund Global (GPFG) due to an unacceptable risk that the company is contributing to serious violations of the rights of individuals in situations of war or conflict.

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