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Human rights, war and conflict

Section 4 of the guidelines states that "Companies may be excluded or placed under observation if there is an unacceptable risk that the company contributes to or is responsible for:

e. serious or systematic human rights violations
f. serious violations of the rights of individuals in situations of war or conflict."

In the field of human rights, the Council in 2021 focused its work on forced labour and other labour rights infringements, the violation of the rights of Indigenous peoples, and human rights abuses relating to the use of surveillance technology and forced relocation. In 2021, as in 2020, the pandemic restricted the Council's endeavours, particularly because it precluded the performance of field studies.

The military coup in Myanmar in February 2021 made it necessary for the Council to devote time and resources to assessing companies that engage in business partnerships with the country's armed forces. These assessments are made under the war and conflict criterion. In addition, the Council continued its assessment of companies with operations in the West Bank.

Serious or systematic human rights violations

When the guidelines were amended in September 2021, the examples, "murder, torture, arbitrary detention, forced labour, the worst forms of child labour" were removed from the wording of the human rights criterion at the suggestion of the Ethics Commission. The Commission considered that this change would emphasise the fact that all types of serious or systematic human rights abuses are covered by the criterion. This was also underlined by the Norwegian Ministry of Finance and the Norwegian parliament's Finance Committee during their deliberations on the Ethics Commission's report.[1] The Finance Committee also underlined that fact that the criterion covers "the rights of workers, Indigenous people and children, as well as equality". Several of the cases assessed by the Council during the year related to these rights.

Another change that may be significant for the Council's endeavours pursuant to the human rights criterion is the Ethics Commission's proposal relating to companies operating in countries whose fundamental values diverge from those on which the GPFG's ethical guidelines rest. The Commission states that all companies must be assessed to the same ethical standards, and points out that the norms underpinning the guidelines have broad popular support in Norway and internationally. At the same time, the GPFG invests in countries whose governments espouse norms that diverge from this consensus. The Commission points out that companies domiciled in such countries may have little leeway to influence or reduce the risk of norm violations.

The Commission recommended that the Council and Norges Bank should have a particularly effective information sharing process in cases of this kind. The Commission also said the Council's recommendations may have a slightly different form and length in these cases. Because information will often be less readily available in such cases, the Commission took the view that the Council's recommendations could therefore attach greater importance to risk assessments at the country and business sector level. This notwithstanding, the Council's recommendations must still contain specific assessments of the companies concerned. The Ministry of Finance endorsed this new, risk-based approach.[2] Although this approach may be used for companies being assessed under all the guidelines' criteria, the Council expects that it will have the greatest impact on its work under the human rights criterion. In 2021, the Council issued one recommendation based on this risk-based approach. Here, the Council also took account of the fact that the company failed to provide any information, as several reports to the Norwegian parliament have advocated.

The Council prioritises cases in part on the basis of the norm violations' consequences. Since Indigenous people often depend on nature for their livelihoods and often have a strong cultural connection with the natural surroundings in which they live, projects that change environmental conditions or lead to forced relocation will have a major impact on them. Economic activity in indigenous areas can also lead to an influx of other groups which will put pressure on the Indigenous people's territories and weaken their ability to make a living or threaten their very existence. In 2021, the Council focused on activity in areas where Indigenous people live in voluntary isolation. Isolated Indigenous people are particularly vulnerable to outside intervention, partly because they have not built up immunity to diseases that are otherwise common in society. Economic activity in their areas can therefore have extremely serious consequences.

Relocation is another type of case to which the Council gives priority. Mining projects, hydropower schemes or the construction of infrastructure depends on a

1 Report to the Storting (white paper) Meld. St. 24 (2020–2021) (regjeringen.no), section 7.5.2.4 Recommendation to the Storting Innst. 556 S (2020-2021) (stortinget.no), section 7.2

2 Report to the Storting (white paper) Meld. St. 24 (2020–2021) p. 139

specific location. Even though the companies have been granted permits to build, and licences have been formally obtained, the areas concerned may, in reality, be populated by groups who lack formal land rights. In such situations, violent conflicts may arise, and forced relocation may lead to people losing both their homes and their livelihoods. In 2021, the Council has been in contact with several companies engaged in mining operations that have led to forced relocation.

Companies have a particular responsibility for human rights abuses within their own operations. For this reason, many of the cases assessed by the Council relate to the infringement of labour rights. The Council is in the process of concluding its examination of working conditions at textiles factories, which started in 2015. As a result of its investigations, six companies have been excluded, while three have been placed under observation. The textiles industry project is also described later in this annual report.

One of the four main categories in the ILO's core conventions is the ban on forced labour. Since 2015, the Council has focused on migrant workers subjected to working conditions akin to forced labour. The norm violations in these cases relate typically to the use of recruitment fees, poor working and living conditions, illegal overtime, restrictions on workers' freedom of movement, etc. The Council's investigations in 2021 have focused primarily on the rubber glove industry in Malaysia. Although it has not been possible to study conditions at the factories, due to the pandemic, the Council has reviewed the publicly available information. The Council's own investigations will be resumed in 2022. These will to a greater extent be conducted online.

In addition to its work with migrant workers, in 2021 the Council has investigated serious accusations of forced labour in China's Xinjiang region.[3] Xinjiang is located in northwest China and around 45 per cent of its population belong to the Uighur ethnic minority. According to reports published in the media and by researchers and civil society organisations, Uighur and other ethnic minority people have been put to work against their will, either directly in government-organised internment camps or elsewhere as part of government programmes. It has been reported that companies, including listed companies, have taken on such workers both inside and outside of Xinjiang. On this foundation, the Council has examined whether GPFG companies could have been involved in such norm violations. While many media and research reports focus on Western companies' links to forced labour through their supply chains, the Council has focused primarily on GPFG companies which make direct use of this type of labour. Access to information in these cases is a particular challenge. On several occasions, the United Nations High Commissioner for Human Rights has requested access to Xinjiang to investigate the situation there, but this has so far not been granted. Nor has it been possible for the Council to undertake its own investigations in the region. The Council must therefore base its assessment on the information that is publicly available. The Council's investigations into publicly available sources, including webpages and company filings, showed that some companies report on their own participation in government programmes in Xinjiang. From a Chinese perspective, participation in such programmes may be considered a positive contribution to reaching national anti-poverty goals. From the Council's perspective, the same information could indicate that the companies make use of forced labour. The Council's investigations also revealed that GPFG companies may have purchased goods from a supplier with production inside an internment camp. On the basis of these investigations, the Council recommended that one company be excluded in 2021. The Council will continue to follow up this issue.

In 2021, the Council continued to investigate GPFG companies that may contribute to human rights abuses through the development or sale of surveillance equipment. The Council has obtained several reports on companies that have been involved in serious norm violations enabled by surveillance technology. In 2021, the Council has assessed one specific company. The outcome of this case will be of significance for the Council's further work in this area.

Serious violation of the rights of individuals in situations of war or conflict

In 2021, the Council assessed several companies with operations in the West Bank. The Council's objective is to assess whether companies, through their operations, have contributed to the violation of international

3 New York Times, *China's Detention Camps for Muslims Turn to Forced Labor*, 16 December 2018 https://www.nytimes.com/2018/12/16/world/asia/xinjiang-china-forced-labor-camps-uighurs.html

law. During the year, five companies were excluded because of their involvement in the construction of settlements or road infrastructure, or the leasing of industrial premises in the West Bank. The Council is monitoring developments in the area. To follow up the outcome of the Ethics Commission's report, companies that fund such operations through project financing may also be assessed.

The Council has also assessed cases where GPFG companies operate in areas in which non-international armed conflicts are underway and where companies have entered into business partnerships with actors responsible for extremely serious abuses. In 2021, one company, operating in South Sudan, was excluded on these grounds, while one company with operations in Myanmar has been placed under observation. Following the military coup in Myanmar on 1 February 2021, a great deal of information has emerged on companies engaged in business partnerships with the country's armed forces. So far, the Council has prioritised companies working directly with the military and military-owned companies. Examples include joint ventures or so-called "build operate and transfer" contracts. In 2021, the Council issued a recommendation to place one such company under observation. The Council will also assess whether sale of weapons to Myanmar may lead to exclusion under the war or conflict criterion. The Council's assessments of companies with business ties to the military regime in Myanmar will continue in 2022.

Requirement for due care in areas of war and conflict

Due to the high risk of contributing to extremely serious norm violations in particular areas where war or conflict are ongoing, the Council has found that companies operating in such areas should carry out especially thorough due diligence assessments. This approach is in line with a number of international guidelines, for example, the report "Business, human rights and conflict-affected regions: towards heightened action", published in 2020 by the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Enterprises.[4] In light of this heightened due diligence requirement, the Council has recommended that companies be placed under observation or excluded, even though their association with the norm violations was somewhat weaker than would qualify for exclusion or observation in other cases. This approach is reserved for companies operating in conflict areas where they risk contributing to extremely serious norm violations.

In three cases the Council has used this approach. Two of the companies concerned, Kirin Holdings Co Ltd and Adani Ports & Special Economic Zone Ltd, operate in Myanmar, where armed conflicts have intensified since the military coup. Kirin is co-owner of a joint venture with a military-owned conglomerate, while Adani has signed a contract to build and operate a port in Yangon with another military-owned conglomerate. Although the Kirin recommendation was issued before the military coup, the Myanmar armed forces had already committed extremely serious abuses of the country's civilian population, particularly the Rohingya minority in 2016 and 2017. In the Council's opinion, Kirin Holdings Co Ltd and Adani should have demonstrated greater care before entering into a business partnership with military-owned entities. However, both companies have started the process of withdrawing from these business partnerships. The Council has therefore recommended that they be placed under observation.

The third case related to Oil & Natural Gas Corp Ltd (ONGC), which engages in oil production in South Sudan, where armed confrontations have taken place over many years and where the civilian population has been subjected to extremely serious abuses. Control of oil resources has been an important driver in the conflict. ONGC engages in oil production in partnership with South Sudan's national oil company Nilepet. The Council attached importance to the fact that actors directly or indirectly responsible for grave abuses, including murder and rape, perform services for these joint ventures and are responsible for the security of the oil fields operated thereby.

In all these three cases, government entities have carried out extremely serious abuses of their respective countries' civilian populations. The Council considers that there are few geographic areas and conflicts where there is a risk that companies are contributing to such atrocities. Whenever the Council becomes aware of such cases, it will give them a high priority.

4 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