Council on Ethics
Government Pension Fund – Global

Annual report 2008

Table of contents

Introduction

The Council on Ethics for the Government Pension Fund – Global was established by cabinet decision on 19 November 2004 at the same time as the Fund's Ethical Guidelines were laid down. The Council on Ethics is an independent advisory body whose task is to submit recommendations to the Ministry of Finance regarding the exclusion of companies from the Pension Fund on the grounds of acts or omissions that are inconsistent with the criteria of the Ethical Guidelines.

This annual report includes four recommendations issued by the Council in 2008, as well as two recommendations that have been submitted in previous years, but were made public only in 2008/2009. These recommendations have been followed up by letters to the Ministry of Finance in 2008 which are comprised in this report. In March, the Ministry of Finance requested a particular assessment of the company Israel Electric Corporation, and the Council's reply to the Ministry is also included.

In 2008/2009 the Ministry of Finance is carrying out an evaluation of the Ethical Guidelines. The Council on Ethics' public consultation statement, including its assessment of how the Guidelines have functioned and what should be changed, is also part of this annual report.

Below follows an overview of the companies that are discussed in this annual report and a brief outline of the grounds for exclusion.

The Chinese company Dongfeng Motor Group has been excluded for selling military vehicles to Burma. The Ministry of Finance changed the Ethical Guidelines in 2008, sanctioning the exclusion of companies that supplies weapons and military equipment to states featuring on the list of countries whose government bonds the Fund is unable to invest in. This implies that the Fund shall not invest in companies that sell such products to Burma.

The recommendations to exclude the Australian/British company Rio Tinto and the Canadian company Barrick Gold refer to severe environmental damage. Both cases concern riverine tailings disposal from mining operations. Thus far a total of four companies that use riverine disposal have been excluded as this practice causes extensive and long-term damage.

The last recommendation of the year applies to the American company Textron, which has been excluded on the grounds of cluster munitions production. In 2008 an international convention to ban cluster munitions was negotiated. The convention's definition of cluster munitions largely coincides with the criteria that the Council on Ethics based its discussion of cluster munitions on in 2005, but in some respects it is more stringent. Having adopted the new definition, the Council on Ethics recommends the exclusion of Textron.

This annual report also includes two recommendations issued in 2006 and 2007. In 2005 the Council on Ethics decided to examine more closely various companies that produce hybrid cotton seed in India. Several times the Council on Ethics has commissioned consultants to monitor the incidence of child labour at a number of production sites, and the Council on Ethics' Secretariat has also conducted its own surveys. This is probably the area where the Council has spent most time and resources so far. Child labour is widespread in Indian hybrid cotton seed production, and the children often come from far away and live separated from their families. The work involves health hazards, such as the use of pesticides without adequate protective equipment.

As a result of the investigations in India, the Council on Ethics recommended, in November 2006, the exclusion of the American company Monsanto, which is one of the largest multinationals involved in hybrid cotton seed production in India. Following a suggestion from Norges Bank in the spring of 2007, the Ministry of Finance decided to try active ownership over a limited period of time to see if this could reduce the risk of the Fund contributing to the worst forms of child labour. In the spring of 2008, the Ministry of Finance requested the Council on Ethics to present new information on the conditions so that the Ministry could assess whether continued active ownership would be to the purpose or whether it would be right to exclude the company. In its reply to the Ministry, the Council on Ethics documents that the incidence of child labour in Monsanto's hybrid cotton seed production chain still is considerable. It has, however, been significantly reduced in the areas where the company has taken steps to avoid child labour. This indicates that by making determined efforts it is possible to reduce the incidence of child labour within a reasonable time frame. Consequently, the Council on Ethics' latest recommendation did not propose exclusion.

In November 2007 the Council on Ethics advised the Ministry of Finance to exclude the German company Siemens on the grounds of gross corruption. A series of lawsuits documented that a large number of company employees had used gross corruption to win public contracts. Around the time of the Council on Ethics' recommendation, other instances of bribery were revealed. At the same time, Siemens presented new measures to prevent corruption in the future. In light of this development, the Ministry of Finance asked the Council on Ethics, in May 2008, to assess the new information that had emerged after the recommendation had been issued. The Council maintained its recommendation to exclude Siemens arguing that the scope of corruption revelations had increased substantially since the recommendation was issued in November 2007, that the confessions of corruption were only given in the wake of revelations about the company, and that Siemens showed a pattern of starting clean-up processes only under pressure and never on its own initiative. Particularly in view of Siemens' previous involvement in corruption and the company's lack of credibility when it comes to cleaning up, as well as the scope of the anti-corruption measures that will be necessary, the Council deemed the risk of future corruption to still be unacceptable.

The corruption criterion poses additional challenges when compared with the other exclusion criteria of the Ethical Guidelines. Being illegal in most countries, corruption tends to take place in secret. When corruption is revealed, the case is normally tried by the courts. If a company or its employees are judged or accused of such crimes, a natural reaction would be to take steps to prevent future corruption in that company. The Council on Ethics' task is to assess the risk of future corruption, and it cannot base this solely on what has occurred in the past. Such appraisals must therefore also weigh the concrete measures taken by the company.

In March 2008 the Ministry of Finance announced that Siemens has been placed on an observation list featuring companies that the Ministry has decided not to exclude, but where activities in breach of the Ethical Guidelines have been detected. Siemens will remain on this list for a period of four years and will then be removed if no information emerges on new instances of corruption.

In 2008 the Council on Ethics' workload has increased. In June the Ministry of Finance added some 800 companies to the Pension Fund's benchmark portfolio for equity investments, making the total nearly 8000 companies. The benchmark portfolio now covers all countries included in the FTSE AllCap Index (except Norway). Among other things, this implies that at the end of 2008 the number of emerging markets included in the benchmark portfolio had increased from five to 23. Experience so far indicates that there is less information available on companies headquartered in emerging markets. The Council on Ethics' system for mapping the activities of portfolio companies is presented later in this report. In 2009 we will try to improve the access to information by measures such as a search service in mandarin for companies headquartered in China, Japan, Hong Kong, and Taiwan. These markets constitute a considerable part of the Pension Fund's investments, and one must presume that the language barrier will mean that less information is retrieved if only English sources are used. The global news search service, will be expanded to include both Spanish and English sources.

The portfolio extension represents a challenge to the Council. In several of the countries that now are included in the benchmark portfolio, the possibility to collect data is limited. It may be very challenging to obtain concrete and reliable documentation from countries that do not practice transparency in public administration or where it may be illegal or dangerous to divulge information on company operations.

Much of the Council's work in the course of a year does not lead to recommendations. In 2008 some 130 companies have been assessed. Information on companies that are investigated is only made public if the Council on Ethics issues a recommendation or gives an account of its work in letters to the Ministry of Finance. In 2008 the Council initiated a review of the tobacco industry, aimed at investigating the incidence of child labour, and an analysis of companies with operations in tropical rain forests. Moreover, a series of cor-

ruption accusations were studied. A significant amount of work has also been dedicated to investigating companies with operations in Burma. In 2008 the Council on Ethics had 10 meetings, and the Secretariat put in approximately seven man years. The Council's budget in 2008 totalled nearly nine million kroner.

As part of the work on the aforementioned evaluation of the Ethical Guidelines, the Ministry of Finance prepared a consultation paper in 2007 and invited a number of entities to offer their input to the process. A fundamental question that has been discussed in connection with the evaluation is whether the purpose of exclusion should be not only to avoid complicity in serious violations, but also to influence companies to change their conduct. In its consultation statement, the Council on Ethics recommends that the purpose of exclusion should still be to avoid the Fund's complicity in serious violations. Influence, on the other hand, is the purpose of the active ownership exercised by Norges Bank.

Our experience indicates that exclusion nevertheless contributes to influencing companies. Most companies that the Council on Ethics writes to requesting information reply or ask for a meeting with the Council on Ethics. Companies that have been excluded have also contacted the Council on Ethics afterwards reporting on changes with a view to being readmitted to the Fund. The publicity around the recommendations is probably instrumental in influencing companies, especially since the assessments have proven to be based on reliable information and since it may be detrimental to a company's reputation to come under public scrutiny.

The Council on Ethics (members of the Council and of the Secretariat) made more than 40 presentations in the course of the year. The contact with various research institutions, nongovernmental organisations and the media is important to the Council's activities, as it provides useful feedback and suggestions on how the Council may improve its work. We value such input and discussions wich we will continue to seek in the future. It is also our ambition to produce thorough and well documented recommendations implementing the Ethical Guidelines for the Fund in a credible and sustainable manner.

Gro Nystuen (Chair) Andreas Føllesdal Anne Lill Gade Ola Mestad Bjørn Østbø

Members of the Council and of the Secretariat

The Council on Ethics

Gro Nystuen (Chair) Doctor Juris and Associate Professor at the Center for Human Rights, University of Oslo

Andreas Føllesdal Professor Ph.D. in Philosophy at the Center for Human Rights, University of Oslo

Anne Lill Gade MSc in limnology (freshwater ecology), Programme Manager at Jotun AS.

Ola Mestad Doctor Juris and Professor at the Centre for European Law, University of Oslo

Bjørn Østbø Economist HAE, Managing Director at First Securities ASA, Bergen.

The Secretariat

The Council has a Secretariat that investigates and prepares cases for the Council. The Secretariat has the following employees:

Pia Rudolfsson Goyer (LL.M)

Hilde Jervan (cand. agric)

Anita Karlson (IT)

Eli Lund (Executive Head of Sectretariat, Economist)

Charlotte Hafstad Næsheim (LL.M)

Aslak Skancke (graduate engineer)

Kamil Zabielski (M.Phil. human rights LL.M)

Mandate for the Council on Ethics

"The Ministry of Finance presented ethical guidelines for the Government Pension Fund – Global (former Government Petroleum Fund) in the Revised National Budget for 2004. The Storting endorsed the guidelines in Budget Recommendation to the Storting No. 1 (2003-2004). The Ministry of Finance established the ethical guidelines with effect from 1 December 2004. Clause 4.4 of the guideline was revised on the 29th of September 2008, according to the Report to the Storting No. 16 (2007-2008).

The guidelines establish the following tasks for the Council on Ethics:

1 The Council shall be composed of five members. The Council shall have its own secretariat. The Council shall submit an annual report on its activities to the Ministry of Finance.
2 The Council is to issue recommendations at the request of the Ministry of Finance on whether an investment may be in violation of Norway's obligations under international law.
3 The Council shall issue recommendations on negative screening of companies that:
   - produce weapons that through their normal use violate fundamental humanitarian principles; or
   - sell weapons or military materiel to states mentioned in Clause 3.2 of the supplementary guidelines for the management of the Fund.

The Council shall issue recommendations on the exclusion of companies from the investment universe because of acts or omissions that constitute an unacceptable risk of the Fund contributing to:

- serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other forms of child exploitation,
- serious violations of individuals' rights in situations of war or conflict,
- severe environmental damages,
- gross corruption; or
- other particularly serious violations of fundamental ethical norms.

The Council shall raise issues under this provision on its own initiative or at the request of the Ministry of Finance.

4 The Council is to gather the necessary information on an independent basis and ensure that the matter is elucidated as fully as possible before a recommendation concerning screening or exclusion from the investment universe is issued. The Council can request Norges Bank to provide information as to how specific companies are dealt with in the exercise of ownership rights. All enquiries to such companies shall be channelled through Norges Bank. If the Council is considering an exclusion recommendation, the draft recommendation, and the grounds for it, shall be submitted to the company for comment.
5 The Council shall review on a regular basis whether the grounds for exclusion still apply and can on receipt of new information recommend that the Ministry of Finance reverse the exclusion decision.

See the Revised National Budget for 2004 for an elaboration of the ethical guidelines and of the Council's tasks.

According to the ethical guidelines, the recommendations of the Council on Ethics and the decisions of the Ministry of Finance are in the public domain. The Ministry may in special cases defer the date of publication if this is deemed necessary to assure due and proper disinvestment from a financial point of view. Against this background, and in regard to the Council's recommendations, the Ministry of Finance is the appropriate body to approve or reject requests to examine documents under the Freedom of Information Act.

The Ministry of Finance determines the Council members' and the secretaries' remuneration as well as the Council's budget. The Ministry of Finance shall be the contractual counterparty to any agreement the Council needs to enter into with other parties.

The Ministry of Finance may make additions to or changes in this mandate."

In accordance with a letter from the Ministry of Finance of 24 October 2005, the Council shall submit to the Ministry of Finance a letter with recommendations on fixed dates four times per year (15 February, 15 May, 15 August, and 15 November). If the Ministry, on the basis of the recommendations by the Council, decides upon exclusion of companies, the Norwegian Central Bank shall have two entire months to dispose of any securities in the company held by the Fund. The Ministry will publish recommendations and decisions regarding any exclusion after the completion of such disposal.

Overview of recommendations issued by the Council on Ethics in 2008

Made public as of March 2009

20.11.2006 Recommendation on exclusion of Monsanto Co. *(Published 9 September 2008)*
Recommendation on the exclusion of the American company Monsanto Co. due to hazardous and extensive child labour in the production of hybrid cotton seed in India. The Ministry of Finance decided to attempt the exercise of ownership rights during a limited period of time in order to see if this would reduce the Fund's risk of contributing to serious violations.

In a new evaluation (letter dated 3 September 2008) the Council finds that the risk of future violations may be reduced to an acceptable level, given that the company's efforts are further strengthened and their application extended so that the expected results are achieved.

15.09.2007 Recommendation on exclusion of Siemens AG
(Placed on an observation list and published March 2009)
Recommendation on the exclusion of the German company Siemens AG because it is believed to represent an unacceptable risk for complicity in gross corruption.

15.02.2008 Recommendation on exclusion of Rio Tinto plc. and Rio Tinto Ltd.
(Published 9 September 2008)
Recommendation on the exclusion of the British/Australian mining group Rio Tinto on the grounds of the company's contribution to severe environmental damage caused by Freeport McMoRan and Rio Tinto's joint mining operation of the Grasberg mine in Indonesia. Freeport McMoRan was excluded from the Fund in 2005 owing to environmental damage caused by the company's riverine tailings disposal.

15.08.2008 Recommendation on exclusion of Barrick Gold Corp. *(Published 30 January 2009)*
Recommendation on the exclusion of Barrick Gold, a Canadian mining company, on the grounds of severe environmental damage caused by the company's riverine tailings disposal from the Porgera mine in Papua New Guinea.

26.08.2008 Recommendation on exclusion of Textron Inc. *(Published 30 January 2009)*
The Council recommends that Textron Inc. is excluded from the investment universe of the Government Pension Fund – Global because the company produces cluster munitions.

14.11.2008 Recommendation on exclusion of Dongfeng Motor Group Co. Ltd.
(Published March 2009)
The Council recommends that Dongfeng Motor Group Co Ltd. be excluded from the investment universe of the Government Pension Fund – Global because the company supplies military equipment to the Burmese government.

Letters

18.04.2008 Letter to the Ministry of Finance regarding the Council on Ethics' assessment on investments in Israel Electric Corporation.

10.06.2008 Letter to the Ministry of Finance regarding recommendation to exclude the company Monsanto Co. from the investment universe of the Government Pension Fund – Global.

03.09.2008 Letter to the Ministry of Finance regarding Siemens AG.

29.09.2008 Consultation statement from the Council on Ethics concerning the evaluation of the Ethical Guidelines for the Government Pension Fund – Global.

Companies the Ministry of Finance has decided to exclude from the Government Pension Fund – Global

Cluster Weapons

- Alliant Techsystems Inc.
- General Dynamics Corp.
- Hanwha Corp.
- L3 Communications Holdings Inc.
- Lockheed Martin Corp.
- Poongsan Corp.
- Raytheon Co.
- Textron Inc.
- Thales SA

Nuclear Weapons

- BAE Systems plc.
- Boeing Co.
- EADS Co., including its subsidiary
- EADS Finance BV.
- Finmeccanica Sp. A.
- GenCorp Inc.
- Honeywell International Corp.
- Northrop Grumman Corp.
- Safran SA
- Serco Group plc.
- United Technologies Corp.

Anti Personnel Landmines

- Singapore Technologies Engineering Ltd.

Companies supplying arms or military equipment to Burma

- Dongfeng Motor Group Co. Ltd.

Human Rights

- Wal-Mart Stores Inc., including its subsidiary
- Wal-Mart de Mexico

Environmental Damage

- Barrick Gold Corp.
- Freeport McMoRan Copper & Gold Inc.
- DRD Gold Ltd.
- Vedanta Resources Ltd., including its subsidiaries
- Madras Aluminium Company Ltd.
- Sterlite Industries Ltd.
- Rio Tinto plc. and
- Rio Tinto Ltd.

Company selection and information gathering

Consultation statements and reports prepared in connection with the evaluation of the Ethical Guidelines for the Government Pension Fund have revealed a need for information on how the Council on Ethics selects companies for closer examination. The Council will therefore provide a more detailed presentation of how the selection of companies is carried out, with regard to both negative screening and exclusion. The Council on Ethics dedicates many resources to selecting companies and gathering information on these. The Council uses a series of consultancy services, from general monitoring of companies in the portfolio to comprehensive reports on specific aspects related to individual companies. Frequently the Council hires local experts. The Council has a Secretariat of seven staff members who analyse and prepare cases for the Council.

Negative screening

The objective of the negative screening criteria in the Council's mandate is to identify all companies that produce weapons in contravention of the Guidelines. Two external consultancies, Sustainalytics and EIRiS, have a running contract for making quarterly reviews of the Fund's portfolio and reporting on companies that may have operations in conflict with the negative screening criteria. Cooperating with other investors, the Council has also commissioned Jane's Strategic Advisory Services to map companies that produce cluster munitions. Based on the reports, the Secretariat investigates more closely some companies to verify whether the weapon types actually are incompatible with the Guidelines. The Council on Ethics contacts the companies in question, through Norges Bank, asking them whether they manufacture weapons banned by the Guidelines. The Secretariat's assessment is presented to the Council, which decides whether a recommendation shall be issued.

Exclusion

The assessment of companies for exclusion goes through several stages:

The Council on Ethics has engaged the consultancy EIRiS, which carries out daily internet based news searches on all companies in the portfolio. Every month the consultant sends a report with an overview of companies that are accused of severe environmental damage, complicity in human rights violations, corruption, or other offences. This report identifies about 30 companies a month. The majority of investigations undertaken by the Council on Ethics are a result of such reports.

On the basis of the reports, the Secretariat conducts an initial assessment of how serious or systematic the violations seem to be. Do they appear to constitute a single occurrence or is it a case of recurrent practices? Have steps been taken by the authorities or the company to remedy the violations? The Secretariat's assessments are presented to the Council, who decides which companies shall be subject to a closer examination. On average, each

monthly report prompts the singling out of two to four companies for further investigations. Several companies are often accused of similar violations in the monthly reports. In order to identify the most serious violations, we try to contextualize such cases. In 2006, for instance, the Council looked at 21 companies where the news search indicated a significant risk of the companies practicing gross corruption.

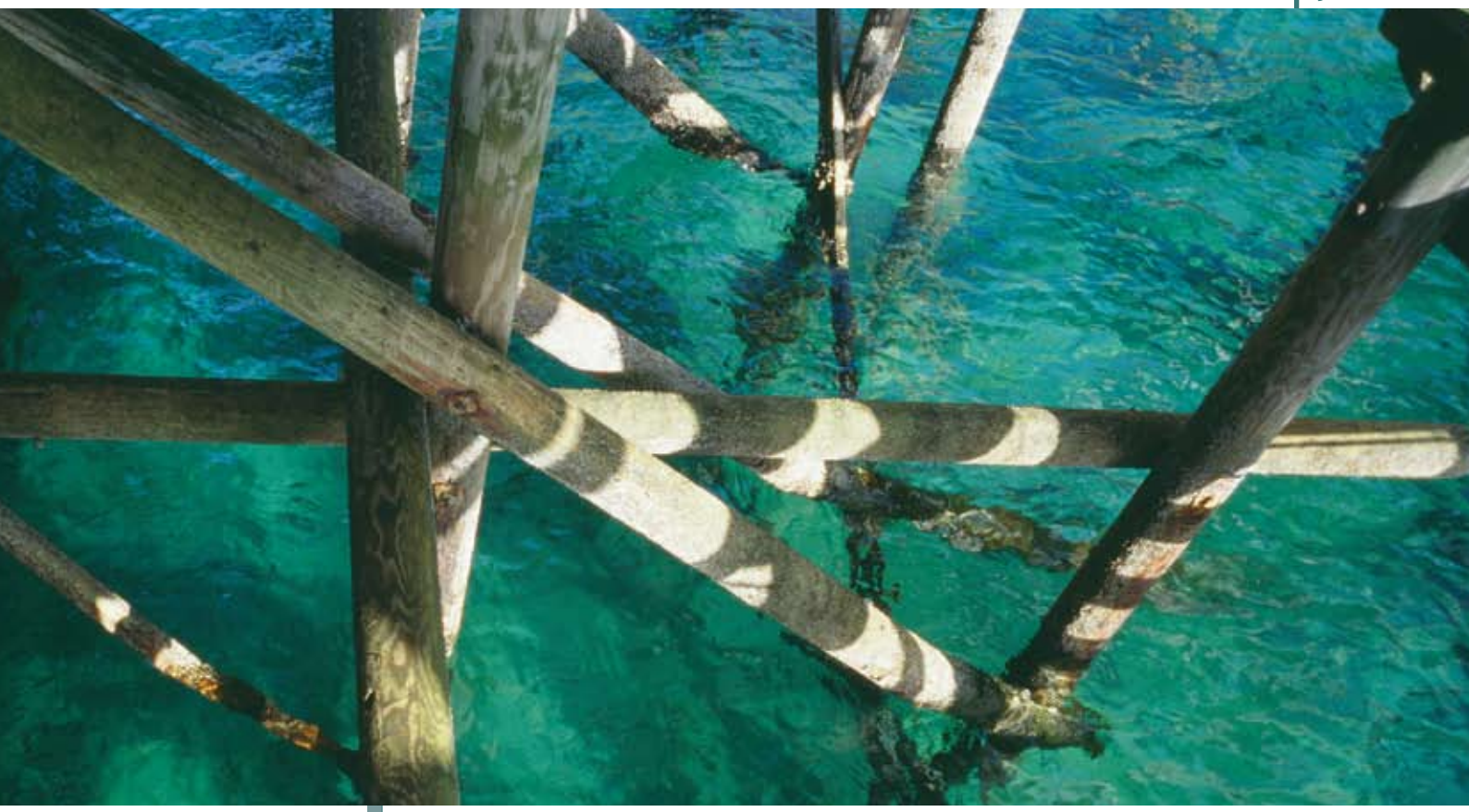
In the further investigations of a company, several factors are emphasized. The gravity of the violation is reassessed, as well as whether it is systematic and whether violations have been reported in various of the company's operations. One also assesses how serious the violation is when compared with other companies in the same kind of business, or in the same country or region. It is essential that the violations can be documented and that the accusations against the company can be substantiated by facts. Moreover, there must be an unacceptable risk that the violations will continue in the future. In many cases, a closer examination shows that the accusations are less serious than initially assumed, that past occurrences are reported as news, or that the company has implemented measures to improve the situation. In such cases the Council does not pursue the case further unless any new information emerges indicating that the company should be reassessed.

With the exception of the weapons criteria, around five companies a year have so far been thoroughly investigated with a view to exclusion. The Secretariat presents the analyses to the Council, which decides whether the company shall be recommended for exclusion. In that case, a draft recommendation is written and sent to the company for comment, as prescribed by the Guidelines. The company's reply is assessed by the Council before it takes a final decision on issuing the recommendation.

When assessing companies, it is not unusual that the Council looks at whole sectors in the portfolio. In 2005 all mining companies in the Fund were examined to assess whether they cause severe environmental damage. The Council then decided that companies using riverine tailings disposal should be further investigated. Riverine disposal is internationally considered an unacceptable practice and is prohibited in most countries because it causes extensive environmental damage. Since the first review, four companies that discharge tailings into river systems have been excluded from the Fund.

In addition to the monthly reports from EIRiS, the Council on Ethics receives requests from individuals or organisations to assess issues or individual companies. These requests are treated in the same way as information that appears through the Council's news searches. The more concrete such enquiries are, the easier it is for the Council on Ethics to address these cases. The Council also assesses companies on its own initiative. In particular, if a situation occurs that raises the Council's awareness of a sector or a country, the Council will often launch an investigation without necessarily basing itself on information regarding concrete companies.

In some cases the Ministry of Finance asks the Council to look at individual companies. The Council gives priority to these requests, always submitting a recommendation, even if it does not recommend the exclusion of a company. The Ministry of Finance has requested a general account of the Council's work on companies with operations in Burma and in Israel. Because of the current situation, the Council had already been closely following companies with activities in these countries. An enquiry from the Ministry of Finance makes the Council exert itself even more to examine such cases.



The Recommendations

To the Ministry of Finance

Oslo, November 20th, 2006

(Published September 9th, 2008)

Recommendation on exclusion of Monsanto Co.

Contents

1 Introduction

[Text added the 9th of September 2008: In November 2006, the Council on Ethics recommended that the Ministry of Finance should exclude Monsanto Co. from the investment universe of the GPFG. The Council then held the view that continued investment in the company would entail an unacceptable risk of contributing to the worst forms of child labour. The Ministry of Finance decided, based on plans presented by Norges Bank in spring 2007, that it would be appropriate to pursue an active ownership strategy for a limited period of time in order to establish whether this might reduce the risk of contributing to grossly unethical conduct.]

In August 2005 the Council on Ethics for the Government Pension Fund – Global decided to assess whether the operations of the company Monsanto Co. (Monsanto) may imply the Fund's compliance in gross or systematic human rights violations under the Ethical Guidelines, point 4.4, second clause, first bullet point.

As of 31 December 2005 the market value of the Pension Fund's shareholding in Monsanto was NOK 657,748,000.00.

The Council on Ethics finds that there is an unacceptable risk of the Fund contributing to the worst forms of child labour through its investment in Monsanto. Available information reveals that the company's producers of hybrid cotton seed employ child labourers aged 8-15 years. As a result these children are exposed to health risks, such as pesticides, and are deprived of schooling. Many of them are so-called migrant children, who live away from their own families. These allegations are further elaborated on in Chapter 3 below.

In agreement with the Guidelines, point 4.5, the Council has written to Monsanto through Norges Bank requesting the company to comment on the aforementioned accusations and the documentation presented to substantiate these. Monsanto replied to the enquiry in a letter dated 21 June 2006. The Council has also had subsequent contact with the company, including a telephone conversation on 21 September 2006.

In order to establish whether there is an *"unacceptable risk of contributing to …the worst forms of child labour"* (Guidelines' point 4.4, second clause, first bullet point), various conditions must be met. There must be a connection between the company's activities and the violations in question; the violations must be perceived to be in the interest of the company; and the company must have been aware of them, but failed to try to prevent them. Moreover, there must be an unacceptable risk that the violations will continue in the future.

In this case, the Council finds that all the conditions have been met and thus recommends the exclusion of Monsanto Co with reference to the Ethical Guidelines, point 4.4, second clause, first bullet point, regarding unacceptable risk of contribution to the worst forms of child labour.

2 The Council on Ethics' sources of information

The Council has drawn on several sources in this case. Individual sources are referred to in footnotes throughout the recommendation.

Much information and several reports on child labour in India are available from governmental and non-governmental organisations.[1] Notwithstanding, there is scarce scientific research on the extent of child labour in hybrid cotton seed production.

The Council has, however, gained access to an ILO report, yet to be released, on child labour in the Indian cotton seed industry. This report is on file with the Council on Ethics.[2]

In order to extend its range of source material, the Council on Ethics decided to conduct its own research, commissioning an Indian consultancy firm, Global Research and Consultancy Services, to carry out field surveys in November and December of 2005. This company has also previously been engaged in mapping the scope of child labour in India's hybrid cotton seed industry.[3]

3 Background

3.1 Production of hybrid cotton seed in India

During recent years the scale of hybrid cotton seed production in India has increased significantly. [4] The use of hybrid cotton varieties is rising because they yield larger crops than traditional varieties. Hybrid cotton seed grown in India is often referred to as BT cotton seed.[5] Seed cultivation is a very labour-intensive process, particularly in the case of hybrid varieties, since each plant must be cross-pollinated manually.

3.2 The production chain in the hybrid cotton seed industry

Indian legislation bans private and corporate ownership of large landholdings.[6] Companies engaged in the production of hybrid cotton seed are therefore dependent on numerous local farmers and small landowners. The company included in the investment portfolio of the Government Pension Fund – Global does not necessarily have a direct link to these landowners, but does business with them through local subsidiaries, henceforth called "seed companies", via middlemen known as *seed organisers*, or licence agreements with other companies, which in turn have production agreements with local farmers.

Local farmers' production is organized through a system of contracts and advance payments between local landowners and the middlemen who coordinate seed growing in hundreds of small farms. Production targets and other conditions for cotton seed cultivation are determined by the seed companies. The intermediaries find land owners who are interested in undertaking production on these conditions and enter into agreements with them. It is common for seed companies, through *seed organisers*, to provide capital for the purchase of foundation seed and other factor inputs. The middlemen supply local farmers with seed for production from the seed companies. After the harvest, the seed crops are fetched by these intermediaries and delivered to the seed companies. Quality controls determine whether the seed meet the required standard. If it does, both middlemen and local landowners receive payment.[7]

3.3 More details on Monsanto Co.'s operations

The Council on Ethics' point of departure is that Monsanto operates in the cotton seed industry in India through the wholly-owned subsidiary Emergent Genetics.[8]

Additionally, Monsanto has a 26 per cent stake in Mharashtra Hybrid Seed Company (Mahyco). Mahyco produces hybrid cotton seed through contracts with local farmers. Moreover, Mahyco and Monsanto jointly own the company Mahyco-Monsanto Biotec (MMB). MMB is a joint venture in which each owner holds a 50 per cent share. As a result of its stake in Mahyco Monsanto owns 63 per cent of MMB. MMB operates through licence agreements, selling licences for hybrid cotton seed cultivation to other companies, which in turn sign production contracts with local farmers.[9] This is illustrated in Figure 1.

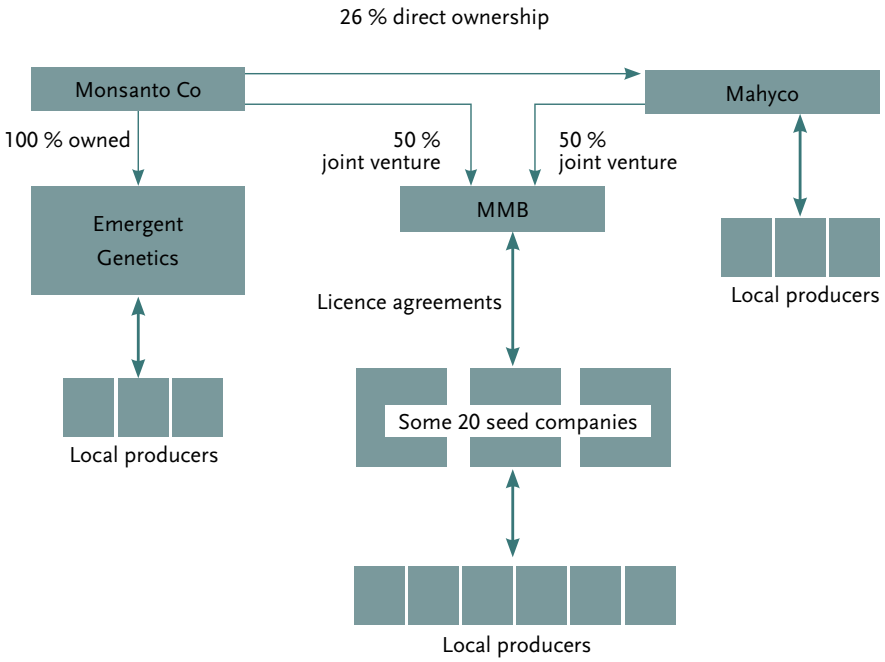


Figure 1: Schematic outline of Monsanto's hybrid cotton seed operations in India

To calculate the scope of child labour associated with Monsanto's operations in the 2005-2006 season, this recommendation takes as its basis the following acreage:

Emergent Genetics: 310 hectares in Andhra Pradesh[10]

MMB: Licensed production totalling 2,200 hectares[11]

Research performed regarding cultivation for Mahyco is not directly included in the Council's assessment of Monsanto's activities.

3.4 Debt relations and child labour in the Indian cotton seed industry

India is probably one of the countries in the world with the highest incidence of child labour.[12] Estimates indicate that approximately 80 per cent of child labourers work in agriculture, and they are often forced to work as a result of their parents' debt.[13]

It is rather common that debt obligations are redeemed through child labour, i.e. in order to repay advances or other loans that have been incurred, the borrower himself or his children work for the lender. High interest rates and low wages may create working conditions that resemble slavery or bonded labour in the sense that the debt is never paid off

and the borrower is bound to the lender and forced to work for him. Children are caught up in this system by having to work as a result of their parents' debt to local landowners, and such debt may be inherited through several generations.

A survey commissioned by the ILO in 2003 showed that up to 82 per cent of children in the cotton seed industry were working because their parents had received loans or advances from the local landowner.[14] In many cases children are relocated from other parts of the country to work in the cotton seed industry. This is often arranged through intermediaries who make an agreement and pay the children's parents an advance. These children living away from their families generally have to work under even worse conditions than local children.[15]

In the hybrid cotton seed industry it is common that local landowners, who have delivery contracts with seed companies through middlemen, obtain child labourers by extending loans and advance payments to the parents.

Compared to other segments, child labour is particularly widespread in hybrid cotton seed production. This is probably linked to the fact that the cultivation is extremely labour-intensive as cross-pollination has to be done manually on each individual plant, something that demands a great work effort over a long period of time. It has been estimated that around 90 per cent of the work load in hybrid cotton seed production refers to manually assisted cross-pollination. This process requires approximately 10 times more work than the cultivation of self-pollinating cotton seed.

Employment contracts in general contain no or very vague provisions with regard to working hours. Normally, the children work long hours. For local children living in the area near the production site 10-hour days are standard, with an additional 1-2 hours in peak periods. Migrant children, who do not come from local communities and who live and work far from their parents, are used to putting in 12-14 hours a day.

Most children who work in this segment are aged between 7 and 14. The cotton seed season is from May to February and, as already mentioned, working hours are very long. This means that most children employed in the production are unable to go to school. A study from 2003 showed that 89 per cent of children working in the cotton seed industry had either interrupted their education or never attended school at all. Furthermore, it was revealed that areas where cotton seed cultivation was widespread also had a larger per centage of children out of school. Some 40 per cent - 60 per cent of children not attending school were found to work in cotton seed production.[16]

3.5 Economic factors associated with the use of child labour

It is estimated that labour costs account for some 50 per cent of hybrid cotton seed production costs. In order to minimize these expenses children are used in the production.[17] Children's wages are approximately 30 per cent lower than those of women and 55 per cent below men's wages. The average wages for children in this industry are around NOK 4 for a day's work.[18]

Previous reports show a clear connection between the price of cotton seed and the use of child labour. Given current procurement prices, the producers cannot offer high enough wages to employ adult workers. If local farmers were to carry all costs related to the employment of adult rather than child labour, their operating margin would be reduced

by between 65 per cent and 100 per cent. The market price of hybrid cotton seed is 4 to 12 times the procurement price companies pay to local farmers. If the additional cost involved in using adult labour were to be compensated through an increase in procurement price, it is estimated that this would have to rise by 12 per cent. The companies' profits would probably be reduced somewhat through an increase in the procurement price. Consequently, there is a clear connection between pricing and the fact that farmers use child labour. This does not imply that the problem of child labour would be solved by increasing the procurement price alone, but it seems clear that other measures to abolish child labour in this industry would have limited chances of success as long as it is not economically viable for local farmers to replace children with adult workers.[19]

3.6 Health hazards as a result of pesticide use

Use of pesticides in the cotton seed industry

The use of pesticides poses a particular health risk to children who work in this industry. Indian cotton production is responsible for approximately 45 per cent of the country's total consumption of pesticides, even if only some 4 per cent of the cultivated area is used for cotton.[20] In general, hybrid cotton seed production requires more pesticides than the cultivation of natural cotton seed.

Children working in cotton seed production are particularly vulnerable to the effects of pesticides because they often work in the fields during and immediately after the application. Children have also been reported to be engaged in the actual spraying.

Reports from several sources reveal that in hybrid cotton seed cultivation no kind of protective equipment is used to prevent exposure to pesticides. Normally, the children do not even have access to soap and water for hand washing before meals. In this way they ingest pesticides through their food intake. *Physicians for Human Rights*[21] have conducted a study of children employed in hybrid cotton seed production in the Indian region of Andhra Pradesh. Describing how children mix and apply pesticides without wearing any protective equipment, the study also reports that most children are barefoot and thus in constant contact with the pesticides. Moreover, there is no extra clothing or washing facilities available. Local health authorities have reported several cases of poisoning in children as a result of exposure to pesticides.[22]

In India the most common pesticides used in hybrid cotton seed production include *Methomyl*, *Monocrotophos*, *Endosulphan*, *Cypermethrin*, and *Metasystox*.

The health hazards associated with exposure to several of the pesticides in question are amply documented. Exposure to all these pesticides may lead to health damage or death. The World Health Organization (WHO) classifies *Methomyl* and *Monocrotophos* as *"highly hazardous"*, and *Endosulphan* and *Cypermethrin* as *"moderately hazardous"*.[23]

Skin contact, inhalation and ingestion of pesticides may lead to health damage. Safe application and handling of pesticides require the use of protective equipment in the form of appropriate clothing and gloves to cover exposed skin, respiratory protective devices, and access to soap and water for washing.

Exposure to *Endosulphan* may cause several of the symptoms found among children who work with hybrid cotton seed; headaches, exhaustion, dizziness, nausea and respiratory problems.[24] *Endosulphan* is poisonous if ingested or absorbed through the skin. Inhalation

may also be hazardous.[25] This is equally the case with *Methomyl*[26] and *Monocrotophos*.[27] There are a series of possible harmful effects associated with exposure to these pesticides, for instance damage to the central nervous system, which may lead to paralysis. Prolonged or high-concentration exposure may be lethal.

Restricted Entry Interval

For several of the pesticides in question, so-called *Restricted Entry Interval* (REI) is recommended, indicating the time interval to be observed between spraying and entry into treated field. The REI for different pesticides depends on which plant species the pesticide is used on. The following applies to cotton plants:

Methomyl[28] and *Metasystox*[29] both have a recommended REI of 72 hours, whereas *endosulphan* requires an REI of 24 hours.[30] For *Cypermethrin* a 12-hour REI is suggested.[31]

Restrictions on pesticide use in the company's home country

The Council on Ethics is aware of the strict restrictions placed on the use of these pesticides in Monsanto's home country, the USA. In the USA the use of Monocrotophos is prohibited in all agricultural production.[32] *Methomyl* is classified as a *Restricted Use Pesticide* (RUP), which implies that purchase and application are limited to authorized individuals who have training and equipment for safe use. Moreover, *Metasystox* is classified as a RUP,[33] as is *Cypermethrin*.[34]

3.7 Measures to reduce the incidence of child labour

CLEP

A voluntary programme to eradicate child labour in the cotton seed industry in India has been in place for several years. The programme is called *Child Labour Elimination Programme* (CLEP) and is based on cooperation between seed companies, authorities and NGOs.[35]

Monsanto's subsidiary Emergent Genetics is involved in the CLEP. Neither MMB nor Mahyco are part of the programme.

Through participation in the CLEP companies are committed to:

- Providing all relevant information on production conditions, including specific information on all production sites where seed purchased by the company is grown.
- Establishing provisions in sales contracts that children under 15 years of age are not to be employed in any part of cotton seed production.
- Contributing to the formation of monitoring groups in order to map the scale of child labour in different areas.
- Giving financial support to the Naandi Foundation, which offers education to children who have worked in the cotton seed industry.
- Offering training in safe use of pesticides.
- Introducing a system of rewards and sanctions to incentivize the elimination of child labour.

Rewards

The CLEP's allows for the payment of a 5 per cent bonus in addition to the price agreed upon for cotton seed cultivated on farms where no children are used in the production. Furthermore, if child labour ceases on all farms in a village, the companies will reward the village by offering financial support for school building, teaching material and so forth.

Sanctions

Besides, if inspections reveal the use of children in cotton seed production, first-time offences will be reprimanded. If later use of child labourers is detected, the company will reduce the price paid for the seed by 10 per cent. Farms that after this still make use of child labourers will not be allowed to supply seed to the company; neither will future contracts be awarded.

Introduction of the CLEP

The CLEP was launched in July 2005. Participating companies made information on production sites available and introduced provisions in seed sales contracts which prohibited the use of children under 15 years of age in the production.

A secretariat comprising one project manager and a staff of five has been established to assist in implementing the CLEP's action plan, and briefings have been held to inform farmers and landowners of the programme. In August 2005 monitoring groups made up of representatives from companies and NGOs carried out inspections.

The Council on Ethics is aware that the cooperation between participating seed companies and NGOs soon became problematic. In the NGOs' opinion the companies reluctantly cooperated to implement the CLEP, and joint inspections revealed few child labourers in the production. However, during inspections carried out on the same farms by NGOs alone, a much larger number of children were found. Consequently, the NGOs suspected that the companies gave prior warning of the inspections, and that children were temporarily removed before the inspectors arrived. In September 2005, a leading NGO partner in the project, the MV Foundation, withdrew from participation in joint inspections owing to poor teamwork. Despite this, the participating companies chose to continue joint inspections in cooperation with the CLEP's secretariat and a few minor local NGOs.

4 Investigation of working conditions in cotton seed production

4.1 Surveys conducted on behalf of the Council on Ethics 2005-2006

Purpose of the investigations

The Council on Ethics was intent on commissioning new research in order both to gain access to the most updated information available and to see if measures aimed at reducing the incidence of child labour had produced the desired effect. Investigations were also carried out in the state of Gujarat, where, to the Council's knowledge, such surveys had not yet been conducted.

Dr. Davuluri Venkateswarlu of the Global Research and Consultancy Services in Hydrabad, India performed the investigations commissioned by the Council on Ethics.

Scope

At the Council on Ethics' request, the conditions in cotton seed cultivation for Emergent Genetics and Mahyco in the states of Andhra Pradesh and Gujarat were investigated in November and December 2005. A survey of working conditions was conducted at a total of 124 farms.

The research was undertaken at a time of the year when the need for manpower is approximately 20 per cent – 25 per cent lower than in the most labour-intensive periods. However, the data have not been corrected accordingly; only actual findings are reported.

Selection of farms
The selection of farms to be investigated with regard to the incidence of child labour has been made through random sampling within different groups of the total number of farms (so-called *stratified random sampling)*. This means that the farms are divided into groups according to size, ownership (freehold or leasehold), and geographic location. Within these groups random farms are selected for investigation.

Surveys of Monsanto Co. production sites
A survey of child labour incidence was performed on 104 farms that produce cotton seed for Emergent Genetics and are located in 26 villages in four districts of Andhra Pradesh. These constituted a total acreage of 60 hectares. In the 2005–2006 season cotton seed was produced for Emergent Genetics at some 450 farms (the equivalent of around 310 hectares of cultivated land) in Kurnool, Mahaboobnagar, Cuddapah and Vijayanagaram districts, in the state of Andhra Pradesh.

Surveys of Mahyco production sites
Research was conducted regarding the incidence of child labour on 20 cotton seed producing farms in Mahyco's supply chain. These farms are located in Gujarat state. 13 of the inspected farms are situated in the Sabarkantha district (four in Idar, six in Himmatnagar and three in Khedbraham Taluks), and seven belong to the district of Mehasan (all in Vijayapuri Taluk). The total area cultivated for Mahyco in Gujarat is not known precisely, but it is believed to be some 550 hectares.

Moreover, it is known that in the 2005–2006 season hybrid cotton seed was also produced for Mahyco in the states of Maharastra and Karnataka. The estimated areas of cultivation for the company in these states amount to around 1,000 and 300 hectares respectively.[36] Here, surveys have not been commissioned by the Council on Ethics. The acreage for Mahyco is estimated as totalling some 1,850 hectares.

4.2 Findings in the Council on Ethics' surveys

General overview
For the 2005–2006 season the exact number of children working in cotton seed production cannot be ascertained. The investigations commissioned by the Council on Ethics, however, provide good indications as to the scope of the problem. These figures do not take into account that surveys were made at a time of the year when labour demand is not at its highest. It is estimated that up to 25 per cent more children work during peak periods. The estimates given in this recommendation concerning the number of children are therefore conservative.

Scope of child labour on farms in Monsanto Co's supply chain
Emergent Genetics
At the 104 surveyed farms that produce cotton seed for Emergent Genetics a total of 302 children aged 8–15 were reported to work in production. This makes up approximately 28 per cent of the whole workforce on the farms in question, a per centage which ranged from 21 per cent to 39 per cent in the various districts. The largest portion was found in the district of Cuddapah in Andhra Pradesh. 58 per cent of child workers were girls.

To calculate the approximate number of children employed in cotton seed production for Emergent Genetics, the proportion between number of children and acreage of farms in the survey can be multiplied by the total area cultivated for Emergent Genetics. Findings

show that 302 children are used for the cultivation of 60 hectares of land, i.e. an average of 5 children per hectare of cultivated land. The total area being farmed for Emergent Genetics is 310 hectares. It may therefore be inferred that at least 1,500 children were employed in cotton seed production for Emergent Genetics in Andra Pradesh during the 2005–2006 season.

Mahyco

Monsanto holds a 26 per cent stake in the company Mahyco. There was no production of hybrid cotton seed for Mahyco in Andhra Pradesh during the 2005-2006 season. Yet, production took place for the company in Gujarat, and in this regard, the Council on Ethics commissioned investigations of the incidence of child labour. 20 farms in the districts of Sabarkantha and Mehasan were selected for inspections.

According to the findings, 114 minors aged 8 to 15 worked on the surveyed farms, representing some 35 per cent of total workforce. Among the 114 children, 89 per cent were not related to the landowner. 86 per cent of the children came from other districts, mainly from the state of Rajastan and other areas in Gujarat.

The 20 farms in the survey made up 13 hectares of cultivated land, which implies an average of 8.8 children per hectare of land. This gives an idea of the child labour situation in areas where the CLEP programme has not been implemented.

As mentioned earlier, Monsanto owns only 26 per cent of Mahyco. The Council of Ethics will therefore not attach decisive importance to the findings made through investigations of the production for this company. This information is, however, included in the present recommendation to show the scope of child labour at one of Monsanto's business partners and in areas where measures to reduce child labour have not been implemented.

MMB

MMB does not produce cotton seed itself, but sells licences to companies which in turn enter into production agreements with local farmers. During the season, the total acreage of the companies producing on licence from MMB was around 2,200 hectares.

In the production linked to MMB, no steps aimed at reducing child labour have been taken. Previous research shows that in areas where improvement programmes have not been put into practice, the number of child labourers may vary between 7 and 25 children per hectare. Taking this as a basis, it can be estimated that 9,300 to 55,000 children were working in production linked to MMB in the 2005–2006 season.

Overall estimate

Table 1 shows estimated number of children employed in production for Emergent Genetics and MMB in the 2005-2006 season.

Table 1: Estimated number of children employed in production for Monsanto in the 2005–2006 season

*MMB is a joint venture between Monsanto and Mahyco, which hold 50 per cent each

Company	Cultivated area (hectares)	Number of Childern working per hectare	Estimated total number of children
Emergent Genetics	310	5	1 500
MMB*	2 200	7 – 25	19,300 – 55,000
Totalt			20,800 – 56,500

The age of the children in the survey
Approximately 45 per cent of children found working were aged between 13 and 15. Some 35 per cent of the children were 10 to 13 years old, and the remainder (approx. 20 per cent) were under 10 years.

Investigations carried out on behalf of the Council on Ethics also show that attempts are made at presenting children aged 11-14 years as older than they are, and that local officials in some cases are bribed to issue identity papers which belie children's true age. The motivation behind these measures is probably the increased attention recently drawn to child labour, as well as more extensive inspections by companies and organizations.

Working conditions with regard to pesticide use
The actual application of pesticides is mainly done by the use of backpack mist sprayers without any kind of protective equipment, and, at best, with faulty and insufficient protective equipment. One of the CLEP's initiatives (see section 3.7) has therefore been that the companies should pave the way for safe use of pesticides through training programmes.

No significant improvement when it comes to safe handling and use of pesticides has been observed. None of the inspected farms had undertaken such training, and work on sprayed fields went on with complete disregard for recommended entry interval (see section 3.6). It must therefore be assumed that the health hazard related to this kind of work may be considerable, and that measures to reduce this risk have not been implemented.

4.3 Comparison with previous surveys

Age and salary conditions
With regard to salary conditions there is little that seems to have changed since the 2003-2004 season.[37] A large number of children are still working as a result of loans and advances extended to their parents. The per centage of minors working on account of such debt relations has, however, been somewhat reduced, from around 70 per cent in 2003-2004 to 62 per cent in 2005-2006.

The proportion of teenagers between 16 and 18 years who work in production has grown significantly in the 2005-2006 season compared with previous years. This is mainly due to the fact that these youths have also worked during earlier seasons and are kept as labourers. Consequently, the average age of production workers has increased.

During the 2005-2006 season, at least 1,500 minors were found to be working in cotton seed production for Emergent Genetics in Andra Pradesh. A similar survey performed in 2003-2004 registered 4,950 children employed in production for Emergent Genetics. This indicates a reduction of 70 per cent in the number of child workers per area unit engaged in production for Emergent Genetics.

Even if the number of children who work in cultivation for Emergent Genetics seems to have been reduced, it cannot be ascertained that there has been a decrease in the total number of child labourers engaged in production for Monsanto, seeing as no measures have been implemented to lessen the incidence of child labour in MMB's supply network.

4.4 The Council on Ethics' contact with the company

On behalf of the Council on Ethics, Norges Bank has contacted Monsanto. A letter was sent to the company on 30 May 2006, presenting the results of the Council's investigations and other background information brought to light in this recommendation. Moreover, the company was requested to answer specific questions in order to further clarify the case.

The company was asked to give an account of how its cotton seed production is organized in India, to what extent its staff inspects the production sites, what it does to reduce the health hazards associated with the use of pesticides, and what it will do to decrease the incidence of child labour in hybrid cotton seed cultivation.

Monsanto answered the first query by way of a 1-page e-mail, stating the following: *"We share your interests and concerns about child labor in India and take the matter very seriously"* and *"…child labor is a complex socio-economic problem"*. Incidentally, the wording of the e-mail is essentially identical to a standard letter Monsanto sends to various interest groups.[38]

Additionally, Monsanto informed that the company is involved in the CLEP, but omitted information as to whether this is restricted to the operation of Emergent Genetics. The company also stated that it has implemented a Human Rights Policy;:*"We are in the early stages of our implementation of this newly released policy"*. Besides this, Monsanto did not comment on the report and did not address any of the queries raised in the letter.

Since the first reply from the company contained little substantial information, the Council on Ethics directed a new request to Monsanto in September 2006, asking the company once more to comment on the report and answer the accompanying questions. As a reply to the new query Monsanto suggested a telephone conference, and this was held on 21 September 2006 with representatives from the company and the Council on Ethics' Secretariat.[39]

During the telephone conference Monsanto expressed once more the opinion that child labour in the cotton seed industry is a very complex issue and that it will require an effort by varies parties to diminish the problem. It was also made clear that Monsanto deems it unrealistic to eliminate child labour in the company's supply chain, but that it has a desire to reduce the incidence of child labour. However, the company regards its own efforts as limited as long as other parties do not show the same interest.

Monsanto explained the implementation of the company's newly-established *Human Rights Policy*[40], adding that it applies to their own employees as well as business partners and joint ventures. It was emphasized, though, that in the initial phase the introduction of the Human Rights Policy would focus on the company's own staff.

With regard to the improvement programme CLEP, Monsanto made it clear that this only refers to Emergent Genetics' activities, and not to MMB's or Mahyco's.

During the telephone conference Monsanto informed that to reduce the health risk associated with use of pesticides it would encourage and organize training for growers engaged by Emergent Genetics. Nevertheless, it was stated that Monsanto would not provide protective equipment or make this available for use during application.

5 The Council on Ethics' assessment

5.1 Factors the Council on Ethics will consider

The Council on Ethics shall assess whether the investment of the Government Pension Fund – Global in Monsanto Co. constitutes an unacceptable risk of future complicity in unethical acts. The Council on Ethics' mandate is limited to concrete assessment of whether the company's operations fall within or outside the scope of the Guidelines. The Ethical Guidelines, point 4.4, second clause, first bullet point states:

"The Council shall issue recommendations on the exclusion of one or several companies from the investment universe because of acts or omissions that constitute an unacceptable risk of the Fund contributing to: Gross or systematic human rights violations, such as torture, deprivation of liberty, forced labour, the worst forms of child labour and other child exploitation."

In previous recommendations the Council has taken as its basis that even if States, and not companies, are obliged by international human rights conventions, companies may be said to contribute to human rights violations. The Council has not deemed it necessary to evaluate whether States are responsible for possible human rights violations, even if it accepts as a fact that companies may be complicit in such violations: "*It is sufficient to establish the presence of an unacceptable risk of companies acting in such a way as to entail serious or systematic breaches of internationally recognised minimum standards for the rights of individuals.*"[41]

In two of its previous recommendations (re Total and Wal-Mart), the Council has referred to companies' complicity in human rights violations in the following way:

"Not all human rights violations or breaches of international labour rights standards fall within the scope of the provision. Point 4.4 states that human rights violations must be 'serious or systematic'. The Graver Committee recommends 'fairly restrictive criteria for deciding which companies should be subject to possible exclusion …'.[42] *The Council assumes that a determination of whether human rights violations qualify as serious or systematic needs to be related to the specific case at hand. However, it seems clear that a limited number of violations could suffice if they are very serious, while the character of a violation need not be equally serious if it is perpetrated in a systematic manner.*

The acts or omissions must constitute an unacceptable risk of complicity on the part of the Fund. This means that it is not necessary to prove that such complicity will take place – the presence of an unacceptable risk suffices. The term unacceptable risk is not specifically defined in the preparatory work. NOU (Norwegian Official Report) 2003: 22 states that 'Criteria should therefore be established for determining the existence of an unacceptable ethical risk. These criteria can be based on the international instruments that also apply to the Fund's exercise of ownership interests. Only the most serious forms of violations of these standards should provide a basis for exclusion.'[43] *In other words, the fact that a risk is deemed unacceptable is linked to the seriousness of the act.*

The wording of Point 4.4 makes it clear that what is to be assessed is the likelihood of contributing to "present and future" acts or omissions. The Council accordingly assumes that actions or omissions that took place in the past will not, in themselves, provide a basis for exclusion of companies under this provision. However, earlier patterns of conduct might give some indications as to what will happen ahead."

Based on the Council's previous recommendations regarding contribution to human rights violations, including the aforementioned quotes, the Council has formulated four criteria which will form the basis of the actual assessment of whether an unacceptable risk of complicity exists.[44] If the Council on Ethics finds that the violations in question are gross or systematic, the subsequent assessment of the Fund's contribution to violations will be based on these. The following criteria will constitute decisive elements in the overall assessment of whether there is an unacceptable risk of the Fund contributing to human rights violations:

- There must be some kind of linkage between the company's operations and the existing breaches of the Guidelines, and these must be visible to the Fund.
- The violations must have been carried out with a view to serving the company's interests or to facilitating the conditions for the company.
- The company must either have contributed actively to or had knowledge of these violations without seeking to prevent them.
- The violation must either be ongoing or there must be an unacceptable risk that they will occur in the future. Previous violations may indicate future patterns of conduct.[45]

5.2 The Council on Ethics' assessment of the violations

To assess whether the child labour in question may fall within the scope of the Guidelines' provision regarding *"the worst forms of child labour"*, the Council on Ethics will take as its point of departure the UN Convention on the Rights of the Child, which, in Article 32 instructs States to protect children against work which is hazardous or a hindrance to their education or development: *"States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."*[46]

The Council on Ethics also bases its assessment on the ILO Convention 182, Article 3d, which defines the worst forms of child labour thus: *"Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children."* This implies that work which is harmful to children's health and safety must be considered the worst forms of child labour.

Furthermore, the ILO Convention 182, Article 3a defines as the worst forms of child labour: *"All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict"*. This implies that exposing children to all kinds of slavery and conditions similar to those of slavery, including debt bondage and serfdom, also must be considered the worst forms of child labour.[47]

According to the aforementioned human rights norms, child labour that may cause health damage, and work that interferes with children's education and development, or is a result of debt bondage will constitute the core area covered by international bans on child labour.

The Council therefore takes as its basis that the detected cases of child labour in themselves must be regarded as qualifying for *"the worst forms of child labour"*, even if the formal human rights responsibility, according to the various conventions referred to here, are not taken into consideration in this respect. There are several factors which substantiate this:

The Council places great importance on the children's tender age, as the investigations show that 20 per cent of the children were under 10 years old, and 35 per cent were aged 10-13. A large majority of the children, nearly 90 per cent, did not have any family ties to the production site. This shows that the child labour is not part of traditional family farming, but rather that the children are engaged in seasonal labour, often working far away from their families and care providers.

An important point which makes this fall within the scope of *"the worst forms of child labour"* is the evident health risks that the children are exposed to because of almost constant contact with hazardous pesticides. In the few cases where protective equipment is available, this is for the adults who apply the actual spray, not for the children working with pollination.

The children are subject to very long hours (up to 14 a day) of demanding physical work, often in strong heat. Allegedly, one of the reasons for using children in this industry is that it is easier to make them work very long hours without extra pay. Since the season lasts for at least 8 months a year, these children are generally deprived of education.

It may also be added that findings show a strong element of debt bondage in the operations which have been investigated.[48] Besides, when it comes to child labour in India on the whole, it has been amply documented that this practice is widespread.[49]

In addition to considering the aforementioned norm breaches gross, the Council takes as its basis that they, as a rule, must also be regarded as *systematic*. This is substantiated by the large scope of the child labour, as minors make up some 30 per cent of the workforce on several thousand farms, and the practice of using children as labour seems to be well established. The large number of children involved in the industry shows that they constitute a significant part of an organized production system.[50]

The Council on Ethics therefore considers the violations to be both gross and systematic.

5.3 The Council's analysis of the risk of the Fund's complicity in breaches

If the Council is to consider a recommendation on the exclusion of companies, there must be elements linking the operations of the company in question to the specified violations.

As previously mentioned, the Council is charged with assessing the activities in relation to the four criteria listed in section 5.1. Firstly, it has to consider whether there is some kind of connection, evident to the Fund, between the company's operations and the violations; secondly, whether the violations were committed with a view to serving the company's interests or facilitating its conditions. The last two criteria state that the company must either have contributed actively to the violations or have had knowledge of these without seeking to prevent them, and that the violations either must be ongoing or that there must be an unacceptable risk that they may occur in the future.

Connection

The Council considers there to be a clear connection between Monsanto's operations and the use of child labour. This connection is most evident with regard to the wholly-owned subsidiary Emergent Genetics, as this company signs production contracts, possibly

through middlemen, with local farmers for the cultivation of hybrid cotton seed. In many cases, the farmers are given advance payments, entering into a close-knit relationship with the company, which also offers guidance and inspects the production. Child labour is a direct factor input used to fulfil the production contracts between local farmers and the company.

With regard to the use of child labourers by joint ventures in which companies in the Fund's portfolio holds large stakes, or licensed production where companies in the Fund are licensors, the link between violations and the company's activities may seem slightly more extrinsic. Even so, the Council on Ethics deems there to be a clear connection between the company's operations and the use of child labour in this case as well, and different operational structures do not formally change this in any significant way.

The company's interests

Moreover, the Council takes as a point of departure that the company's interests are served through the use of child labour in cotton seed production. The company earns profits from the production through contracts with local farmers. As mentioned in section 3.5 the procurement price is established at a level that makes it difficult or impossible for farmers to use adult workers. Local farmers employ children because this translates into lower production costs. The cost reduction thus achieved benefits the company in the form of reduced procurement costs, when compared to the use of adult labour.

Knowledge and passivity

Monsanto does not dispute that it is fully aware of the incidence of child labour in cotton seed production in India. The issue that has to be addressed is whether Monsanto has made sufficient efforts to prevent the violations. It seems clear that Monsanto, through Emergent Genetics, has actively contributed to the violations by signing production agreements with local farmers who use child labour. Furthermore, such contracts have been signed by Mahyco, in which Monsanto holds a 26 per cent stake, and through licences sold by MMB, a joint venture between Monsanto and Mahyco of which Monsanto owns 50 per cent. Monsanto's total ownership in MMB is therefore 63 per cent. In the Council's view, ownership interests of such magnitude clearly entail an ethical responsibility for the norm breaches occurring at MMB. The Council has not formed an opinion on whether the 26 per cent ownership stake in Mahyco in itself would be sufficient to exclude Monsanto.

To the Council on Ethics, Monsanto comes across as a hesitant member of the CLEP. Monsanto became involved in the CLEP through its acquisition of Emergent Genetics in 2004. At that time Emergent Genetics was already part of the CLEP initiative. In Monsanto's operations run by Emergent Genetics, the CLEP seems to have reduced the scope of child labour significantly. Nevertheless, Monsanto has no apparent plans of applying the experience from this improvement programme to other areas of the company's hybrid cotton seed business.

The Council on Ethics deems Monsanto's measures to reduce health hazards associated with pesticide use, including the steps taken by Emergent Genetics, as insufficient. To the Council on Ethics, Monsanto has acknowledged that it will not provide necessary protective equipment, but only undertake training and motivation for safe use of pesticides. Without access to adequate protective gear, the Council regards such training and motivation as, inevitably, of little consequence.

Continued risk

The Council on Ethics shall only recommend exclusion if there are no expectations that the unacceptable practices will discontinue.[51] Monsanto has recently adopted a Human Rights Policy, which, with reference to the ILO Convention 182, specifically mentions the worst forms of child labour. It is unclear how the company intends to transform this policy into concrete acts, and the fact that such a policy exists will hardly in itself lead to substantial improvements. Monsanto has confirmed to the Council on Ethics that the policy in principle also includes joint ventures, and hence Monsanto's operations through MMB, but the actual implementation of the company's Human Rights Policy will primarily be applied to Monsanto's own employees and what it considers to be its own operations.

Without focused and comprehensive measures undertaken by the company itself there is little reason to believe that the incidence or the severity of the violations will recede in the future. In communication with the Council on Ethics Monsanto has emphasized that one company alone cannot do much to eliminate child labour in this industry, and that a series of socio-economic factors are at the root of the problem. The Council finds reason to question this attitude, particularly in light of the positive results the company after all has achieved through Emergent Genetics' participation in the CLEP. Even if it cannot be expected that one company alone will manage to eradicate child labour, it seems clear that the key to improvement must lie with the company. The Council on Ethics is of the opinion that especially in countries where conditions are not conducive to the authorities' enforcement of all laws and regulations, companies have a particular ethical responsibility to ensure that minimum standards are complied with.

The Council on Ethics is not responsible for exercising ownership in companies, but may take into consideration whether it is probable that the Fund's exercise of ownership rights could produce results. The preparatory work for the Ethical Guidelines states: *"Exclusion from the investment universe should also apply to companies … if there is no significant hope of changing the unethical practices through ethical ownership."*[52] The Council has, on the basis of the aforementioned postal and telephonic communication with Monsanto,[53] no reason to believe that the company desires to do anything about the situation other than what is implicit in the CLEP programme on Emergent Genetics' part. In the remaining operations linked to the company, there are more than 20,000 children working under totally unacceptable conditions that the company has no plans to remedy. Monsanto is aware of the contents of the Ethical Guidelines and of the company being assessed for exclusion, but this has not prompted any change in its attitude.

Overall assessment of whether there is an unacceptable risk of complicity in future violations through investment in Monsanto

The Council sees a clear connection between the violations and the company's operations, considering the violations to be perpetrated with a view to serving the company's interests. Moreover, the Council on Ethics accepts as a fact that this situation is currently unfolding.

In the Council's opinion there is an unacceptable risk that Monsanto will continue to be complicit in the worst forms of child labour in India. According to a conservative estimate, 20,000 minors are engaged in work associated with Monsanto's operations. Many of the children are very young; as many as 20 per cent are believed to be under 10 years of age. The great majority live away from home and work 12-14 hours a day with no access to education. In the Council of Ethics' view, the irresponsible use of pesticides

is of particular concern. Monsanto is among the world's major producers of pesticides. It must therefore be inferred that the company is well versed in the dangers associated with the irresponsible use of pesticides in the kind of production discussed in this recommendation.

In its assessment of the risk of future norm breaches, the Council on Ethics has considered whether the company shows sufficient willingness and effort to reduce the incidence and severity of the violations. Monsanto has not revealed or expressed any particular willingness to reduce the risk of future violations. With regard to large parts of its operations related to hybrid cotton seed production in India the company will not implement measures to decrease the scope of the worst forms of child labour. The Company's steps to reduce the gravity of the violations, where such measures have been undertaken, are also considered inadequate. Hence, there is reason to believe that the incidence of child labour will not diminish.

6 Recommendation

The Council on Ethics will, in light of this assessment of Monsanto Co.'s operations and according to point 4.4 of the Ethical Guidelines, recommend that the company be excluded from the investment universe of the Government Pension Fund - Global owing to an unacceptable risk of complicity in the worst forms of child labour.

This recommendation was issued on 20 November 2006 by the Council on Ethics for the Government Pension Fund – Global.

Gro Nystuen	Andreas Føllesdal	Anne Lill Gade	Ola Mestad	Bjørn Østbø
(Chair)	(sign.)	(sign.)	(sign.)	(sign.)
sign				

Notes

1 See the Indian Ministry of Labour's own website: http://www.labour.nic.in/cwl/ChildLabour.htm, U.S. Department of Labor, "The Worst Forms of Child Labor: 2005," Report by U.S. Department of Labor, Bureau of International Labor Affairs, 2005, www.dol.gov/ilab/, as well as a number of international special interest organisations, for example http://www.workingchild.org/ http://www.caclindia.org/ http://www.globalmarch.org/index.php

2 On file with the Council.

3 The report "The Impact of a Joint Action Plan of MNCs for the Elimination of Child Labour on the farms Producing Cotton Seed for Companies in Andra Pradesh" is based on field work commissioned by the Council on Ethics and records field surveys carried out in November and December 2005. This report is discussed in more detail in section 4.1.

4 Hybrid cotton plants are not self-pollinating, but each single plant has to be pollinated manually. The production of such seed is extremely labour-intensive compared to that of naturally pollinating varieties.

5 "BT" is short for "bacillus thuringiensis", a bacteria used to genetically modify the cotton seed so as to make it pest resistant. BT cotton seed is the only kind of genetically modified cotton seed permitted in India.

6 Land Ceiling Act: http://indiacode.nic.in/coiweb/amend/amend34.htm

7 See footnote 2.

8 See http://www.emergentgenetics.com/

9 Confirmed through e-mail from Monsanto Co to the Council on Ethics' Secretariat on 1 November 2006.
10 See footnote 3.
11 The estimate of cultivated area has been made by Dr. Venkateswarlu on the basis of the amount of foundation seed reported sold by Monsanto. From a press release (cited at http://www.gmoafrica.org/2005/09/sale-of-monsantos-gmo-cotton-seed.html) it appears that the company sold 3 million packets (450 g each). It is estimated that 60 % went to MMB. Normal consumption of seed per area unit (333 packets per acre) implies a total acreage of some 2,200 ha for MMB. Similar estimates for Mahyco suggest an acreage of 1,850 ha.
12 U.S. Department of Labor, "The Worst Forms of Child Labor: 2005," Report by U.S. Department of Labor, Bureau of International Labor Affairs, 2005. www.dol.gov/ilab/
13 Physicians for Human Rights Child Rights Group, "Child Labour in India: a health and human rights perspective," The Lancet, Vol. 262, Dec.2003, p.32, www.thelancet.com
14 See footnote 2. The report covered 440 children.
15 The same reference as for footnote 14. The study shows that 18 % of the children involved in the activity were migrant children, i.e. children who come from another part of the country. These children are kept in work camps run by landowners, generally under extremely miserable conditions. The survey commissioned by the Council on Ethics reveals that as many as 89 % of the children who worked in the cotton seed industry for Mahyco in Gujarat state were migrant children living apart from their families. See section 4.3 below.
16 Venkateswarlu, Dr. Davuluri, "Child Labour and Trans-National Seed Companies in Hybrid Cottonseed Production in Andhra Pradesh," India Committee of the Netherlands, April 2003.
17 The cost saving implicit in the use of child labour is commented on in further detail in Venkateswarlu, Dr. Davuluri, and da Corta, Lucia, "The Price of Childhood: On the Link between Prices Paid to Farmers and the use of Child Labour in Cottonseed Production in Andhra Pradesh, India," India Committee of the Netherlands, International Labor Rights Funds, and Eine Welt Netz NRW, Oct. 2005. See www.indianet.nl/PriceOfChildhood2005_Final.pdf
18 According to a briefing by Dr. Davuluri of the Council on Ethics in Oslo, October 2005.
19 Venkateswarlu, Dr. Davuluri, "Child Labour and Trans-National Seed Companies in Hybrid Cottonseed Production in Andhra Pradesh," India Committee of the Netherlands, April, 2003.
20 Mathur SC., "Future of India Pesticides Industry in Next Millennium." Pesticide Information, 1999; XXIV (4):9-23. It should be noted that other surveys estimate the proportion of pesticides in the cotton industry as being even higher.
21 See http://www.phrusa.org/
22 Lancet report: Physicians for Human Rights "Child labour in India: a health and human rights perspective," The Lancet, Vol. 262, December 2003, p. 33. www.thelancet.com
23 See WHO's classification of health hazards related to different pesticides: http://www.inchem.org/documents/pds/pdsother/class.pdf
24 See footnote 19.
25 IPCS International programme on chemical safety: Re Endosulphan: http://www.inchem.org/documents/pims/chemical/pim576.htm#PartTitle:9. %20 %20CLINICAL %20EFFECTS
26 Extension Toxicology Network (EXTOXNET) on Methomyl: http://extoxnet.orst.edu/pips/methomyl.htm
27 Extension Toxicology Network (EXTOXNET) on Monocrotophos: http://extoxnet.orst.edu/pips/monocrot.htm
28 National information system for the regional integrated pest management centers: Crop Profile for Cotton (Gossypium hirsutum) in Tennessee. January 2005: http://www.ipmcenters.org/CropProfiles/docs/tncotton.html
29 National information system for the regional integrated pest management centers: Crop Profile for Cotton in California January 2002: http://www.ipmcenters.org/cropprofiles/docs/CAcotton.html
30 National information system for the regional integrated pest management centers: Crop Profile for Cotton (Gossypium hirsutum) in Tennessee. January 2005: http://www.ipmcenters.org/CropProfiles/docs/tncotton.html
31 National information system for the regional integrated pest management centers: Crop Profile for Cotton in California. 08.01.02, http://www.ipmcenters.org/cropprofiles/docs/CAcotton.html

32 US Environmental Protection Agency: List of Pesticides Banned and Severely Restricted in the U.S http://www.epa.gov/oppfead1/international/piclist.htm
33 Gowan Company (producer) http://www.gowanco.com/Reference/Document~rid~397~FL-960006MSRcitrus.pdf.aspx
34 EPA on Cypermethrin: http://extoxnet.orst.edu/pips/cypermet.htm
35 See Monsanto's reference to CLEP at http://www.indianet.nl/br060530.html
36 See footnote 11.
37 Venkateswarlu, Dr. Davuluri: "Child Labour in Hybrid Cottonseed Production in Andhra Pradesh: Recent Developments". Study commissioned by the India Committee of the Netherlands (ICN), Sept. 2004.
38 See for example Monsanto's letter to the India Committee of the Netherlands: http://www.indianet.nl/br060530.html
39 The report from the telephone conference is on file with the Secretariat.
40 Monsanto's Human Rights Policy states the following:
"Child labor
Monsanto will not tolerate any form of exploitative child labor, as defined in the International Labor Organization Convention 182, Article 3 (Worst Forms of Child Labor). Accordingly, we will observe applicable local, state and national laws regarding the employment of minors. In those situations where minors may legally be employed, we will act to assure that such employment does not interfere with the educational opportunities of the children. Consistent with our safety and health policies and procedures, we will not expose young workers to situations in the workplace that are likely to jeopardize their health or safety.
Forced labor
Monsanto will not engage in the use of indentured, slave, bonded or other forced involuntary labor. Monsanto rejects corporal punishment of any type."
See http://www.monsanto.com/monsanto/layout/our_pledge/humanRightsPolicy.asp
41 See the Council on Ethics' recommendation on Wal-Mart, section 3.2, 15 November 2005. http://odin.dep.no/etikkradet/norsk/dokumenter/099001-110012/dok-bn.html
42 NOU 2003:22, p. 34.
43 NOU 2003: 22, p. 35.
44 Recommendation on Total, 14 November 2005, and recommendation on Wal-Mart, 15 November 2005. http://odin.dep.no/etikkradet/norsk/dokumenter/099001-990073/dok-bn.html
http://odin.dep.no/etikkradet/norsk/dokumenter/099001-110012/dok-bn.html
45 See the Council on Ethics' recommendation regarding Total SA, based on the company's operations in Burma: http://odin.dep.no/etikkradet/norsk/dokumenter/099001-990073/dok-bn.html
46 The UN Convention on the Rights of the Child: http://www.ohchr.org/english/law/pdf/crc.pdf
47 ILO Convention 182: http://www.ohchr.org/english/law/childlabour.htm
48 See footnote 3.
49 See for example Human Rights Watch's reports from 1996 and 2003 on debt bondage and child labour in India http://www.hrw.org/children/labor.htm#bonded or the website of the organisation Anti Slavery http://www.antislavery.org/homepage/campaign/bondedinfo.htm#why
50 See section 3 above.
51 NOU 2003:22, pp. 34 and 165.
52 NOU 2003:22, p. 34.
53 See section 4.4.

Letter to the Ministry of Finance

Oslo, June 10th, 2008

Regarding recommendation to exclude the company Monsanto Co. from the investment universe of the Government Pension Fund – Global

The Council on Ethics refers to the letter from the Ministry of Finance dated April 11th this year requesting the presentation of any new information in the case under consideration.

1 Background

On November 20th 2006, the Council on Ethics submitted a recommendation to the Ministry of Finance proposing the exclusion of the company Monsanto Co. ("Monsanto") from the investment universe of the Government Pension Fund – Global. The recommendation was based on surveys commissioned by the Council on Ethics which looked into the occurrence of child labour in hybrid cotton seed production for Monsanto in India. The draft recommendation was presented to Monsanto before being submitted.

The Ministry of Finance deemed it opportune to attempt the exercise of ownership rights during a limited period of time in order to see if this would reduce the risk of the Fund contributing to serious violations.

After submitting the recommendation, the Council on Ethics has carried out further surveys with a view to mapping the occurrences of child labour in Monsanto-related seed production.

The Council on Ethics' assessment refers to the risk of the company's complicity in violations and is not necessarily limited to the company's legal entities, but may also apply to the conditions at the company's suppliers, licensees and others over whose operations the company must be considered to wield influence.

In the following, an account is given of the surveys carried out in the period after the recommendation was presented, as well as the Council on Ethics' evaluation of whether investments in Monsanto still implies an unacceptable risk of the Fund contributing to serious violations.

The Council on Ethics bases its assessment on three sources of information regarding the occurrence of child labour in Monsanto-related seed production in India:

- In 2006, 2007, and 2008 the Council on Ethics commissioned surveys on the occurrence of child labour in Monsanto-related hybrid cotton seed production in the Indian states of Andhra Pradesh, Tamil Nadu, Gujarat, and Karnataka. Similar surveys have also been carried out on hybrid vegetable seed production for Monsanto in Karnataka state.
- In November 2007, the Council on Ethics' Secretariat undertook visits in the Indian states of Andhra Pradesh, Tamil Nadu, and Karnataka in order to form an impression of the production conditions. Visits were made to Monsanto-related farms that produce hybrid cotton and vegetable seeds.
- The Council on Ethics also bases its assessment on a survey commissioned by a Dutch NGO[1].

On the whole, hybrid vegetable seed production is organised in the same way as hybrid cotton seed production, but the actual cultivation process is different. The work with hybrid vegetable seed may be more labour intensive than hybrid cotton seed farming, whereas the growing season is normally shorter. There are also some species-related variations.

2 Companies under consideration

The Council on Ethics takes as its point of departure that several companies are in charge of the Indian hybrid cotton seed production associated with Monsanto. The first three of those listed below produce hybrid cotton seed:

- Monsanto Genetics Pvt. Ltd. (this company was formerly known as Emergent Genetics). Monsanto Genetics is a wholly-owned subsidiary of Monsanto Co.
- Mahyco (Maharashtra Hybrid Seed Company), in which Monsanto holds a 26 per cent stake.
- Companies with licence production agreements with MMB (Mahyco Monsanto Biotech), a 50/50 per cent joint venture between Mahyco and Monsanto.
- The company Seminis Vegetable Seeds (India) Pvt. Ltd. ("Seminis"), which is 100 per cent owned by Monsanto. The company produces hybrid vegetable seeds.

In 2006, 2007, and 2008, the Council on Ethics carried out investigations at a total of 175 farms involved in production for Monsanto Genetics. 40 of these farms were found in Andhra Pradesh, in Tamil Nadu, and 48 in Gujarat. [87]

With regard to the surveys conducted in Gujarat, these have been carried out by two consultants who have worked independently of one another.

Furthermore, visits have been carried out at 66 farms, in three states, with licence production for MMB, and also at 26 farms in Gujarat that produce for Mahyco.

The surveys have been conducted in the same way as those forming the basis for the recommendation regarding exclusion. Please refer to this recommendation for a more detailed description of survey methods, including farm selection and age determination of children.

When it comes to hybrid vegetable seed production, investigations have been performed at 17 production sites in Karnataka pertaining to the company Seminis.

3 Survey findings

Occurrence of child labour

The occurrence of child labour in agricultural production may be presented in different ways. As an example, it may be expressed as a per centage of the total workforce, as the number of children per of unit of cultivated area, or as the total number of children working in the production related to a company. If one is to assess the development over time with regard to the occurrence of child labour, the choice of figures may lead to divergent conclusions. For instance, it may be that the total number of children increases over a period of time, while the number of children per unit of cultivated land decreases, provided there has been an expansion in the overall production area over the same period.

The Council on Ethics'surveys indicate that the child labour rate, measured as the number of children per acre in production for Monsanto Genetics has been considerably reduced since 2006. This development is most evident in Andhra Pradesh, where surveys conducted in 2005/2006 found 2.0 children per acre.[2] Research done in the two subsequent growing seasons shows that this rate had decreased to 0.4 and 0.2 respectively, which may be said to constitute a 90 per cent reduction in the occurrence of child labour. Measured as a reduction in the total number of children, the per centage will not be as high, but the total number of children also appears to have decreased significantly over the same time period.

Moreover, in Tamil Nadu, there seems to have been a decrease in the occurrence of child labour in the production for Monsanto Genetics. From the 2006/2007 to the 2007/2008 season the number of children per acre went down from 1.5 to 0.5, amounting to a 70 per cent reduction.

Concerning the occurrence of child labour in the production for Monsanto Genetics in Gujarat state, the surveys show that the number of children per acre for the 2007/2008 season totalled about 1.2. This is a high rate compared with other states in the same period, but not as high as the rate registered in Andhra Pradesh in the 2005/2006 season, which formed an important basis for the Council on Ethics' recommendation for exclusion.

The biggest number of children employed in Monsanto-linked operations are found in production for the company MMB. A series of Indian companies have licence agreements with MMB. It has been difficult to form a comprehensive picture of MMB's operations, which include licence production in various states and different companies. Based on surveys conducted in the states of Andhra Pradesh, Gujarat, and Tamil Nadu , the occurrence of child labour connected with licence production for MMB in the 2007/2008 season may be estimated at some 50,000- 60,000 children. Additionally, there is the child labour associated with production for the company Mahyco. Estimates of this number total 10,000–20,000 children in the 2007/2008 season.

With regard to Seminis' hybrid vegetable seed production, the Council on Ethics has focused its studies on the following species: chilli, okra, and tomatoes. For the 2007/2008 season it is estimated that some 850 children were employed in the cultivation of these seed species for Seminis.

The Council on Ethics presumes that it is impossible to establish the exact number of children working in the production of different types of hybrid seeds for Monsanto. Such surveys will, regardless of who conducts them, be debilitated by several sources of uncertainty. Nevertheless, the Council on Ethics finds that the conducted surveys,

combined with the Secretariat's visits of the areas, provide a realistic picture of the working conditions in general, and the occurrence of child labour in particular.

Further details on the conditions in Gujarat state

The conditions with regard to child labour in Gujarat state are presumed to differ from the conditions in the other investigated regions. This is partly due to the fact that the children often come from more remote areas, for instance the neighbouring state of Rajasthan, and that as a rule the transport and mediation of child labourers are coordinated through the use of middlemen and organised networks.

In Gujarat, it was difficult for the Council on Ethics to investigate the occurrence of child labour in hybrid cotton seed production. The Council on Ethics' consultants were in different ways prevented from carrying out their work, and in order to preserve their personal safety the scope of the studies was reduced in relation to the original plan.

4 Observations made during the Council on Ethics' visits

In November 2007, the Council on Ethics' Secretariat carried out a visit covering production sites linked to Monsanto in the states of Andhra Pradesh, Tamil Nadu, and Karnataka.

In general, few children were observed in Monsanto Genetics-related production in Andhra Pradesh. Only at one of the five farms visited, one or two persons appeared to be under 15 years of age. A number of fields had signs saying *"Monsanto Child Labor Free Farms"*. On farms producing hybrid cotton seed for Monsanto Genetics in the state of Tamil Nadu, some children were observed working: At the three visited farms, 14 children were registered.

The occurrence of child labour appeared to be very high at one visited farm in Andhra Pradesh engaged in production for local seed companies under licence from MMB. During one visit, 13 out of 22 persons working on the farm seemed to be under 15 years of age, and 4–5 of the children appeared to be below 7 years of age.

The visit to the farm producing hybrid vegetable seed for Seminis revealed a somewhat complex picture. The cultivation takes place in greenhouses, so-called net houses, and these were emptied of people as soon as the Secretariat arrived. However, it may be estimated that around half the workforce, some 20 people, were children under the age of 15.

With regard to protective measures during pesticide application, the Secretariat was informed, through discussions with local producers in Andhra Pradesh, that Monsanto has held meetings and provided information about the safe use of pesticides. Monsanto is also said to have promised to distribute protective equipment and offer training in the use of this. However, the scope of this initiative is not known. During the Secretariat's inspection, only one instance of pesticide application was observed, and this was carried out without any kind of protective equipment and while people remained in the field.

The farm visits made it absolutely clear that inspections must occur without prior notice in order to gain as representative a picture as possible of the working conditions in the production. At the same time it was clear that an inspection without prior warning may also be problematic. Children were plainly seen to leave the fields as soon as a car stopped on

the road or a stranger approached on foot. Moreover, a large number of farms, probably several thousand, produce hybrid seed for Monsanto. The farms are scattered over large and, in part, barely accessible areas. To the Council on Ethics' Secretariat it seemed a very difficult task to continuously monitor the working conditions at a great number of farms in order to detect child labour, and very difficult indeed to carry out unannounced inspections on a large scale. Inspections occurring with the farmers' previous knowledge may easily give the wrong impression of child labour occurrence.

5 The Council on Ethics' assessment

The Council on Ethics is to assess whether the investment by the Government Pension Fund – Global in the company Monsanto Co., may still be said to constitute an unacceptable risk of the Fund's future complicity in unethical actions. The Council on Ethics' mandate is limited to a concrete evaluation of whether the company's operations fall within or without the scope of the Fund's Ethical Guidelines.

A key element that makes the detected violations fall within *"the worst forms of child labour"* is the obvious health risk the children are subject to because of the nearly constant exposure to hazardous pesticides. The Council on Ethics is aware that Monsanto, at least to a certain extent, has taken steps to provide those who apply the pesticides with protective equipment, and that it also offers training in the safe use of pesticides. Such measures are likely to reduce the health risks to those who carry out the actual spraying. A remaining problem is that persons are staying in the fields during and after the application and therefore are exposed to hazardous pesticides. It is particularly serious when children are exposed to health risks in this way. Children's exposure to hazardous pesticides constituted an important part of the grounds for the Council on Ethics' recommendation to exclude Monsanto.

Often suffering from strong heat and hazardous exposure to pesticides, the children are also subject to very long hours (up to 14 hours a day) of work that tends to be physically straining.

However, the good results that have been achieved in Andhra Pradesh with regard to reducing the occurrence of child labour in the hybrid seed production chain show that the problem of child labour in this industry is to a great extent solvable. Through determined efforts and constant follow-up it seems possible to reduce the occurrence of child labour to a level where it can be regarded as constituting isolated and rare incidents rather than a systematic and recurring feature of a production system.

The Council on Ethics is aware that Monsanto has intensified its efforts aimed at reducing the rate of child labour in its supply chain, both in Gujarat and in other geographical areas where hybrid cotton seed is produced for the company. Moreover, the Council on Ethics knows that the company will introduce third-party audits to assess the occurrence of child labour in its supply chain.

It also seems clear that the extent of child labour in Monsanto's production chain increases as the connection with the company becomes more peripheral. Monsanto has implemented measures to reduce the occurrence of child labour in the parts of the production chain that are most closely related to the company. The large number of children contributing to licence production for the company MMB seem to fall outside the scope of Monsanto's improvement programmes. The Council on Ethics has a certain understanding for the

fact that Monsanto's leverage vis-à-vis the conditions in licence production for MMB is not as strong as in production for the company itself, but, at the same time, it presumes that Monsanto can wield significant influence also when it comes to this production.

The issue of pesticide exposure also seems to be a problem that can be remedied. First, protection for those who apply the pesticides may be achieved by giving them access to and training in the use of protective equipment, as well as in the safe use of pesticides. Such measures have already been introduced to a limited extent and it should be possible to pursue them further. Training and raised awareness should also make it possible to enjoin everyone to leave the fields during spraying. In the Council on Ethics` view, measures aimed at preventing the harmful exposure of children to pesticides are of major importance. The best means to achieve this will obviously be to reduce the occurrence of child labour so that fewer children are exposed to such health risks.

The Council on Ethics is aware that Norges Bank, through its exercise of ownership rights, has taken an initiative aimed at influencing Monsanto to step up measures designed to reduce the occurrence of child labour in hybrid seed production. Moreover, Norges Bank has proposed a sector-wide programme encompassing various companies within the industry, and Monsanto has endorsed this initiative.

The Council on Ethics presumes that industry cooperation aimed at reducing the occurrence of child labour may represent a suitable instrument. Previously, various seed producers launched a joint project (CLEP), but for various reasons this seems to have come to a halt. In order for such an initiative to succeed, it will evidently be crucial that influential companies participate. Monsanto's participation in this programme may lead to a reduction in the occurrence of child labour both in the value chain of the company itself and hopefully in the industry as a whole. Since local Indian companies for the most part are in charge of MMB licence production, strengthened sector-wide cooperation may have a positive effect also when it comes to reducing the extent of child labour here.

The Council on Ethics is aware that in developing countries the problem of child labour in agricultural production can be very extensive and linked to established socio-economic factors. At the same time, it seems clear that if influential companies work in a focused and systematic way, it is possible for them to drastically lower the occurrence of the worst forms of child labour in their own value chain.

6 Conclusion

The Council's assessment is that the detected violations in this case must be considered ongoing and, seen in isolation, deemed to count as "the worst forms of child labour", and thus as grave violations which, in principle, qualify for exclusion from the Fund's investment universe. In this context, particular attention is called to the conditions in Gujarat, to the large number of children contributing to licence production for MMB, and to the health hazards that children are subject to as a result of exposure to pesticides. The use of child labour in vegetable seed production is also an issue that the Council on Ethics has become more aware of after submitting the recommendation to exclude Monsanto in 2006.

At the same time, the Council on Ethics finds that Monsanto has achieved considerable improvements, particularly within certain geographical areas, when it comes to reducing the occurrence of child labour use.

The Council on Ethics is not aware that other investors have established a dialogue with Monsanto regarding the issues raised in this case. The role of Norges Bank in the improvement efforts are thus even more essential, and it seems clear that a possible exclusion of the company may undermine the ongoing process initiated by Norges Bank. Norges Bank's continued exercise of ownership rights in relation to Monsanto, and thus also the maintenance of the investment in the company, seems to be a necessary prerequisite for real improvement.

To the Council on Ethics it appears to be of particular importance that monitoring systems are established through independent third-party audits evaluating the occurrence of child labour in the supply chain, that the factors leading to children's harmful exposure to pesticides are eliminated, and that the child labour rate in the company's own production and licence production is drastically reduced.

Given that the improvement efforts are further strengthened and their application extended so that these goals are met, and also that the sector-wide initiative succeeds in reducing the occurrence of child labour in the production linked to MMB and Mahyco in the same way as in the company's own operations, the risk of future violations may be reduced to a level where the Fund's investment in Monsanto no longer must be regarded as constituting a breach of the Fund's Ethical Guidelines.

As the conditions for the exclusion of Monsanto in principle are met, but the aforementioned specific factors mean that the company will not be excluded at this point in time, the Council on Ethics expects that the ongoing efforts aimed at eliminating the worst forms of child labour will yield results. In the time to come, the Council on Ethics will closely follow the development.

Gro Nystuen	Andreas Føllesdal	Anne Lill Gade	Ola Mestad	Bjørn Østbø
(Chair)	(sign.)	(sign.)	(sign.)	(sign.)
sign				

Notes

1 The report "Seeds of Change", prepared by Dr. Venkateswurlu and commissioned by the organisations OECD Watch, India Committee of the Netherlands, Eine Welt Netz NRW, and International Labor Rights Fund, June 2007; see http://www.indianet.nl/pdf/seedsofchangefinal.pdf

2 An acre is the equivalent of 0.404 hectares.

To the Ministry of Finance

Oslo, November 15th, 2007
(Placed on an observation list and published March 2009)

Recommendation on exclusion of Siemens AG

Contents

1 Introduction

At a meeting on 5 March 2007, the Council on Ethics for the Government Pension Fund – Global[1] decided to assess whether the company Siemens AG[2] should be excluded from the Government Pension Fund – Global due to a risk of complicity in gross corruption.

This is the Council's first recommendation for exclusion on the grounds of gross corruption. Section 3 expounds on the term gross corruption and the elements that will be decisive in the Council's assessment of whether there is an unacceptable risk of the Fund contributing to this.

In Section 5 the Council gives an account of cases that show how Siemens has been guilty of gross corruption through the bribery of public officials, for example in connection with public tenders. The account covers cases during a period of 15 years, from 1992 until October 2007. Some of the ongoing trials in which Siemens is involved are also described. Against this background the Council finds it established that Siemens in a systematic and extensive way has unduly influenced public officials in order to confer an advantage on the company.

Under the Ethical Guidelines of the Government Pension Fund – Global there must exist an unacceptable risk that these acts will continue in the *future* for the Council to recommend the exclusion of a company. It does not suffice that the criteria for gross corruption are deemed to be met concerning past practices.

In accordance with the Guidelines, point 4.5, the Council has contacted Siemens through Norges Bank requesting the company to comment on the draft recommendation. Norges Bank received the company's reply on 3 September 2007. In this letter, Siemens expresses its intention to prioritize anti-corruption measures in the time to come. The measures described include the implementation of a whistle-blowing channel, the centralization of bank accounts to prevent unauthorised payments, and stricter rules for consultancy contracts.

In the Council's view it is nonetheless doubtful whether the measures described by Siemens in its reply to the Council and on the company website will be comprehensive enough to prevent future corruption at Siemens. The numerous and serious corruption cases Siemens has been involved in, and the fact that the company is currently under investigation in Germany's largest corruption probe to date make the Council look at this as a particularly flagrant case. In the wake of the previous big corruption scandal which marked Siemens in the 1990s, the company introduced a series of anti-corruption measures. Nevertheless, the scale and gravity of the corrupt practices revealed after the company's "turnaround" 15 years ago seem unequalled, at least in a European context. Particularly in view of this, the Council finds that the measures Siemens is currently intending to implement seem insufficient to prevent the risk of gross corruption in the future.

The White Paper preceding the Ethical Guidelines allows for the exclusion of companies as a precautionary measure in cases that are very serious from an ethical viewpoint.[3] The Siemens case is very serious with regard to the numerous and repeated instances of corruption over many years, the large sums involved, and the insecurity associated with the company's countermeasures. It is thus the Council's opinion that there is an unacceptable risk of the Fund, through its investment in Siemens, contributing to gross corruption. Hence, the Council recommends the exclusion of Siemens AG from the Government Pension Fund – Global.

2 Siemens

Founded in 1847, Siemens is a German multinational manufacturing group headquartered in Munich. In 2006, Siemens had 475 000 employees across more than 190 countries. Siemens' business areas include information technology, telecommunications, automation, building technologies, power generation and distribution, transportation, healthcare and lighting.[4] In 2006, the turnover amounted to EUR 87. 3 billion and more than 80 per cent of earnings are generated outside Germany. Numbering over 800 000 shareholders, the company is listed on the stock exchanges of Frankfurt, London, and New York.

As of 31 December 2006, the Fund held Siemens shares at a market value of NOK 3.138 billion, an ownership stake equivalent of 0.57 per cent.

3 The basis for the Council's assessment

3.1 Definition of "gross corruption"

The Ethical Guidelines, point 4.4, second paragraph, state:

"The Council shall issue recommendations on the exclusion of one or several companies from the investment universe because of acts or omissions that constitute an unacceptable risk that the Fund contributes to (…) Gross corruption (…)"

When there is an unacceptable risk that the Fund through its investment in a company may contribute to gross corruption, the Council should recommend the exclusion of the company from the Fund's portfolio. The Council's assessment is twofold. First, the criteria of gross *corruption* must be met. Second, there must be an unacceptable risk that the use of gross *corruption* will continue in the future.

Referring to Norwegian legislation and international conventions, the Council bases its assessment on the following definition of *gross corruption*:

Gross corruption exists if a company, through its representatives,

a *gives or offers an advantage – or attempts to do so – in order to unduly influence:*
- *a public official in the performance of public duties or in decisions that may confer an advantage on the company; or*
- *a person in the private sector who makes decisions or exerts influence over decisions that may confer an advantage on the company,*

and

b *the corrupt practices as mentioned under letter a) are carried out in a systematic or extensive way.*

In order to consider the conditions of gross corruption to be met, the existence of particularly reprehensible practices are required. The qualifier "gross" refers to the gravity of the infraction. An assessment of the gravity must therefore be made to establish whether there is a marked deviation from the acceptable. Below follows an exposition of the elements which make up the assessment of whether certain practices may be considered gross corruption.

Undue influence

If the advantage has an economic value, this will preferably form the basis of the assessment. Additional considerations include whether the transmission of the advantage has occurred in secret, whether it has led to incorrect bookkeeping, and whether it has violated internal guidelines/sector agreements.

Confer an advantage on the company
The purpose of transmitting the undue advantage must have been to achieve an advantage for the company. An advantage may be a competitive edge or another advantage that places the company in a privileged position; typically to gain a contract, conditions of contract, or a permission that the company would not otherwise have gained.

Systematic or extensive way
The condition under letter b) requires that the company can be deemed responsible for the systematic or extensive way in which the corrupt practices are carried out. The requirement as concerns systematic acts implies that the company can be linked to a series of corrupt acts which have been systematized. An important factor regarding the requirement that the corruption must be extensive is that it entails large sums. The various corrupt practices are assessed cumulatively.

In most countries corruption is prohibited by law. In Norway, a legislative amendment was passed in 2003, making the Norwegian penal code one of the most restrictive in this area. Furthermore, international anti-corruption conventions to which Norway is party oblige the states to commit themselves to actions aimed at fighting corruption in the business sector. Norway has a proactive policy in this area – combating corruption is considered a priority in several different sectors both nationally (e.g. the judicial and police sector) and internationally (e.g. the aid and development sector).[5]

3.2 Unacceptable risk of contributing to gross corruption in the future

Pursuant to the Guidelines, point 4.4, the Council shall recommend the exclusion of companies where there is an unacceptable risk that the Fund through its investment may contribute to gross corruption. A company's pattern of conduct constitutes an important element in the assessment since it may give an indication as to whether there is a future risk of continued gross corruption.

Regarding the assessment of future risk, the White Paper states the following:[6]
"There are several factors that must be taken into account in an ethical risk assessment. First, the nature of the actions one risks contributing to must be evaluated. If the actions are very serious from an ethical viewpoint, a higher degree of diligence on the part of the Fund will be required than in the case of actions that are not as serious. A high degree of diligence will require an active investigation when there are indications that a company in the portfolio is engaged in unethical practices, but it will also require action in the form of exclusion of a company from the portfolio as a precautionary measure. Second, available information on the company's actions to date must be examined. Normally, this gives indications of whether the company's unethical practices are likely to continue in the future. In that case, maintaining investments in the company could imply contribution to future unethical actions."

At the same time it states that *"Exclusion should be limited to the most serious cases where the company in which the Fund is invested is directly responsible for unacceptable breaches of norms, and there are no expectations that the practices will be discontinued."*

The Council must therefore conduct an overall assessment, considering previous incidents at Siemens and the anti-corruption measures that are currently being implemented.

4 Sources

The sources used to prepare this recommendation are primarily court documents, including final and enforceable judgements and other decisions against Siemens which are mentioned in more detail below. These include administrative decisions on exclusion of Siemens from public tenders and other types of reactions against the company's corrupt practices.

With regard to ongoing cases that have not yet been judged by the courts, the Council has drawn on information about the company that has come to light in a broad range of international press, particularly the German. Siemens' reply to the Council also constitutes an important part of the material. Moreover, the Council has relied on Siemens' own website and other publicly available information. The information gathering was concluded in the middle of October 2007.[7]

5 Accusations of gross corruption

This section presents some of the most important cases where Siemens or Siemens employees stand accused or have been found guilty of corruption.

5.1 Court rulings and administrative decisions

In Germany corruption charges have been brought against Siemens employees in criminal proceedings. Such trials are also currently ongoing. Moreover, there have been cases in Singapore and Italy where Siemens has been debarred from public tenders. In Norway a settlement has been reached with Siemens regarding the refund of money to the Ministry of Defence due to overbilling worth millions of NOK on Siemens' part. German public prosecutors suspect Siemens of corruption in 25 countries.

German legislation differs somewhat from the Norwegian, and the main difference in this context is that it does not prescribe corporate penalty. Consequently, individual employees are the ones made responsible for corruption, often being charged with both corruption and breach of trust against the company. Siemens employees, and not the company per se, thus stand accused of corruption in Germany. As far as the Council's assessment is concerned, it is, in principle, of no importance that the employees and not the company are found guilty in corruption, provided the corruption criterion in the Guidelines has been met. Germany has ratified the OECD Convention on Combating Bribery of Public Officials in International Business Transactions. The country has signed, but not ratified, the UN Convention against Corruption of 2003, the Council of Europe's Criminal Law Convention on Corruption of 1998, and the Council of Europe's Civil Law Convention on Corruption of 1999.[8]

Germany 1992 and 1997 – Munich (Die Münchener Klärwerks-Affäre)

In 1992 five Siemens executives in Munich were convicted of bribing a German public official.[9] The bribes, amounting to several hundred thousand DM, were deposited into an account in a Swiss bank. In return, Siemens gained a large electronics contract for a public sewage treatment plant.[10] [11] The case was called the "Die Münchener Klärwerks-Affäre". During the trial it was revealed that the management was under great pressure to secure contracts.[12] The presiding judge, Günter Bechert, declared that Siemens *"… at any cost and with all possible means"* tried to win the contract. The judge is said to have asked repeatedly whether bribery was part of Siemens corporate culture, something which the defendants denied. After this judgement, Heinrich von Pierer, the then newly instated CEO at Siemens, made a statement to the media saying that this would never happen again.[13]

In 1997, the sentence was revoked by the Supreme Court, and the case had to go through the judicial system once more, mainly because the court found that it was not about bribery of a *public official*.[14] The sentence from 1997 establishes that the person acting on behalf of the government could not be designated *public official* seeing as the local authority had hired him through a private company. He could therefore not be considered to represent the government. This meant that the Siemens employees were not convicted of bribing a public official under the German Penal Code (StGB § 334). Nevertheless, it was established that they had made use of bribery in order to gain contracts. The facts of the case were still the same, but the legal basis had to be changed. The case was referred back to another section of a lower court pending a final ruling there. However, in the judgement from 1997 the facts of the case were quite clearly presented, and the Supreme Court proclaimed that the employees had made use of corrupt practices to secure the contract for Siemens.[15]

Singapore 1996 (debarment 1996-2001)
In 1996, Siemens and four other companies were debarred from public tenders in Singapore for a period of 5 years owing to bribery of a public official. Through the use of a middleman, the companies had paid bribes to the Deputy Chief Executive Officer of the Public Utilities Board (PUB) in order to gain access to confidential information on projects that the PUB was to tender out.[16]

The companies have reportedly paid a total of USD 9.8 million to obtain the information. Constituting the biggest corruption case in Singapore to date, the trial against Mr. Choy in 1995 sentenced him to 14 years in prison for having received bribes over a period of 18 years. The middleman, Mr. Lee, was also convicted, but was promised immunity. In Singapore, company debarments are determined by the Ministry of Finance, and the minimum penalty is 5 years for such practices. The ban does not only affect the companies directly involved, but also their subsidiaries and companies where the involved persons hold board positions.[17]

Italy 2004 – Milan (the Enel case)
In the Enel case,[18] three individuals, Mr. Viegner, Mr. Becker and Mr. Dietrich, were found guilty of corruption through bribery of employees at the state-owned company Enel.[19] The bribes were intended to secure a contract for the sale of gas turbines to Enel. By being awarded the first contract, Siemens could attain a monopoly position in relation to further contracts for the purchase of more turbines and the maintenance of these.[20] The court found that the transfer of bribes to Enel employees was meticulously planned and paid via bank accounts in Liechtenstein, Dubai and the British Virgin Islands – not directly to the individuals, but through an intermediary.

According to Italian legislation, companies are obliged to create systems aimed at preventing illegal acts. Moreover, the law says that juristic persons may be held responsible for criminal offences committed by their employees. The maximum sanction is debarment from negotiating public tenders with Italian authorities.

Regarding Siemens' internal control systems, the judgement states the following:

"In the present case one may rule out that Siemens AG has implemented an effective model for organisation, management and control of the company's acts which is fit to prevent crimes of the kind that have occurred […]. Additionally, it seems as if the company itself has encouraged and has been an accomplice to the offences that Mr. Viegner, Mr. Becker and Mr. Dietrich[21] *have been*

charged with. The way in which SIEMENS managers carried out their corrupt practices (use of a third party, namely AL NOWAIS, for the payment of the bribes in order to render it more difficult to trace the origin of the money; repeated payments in several "instalments" accompanying the progress of the tender and the contract), and, above all, the existence of accounts and secret funds that could be traced to SIEMENS AG and were destined for (and actually were used for) criminal offences, show the inefficiency of any internal control mechanisms at SIEMENS AG and a lack of action by the entities that were supposed to monitor the compliance with such a framework. It also indicates that the company regarded the payment of bribes as, at least, a possible business strategy, and 'secret funds' had therefore been created to implement this strategy."[22]

The Court also stated that what had been revealed during the enquiry was only part of a far more complex scenario in which a much larger number of people and resources were involved, signifying that there was a concrete and justified reason to fear recurrence. It was considered particularly aggravating that Siemens AG, although the offences perpetrated by its directors received much press coverage, *"was adamant and did not offer any reply"*. The executives had neither been dismissed nor subjected to disciplinary measures, but merely been transferred from one department to another.

The verdict also drew attention to the fact that Siemens during the proceedings had not shown that the company had implemented a new and better organisational model to prevent similar episodes from occurring again, and further that a company of such size and importance in Europe and internationally has an obligation to assume a firm and unequivocal attitude once this kind of situation has arisen. The Court went on to express that the company's inability to offer any information concerning concrete measures aimed at preventing criminal offences in the future could be considered a confirmation of its complicity in the illegal acts that had come to light.

In April 2004, Siemens was convicted of corruption by the Court of Milan and thus barred from entering into negotiations with the Italian public administration for a period of one year. The verdict states that the defendants are guilty of corruption, but that they acted exclusively in the interest of Siemens. Concerning damages, Siemens had reached a settlement with Enel at the end of 2003. The judge did not actually deem this sufficient, declaring that as for the negotiation ban: *"SIEMENS AG's monopoly position is a direct consequence of the illegal acts and can only be met with this ban, which is the sole sanction that makes it possible to restore competition and the undermined market conditions. To this end the Court deems it reasonable that the ban is in force for 1 (one) year."* [23]

Germany 2007 – Darmstadt

On May 14th in Darmstadt, Germany, Andreas Kley, former finance director at Siemens was given a two-year suspended prison sentence for commercial bribery and breach of trust against Siemens. Horst Viegner, a former consultant to Siemens, was sentenced to a nine-month suspended prison term for complicity. In part the trial was a continuation of the Enel case[24]. At the time of the offence Mr. Kley was responsible for trade and finance at Siemens Power Generation, and Mr. Viegner was working as a consultant to Siemens Power Generation.[25] With Mr. Kley's consent, Mr. Viegner allegedly bribed Enel employees in Italy with EUR 6 million in order to secure Siemens a contract with Enel.[26] After being transferred from accounts in Liechtenstein and other countries, part of the money was reportedly deposited into the account of an Enel employee's wife. Both defendants pleaded guilty to bribery. During the proceedings, Mr. Kley is said to have stated that bribery and slush funds were common practices at Siemens.[27] Siemens was sentenced to pay back EUR

38 million to the German state as compensation for the profit gained through the Enel contract. The Siemens representative immediately lodged an appeal.[28] No final decision has been reached in the case.

5.2 Ongoing trials

The Council is aware that at least four corruption cases against Siemens are currently being tried in Germany. In the Council's overall assessment, the case under investigation by the Norwegian National Authority for Investigation and Prosecution of Economic Crime (Økokrim) is also important. The present section includes an account of these cases.

Germany 2007 – Munich

The Council follows the investigation launched against Siemens by Munich prosecutors. The corruption charges contained in the case reports are both very serious and very detailed. Individuals interrogated in the case have been with the company for a long time and are reported to have given testimonies which place responsibility for the corrupt practices at the very top of the corporate ladder.[29]

Apparently, the case started after a request for assistance from the judicial authorities in Switzerland and Italy, something which prompted Munich prosecutors to launch an investigation of Siemens staff in November 2006. Employees at Siemens Telecom division were under suspicion of having diverted EUR 20 million via fictitious companies and of having deposited the money as "slush funds" in Switzerland and Liechtenstein between 2002 and 2006.[30] The amount was later altered to EUR 200 million, and it was confirmed that the evaded sums had not been destined for the personal enrichment of the accused. At first, public prosecutors referred to the concept of "breach of trust" against Siemens. As the investigation proceeded, Siemens itself came under suspicion. The prosecutors started using the expression "gross misappropriation of funds", and in December 2006 they applied the term "commercial bribery".[31] Munich prosecutors are cooperating closely with the judicial authorities in Switzerland, Italy and Liechtenstein.[32]

According to the media, Siemens CFO Joe Kaeser has declared that an internal investigation has uncovered EUR 426 million in suspicious payments.[33] Following an internal audit carried out by the US law firm Debevoise and Plimpton, Siemens adjusted the amount to EUR 1.5 billion in September 2007.[34] Moreover, it seems as if Thomas Ganswindt, a member of the supervisory board until September 2006, and Heinz-Joachim Neuburger, Siemens CFO until April 2006, are the highest-ranking executives to be arrested in connection with the Munich investigation. According to arrest warrants and detailed witness statements, Siemens is portrayed as a company where the payment of bribes was *"common and highly organized"*.[35]

Michael Kutschenreuter, former head of the IT department at Siemens, has reportedly made a statement after his arrest placing the blame for the corrupt practices on senior management. Mr. Kutschenreuter apparently said that he personally has also repeatedly been involved in bribery after becoming finance director of the Telecommunications department in 2001. Although bribery was prohibited by law in Germany in 1999, many of his colleagues regarded the bribes as peccadilloes because they served the company's interests.[36]

According to information reported by the media, two other highly placed executives at Siemens Telecom are also said to have described the use of bribes. Reinhard Siekaczek and Andreas Mattes, former colleagues of Mr. Kutschenreuter, have confirmed that the bribes were

paid with the management's knowledge. Information has emerged that Reinhard Siekaczek was requested to set up "slush funds" for bribes in 1999 or 2000. These secret accounts are allegedly placed abroad, and Siemens is said to have deposited large annual sums.[37]

A German arrest warrant issued in 2006 reportedly shows that the prosecution suspects bribery in Egypt, Greece, Indonesia, Kuwait, Saudi-Arabia and Vietnam from 2002 to 2004. Siemens is said to have channelled money through at least three layers of secret accounts, fictitious companies, and local intermediaries. As of March 2007, the prosecution has registered 25 countries in which Siemens is said to be engaged in corrupt practices.[38] [39]

The scale of the legal proceedings in the Munich case will be significantly reduced as a result of a settlement reached in October 2007. Siemens accepted to pay a fine of EUR 201 million, while Munich prosecutors dropped the charges of corruption at the Com Group. In this respect, the following note has been posted on the company website: *"Siemens accepts the fine imposed by the court and takes responsibility for past misconduct at the Com Group."*[40]

Germany 2007 – Nuremberg (the AUB case)
The Nuremberg state prosecutor's office is currently investigating a former director [41] at Siemens for having bribed a union representative of the corporate assembly during the period from 2001 to 2005. The employee is charged with breach of trust against Siemens.[42] It is believed that EUR 14.75 million have been paid to the trade union AUB in order to secure its goodwill towards the company. Between 2002 and 2004, more than EUR 2.5 million have allegedly been transferred from Siemens to the AUB chairman Wilhelm Schelsky. The state prosecutor is also examining whether these funds were used to influence the elections of representatives to the corporate assembly. Mr. Schelsky has been the leader of AUB for 20 years. Before becoming self-employed, he worked for Siemens, but also while self-employed he had close business ties to Siemens. The contract between Siemens and Mr. Schelsky was terminated in 2006 because an internal investigation found that Siemens was not receiving adequate services from Mr. Schelsky in return.[43]

It was the trade union IG Metall that brought an action against Siemens on the grounds of the company's illegal favouring of an employer friendly corporate assembly representative.[44]

Germany 2007 – Nuremberg (the Oil-for-food case)
In October 2005, the Independent Inquiry Committee, appointed by the UN, published a report[45] in which 2,200 companies, including Siemens, were accused of bribing the Iraqi government as a means to win contracts. The report states that practices at Siemens have violated the conditions set out in the Oil-for-Food Programme and the UN sanctions resolutions against Iraq.[46] Three Siemens subsidiaries, Siemens-France, Siemens-Turkey and Osram-Middle East, were accused of having bribed the Iraqi government with more than USD 1.6 million in order to be awarded contracts worth a total of USD 124.3 million. The bribes were allegedly paid through the companies' accounts in Jordan.[47] After the report was published, Siemens declared that the commission's conclusions were premature and unjustified. Moreover, the company pointed out that only its subsidiaries were accused of bribery. Siemens has not made any further public statement regarding this case.

In May 2006, public prosecutors at Munich and Nuremberg started a probe into these accusations against Siemens, examining whether the incidents will have legal consequences for Siemens in Germany.[48] In November 2006, the Nuremberg prosecutors launched an enquiry into Siemens Medical Solutions, Siemens Power Generation and Siemens Power

Transmission and Distribution with respect to possible violations of the Foreign Trade Act (Aussenwirtschaftsgesetz).[49] The Act covers currency transactions, as well as trade in goods, services and capital with foreign countries. The case is still under investigation.

Germany 2007 – Wuppertal (the OLAF[50] case)
According to information in two important German newspapers, the public prosecutors in Wuppertal, Germany, are investigating a case where executives at Siemens Power Generation (wholly owned subsidiary of Siemens AG) and employees at Lurgi Lentjes Services are said to have bribed an official at the EU's Balkan agency in Belgrade.[51] In 2004, the European Commission Anti-Fraud Office, OLAF, was notified.[52] OLAF prepared a report which was forwarded to the Wuppertal state prosecution. The investigation will be concluded in 2007.

Norway 2007 – Oslo (Økokrim)
In 2006, Per-Yngve Monsen, a former employee at Siemens Business Services (SBS), blew the whistle on probable violations of the law in the way SBS handled IT supplies to the Norwegian Armed Forces (NAF). Following the alert to Siemens headquarters in Munich about the matter, Mr. Monsen was informed by the Norwegian management that SBS was facing redundancy, and that he would have to resign from his position. He brought an employment tribunal claim arguing that it was the alert about overbilling and not the redundancy which had caused him to lose his job. The court found that the dismissal was unfair, and thus ruled it invalid. Mr. Monsen was awarded a compensation of NOK 1.5 million. The verdict pointed out that Mr. Monsen was probably right about SBS overbilling the NAF, something which led the NAF to investigate the case.[53] [54]

In 2006, a government probe was therefore launched into the allegations of possible overbilling of the armed forces. The Dalseide Committee was appointed by cabinet decision on 6 January 2006, and in June of the same year it presented the investigative report. The committee concluded that SBS did not fulfil its duty to protect the military's best interests, as stated in the loyalty clause of the contract and normal loyalty principles of contract law. It was uncovered that SBS overbilled the military by NOK 36.8 million in the years 2000–2004.[55] In December 2006 a settlement was reached between Siemens and the Ministry of Defence about refunding the NAF. In the summer of 2007 an investigative committee consisting of the involved parties concluded that SBS was not guilty of further overbilling.[56]

The investigations carried out by the Dalseide Committee also showed that SBS practiced extensive customer care towards military personnel. SBS is said to have spent NOK 6 million on gifts, travels and entertainment. Two military employees in particular have received significant benefits. Both individuals held positions where they made decisions or influenced decisions which could bring SBS advantages. Such activities are in breach of the gift ban under Section 20 of the Public Service Act and the military's own procurement rules. Certain transfers of advantage may constitute violations of the corruption ban under Section 276 a, b, c of the Penal Code. In the autumn of 2006, the military referred the case to the Norwegian National Authority for Investigation and Prosecution of Economic Crime (Økokrim).

6 Other actors' reactions to the accusations against Siemens

The Council notes that in addition to the purely judicial response there have been other reactions against the company as a result of recent corruption cases.

In light of the Siemens enquiry at Munich, Transparency International Germany (TI) cancelled the company's membership in December 2006. Siemens had joined TI in 1998, following its management's commitment to the implementation of the OECD Convention on Corruption. In 2004 Siemens' membership was put on hold after the company's involvement in a corruption case in Italy (the Enel case). The basis for TI membership is that the organisation believes the company to be committed to combating corruption through the implementation of suitable preventive procedures and checks. However, the Munich police investigation of Siemens in November 2006 uncovered information that eliminated the foundation for the company's membership.[57]

On 25 January 2007, Siemens held its general assembly in Munich. Several shareholders stressed the importance of a review of the company's internal control mechanisms aimed at preventing corruption.[58] It was pointed out that the confidence in Siemens had been severely compromised as a result of the corruption accusations, and KPMG's handling of Siemens accounts was also questioned. Several shareholders demanded that Heinrich von Pierer and Klaus Kleinfeld should resign from their posts, but the overall vote secured their positions.[59]

As a consequence of recent developments in Europe, particularly in the Munich case, the US Securities and Exchange Commission (SEC) decided, on 26 April 2007, to launch a full-scale probe into Siemens. On 27 August 2007, the SEC and the FBI met the Munich public prosecutors in order to gain insight into the investigation.[60]

Since Siemens is listed in the USA and is accused of corruption in Europe, it is also being investigated by the US Justice Department under the Foreign Corrupt Practices Act.

The Council has not examined these cases in any further detail.

7 Siemens' reactions to the accusations

Since the beginning of the 1990s, Siemens and its representatives have been subject to criminal proceedings in Germany and other countries on several occasions.

In the initial stages of the investigation in the ongoing Munich case, the management put the blame on a group of disloyal employees that were supposedly behind the corruption.[61] Several former employees have come forward with accusations of corrupt practices in the company, but the management has denied these. In some cases, Siemens is reported to have dismissed whistle-blowers.[62]

When Siemens became subject to much public attention in connection with the uncovering of the corruption scandals in the early 1990s, the management promoted anti-corruption measures within the company. In 1992, the first sentence was passed against Siemens in the "Münchener Klärwerks-Affäre". At that time, Heinrich von Pierer became the company's new CEO and declared that this should never happen again.[63] Mr. von Pierer implemented

strict guidelines for corporate governance in 1992.[64] He also made it mandatory for all managers to sign the internal guidelines on an annual basis to make sure that business practices were in accordance with these.[65] Simultaneously, a total of 900 compliance officers were placed in the company's 10 departments to ensure that the guidelines were adhered to.[66]

At this stage, Siemens' management also cooperated with the OECD disseminating information on the new OECD Anti-Corrruption Convention.[67] In the 1990s Siemens became a member of Transparency International (TI)[68], as well as joining forces with the Extractive Industries Transparency Initiative (EITI) – an organisation focusing on transparency in money transactions between the extractive industries and developing countries.[69] Not only did Siemens appear as a company which took corruption problems seriously, but as an international front-runner in the fight against corruption.

Despite the company's anti-corruption measures and expressed good intentions, these initiatives did not prevent the corrupt practices which have later been discovered. Since the 1990s, Siemens has continued to be subject to several corruption investigations in many countries, some of which are presented in this recommendation.

In the wake of the most recent corruption cases, CEO Klaus Kleinfeld was replaced by Peter Löscher in April 2007, while Gerhard Cromme took Heinrich von Pierer's place as chairman of the supervisory board. Peter Löscher was picked from outside the company. Gerhard Cromme has been with Siemens for many years, and has been a board member since 2003. For some time he also headed the supervisory board's audit committee.[70]

Shortly before Klaus Kleinfeld resigned from his post in April 2007, he presented a new ambitious action plan – Fit for 2010 – for the coming three years. His successor, Mr. Löscher, declared at the end of July 2007 that he will stick to the plan.[71] In his first address to the press, Mr. Löscher stated that *"for those of you who think – now Löscher begins; now the revolution begins – I have to disappoint you". Mr. Löscher, he prefers to speak of "evolution" rather than "revolution"*, and the plan is for changes to take place at the same pace as in past decades.

The Council has watched the development at Siemens and has made a note of certain anti-corruption measures recently implemented by the company. In the Council's view, some of the most concrete measures seem to be that the company now centralizes payments to control the cash flow and that consultancy contracts must be approved by more persons than before. Furthermore, the company is said to have established protected communications channels for whistle-blowing.[72] [73] According to information from Siemens[74], corporate management will also cooperate with Michael J. Hershman (the founder of Transparency International) with a view to restructuring internal control mechanisms.[75]

At the beginning of October 2007, information emerged on more changes at Siemens.[76] Mr. Löscher is for example said to have management restructuring plans. Siemens has previously had a three-tiered management structure: coaches who monitor the divisions, the actual division level, and the national subsidiaries around the world. It now seems that the coach level will be eliminated and substituted by directors who hold more central positions in the company.[77] Moreover, the national level will be given less power and no longer conduct the negotiations of large contracts nationally. It seems as if such contracts will be signed at the division level. Furthermore, Peter Solmssen, who has been recruited from General Electric, is said to have taken up the newly created post as legal and compliance

executive. The information on the structural changes has not been confirmed by Siemens, but the news about Peter Solmssen can be found on the Siemens website. To the Council's knowledge, there are so far no suggestions regarding changes in the supervisory board.[78]

A US law firm, Debevoise and Plimpton, is working on an internal investigation motivated by the corruption allegations. The law firm reports directly and exclusively to the supervisory board's newly established compliance committee, being assisted by auditors from Deloitte & Touche.[79] In July 2007, the law firm complained to the board that its investigation was hampered at Siemens offices in countries such as Austria, Greece, and Belgium.[80] The board's newly appointed compliance committee is charged with monitoring the ongoing investigation and the new measures adopted by the company. This committee is made up of the same members as the audit committee, and its chairman is Gerhard Cromme.[81]

8 Siemens' reply to the Council's enquiry

As prescribed by the Guidelines, the Council has sent the draft recommendation to Siemens for comments. This was done at the end of June 2007, and the Council received Siemens' reply within the deadline at the beginning of September.

In its reply, Siemens provides information on the company's internal guidelines, adding that the compliance with these has top priority from now on. The letter also states that, *"Exceptional performance and ethics are not mutually exclusive: They are absolutely essential!"*, *"Siemens is committed to clearing up all misconduct no matter who was responsible, and will endorse the necessary consequences"*, and *"The company has achieved its strength through operational excellence based on high ethical standards."* Siemens annexes an overview of ongoing trials in which it is involved, new anti-corruption measures, and a printout of a presentation on the company's compliance efforts.

A key element in the Council's assessment is to evaluate whether the measures at Siemens are sufficient to avoid an unacceptable risk of the Fund contributing to gross corruption through its investment. Several of the measures presented in the annexes from Siemens are discussed under Section 7. Moreover, there is mention of plans in the company for a "corporate disciplinary committee" charged with imposing disciplinary sanctions in cases of suspected criminal offences or violations of the company's internal policy, or other documented misconduct.[82] The annexed presentation printout to the reply from Siemens features a quote from Mr. Löscher saying, *"I have made the topic of compliance one of my top priorities. There will be no compromises here: Illegal and improper behaviour will not be tolerated under any circumstances."* The Council is not aware of the context in which Mr. Löscher made this declaration, but it does not seem to have been echoed in the media afterwards.

9 The Council's assessment

As mentioned, Norway has one of the world's most rigorous legislations when it comes to corruption. This is in keeping with the developments internationally, as it is recognized that corruption not only is destructive for business relations, but also a contributing factor to poverty and human rights violations in many countries. The Council takes as its point of departure that Norwegian corruption legislation reflects the seriousness of the corruption criterion in the Ethical Guidelines.

9.1 The Council's assessment of gross corruption at Siemens

With regard to corruption in the company to date, the Council bases itself on existing verdicts and other administrative decisions, as well as on information about ongoing corruption trials in several countries.

As shown in Section 5, Siemens has, through its representatives, used bribes to influence both public officials and private sector staff with a view to winning contracts. Court rulings confirm this with regard to previous case circumstances, and current investigations also seem to concern corrupt practices carried out in a systematic and extensive way.

Two of the verdicts mentioned in this recommendation are based on German law – which does not prescribe corporate penalty. Consequently, the sentences targeted employees directly, and not the company as such. The Italian judgement also refers to employees; nevertheless, Siemens is strongly criticized for the poor routines that made the corruption possible. As a result, Siemens was debarred from public tenders for a period of one year.

The Council's deliberations take into account that there are varying attributions of legal responsibility under different judicial systems; for example, some systems include corporate penalty, whereas others do not. This means that the Council may draw conclusions regarding the existence of gross corruption in a case even if the company has not been found directly guilty, as long as it has been established that representatives of that company have carried out the actions on the company's behalf. It seems a prevalent characteristic that the acts have been committed with the management's knowledge and with a view to winning contracts for Siemens, not in order to achieve personal gain for the employees.

The Council attributes importance to what may be perceived as Siemens' own admission of corruption through accepting a considerable fine to avoid part of the legal proceedings in the Munich case (2007).[83]

Siemens' conduct reveals a long-standing pattern of corrupt practices perpetrated to serve the company's interests. The acts have been committed in many countries and they include the transfer of large sums. The great number of cases, their nature, and the substantial amounts of money involved imply that this is one of the most comprehensive corruption cultures investigated in any listed company, at least in a European context. Therefore, the irregularities at Siemens must unquestionably be considered serious under the Guidelines.

9.2 The Council's assessment of risk that the Fund, through its investment in Siemens, may contribute to gross corruption in the future

It is laid down as a condition in the Guidelines' point 4.4 that there must be an "unacceptable risk" of the company contributing to violations in the future if the Council is to recommend its exclusion.

The White Paper preceding the Guidelines states that exclusion may be used as a precautionary measure in cases which are very serious from an ethical viewpoint.[84] At the same time, it says that exclusion should be limited to the most flagrant cases. An overall assessment and a concrete appraisal in each case are therefore required.

Moreover, the White Paper stresses that the breaches must either be ongoing or that there must be an unacceptable risk of such violations occurring in the future if they are to lead to exclusion. Previous patterns of conduct, which may be more or less systematic and/or

extensive, may give an indication as to whether there is a future risk of continued use of corruption. The White Paper establishes that *"The purpose is to reach a decision as to whether the company in the future will represent an unacceptable risk for [the Fund]."*[85] The wording of point 4.4 makes it clear that the probability of the Fund's contribution to present and future acts or omissions is the matter to be assessed.

This recommendation discusses decisions of a judicial nature that refer to acts committed in the past. Information on the company's earlier conduct may give an indication as to its future conduct. The number of corruption sentences associated with Siemens during recent years and the number of current trials against the company indicate that effective measures must be implemented if the risk of future corruption is to be considerably reduced. The Council's main concern is therefore to assess whether the steps that the company has now taken, and that are known to the Council, may be sufficient to prevent corruption.

The Council attributes importance to how Siemens has responded to the disclosure of corporate corruption, partly through the documentation Siemens has provided as a reply to the Council's request and partly through publicly available information on the measures currently adopted by the company. The measures considered most effective by the Council are the centralization of bank account handling, altered routines for the signing of consultancy contracts, as well as the introduction of an ombudsman through whom the employees may report violations of the law or business conduct guidelines.

As previously mentioned, the board has appointed a so-called compliance committee to monitor the ongoing investigation and the proposed corporate measures. This committee is made up by the same members as the former audit committee and is chaired by Gerhard Cromme. In the Council's view, there is uncertainty as to whether the committee will be able to make sufficiently independent assessments as it mainly consists of the same people who earlier failed to detect corruption at Siemens and is being headed by the same person who previously conducted this work and did not succeed in disclosing corporate corruption.

Siemens is also in the process of establishing a disciplinary committee to assess cases where employees' violations of the law or company policy are suspected. A proposal of possible sanctions for such breaches was presented to the board at the end of September 2007, but information is not available as to the board's decision in this case. According to the proposal, corrupt employees may risk sanctions such as lower wages, transfer, no promotions, or bonus cuts. However, reporting corruption to the police does not seem to be part of the sanctions.[86]

The fact that Siemens has appointed an ombudsman seems, in itself, an effective measure. Retaliation against whistle-blowers is also prohibited by internal business conduct guidelines. However, Siemens' internal policy establishes strict confidentiality obligations in several areas. There is a risk that these confidentiality obligations may prevent that for example cases regarding disclosure are brought to light. Considering Siemens' previous history in whistle-blowing cases this is an area that ought to be of particular importance to the company.

Compared with the other exclusion criteria contained in the Guidelines, the corruption criterion poses additional challenges. A company may implement measures to prevent human rights violations and environmental damage, and the effect of the measures can be more easily examined once they have been implemented. When it comes to corruption,

this may be more complex because corruption occurs in secret and is only brought to light after disclosures and investigations. This makes it difficult to verify how effective anti-corruption measures are.

The anti-corruption measures implemented by the company at the beginning of the 1990s seemed ambitious. They included the introduction of strict guidelines to which managers had to sign compliance statements every year, as well as the placement of 900 corporate compliance officers. Siemens was considered an international front runner in terms of combating corruption. Nevertheless, the corrupt practices that have been uncovered after the company's "turnaround" 15 years ago are of a magnitude and gravity which seem unequalled, at least in a European context. Particularly in light of this experience, the Council deems it uncertain whether today's announced measures will be effective. In the Council's view they do not seem sufficient.

The Council is aware that it may be problematic for a company to publicly acknowledge the existence of very reprehensible practices in its midst. In view of the documented irregularities in this case, the Council is nonetheless surprised that Siemens, in its letter of reply to the Council through Norges Bank, claims that *"The company has achieved its strength through operational excellence based on high ethical standards."* In the Council's opinion this is a rather inapt description of the company's conduct in this context, indicating that the company underestimates the gravity of the case. There is a risk that such downplaying of the situation may cause a possible process of change in the company to occur slowly.

It is uncertain to what extent and when any measures will produce effect. The Council considers it problematic to maintain its investments in Siemens once the uncertainty prevails concerning if, and possibly when, sufficient measures will be implemented. Based on an overall assessment, the Council finds that there is an unacceptable risk of Siemens' continued involvement in gross corruption in the future.

10 Recommendation

Based on this assessment of the substance of the accusations against Siemens and in view of the Ethical Guidelines, point 4.4, the Council recommends that the company be excluded from the Government Pension Fund – Global owing to an unacceptable risk of the Fund, through its investment in Siemens, contributing to gross corruption.

Gro Nystuen	Andreas Føllesdal	Anne Lill Gade	Ola Mestad	Bjørn Østbø
(Chair)	(sign.)	(sign.)	(sign.)	(sign.)
sign				

Notes

1 Hereinafter, "the Council".
2 Hereinafter, "Siemens".
3 NOU 2003:22, p 35.
4 www.nyse.com/about/listed/si.html
5 See the Norwegian government's website concerning various anti-corruption measures: www.regjeringen.no/nb/dep/jd/tema/Korrupsjon_og_hvitvasking.html?id=1266.
6 NOU (Norwegian Official Report) 2003:22, p 35.
7 The date was set with a view to including information about Peter Löscher's new action plan, scheduled to be made public at the beginning of October 2007 – marking his first 100 days as head of the company; see http://www.finanznachrichten.de/nachrichten-2007-05/artikel-8308988.asp. The proposed measures that then were presented are taken into account in this recommendation.
8 http://www.oecd.org/dataoecd/59/13/1898632.pdf http://www.unodc.org/unodc/crime_signatures_corruption.html http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=173&CM=7&DF=10/31/2007&CL=ENG http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=174&CM=7&DF=10/31/2007&CL=ENG
9 http://www.handelsblatt.com/news/Unternehmen/Industrie/_pv/_p/200038/_t/ft/_b/1186555/default.aspx/
korruption-ist-bei-siemens-nichts-neues.html
10 Lexetius, summary of court rulings: http://lexetius.com/1997,490
11 http://onwirtschaft.t-online.de/c/99/31/55/9931558.html
12 http://www.handelsblatt.com/news/Unternehmen/Industrie/_pv/_p/200038/_t/ft/_b/1186555/default.aspx/
korruption-ist-bei-siemens-nichts-neues.html
13 http://www.handelsblatt.com/news/Unternehmen/Industrie/_pv/grid_id/1048180/_p/200038/_t/ft/_b/1186555/default.aspx/korruption-ist-bei-siemens-nichts-neues.html
14 http://finanzen.aol.de/Klaerwerk-Korruption-1225650577-6.html
15 The judgement: http://www.hrr-strafrecht.de/hrr/1/96/1-233-96.php3
16 The relevant authority confirms that Choy Hon Tim was convicted for corruption in 1995, and that the sentence led to the debarment of the companies; Corrupt Practices Investigation Bureau, in Singapore. Communication between the Council and the Norwegian Embassy in Singapore; on file with the Council.
17 Asiaweek.com 3 March 1996: http://www.asiaweek.com/asiaweek/96/0301/biz3.html
18 The Enel trial at Milan Ordinary Court, 24 April 2004, No 2460/03 TGNR and 950/03RGGIP; on file with the Council.
19 At the time, the Italian state held a 68% share.
20 Such maintenance work is said to be so complex that only the turbine supplier – who knows how they are constructed – is able to carry out maintenance work on them.
21 See footnote 18. In the verdict there is a footnote here that begins as follows: "Note that Jean Dietrich, who participated in the negotiations with ENEL's directors in his capacity as CEO of SIEMENS AG, was not a subordinate employee and thus not subject to control and administration by others as stated in the accusation, but, on the contrary, was a top executive at SIEMENS AG, and that his declaration of intent per se must be regarded as the company's intention (voluntas societatis).".
22 Excerpt from the Norwegian translation of the verdict, commissioned by the Council; on file with the Council. (Ref to the case: Enel trial at Milan Ordinary Court, 24 April 2002, No 2460/03 TGNR and 950/03RGGIP)
23 See footnote 22.
24 Enel is a State-owned Italian company.
25 He is also a former director at Siemens, see footnote 23, p 1.
26 http://uk.reuters.com/article/oilRpt/idUKL1767582120070417?sp=true
27 http://www.spiegel.de/wirtschaft/0,1518,471461,00.html
28 http://www.spiegel.de/wirtschaft/0,1518,482730,00.html

29 Wall Street Journal, 31 January 2007, "At Siemens, witnesses cite pattern of bribery", by David Crawford and Mike Esterl; on file with the Council.
30 http://www.sueddeutsche.de/wirtschaft/artikel/972/97875/1/
31 http://www.sueddeutsche.de/wirtschaft/artikel/972/97875/1/
32 http://www4.justiz.bayern.de/sta-muenchen/stamue1/pr070207.htm
33 Financial Times, 9 February 2007, "Siemens broadens bribery inquiries", by Richard Milne; on file with the Council.
34 http://www.spiegel.de/wirtschaft/0,1518,507018,00.html
35 Wall Street Journal, 31 January 2007, "At Siemens, witnesses cite pattern of bribery", by David Crawford and Mike Esterl; on file with the Council.
36 See footnote 35.
37 In the 1990s Siemens is believed to have spent DM 500 million a year in bribes:
See: http://www.sueddeutsche.de/wirtschaft/artikel/972/97875/1/
38 See footnote 35.
39 http://www.sueddeutsche.de/wirtschaft/artikel/972/97875/1/
40 http://w1.siemens.com/pool/en/investor_relations/financial_publications/ad_hoc_announcements/071004_siemens_ad_hoc_message_com_settlement_e_1464784.pdf
41 Since March 2007 he is no longer a director at Siemens.
42 http://www4.justiz.bayern.de/olgn/presse/info/fr_aktuell.htm
43 http://www.images.de/online/2007/11/siemens-schelsky-aub
44 http://www.spiegel.de/wirtschaft/0,1518,475178,00.html
45 The Independent Inquiry Committee's report, page 382: http://www.iic-offp.org/documents/IIC%20Final%20Report%2027Oct2005.pdf
46 S/RES/986, para 8, S/RES/986, para 9, and Iraq-UN MOU, para 5; on file with the Council.
47 Focus, "Auch Deutschland schmierten Saddam": http://focus.msn.de/politik/ausland/irak_nid_20817.html .
The Washington Post, "U.N. panel says 2400 firms paid bribes to Iraq": http://www.washingtonpost.com/wp-dyn/content/article/2005/10/27/AR2005102700954.html
"Staatsanwälte wegen Irak-Geschäften bei Siemens": http://de.internet.com/index.php?id=2019572
48 Die Tageszeitung, "Irak: Ermittlungen gegen deutsche Firmen": http://www.taz.de/pt/2006/05/27/a0088.1/text
49 Süd Deutsche Zeitung: http://www.sueddeutsche.de/wirtschaft/artikel/893/96797/
50 OLAF is the French acronym for the European Commission Anti-Fraud Office.
51 http://www.sueddeutsche.de/wirtschaft/artikel/77/92984/ and
http://suddeutche.de/wirtschaft/artikel/893/96797
52 http://www.stern.de/wirtschaft/unternehmen/unternehmen/:Bestechungsskandal-Wo-Jaguar/579202.html
53 http://e24.no/arkiv/article1252468.ece.
54 The verdict is from the District Court of Oslo, 29 September 2005, ref TOSLO-2004-99016.
55 Investigative report from the Dalseide Committee:
http://odin.dep.no/filarkiv/284017/Granskningsrapport_IKT-kontrakter.pdf
56 Dagens Næringsliv, 6 July 2007; on file with the Council.
57 Press release from TI Deutschland: http://www.transparency.de/Trennung-von-Siemens.978.0.html?&no_cache=1&sword_list[]=Siemens
58 Counterproposal to the general assembly at Siemens: http://www.siemens.com/Daten/siecom/HQ/CC/Internet/Investor_Relations/WORKAREA/hv_ed/templatedata/Deutsch/file/binary/Gegenantraege2007_1425327.pdf
59 Der Spiegel: http://www.spiegel.de/wirtschaft/0,1518,462356,00.html
60 http://www.zeit.de/online/2007/35/siemens-ermittler
61 http://www.manager-magazin.de/unternehmen/artikel/0,2828,450641,00.html
62 For example Rudolf Vogel: http://www.stern.de/wirtschaft/unternehmen/unternehmen/:Siemens-Mit-Stumpf-Stiel/577903.html and Per-Yngve Monsen http://e24.no/naeringsliv/article1414801.ece.
63 Heinrich von Pierer became CEO in 1992 and chairman of the board in 2005.
64 Handelsblatt: htt//www.handelsblatt.com/news/Unternehmen/Industrie/_pv/grid_id/1048180/_p/200038/_t/ft/_b/1186555/default.aspx/korruption-ist-bei-siemens-nichts-neues.html
ZDF: http://www.heute.de/ZDFheute/inhalt/23/0,3672,4089591,00.html

65 Die Welt: http://www.welt.de/wirtschaft/article702722/Ex-Siemens-Vorstand_packt_aus.html?print=yes

66 Süddeutsche Zeitung: http://www.sueddeutsche.de/wirtschaft/artikel/345/99246/print.html
Stern: http://www.stern.de/wirtschaft/unternehmen/unternehmen/:Siemens-Schmiergeld-Aff%E4re-Katastrophe-Katastrophe/577353.html

67 Transparency International Deutschland: http://www.transparency.de/Trennung-von-Siemens.1012.0.html

68 Transparency International's membership conditions: http://www.transparency.de/Selbstverpflichtung-serklaerung.67.0.html

69 News-report: http://www.news-report.de/nachricht/Politik/1179935550/Siemens_arbeitete_Jahre_mit_Anti-Korruptionsorganisation_EITI_zusammen.html

70 When the Securities and Exchange Commission (SEC) pointed out that it is unfortunate to have the chairman of the board as leader of the audit committee, Gerhard Cromme resigned from his position as leader of the committee: http://www.compliancemagazin.de/markt/personen/thyssenkruppsiemens240407.html. According to information in the annex to the letter sent to the Council, Gerhard Cromme is now leader of the board's compliance committee: "Legal proceedings – Third Quarter of Fiscal 2007" p 4.

71 http://www.siemens.com/index.jsp?sdc_p=fml70su01457353ni1142524pc132z3&sdc_bcpath=1127184.s_0%2C&sdc_sid=21248909866&

72 According to an international survey 40% of corruption is discovered through whistle-blowing. In comparison, company auditors only disclose some 10% of such practices: www.kpmg.no/arch/_img/9282037.pdf page 4.

73 At the same time the internal guidelines establish confidentiality obligations for the employees: "Every employee should be concerned with the good reputation of Siemens in each country. In all aspects of performing his/her job, every employee must focus on maintaining the good reputation of, and respect for, the Company." It may prove difficult to blow the whistle without breaking this rule. The following is said about confidentiality: "Confidentiality must be maintained with regard to internal corporate matters which have not been made known to the public. As an example, this includes details concerning the Company's organization and equipment, as well as matters of business, manufacturing, research and development, and internal reporting figures. The obligation to maintain confidentiality shall extend beyond the termination of the employment relationship", Siemens Business Conduct Guidelines, articles A2 and E2.

74 http://www.focus.de/finanzen/news/aufklaerer_nid_41222.html

75 In January 2007, Siemens also employed a former public prosecutor, Daniel Noa, as new leader of the compliance office. After six months he resigned, and his successor, Peter Solmssen, was appointed in October 2007. http://www.compliancemagazin.de/markt/personen/siemens050107.html.

76 Financial Times, 2 October 2007, the article "Siemens prepares for its cultural revolution", by Richard Milne, presents information which is said to come from "senior directors"; on file with the Council.

77 Members of the group that will monitor the divisions appear to be: Mr. Löscher himself, the CFO, the directors of technology, compliance and human resources, as well as heads of the three new "super divisions", Energy, Infrastructure and Health Care; see footnote 76.

78 With the exception of the newly instated Peter Solmssen, who is to be both a board member and a director, and Mr. Feldmayer, who at his own request is said to have left his position owing to accusations of his involvement in the AUB case; http://www.reuters.com/article/marketsNews/id-USWEB382720070328.

79 Siemens's reply to the Council, in the annex "Legal Proceedings – Third Quarter of Fiscal 2007", p 2; on file with the Council.

80 http://www.spiegel.de/international/business/0,1518,druck-496908,00.html

81 See footnote 79, p 4.

82 See footnote 79. The annex "Legal proceedings – Third Quarter of Fiscal 2007", p 2.

83 "Ad-hoc Announcement according to § 15WpHG (Securities Trading Act)", Siemens website, 4 October 2007: http://w1.siemens.com/en/investor/index.htm.

84 NOU 2003:22, p 35.

85 See footnote 84.

86 http://www.spiegel.de/wirtschaft/0,1518,506486,00.html

Letter to the Ministry of Finance

Oslo, September 3rd, 2008
(Published March 2009)

The Council on Ethics' recommendation to exclude Siemens AG

We refer to the Ministry of Finance's letter of 5 May 2008, in which the Ministry requests the Council to comment on and assess new information on Siemens that has come to light after the Council, on 15 November 2007, submitted its recommendation to exclude Siemens from the GPF's portfolio. The Ministry's letter makes reference to new information available in Siemens' Annual Report, which was made public after the recommendation had been submitted. In this reply, the Council provides a summary of the main elements in its recommendation, followed by an account of the new information in Siemens' Annual Report. Finally, there is an appraisal of new information from other sources that have a bearing on the Council's conclusion in this case. The key question is whether Siemens' announced measures and other information that has emerged after the recommendation was submitted give reason to believe that there no longer is an unacceptable risk of contribution to future corruption.

1 The recommendation of 15 November 2007

The Council has worked on this case since the summer of 2006. In its recommendation for exclusion, dated 15 November 2007, the Council gave an account of Siemens' use of gross corruption. Moreover, the Council assessed the risk of future corruption. In view of Siemens' record of several convictions for corruption, numerous ongoing corruption investigations, as well as the extensive and systematic nature of the corrupt practices, the Council concluded that the Guidelines' criterion of gross corruption must be regarded as being met.

In its recommendation, the Council assessed the measures Siemens so far had announced in order to prevent future corruption. The company's chief executive and chairman had been replaced, and an ombudsman system had been established, as well as a Compliance Committee and a Disciplinary Committee. Moreover, a Legal and Compliance Executive had been recruited externally and protected communication channels had been created for whistle-blowers. Siemens had also engaged an American law firm, Debevoise and Plimpton, to carry out an internal investigation of the corruption accusations against the company. The law firm reports both to the Compliance Committee and to the SEC in the USA.[1]

The company had also announced organisational measures designed to reduce the risk of corruption, such as the centralization of payments to control the cash flow. New consultancy agreements were to be approved by staff at various levels, and large contracts ought to be signed at the division level and not nationally. Management restructuring had been announced as well.

Based on an overall assessment, the Council found that the measures did not seem sufficiently far-reaching to reduce the risk of future corruption. Previous experiences with the company's anti-corruption efforts had a significant bearing on this evaluation. In the early 1990s, corruption was revealed at Siemens, but despite extensive anti-corruption measures in the wake of this scandal, the corrupt practices prevailed. The company's reaction to the new revelations was, in the Council's view, characterized by an underestimation of the seriousness of the case.

In its assessment, the Council attached importance to the fact that persons who according to their position should have acted in order to prevent the corrupt practices continued in key company positions despite their failure to do so. At the time, it was also unclear whether the company would impose sufficiently strict sanctions on employees who were involved in corruption, such as reporting them to the police.

2 New information in Siemens' Annual Report 2007

According to the Annual Report released in November 2007, the company has implemented various measures to improve its compliance procedures and control mechanisms as a result of the corruption accusations. The majority of these measures had already been made public by the time the Council submitted its recommendation and were thus assessed in the recommendation. Some new measures are nevertheless presented in the Annual Report, and these are briefly described below.

According to the Annual Report, the company's Audit and Compliance Committee was carrying out an internal analysis of the company's compliance procedures and internal control mechanisms with a view to uncovering possible weaknesses. Moreover, all the company's auditing functions had been merged into one Corporate Finance Department. A Chief Audit Officer was appointed for the department, with an independent reporting line to the Audit Committee and its leader.[2] A new Chief Compliance Officer (CCO) had been appointed as the former CCO was dismissed in August 2007.[3] The CCO heads the compliance organisation and reports directly to the board member responsible for compliance as well as to the chairman. In addition, a training programme had been created, aimed at staff at various levels.[4] As of 3rd quarter 2008, 30,000 employees are supposed to have participated in compliance courses, and 108,000 have taken an online course in the same area.[5]

The Annual Report also announced that an amnesty programme would be launched in December 2007, offering the employees a three-month period to report on corruption in the company without the risk of being sued for damages or dismissed, even if they had been personally complicit in the corrupt practices. However, the company reserved the right to impose other disciplinary sanctions on employees, and the amnesty would not prevent criminal prosecution if the whistle-blower had been guilty of any criminal offence.[6] According to Siemens, 123 employees have made use of the offer as of 3rd quarter 2008, and among these 67 have been granted amnesty.[7]

3 Other new information

In November 2007, the new CEO, Mr. Löscher, declared that the scope of bribery now seemed to have been uncovered in its entirety.[8] In the period following his statement, the Munich prosecutors have extended the investigation to include five new units, and investigations have been launched in several new countries.[9] Debevoise and Plimpton has found

proof of corruption and other serious violations in nearly all the investigated units.[10] The corruption accusations have also been shifted further up the system. The Public Prosecutor's Office in Munich has given 270 present and former Siemens employees status as suspects in the case.[11]

Siemens' management decided in April this year to bring a civil claim for damages against eleven former directors at Siemens, including Mr. von Pierer, former CEO and chairman, and Mr. Kleinfeld, former CEO, because they had neglected their organisational and supervisory duties with regard to the prevention of illegal business practices and bribery.[12]

To prevent corruption, the company has also announced that 450 anti-corruption experts will be allocated to its units.[13] After the Annual Report was presented, it has emerged that Siemens has centralized the compliance organisation in order to strengthen its compliance processes,[14] seeing as the company has previously faced criticism that this structure was very fragmented and understaffed. The mandate of those responsible for compliance has also been very unclear and restricted, something that has hamstrung the compliance organisation as a whole.[15] Moreover, compliance department staff has had a conflicting mandate in that on the one hand, they were expected to take care of the company's anti-corruption efforts, whereas on the other, they had to defend the company externally if corruption cases became known to the public.[16] Based on the information from Siemens, it seems unclear whether the centralization of the compliance organisation has changed this. According to Siemens, the new compliance organisation has been established at the company headquarters, but the various company units and regions are working on implementing the new structure. Previously, the responsibility for compliance did not lie with the corporate management, but this was changed in October 2007 when Siemens created a board position for legal and compliance matters. It is also said that compliance-related goals have been integrated into the system of incentives for top management in the company's various units.[17]

According to Siemens, the general organisational structure is now transparent and is supposed to have clear areas of responsibility based on explicit commando lines. In part, this has been done by merging the company's former eleven divisions into three new main sectors called Health, Energy and Industry. In this connection, part of the management has been replaced. Some of the resigned management members have, however, entered into consultancy agreements with Siemens instead.[18] Three of the new management members have been recruited externally; the remaining five come from various units within Siemens. On the board, eight out of twenty members have been replaced.

4 The Council's assessment

In its recommendation of 15 November 2007, the Council advocated exclusion, concluding that pursuant to the Guidelines there was gross, far-reaching, and systematic corruption at Siemens, as well as an unacceptable risk that the Fund, through its ownership in Siemens, would contribute to future corruption. The question is whether there still is an unacceptable risk of contributing to future gross corruption, considering the new anti-corruption measures that have been implemented after the recommendation for exclusion was submitted on 15 November 2007.

The Council sustains that since November 2007 the scale of uncovered corruption at Siemens has increased significantly, something that is shown through investigations of new units in several new countries. At present, a large number of Siemens' units are under

investigation, and in the Munich case alone 270 current and former Siemens employees are at the moment suspected in the case. The criminal proceedings are expected to continue during the autumn of 2008. In other words, the corruption has turned out to be more far-reaching and systematic than what the Council took as a point of departure for its recommendation of 15 November 2007.

Since the corruption case was revealed, Siemens has introduced several measures that may be expected to contribute to reducing the risk of further corruption in the company. In particular, the Council will call attention to the creation of protected communication channels for whistle-blowing. It is crucial that people within the company are able to report on corruption without running the risk that the alert may be traced back to them. As pointed out in the recommendation, several former employees at Siemens have come forward with accusations of corrupt practices in the company without the management taking it seriously. In some cases, Siemens is said to have dismissed the whistle-blower and offered him consultancy assignments in return for not taking the case further.[19]

The external analysis of compliance procedures and control mechanisms, and the company's centralization of the compliance organisation seem positive. The court case in Munich has revealed that several lawyers in the Compliance Office were aware of the corruption, but they did not have a mandate to initiate investigations or impose sanctions related to breaches of internal rules, and therefore nothing was done.[20] In order to prevent future corruption, it is now of great importance that the company manages to establish a functioning compliance organisation with clear-cut areas of responsibility and commando lines. However, the Council notes that the Audit Committee is still made up of much the same persons who did not succeed in detecting ongoing corruption at the company before. In the Council's view, it is therefore uncertain whether the changes will lead to corruption now being detected.

Furthermore, some replacements have been made among management and board members. The Council finds that the decision to make former managers personally liable for damages related to the corrupt practices is a reaction which may have a preventive effect, indicating that the company tries to weed out the corruption. Nevertheless, the Council notices that Siemens has given some dismissed managers consultancy assignments after their dismissal.

As in the recommendation of 15 November 2007, the Council finds it pertinent to assess Siemens' new anti-corruption measures against the background of the corruption revelations in the 1990s, and the extensive anti-corruption measures that were implemented at that time.[21] The ongoing investigation has revealed that while these measures were being implemented in the 1990s Siemens' employees continued the practice of bribery to secure company contracts. When Siemens was listed on the New York Stock Exchange in 2001, a completely new compliance organisation was put in place to fulfil American requirements. Three years previously, Siemens had become a member of Transparency International, whose membership requirements include zero tolerance and active anti-corruption efforts. From the Munich court case it has emerged that employees were nonetheless asked to set up new and more ingenious systems for bribery.[22] The internal investigation has uncovered that in the period 2000 to 2006 EUR 1.3 billion have been spent on possible bribes to secure contracts for the company.[23] In view of these experiences, the Council still finds it uncertain whether current measures will be effective and sufficient to prevent future corruption in the company.

The Council also makes a note of the fact that the new corruption revelations did not come as a result of internal investigations where the company itself notified the authorities, but because of the public prosecutor's raid at Siemens' headquarters in Munich. The Council finds that the company has shown a passive attitude in face of the detected corruption. It has only confessed insofar as it has been exposed in the media. Only after the SEC initiated a formal investigation of the company did Siemens feel obliged to act and implement various anti-corruption measures. It seems to be a characteristic trend that Siemens only starts the clean-up once it is forced to, and not on its own initiative.

As a multinational company with more than 400,000 employees in 190 countries, Siemens faces great challenges when it comes to changing its corporate culture. The extensive scale of corruption cases and the reluctant way in which the company has dealt with the detected instances of corruption, together with CEO Peter Löscher's misjudgement of the scope as late as November 2007, imply that the risk of future corruption still seems unacceptably high. The Council therefore maintains its recommendation to exclude Siemens AG from the GPF's portfolio.

Gro Nystuen	Andreas Føllesdal	Anne Lill Gade	Ola Mestad	Bjørn Østbø
(Chair)	(sign.)	(sign.)	(sign.)	(sign.)
sign				

Notes

1 Securities and Exchange Commission.
2 Siemens' Annual Report 2007, page 166.
3 Compliance Magazin, 11 September 2007: "Siemens: Schäfer klagt gegen Kündigung": http://www.compliancemagazin.de/markt/personen/siemens110907.html
4 Siemens' Annual Report 2007, page 166.
5 Siemens' Fortschrittsbericht (Q3 FY 2008): http://w1.siemens.com/responsibility/pool/compliance/q3-08-compliance-progress-report-d.pdf
6 Siemens' Annual Report 2007, page 167.
7 Siemens' Fortschrittsbericht (Q3 FY 2008): http://w1.siemens.com/responsibility/pool/compliance/q3-08-compliance-progress-report-d.pdf
8 Der Spiegel, 8 November 2007: "Siemens straft 470 Mitarbeiter ab" http://www.spiegel.de/wirtschaft/0,1518,516091,00.html
9 Siemens' legal proceedings - third quarter fiscal 2008: http://w1.siemens.com/press/pool/de/events/2008-q3/2008-q3-legal-proceedings-e.pdf
10 Siemens press release 29 April 2008: http://w1.siemens.com/press/en/pressrelease/2008/corporate_communication/axx20080447.htm
11 Die Welt, 26 May 2008: "Jetzt packt Reinhard S. im Siemens-Skandal aus": http://www.welt.de/wirtschaft/article2033882/Jetzt_packt_Reinhard_S._im_Siemens-Skandal_aus.html
12 Siemens' legal proceedings - third quarter fiscal 2008: http://w1.siemens.com/press/pool/de/events/2008-q3/2008-q3-legal-proceedings-e.pdf Der Spiegel, 29 July 2008: "Siemens verlangt Schadenersatz von Pierer und zehn Ex-Vorstandsmitgliedern", http://www.spiegel.de/wirtschaft/0,1518,568751,00.html
13 Siemens Compliance Fortschrittsbericht (Q2 FY 2008): http://w1.siemens.com/press/pool/de/events/2008-q3/2008-q3-compliance-fortschrittsbericht-d.pdf
14 Compact Quarterly, 14 July 2008: "A new Direction for Siemens" by Andreas Pohlmann, CCO, Siemens. http://www.enewsbuilder.net/globalcompact/e_article001149152.cfm?x=bd2Hd2m,b4NW9bGV,w
15 Der Spiegel, 16 August 2008: "Neue Studie belastet Ex-Siemens-Vorstand": http://www.spiegel.de/wirtschaft/0,1518,572482,00.html Witness statements from the lawsuit against Reinhard S. in Munich, June 2008. The Secretariat's notes from the courtroom are on file with the Council.
16 Der Spiegel, 16 August 2008: "Neue Studie belastet Ex-Siemens-Vorstand": http://www.spiegel.de/wirtschaft/0,1518,572482,00.html
17 Compact Quarterly, 14 July 2008: "A new Direction for Siemens" by Andreas Pohlmann, CCO, Siemens: http://www.enewsbuilder.net/globalcompact/e_article001149152.cfm?x=bd2Hd2m,b4NW9bGV,w .
18 Siemens press release 28 November 2007: http://w1.siemens.com/press/en/pr_cc/2007/11_nov/axx20071115.htm Süddeutsche Zeitung, 25 June 2008: "Beratervertrag mit Ex-Vorstand Sharef gekündigt": http://www.sueddeutsche.de/wirtschaft/artikel/128/182561/
19 Stern, Heft 49, 2006: "Mit Stumpf und Stiel": http://www.stern.de/wirtschaft/unternehmen/unternehmen/:Siemens-Mit-Stumpf-Stiel/577903.html Per-Yngve Monsen, 2008, "Muldvarp i Siemens".
20 Witness statements from the lawsuit against Reinhard S. in Munich, June 2008. The Secretariat's notes from the courtroom are on file with the Council.
21 Handelsblatt, 15 December 2006: "Korruption ist bei Siemens nichts Neues": http://www.handelsblatt.com/unternehmen/industrie/korruption-ist-bei-siemens-nichts-neues;1186555 ZDF, 12 December 2006: "Siemens räumt Korruption ein": http://www.heute.de/ZDFheute/inhalt/23/0,3672,4089591,00.html
22 Witness statements from the lawsuit against Reinhard S. in Munich, June 2008. The Secretariat's notes from the courtroom are on file with the Council. Die Welt, 26 May 2008: "Siemens-Manager belastet seine Vorgesetzten": http://www.welt.de/wirtschaft/article2034809/Siemens-Manager_belastet_seine_Vorgesetzten.html
23 Der Tagesspiegel, 9 November 2007 "Siemens schmierte mit 1,3 Milliarden": http://www.tagesspiegel.de/wirtschaft/Unternehmen-Siemens-Schmiergeldskandal;art129,2416493

To the Ministry of Finance

Oslo, February 15th, 2008
(Published September 9th, 2008)

Recommendation on exclusion of Rio Tinto plc. and Rio Tinto Ltd.

Contents

1 Introduction

At a meeting held on 25 June 2007, the Council on Ethics for the Government Pension Fund – Global decided to assess whether the investments in the company Rio Tinto may imply a risk of the Fund contributing to severe environmental damage under the Guidelines, point 4.4.

At the end of 2007, the Government Pension Fund – Global held shares worth some NOK 4,419 million in Rio Tinto Plc. and upwards of NOK 428 million in Rio Tinto Ltd.

Rio Tinto, an international mining group, is Freeport McMoRan Copper&Gold Inc.'s[1] joint venture partner in the Grasberg mine in Indonesia. On 15 February 2006, the Council on Ethics submitted a recommendation to the Ministry of Finance proposing the exclusion of Freeport from the Government Pension Fund's investment universe.[2] At Grasberg, Freeport mines copper using a natural river system for tailings disposal. Moreover, there is a great risk that acid rock drainage from the company's waste rock and tailings dumps will cause lasting ground and water contamination. The Council found that continued ownership in Freeport would imply an unacceptable risk of the Fund contributing to severe environmental damage.

The Council has assessed whether Rio Tinto, as Freeport's joint venture partner, is contributing to the environmental damage caused by the mine (Chapter 4), and whether the Fund's investments in Rio Tinto will imply an unacceptable risk of the Fund in turn contributing to severe environmental damage (Chapter 5).

As prescribed by the Guidelines, point 4.5, the Council has contacted Rio Tinto through Norges Bank, requesting the company to comment on its participation in the mining operation and on the basis of the Council's recommendation for exclusion. Norges Bank received the company's reply on 21 December 2007. Rio Tinto's response confirms the company's investments and role in the Grasberg mine, but disputes the Council's assessment that the mining operation causes severe environmental damage. The company regards the discharge as not being environmentally harmful, and the environmental damage as not being irreversible. However, the company fails to present new information that alters the Council's perception of the environmental damage in this case.

The Council has reached the conclusion that the Ethical Guidelines, point 4.4, second clause, third alternative, provide grounds for recommending the exclusion of Rio Tinto due to an unacceptable risk that the Fund, through continued ownership in the company, will contribute to ongoing and future severe environmental damage.

2 Background

The Rio Tinto Group is an international mining corporation that mines and processes aluminium, copper, diamonds, energy products, gold, industrial minerals, and iron ore. Its main operations are concentrated in Australia and North America, but the company also has considerable production in South America, Asia, Europe, and southern Africa.[3] The Rio Tinto Group is made up of the British company Rio Tinto Plc. and the Australian company Rio Tinto Ltd.[4] Being run as a single economic entity, the Group is headquartered in London.[5]

Freeport owns and operates the Grasberg mine, a large mining complex located in the province of Papua (formerly known as Irian Java), in the western part of the island of New Guinea.[6] The mine is operated by the subsidiary PT Freeport Indonesia, in which Freeport McMoRan has a 90.64 per cent stake, and the Indonesian state owns 9.36 per cent.

In 1996, Rio Tinto, at the time RTZ, formed a joint venture with PT Freeport Indonesia. The joint venture agreement gives Rio Tinto a 40 per cent interest in the Grasberg 1995 mine expansion.

On 15 February 2006, the Council on Ethics submitted a recommendation to the Norwegian Minister of Finance proposing the exclusion of Freeport McMoRan Copper & Gold from the Pension Fund's investment universe due to an unacceptable risk of the Fund contributing to severe environmental damage. The Council has assessed whether the Fund's investment in Rio Tinto, as Freeport's partner in the Grasberg joint venture, involves an equally unacceptable risk of the Fund contributing to severe environmental damage.

The Grasberg mine

Freeport signed its first contract for the mining operations with the Indonesian government in 1967. Through the contract, Freeport received exclusive rights to run mining operations within a 10 sq km area in Ertsberg, which is part of the Grasberg complex. In 1988, the Grasberg copper and gold reserves were discovered, and production began in 1990. The contract was renewed in 1991 and is valid for 30 years, with the possibility of a 10-year extension. The mine has the world's largest gold reserve and the second largest copper reserve. It is expected that the mine will be profitable until 2041, provided that new mines, among which a new quarry within the mining complex, are opened.[7]

The Grasberg mine is situated 4,000 m above sea level, and borders on the Lorentz National Park, a UNESCO heritage site. The mine is an open pit mine, but also includes zones of underground operations. In 2004, about 640,000 tons of rock was mined, yielding approximately 185,000 tons of ore per day. Annual production rates are expected to range between 600,000 and 750,000 tons per day through 2015.[8] According to the company this will give a daily output of 240,000 tons of ore.[9] Overburden and waste rock will consequently amount to 360,000 – 510,000 tons a day. In 1997, Freeport received environmental approval to expand the daily milling rate to 300,000 tons of ore.[10]

The ore containing gold, silver, and copper is transported by conveyor belt to a flotation plant situated 1,000 meters below the mine. The processing yields around 9,000 tons per day of copper concentrate.[11] On a daily basis, the tailings, amounting to 230,000 tons, are discharged directly into the Aghawagon River, which again feeds into the Otomona River. The Otomona River runs through a plain covered by rainforest before flowing into the Ajkwa Estuary. [12] The greater part of the tailings settles on the flood plain, while the remainder reaches the estuary where it is poured into the Arafura Sea, being dispersed along the coast by tidal waters and ocean currents.

Overburden and waste rock are disposed of in two valleys adjacent to the mine, amounting to 360,000–510, 000 tons per day.[13] According to existing plans, a total of some 3 billion tons of rock will be extracted during the mine's life cycle.[14] The waste rock now covers an area of approximately 8 sq km and is up to 300 m deep in some places.[15] Acid rock drainage from the deposit sites was first observed in 1993,[16] and leaching into the groundwater has also been reported,[17] causing the pollution of springs in the Lorentz National Park, among

others.[18] Acid rock drainage is considered one of the most serious mining-related environmental problems across the world. It occurs when sulphurous minerals come into contact with both water and air, forming sulphuric acid. In this process the heavy metals that are naturally present in the ore may be mobilized. The result is the generation of acid water containing heavy metals, which may lead to considerable pollution of groundwater and water systems. Once this process has been initiated, it is irreversible and may go on for centuries.

3 The Council's assessment of environmental damage associated with the Grasberg mine

In its assessment of whether there is an unacceptable risk that the Fund may contribute to severe environmental damage the Council will emphasize whether:

- The damage is significant.
- The damage causes irreversible or long-term effects.
- The damage has considerable negative consequences for human life and health.
- The damage is the result of violations of national laws or international standards.
- The company has neglected to act in order to prevent the damage.
- The company has failed to implement adequate measures to rectify the damage.
- It is probable that the company's unacceptable practice will continue.

Included in the Council's recommendation to exclude Freeport is a detailed description of the mining operation, the disposal of tailings and waste rock, as well as the Council's assessment of the environmental damage this entails. The main points in the Council's assessment are summarized below:

In the Council's opinion, riverine tailings disposal is undoubtedly the major environmental problem associated with the mining operation today as the daily disposal of 230,000 tons of tailings generates severe and long-term environmental damage. Furthermore, the Council deems it probable that acid rock drainage from the stockpiles will constitute an increasing and considerable environmental problem with potentially far-reaching harmful effects in the future. Consequently, the Council takes as its point of departure that the damage is severe and that there is an unacceptable risk that the environmental impact caused by the mining operation is lasting and irreversible.[19]

The Council also evaluated the operations with regard to national legislation and international norms.[20] In its reply to the Council, Freeport claimed to comply with all national environmental regulations.[21] In this context the Council found it relevant to point out that the environmental standards required by Indonesian authorities fall significantly short of current rules in Freeport's as well as Rio Tinto's home countries, where riverine disposal is prohibited. Weak environmental legislation and lenient enforcement indicate that there is no system in place to reduce the damage caused by mining, something that contributes to further aggravate the risk of severe environmental damage.

The Council placed great importance on the fact that riverine disposal is internationally considered an unacceptable discharge method for mine waste, due to the environmental damage it provokes. The World Bank no longer finances projects which make use of riverine tailings disposal. The International Finance Corporation also does not accept this practice.[22] Moreover, the World Bank's "The Extractive Industries Review" (EIR) from 2003[23] and the international project "Mining, Minerals and Sustainable Development" (MMSD) [24] advise

against riverine disposal because of the environmental damage it entails. The EIR states: "Scientific evidence clearly demonstrates that this method of waste disposal causes severe damage to water bodies and surrounding environments… In practice, this technology is being phased out due to recognition of its negative consequences."[25]

On these grounds, the Council judged Freeport's practice as clearly in breach of accepted international norms. The Council is of the opinion that Freeport through this conduct is taking advantage of the low environmental standards and the lenient law enforcement in the country where it operates.

Freeport has repeatedly claimed that riverine tailings disposal is the best solution, given the difficult terrain, the earthquake threat and the rainfall. [26] Low infrastructure and maintenance costs are the main advantages attributed to riverine disposal. The Council finds it reasonable to assume that this has been a decisive factor for Freeport, an assumption supported by the company's previous marketing of itself as 'the world's lowest-cost copper producer.'[27] The Council is of the opinion that Freeport knew riverine disposal could cause severe damage to the natural environment, but that the company and the Government attached little importance to environmental concerns.

4 Rio Tinto's involvement in the Grasberg mine

In 1995, RTZ, currently Rio Tinto,[28] and Freeport McMoRan Copper & Gold signed a letter of intent to form a joint venture related to the expansion of the Grasberg mine. As previously mentioned, the joint venture itself was established in 1996. The agreement between the two companies stated that RTZ would finance the mining expansion and future exploration projects in return for a 40 per cent dividend-paying stake. This implied that RTZ would receive 40 per cent of the revenues once the production increased from 80,000 tons a day to 118,000 tons a day. RTZ paid USD 184 million for the expansion.[29] Additionally, RTZ brought USD 500 million in new capital to Freeport, giving Rio Tinto a 12 per cent stake in Freeport McMoRan.[30]

Freeport's own description of the joint venture agreement presented to the Security and Exchange Commission (SEC) states that *"RTZ and FCX will establish an Exploration Committee to approve exploration expenditures [] RTZ will pay for all further exploration approved by the committee until RTZ has paid an aggregate of $100 million."* Both parties will share additional expenditures in proportion to their respective stakes. *"For future expansion projects in Area A of PT-FI's COW, [31] [] RTZ will provide up to a maximum of $750 million for 100per cent of defined costs to develop such projects. RTZ will receive 100per cent of incremental cash flow attributed to the expansion projects until it has received an amount equal to the funds it has provided plus interest based on RTZ's cost of borrowing."*[32]

According to Freeport, the expectations were high regarding the cooperation with RTZ: *"RTZ is expected to contribute substantial operating and management expertise to FCX's business. Representatives of RTZ America, in proportion to RTZ America's ownership in FCX, will be nominated to the FCX Board of Directors. In addition, RTZ and FCX will exchange management personnel and establish an Operating Committee, consisting of personnel of FCX and RTZ, through which the policies established by the Board of Directors of FCX will be implemented and operations will be conducted."*[33]

Robert Wilson, RTZ's CEO at the time, expressed himself thus: *"We are delighted to have this unique opportunity to participate in the future development of Grasberg, one of the world's most remarkable mineral resources, and in the exceptional exploration potential of Irian Jaya. Grasberg is a large and complex operation, but given RTZ's experience in other major open pit copper orebodies such as Bingham Canyon, Palabora and Escondida, we anticipate considerable mutual benefit from combining our skills in this way."*[34]

In 2004, Rio Tinto sold its stake in Freeport, but according to the company's website this does not affect the joint venture: *"Rio Tinto remains committed to the Grasberg Joint Venture, which in 2003 contributed $104 million to Rio Tinto's adjusted earnings of $1,382 million. The management of the Joint Venture will not change as a result of this transaction."* In 2006, the earnings from the mine totalled USD122 million, a USD 110 million reduction compared with the previous year's result.[35] Rio Tinto is still represented on the joint venture's operating committee.

Rio Tinto's 40 per cent share of production exceeding 118,000 tons lasts until 2021. After this the company has a 40 per cent share in the whole output at the Grasberg mine (Block A). According to Freeport, Rio Tinto also has *"a 40 per cent interest in PT Freeport Indonesia's Contract of Work and Eastern Minerals' Contract of Work. In addition, Rio Tinto has the option to participate in 40 per cent of any of our other future exploration projects in Papua."*[36] To the Council's knowledge, Rio Tinto has so far exercised its option to participate in all exploration projects.

Since 1996, Rio Tinto has made significant investments in the Grasberg mine; these amount to an estimated USD 1 billion.[37]

5 The Council's assessment

5.1 Rio Tinto's reply to the Council's enquiry

In accordance with the Guidelines, the Council sent a draft recommendation, through Norges Bank, to Rio Tinto on 4 December 2007 in order to give the company an opportunity to comment on the basis of the Council's recommendation. The company responded to the Council's enquiry in a letter dated 17 December 2007.

In the letter, Rio Tinto confirms its role and participation in the Grasberg mine: *"While PT Freeport Indonesia is responsible for the management of the Grasberg operation, Rio Tinto engages with Freeport and positively influences outcomes on a wide range of operational, community and environmental issues."* It also states that: *"Rio Tinto maintains the highest environmental standards at all its operations wherever they are located, and it contributes technical support to its joint venture partners to ensure that the most appropriate solutions are identified and implemented."* [38]

However, the company disputes the Council's assessment of environmental impact. Rio Tinto claims that the tailings consist of ground natural rock and are not harmful to the environment. The deposition area on the flood plain is, according to the company, *"an engineered, managed system for deposition and control."* Rio Tinto also argues that even before the discharge of tailings started, the river had formed one of Papua's largest sediment deposition areas (depocentres).

Rio Tinto also points out that considerable revegetation is taking place in the deposition area on the flood plain, partly as a result of Freeport's reclamation programme and partly

naturally. According to the company, there is also natural ecological succession, both inside and outside the deposition area. As an example it is mentioned that sediment deposited at the river mouth forms new land where new species establish themselves, including mangrove trees.

In the same way as Freeport, Rio Tinto emphasizes that riverine tailings disposal is the only viable tailings disposal alternative because of high rainfall and earthquake threats.

In the Council's view, it may seem as if Rio Tinto is trying to play down the effects of discharging 230,000 tons of tailings every day into a natural river system, a procedure that cannot be compared to natural erosion processes. Even if the tailings contain high levels of ground rock, this does not mean that the discharge is harmless. When rock is crushed, its physical properties also change, which may trigger the release of metal components. In addition to the purely physical effects of elevated sediment content in the water, the tailings therefore release a considerable amount of heavy metals into the environment, particularly copper. In practice this has led to the destruction of most aquatic life in the waters affected by the discharge.[39] Elevated levels of heavy metals in the sediment have also been detected. There is a considerable risk that the heavy metals enter the food chain, something that may have significant long-term effects on the ecosystems far away from the actual deposition area.[40]

It is hard to attach importance to the company's assertions that considerable revegetation is taking place as this is not quantified. On its website, Freeport states that 50 hectares of the deposition area had been reclaimed in 2006. The Council is not aware of the size of the areas where vegetation has established itself naturally. The Council has learnt that Freeport carries out plant trials and research on natural revegetation, and that the company considers these trials to be very promising. Nevertheless, the Council does not find it probable that the affected areas may be restored to their original state. Neither does the Council find it substantiated that successful plant trials on a small scale may ensure sustainable reclamation of an area covering 230 sq km (23,000 hectares), not least considering that the overburden consists of sand and soil up to 17 meters deep with high heavy metals content and lacking in important plant nutrients.

The Council would also like to point out that the risk of severe and irreversible environmental damage associated with acid rock drainage from the waste rock stockpiles was part of the basis for its assessment. These are issues that Rio Tinto does not address. Acid rock drainage is occurring. Groundwater contamination has been detected in the highlands, and there is also a risk of acid rock drainage developing in the deposition area in the lowlands.

In the Council's view, Rio Tinto's reply presents little new information regarding the environmental impact caused by the operation. Thus, the Council does not find reason to make a new environmental assessment.

5.2 The Council's assessment of Rio Tinto's complicity in severe environmental damage

Based on available information from the companies, the Council is satisfied that Rio Tinto, through its participation in the joint venture with Freeport, is a considerable part-owner of the Grasberg mine.

Rio Tinto's capital supply has evidently played a substantial part in bringing about the expansions at the Grasberg mine. The amount of tailings discharge has increased accordingly, being the cause of the environmental damage which formed the basis of the Council's recommendation to exclude Freeport McMoRan.

In the Council's view, Rio Tinto seems, through its participation on the joint operating committee, to have cooperated closely with Freeport in the areas of mine management and operations, technology and analyses, including environmental impact reports.[41] This is also being confirmed in Rio Tinto's letter to the Council. The Council therefore deems it probable that Rio Tinto during the years of cooperation has exerted considerable influence on decisions regarding tailings management and disposal of waste rock, which in turn have been crucial to the environmental damage.

The Council takes as its point of departure that Rio Tinto, through its participation in the joint venture, has played, and still plays, an active role in the operation and development of the Grasberg mine, and that the company therefore is directly responsible for the severe environmental damage that the mining operation is, and will be, inflicting.

Rio Tinto has a considerable share of the mine's production, and this will increase significantly after 2021. In view of the investments made by the company, the Council infers that it has a long-term interest in the Grasberg mine, which is expected to remain profitable until 2041.

5.3 Conclusion

Based on the information at hand, the Council finds that Rio Tinto, through its participation in the joint venture and part ownership in the Grasberg mine, through its capital supply to the expansion of the mine and exploration activities, through its influence on mine management and operations, and through its present and future share of production, is directly involved in the severe environmental damage caused by the mining operations. There is thus an unacceptable risk that the Fund, by maintaining its investments in Rio Tinto, will contribute to severe environmental damage.

6 Recommendation

Based on this assessment of Rio Tinto's involvement in the Grasberg-mine, and in light of point 4.4 of the Ethical Guidelines, the Council recommends that Rio Tinto plc. and Rio Tinto Ltd. be excluded from the Government Pension Fund – Global's investment portfolio owing to an unacceptable risk that the Fund, through continued ownership in these companies, will contribute to present and future severe environmental damage.

Gro Nystuen	Andreas Føllesdal	Anne Lill Gade	Ola Mestad	Bjørn Østbø
(Chair)	(sign.)	(sign.)	(sign.)	(sign.)
sign				

Notes

1 In this paper also referred to as Freeport.
2 See the Council's recommendation on the exclusion of Freeport McMoRan Copper&Gold Inc, available at the Council on Ethics' website, www.etikkradet.no
3 http://www.riotinto.com/whoweare/business_overview.asp
4 http://www.riotinto.com/whoweare/business_overview.asp
5 http://www.riotinto.com/investors/shareholder_services.asp "The two companies are joined in a 'dual listed companies' (DLC) structure as a single economic entity, called the Rio Tinto Group." According to Rio Tinto's home page the two companies are "managed as a single economic unit, even though both companies continue to be separate legal entities with separate share listings and share registers."
6 New Guinea is the World's second biggest island. One half of it, Papua, is Indonesian territory, whereas the other half belongs to Papua New Guinea.
7 Freeport-McMoRan Copper&Gold Inc. Form 10-K Filings to the Stock and Exchange Commission (SEC) 2004, p. 8; available at http://www.sec.gov/Archives/edgar/data/831259/000083125905000021/fcx200410-k.htm
8 See footnote 7, p.11, Freeport 2006: Response of FCX to the Draft Report by the Advisory Council on Ethics for the Norwegian Government Petroleum Fund, p. 2. In its reply to the Council, Freeport states that after 2015 it expects the production of ore to be reduced to 200,000 tons per day and the open-cast mining to cease. Underground mining does not produce overburden.
9 Freeport 2006: Response of FCX to the Draft Report by the Advisory Council on Ethics for the Norwegian Government Petroleum Fund, p. 2.
10 Freeport-McMoRan Copper&Gold Inc. Form 10-K Filings to the Stock and Exchange Commission (SEC) 2004, p. 23.
11 Mining for the Future, Appendix J: Grasberg Riverine Disposal Case Study. Commissioned by the International Institute for Environment and Development, April 2002; available at http://www.iied.org/mmsd/mmsd_pdfs/068c_mftf-j.pdf
12 An estuary is a transition zone between the river mouth and the sea where freshwater from the river is mixed with more saline seawater. Low flow contributes to the deposition of finer sediments that often form a delta. Estuaries are valuable habitats for marine life, birds, and other fauna.
13 Freeport 2006: Response of FCX to the Draft Report by the Advisory Council on Ethics for the Norwegian Government Petroleum Fund, p 2; Freeport-McMoRan Copper&Gold Inc. Form 10-K Filings to the Stock and Exchange Commission (SEC) 2004, p. 11, based on Freeport's figures for rock extraction and ore production.
14 Based on information that the Council has had access to; on file with the Council. The source refers to Freeport's own documents: AMDAL 300K (1997) and the Freeport and Rio Tinto Environmental Risk Assessment (2002).
15 Perlez, Jane and Bonner, Raymond: Below a Mountain of Wealth, a River of Waste, New York Times 27 December 2005.
16 See footnote 15.
17 Bryce, Robert: Printed in Stone. The Austin Chronicle, 23. September 2005; available at http://www.austinchronicle.com/issues/dispatch/2005-09-23/pols_feature.html; IIED 2002: Mining for the Future. Appendix J Grasberg Riverine Disposal case study, s J-7; see also footnote 15.
18 See footnote 15.
19 The Council's recommendation on the exclusion of Freeport McMoRan, section 4.2, third paragraph.
20 See the Freeport McMoRan recommendation, section 4.2, paragraphs 5-10.
21 Freeport 2006: Response of FCX to the Draft Report by the Advisory Council on Ethics, p 10.
22 In the Freeport recommendation, the Council refers to IFC 2004: Environmental, Health and Safety Guidelines for Precious Minerals Mining. Draft. In December 2007 the IFC adopted new Environmental, Health and Safety Guidelines for Mining establishing that riverine tailings disposal is not considered good international practice (p. 7); available at http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/gui_EHSGuidelines2007_Mining/$FILE/Final+-+Mining.pdf
23 "The Extractive Industries Review was launched by the World Bank Group to discuss its future role

in the extractive industries with concerned stakeholders. The aim of this independent review was to produce a set of recommendations that will guide involvement of the World Bank Group in the oil, gas and mining sectors." See www.worldbank.org

24 "Mining, Minerals and Sustainable Development (MMSD) was an independent two-year process of consultation and research with the objective of understanding how to maximise the contribution of the mining and minerals sector to sustainable development at the global, national, regional and local levels. MMSD was a project of the International Institute for Environment and Development (IIED) commissioned by the World Business Council for Sustainable Development (WBCSD)" See http://www.iied.org/mmsd/

25 EIR 2004: Striking a Better Balance - The World Bank Group and Extractive Industries: The Final Report of the Extractive Industries Review, s 33; available at http://siteresources.worldbank.org/INTOGMC/Resources/finaleirmanagementresponse.pdf. In this context it may also be mentioned that the world's biggest mining company, BHP Billiton, has declared that it does not intend to use riverine tailings disposal in new projects. The reason for this is the extensive environmental damage caused by riverine tailings disposal at the OK Tedi mine in Papua New Guinea, which BHP co-owned with the Papua New Guinean government until 2002; see www.bhpbilliton.com

26 Freeport 2006: Response of FCX to the Draft Report by the Advisory Council on Ethics for the Norwegian Government Petroleum Fund, pp. 8 and 16. According to OPIC's review, other alternatives were presented in connection with the concession application, but were dismissed without sufficient and consistent analysis. See EnviroSearch International 1994: Environmental Review of P.T.Freeport Indonesia Copper and Precious Metals Mine Irian Jaya, Indonesia. Submitted to the Overseas Private Investment Corporation, p. 14; on file with the Council.

27 This statement was prominent on Freeport's home page http://www.fcx.com/aboutus/co-overvw.htm at the time when the Council issued its recommendation on Freeport. The homepage has been changed, but the statement can be found in Freeport's Annual Report from 2002; on file with the Council.

28 According to Rio Tinto's website "The RTZ Corporation (formerly The Rio Tinto-Zinc Corporation) was formed in 1962 by the merger of The Rio Tinto Company and The Consolidated Zinc Corporation. CRA Limited (formerly Conzinc Riotinto of Australia Limited) was formed at the same time by a merger of the Australian interests of The Consolidated Zinc Corporation and The Rio Tinto Company. RTZ and CRA were unified in December 1995. [...]In June 1997, The RTZ Corporation became Rio Tinto plc and CRA Limited became Rio Tinto Limited, together known as the Rio Tinto Group" , http://www.riotinto.com/whoweare/timeline.asp

29 http://findarticles.com/p/articles/mi_m0EIN/is_1996_Oct_11/ai_18754973

30 http://query.nytimes.com/gst/fullpage.html?res=940CE6DF1730F930A15750C0A9629C8B63&n=Top%2fNews%2fBusiness%2fCompanies%2fFreeport%2dMcMoRan%20Copper%20and%20Gold%20Inc%2e

31 PT- Freeport Indonesia's Contract of Work.

32 http://www.secinfo.com/dpBXk.ab.d.htm

33 http://www.secinfo.com/dpBXk.ab.d.htm

34 See footnote 33.

35 Rio Tinto's Annual Report 2006; available at http://www.riotinto.com/documents/FinancialResults/riotinto_2006_annual_review.pdf

36 Freeport McMoRan 2006 Sec Filings form 10-K, p 1; available at http://www.fcx.com/ir/downloads/FCX200610K.pdf

37 Moody, Roger 2005: The Risks We Run. Mining, Communities and Political Risk Insurance, p. 117. International Books, Utrecht.

38 Letter from Rio Tinto to Norges Bank/ the Council of 17 December 2007; on file with the Council.

39 See the Council's recommendation to exclude Freeport McMoRan, chapter 3, and Walhi 2006: The Environmental Impacts of Freeport-Rio Tinto's Copper and Gold Mining Operation in Papua, p. 10; available at http://www.walhi.or.id/attachment/d016df19778a7c563cd1c99afe29c43a/a01327b72b-86341664c513225f7d9352/WALHI_Freeport_Report_Part_1.pdf

40 Walhi 2006: The Environmental Impacts of Freeport-Rio Tinto's Copper and Gold Mining Operation in Papua, chapters 5 and 6.

41 Rio Tinto and Freeport conducted an environmental risk analysis of the impact caused by tailings. The study was completed in 2002.

To the Ministry of Finance

Oslo, August 14th, 2008
(Published January 30th, 2009)

Recommendation on exclusion of Barrick Gold Corporation

Contents

1 Introduction

At a meeting held on 4 October 2005, the Council on Ethics for the Government Pension Fund – Global decided to assess whether investments in the company then known as Placer Dome, currently Barrick Gold Corporation (Barrick Gold), would imply a risk of the Fund contributing to severe environmental damage under the Ethical Guidelines, point 4.4.

As of 31 December 2007, the Government Pension Fund – Global held shares worth some NOK 1,274 million in the company.

Barrick Gold is a Canadian mining company, which, in several countries, has been accused of causing extensive environmental degradation. The Council has investigated whether riverine tailings disposal from the Porgera mine in Papua New Guinea generates severe environmental damage, and finds it established that the mining operation at Porgera entails considerable pollution. The Council attributes particular importance to the heavy metals contamination, especially from mercury, produced by the tailings. In the Council's view, heavy metals contamination constitutes the biggest threat of severe and long-term environmental damage. The Council also considers it probable that the discharge has a negative impact on the population's life and health, including both the residents of the actual mining area and the tribal peoples who live along the river downstream of the mine.

The environmental damage that riverine disposal may cause are well known, but the company has not implemented any appreciable measures to prevent or reduce this damage, neither has the company been willing to present data to underpin its allegations that environmental and health damage does not occur.

The Council started its survey of the Porgera mine in the autumn of 2005. In connection with Barrick Gold's acquisition of Placer Dome in 2006, the Council chose to defer further investigations in case the company would stop the riverine tailings disposal or implement other measures to reduce the pollution after the take-over of the mine. So far this has not happened, and the Council therefore decided to continue its assessment of the company in the autumn of 2007.

Through Norges Bank, the Council has made two enquiries to the company. In November 2007, the Council contacted the company requesting it to send the 2006 and 2007 environmental reports for the Porgera mine. The company declined the Council's request in a letter of 30 November 2007[1], presenting its viewpoints on the riverine tailings disposal, to which reference has also been made in this recommendation. On 7 April 2008, another letter was written to Barrick, giving the company an opportunity to comment on the Council's draft recommendation, in accordance with the Guidelines, point 4.5. The Council received the company's reply on 14 May 2008.[2]

In order for there to be a risk that the Pension Fund may contribute to severe environmental damage, there must be a direct connection between the company's operations and the environmental impact. The Council takes as its point of departure that the damage must be extensive, attributing importance to whether the damage causes irreversible or lasting effects and whether it has a considerable negative impact on human life and health. Moreover, an assessment must be made as to what extent the company's acts or omissions have caused the environmental damage, including whether the damage is in breach of national legislation or international standards. It is also significant whether the company has failed to act in order to prevent the damage or has neglected to take measures aimed

at significantly reducing the scope of the damage. Last but not least, it must be probable that the company's unacceptable practice will continue in the future. Based on an overall assessment, the Council finds that these conditions have been met in the case at hand.

In accordance with the Ethical Guidelines, point 4.4, the Council has reached the conclusion that there are grounds for recommending that Barrick Gold be excluded from the Government Pension Fund – Global's investment possibilities, due to an unacceptable risk of contribution to ongoing and future environmental damage.

2 Sources

The Council has drawn on a large number of sources to assess the accusations levelled against Barrick's operation of the Porgera mine, including reports from domestic and international NGOs (in Australia, Canada, and Papua New Guinea), surveys and scientific papers related to environmental impacts from the mining operation, as well as other publicly accessible data.

Members of the Council's Secretariat have visited Papua New Guinea and had meetings with representatives from local NGOs, people who are directly affected by the mining operation, and experts with knowledge of the mine.

Barrick does not publish any figures relating to the discharges from the Porgera mine and provides little information in general on the environmental aspects of the operation. The Council has therefore, through Norges Bank, contacted Barrick requesting the environmental reports and discharge data for 2005 and 2006, which, according to Barrick's website, are publicly available. The company declined the Council's request in a letter dated 30 November 2007. At the same time, the company informed the Council about certain aspects of the riverine tailings disposal. Barrick has also commented on the Council's draft recommendation in a letter dated 25 April 2008, but did not present new reports or surveys. The company's viewpoints are cited later in this recommendation.

An important part of the background material has been the report *"Porgera Gold Mine. Review of Riverine Impacts"* from 1996. This study was carried out by *The Commonwealth Scientific & Industrial Research Organization (CSIRO)* at the request of the *Porgera Joint Venture,*[3] after the mine had been operative for 5 years. This is still the most comprehensive environmental assessment that has been made of the mining operation to date.[4] As a matter of fact, Barrick refers the Council to this report. The Council, however, has also had access to more recent material.

To assess whether the mine generates ongoing and future environmental damage, the Council has commissioned independent experts in Australia and Norway to analyse the material at hand and the probability that the mining operation may cause severe and long-term environmental harm.

All sources are referred to in the footnotes of this recommendation.

3 The Council's considerations

The Council has assessed whether there is an unacceptable risk that the Government Pension Fund – Global contributes to unethical acts through its ownership in the Canadian mining company Barrick Gold. In particular, the Council has looked into whether Barrick Gold's operation of the Porgera mine in Papua New Guinea causes severe environmental damage.

In previous recommendations, the Council has elaborated on and specified the concept of severe environmental damage.[5] The Council must make a concrete assessment of what is to be considered severe environmental damage in each case, basing itself on an overall evaluation with particular emphasis on whether:

- the damage is significant;
- the damage causes irreversible or long-term effects;
- the damage has considerable negative impact on human life and health;
- the damage is a result of violations of national laws or international norms;
- the company has neglected to act in order to prevent the damage;
- the company has not implemented adequate measures to rectify the damage;
- it is probable that the company's unacceptable practice will continue.

The Council would like to stress that existing and *future* violations are the ones covered by the Guidelines. This implies that one must assess whether there is a risk that the company's unacceptable practice will continue in the future. The company's previous actions may give an indication as to how it will behave in the future, and thus form a basis for the assessment of whether there is an *unacceptable risk* that unethical actions will occur henceforth. This also means that proof of future unethical actions is not required – it is sufficient to establish the existence of an unacceptable risk.

The concrete acts and omissions that Barrick Gold is accused of will be assessed with reference to the elements above.

4 Accusations of severe environmental damage and other factors

In many countries, Barrick Gold has been accused of causing far-reaching environmental destruction through its mining operations. The Council has investigated the conditions at the Porgera mine in Papua New Guinea where the company makes use of a natural river system to transport and dispose of mine waste. The riverine tailings disposal has taken place over many years, and several international NGOs have for years claimed that the riverine tailings disposal causes extensive and long-term environmental damage in a natural river system.[6] The Council accounts for its assessment in this recommendation.

Other accusations that the Council has not assessed

The Council has received an enquiry from the Norwegian organization The Future in Our Hands requesting an assessment of the mining pollution from the closed Marcopper mine in the Philippines, which they claim Barrick is responsible for after the company's acquisition of Placer Dome in 2006. In 2007, a question relating to this matter was also presented to the Minister of Finance during question period in the Norwegian Parliament. This case is recorded briefly below, but the Council has not made any further investigations.

The Marcopper mine is situated on the island of Marinduque in the Philippines, and was operated by Placer Dome from 1975 to 1996, when it was closed.[7] While the mine was in operation, 200 million tons of tailings were dumped in the shallow waters of Calancan Bay. Two mining accidents, in 1993 and in 1996, further deteriorated the pollution situation. In 1993, a tailings containment dam burst, causing three million tons of tailings to flow into the Mogpog River. Three years later, a drainage tunnel collapsed, and more than four million tons of mining waste spilled into the Boac River and its tributaries. As a result, villages had to be evacuated, and 20,000 people were affected by the accident. Because of the contamination, the Filipino Government declared the area a disaster zone.

Several scientific surveys have been conducted, showing that the mine waste contributes to considerable arsenic and heavy metals pollution.[8] It is assumed that the tailings in Calancan Bay are at the root of the incidence of lead poisoning among children in the area.[9] In other affected areas as well, high levels of heavy metals in water and sediments constitute a significant health risk. The pollution has probably destroyed fish resources, cultivated land and drinking water, and thus also the greater part of the local population's livelihood.

Placer Dome sold off the mine in 1997. The Provincial Government of Marinduque, among others,[10] has since sued the company for the damage its mining operation has caused. In connection with Barrick's acquisition of Placer Dome in 2006, the company has by many been regarded as obliged to clean up and compensate for the damage Placer Dome has been instrumental in causing. In 2007, the Marinduque government received the court's ruling that Barrick Gold could also be included as a defendant in this lawsuit. Barrick appealed, and the court granted the motion to dismiss on the grounds that the case was being tried before the wrong court. The case is still pending in the American legal system, however, as the Marinduque Government has filed a motion requesting reconsideration.[11]

The Council is also aware of the accusations made by the Norwegian Church Aid (NCA) regarding *gross human rights violations related to the extension of the mining operation at Bulyanhulu, Tanzania in 1996.* At the time, the mine was owned by the company Sutton Resources, which was bought by Barrick Gold in 1999. Today the mine is owned and run by Barrick Gold. In this context, there have also been allegations that Barrick has under-reported earnings to the Tanzanian authorities and evaded taxation between 1999 and 2003. The NCA raised this issue in a meeting with the Minister of Finance. Barrick contests the allegations. The Council has not assessed this case in any further detail.

Similarly, the Council is aware of international NGOs' accusations against the so-called Pascua Lama project in the Chilean Andes. Chilean authorities have documented that Barrick's prospecting activities in the mountains have caused considerable damage to glaciers in the area, contrary to the requirements for the project.[12] Chilean and international NGOs fear that a future mining operation will cause further destruction to the glaciers, with substantial consequences for the area's water supply and ecosystems.[13] An environmental commission appointed by the Chilean Parliament is looking into these matters.[14] The Inter-American Human Rights Commission is currently investigating a complaint presented by the Diaguita people that the mining operation will lead to serious human rights violations against the indigenous peoples who live in the area.[15] In July 2007, the Chilean environment minister declared that the project would not be approved until all environmental requirements were met.[16] Barrick informs that the project has been altered to avoid any impact on the glacier, making reference to the company's local support for the project.[17] To the Council's knowledge, the concession has not yet been granted.

Considering the resources at hand, the Council has limited its investigations to the conditions at the Porgera mine as these have provided sufficient grounds for a recommendation on exclusion.

5 The Porgera mine – Papua New Guinea

5.1 Background

Barrick Gold is a Canadian mining company listed on the stock exchanges of Toronto and New York. Following the acquisition of Placer Dome Inc. in 2006, Barrick is now the world's largest gold producer. Currently, the company operates 27 mines – in North America (the USA, Canada, and the Dominican Republic), South America (Peru, Chile, and Argentina), Africa (Tanzania and South Africa), Australia (including Tasmania), and Asia (Papua New Guinea). Moreover, the company engages in exploration activities in several of these countries, as well as in Russia and Pakistan.[18]

Barrick owns a 95 per cent share of the *Porgera Joint Venture (PJV)*, which operates the Porgera mine in the Enga province, in Papua New Guinea (PNG).[19] The remaining stake is held by the *Enga Provincial Government and Landowners*. Barrick took over the Porgera mine through the acquisition of Placer Dome in 2006. At the time Placer Dome held a 75 per cent stake in the mine. In 2007, Barrick increased its participation through the purchase of the South African company DRD Gold's (Emperor Mines) 20 per cent share.

The mine site is located in the Porgera Valley, 2 200–2 700 m above sea level, in steep and rugged mountainous terrain covered by rainforest.[20] It is situated some 600 km northwest of the capital Port Moresby, and 680 km from the port of Lae, where the gold is shipped. The operation includes both opencast and underground mining.

The mine came on stream in 1990. Daily production was then 1,500 tons of ore (547,500 tons/year).[21] The mine and the processing plant have since been expanded several times until 1996 when the mill reached its current capacity of 17,700 tons per day (slightly less than 6.6 million tons of ore per year).[22] To the Council's knowledge, there has not been any notable change in the production volume or the amount of tailings since then. In 1999, 15 400 tons of ore were processed per day,[23] which equate to 5.62 million tons a year.[24] The Council assumes that the 1999 data may reflect the present situation, provided that the composition of the ore has not changed significantly.

In addition to gold, the ore contains high concentrations of lead, zinc, iron, and sulphur, as well as substantial levels of mercury, cadmium, arsenic, and copper.[25] The ore is transported to the mill where it is crushed and ground into a powdery texture, going through several processing stages before the gold is extracted by cyanide leaching. The resulting gold-cyanide compound is placed onto activated carbon, which is added to the leaching tanks. Following the carbon elution, the gold is washed off, recovered by electrolysis, and melted into gold bars.[26] After the gold has been extracted, the tailings (the mixture of finely ground ore, leaching chemicals, and water) are neutralized before being discharged through a pipeline directly into the Maiapam River, a small tributary to the Porgera-Laigap-Strickland river system. [27]

Barrick does not provide any information relating to waste management at the mine, neither with regard to tailings nor waste rock. The company has capacity and licence to dispose of 210,000 tons of waste rock per day, amounting to nearly 76 million tons per year. [28]

According to the CSIRO 1996-report, waste rock is disposed of at three different sites. Erodible waste rock is deposited at two of them, and substantial runoff occurs from these deposit sites into tributaries of the Porgera River. The runoff contributes to further increase the contamination of the water bodies. In 1995 it was estimated that the mining operation would produce 313 million tons of waste rock, but at that time it was also assumed that the mine would close down in 2010.[29] Currently predicted volumes are not known to the Council.

The mine's lifespan was originally planned to last until around 2006. Today the mine has reserves for some 10–15 years of operation.[30] Barrick itself has great expectations for the Porgera mine and is also considering an expansion: *"Porgera is expected to play a significant role in Barrick's future in this region. As a result, the Company increased its stake to 95per cent earlier in 2007 and is currently assessing opportunities for a Stage 6 expansion, which could increase production and extend the mine life."*[31]

The mine has approximately 2,000 employees, the majority of whom come from Porgera and the surrounding areas.

Concession and discharge permit

The Porgera Mining Development Contract (MDC) is an agreement between the government and the Porgera Joint Venture partners that specifies the conditions for the mining operation, including annual compensation to be paid to local landowners for the use of their properties – the Special Mining Lease (SML). The SML is in force until 2019 and covers some 2,350 hectares of land, including the mining area itself and corresponding infrastructure.[32] There is no expiration date for the MDC, but it is tied to the continuation of the SML.

Applicable as long as the mine is in operation, a concession has been granted by the authorities for the use of and discharge to water.[33] In 1991, PJV was given permission to discharge tailings into the Maiapam River, a tributary of the Porgera River. The government requires that the water quality of the river, measured some 165 km downstream of the discharge point, does not exceed certain limits. These refer to concentrations of cyanide, ammonium, dissolved metals, as well as pH.[34] The area from the discharge point to the compliance point (i.e. 165 km) is defined as a mixing zone where no requirements are made regarding discharge or water quality.[35]

Compensation

According to Barrick, the production at the Porgera mine is subject to a two per cent royalty of production payable to the National Government Department of Mining. This royalty is in turn distributed to the Enga Provincial government, the Porgera District Authority, and local landowners.[36] In addition, compensation is paid to local landowners who own land in the mining lease area. People living in the immediate downstream vicinity of the mine have received a one-off payment to compensate for loss of alluvial gold and the damage caused by waste disposal.[37] It is not clear whether people living in the Lower Strickland have received any compensation for losses connected to the riverine disposal practice.

5.2 Riverine tailings disposal

5.2.1 Sediment load

Tailings have been discharged into the Porgera-Strickland river system since the beginning of the operations in 1990. As each ton of ore contains only a few ounces of gold, the tail-

ings are nearly equivalent to the amount of processed ore. Consequently, tailings disposal volumes have accompanied the production increase from 1 500 tons a day in 1990 to the current level of some 15,500 tons a day (5 - 6 million tons a year). In addition to the tailings disposal, there is substantial runoff from the stockpiles, which further increases the sediment load of the river system. In 1999, PJV estimated this at 10–15 million tons per year.[38]

Suspended material is transported downstream over a distance of some 1 000 km before reaching the Gulf of Papua. Along the way the concentration of the discharge is diluted as the distance from the mine increases.[39] The particles are transported by the river to the Lower Strickland. In the lowlands, which begin some 50 km downstream from compliance point SG3, the Strickland River flows calmly across large flood plains (see figure 1). Here sediments are being deposited along the river banks, in tributaries, and on the alluvial plain.[40]

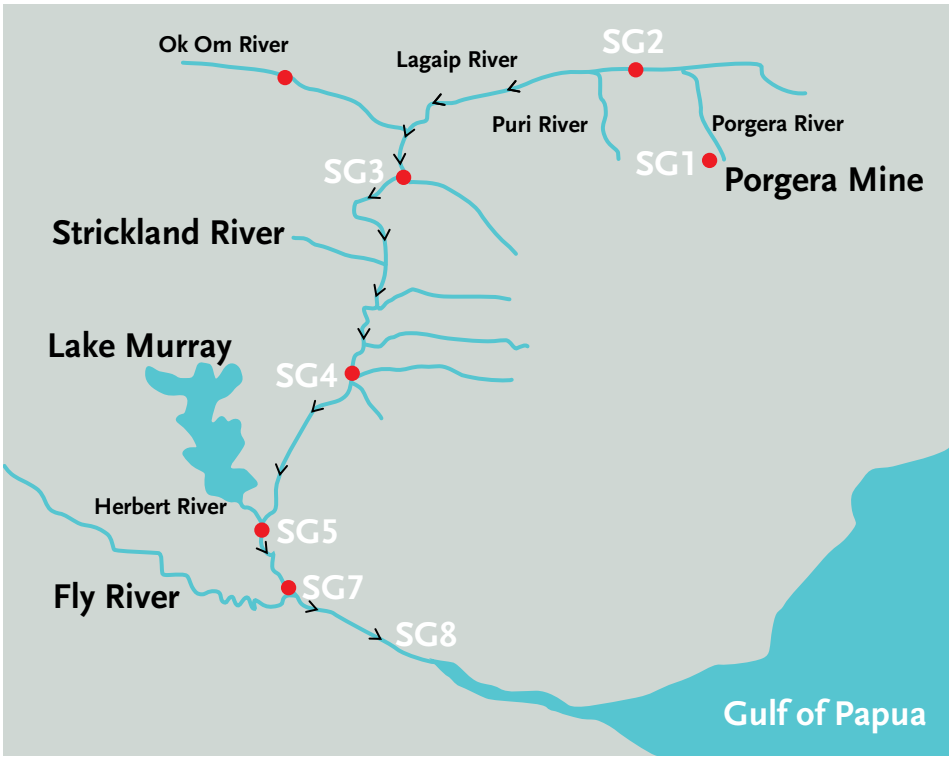


Figure 1:
The Porgera Mine and the Strickland River System[41]

The additional sediment load of the river system may have both a physical and a chemical impact, affecting the water quality, aquatic organisms, but also human and animal life connected with the river. The physical impact is related to factors such as turbidity (the degree of cloudiness in the water), overbank deposition, and aggradation, whereas the chemical impact has a bearing on the sediment's heavy metals content.

According to PJV data from 1999, the mine produces an annual sediment load of some 15–21 million tons.[42] The discharge is diluted as it travels downstream. At the SG3 compliance point the mine waste represents approximately 25–33 per cent[43] of the Strickland River's total sediment load, and at SG4 (360 km from the mine) the figure is around 15 per cent. This is the annual average. In periods of drought and low flow, the discharge from the mine may constitute a significantly higher per centage, whereas a large influx of natural sediment during flooding may lead to lower concentrations of mine sediments.[44]

It has been alleged that an additional sediment load will not influence the riverine ecosystem because the river system has a naturally high sediment level. Barrick also presents this argument in its letter to the Council: *"The Porgera-Lagaip-Strickland River System is capable of transporting massive sediment loads… In fact, the natural annual variability of sediment discharges from the Strickland system exceeds Porgera's annual discharges."*

Barrick's reply also implies that the additional load produced by discharges from the mine is unlikely to cause a negative impact because that load is lower than the annual variability of natural sediment loads in the river system. However, while the Strickland River ecosystem has adapted to relatively high sediment loads, the volume of waste discharged by the Porgera mine is an addition to the natural sediment load in the river system. Besides, the tailings discharge occurs on a continuous basis including during low flow conditions. This constitutes a considerable change in natural conditions that in turn may affect riverine biota.[45]

It is well known that aquatic organisms are very vulnerable to high sediment loads, and even small changes in the suspended solids load may have a negative impact on fish, crustaceans and other aquatic organisms. The number of species and their composition may be affected, spawning grounds may be harmed or destroyed, and a decline in the nutrients may lead to depleted fish stocks. Changes in nutrient access may also have an impact on the bird and animal life along the river system. Already in 1995 the local population reported reduced fisheries and the disappearance of turtles and crocodiles (which constituted an important source of income) as a result of the pollution.[46] However, the lack of data and surveys makes it difficult to verify this.

The physical effects of tailings sedimentation seem to vary in the different parts of the river. According to Barrick, there is temporary aggradation in the upper part of the river. *"The sediment discharges have resulted in significant impacts in the first approximately 20 km of the river."*[47] In the lower reaches of the river and on the flood plain, recent studies show that sediment from the mine is deposited, but probably not on such a scale that it causes major physical damage.[48]

5.2.2 Discharge of heavy metals

With regard to the Porgera mine, one was aware from the very start that the tailings had high heavy metals content and that the mercury discharges could become a problem. PJV itself stressed this in a presentation of the newly opened mine at a conference in 1992: *"Mercury present in the orebody is considered the priority trace metal because of the potential for bioaccumulation and bioconcentration."*[49]

In addition to mercury, the tailings also contain high concentrations of arsenic, cadmium, copper, lead, zinc, as well as milling chemicals, including cyanide. Owing to the iron oxide content, the discharges have a distinct red colouring. Heavy metals are hazardous substances, and their discharge represents a considerable environmental problem, not least because they may accumulate in organisms and sediment.

Table 1 below shows the average heavy metals concentration in the tailings for 1999.

		Concentration (µg/l)	
		Dissolved	**Total**
Arsenic		10	50,000
Cadmium		8	1,300
Chrom		5	2,700
Copper		1,200	14,000
Iron		5,500	4,975,000
Lead		3	68,000
Mercury		0,3	300
Nickel		1,300	5,100
Silver		4	900
Zink		2,200	192,000
Cyanide	CAC*	800	
	WAD**	2,300	3 300
	Thiocyanate	5,500	
Total suspended sediment			2,100,000 (21 %)
* CAC – Cyanide amendable to chlorination			
**WAD – Weak acid dissociable cyanide			

Table 1: Characteristics of tailings discharge, average for 1999[50]

In an impact assessment, a distinction is normally made between dissolved heavy metals and total heavy metals. Metals dissolved in water may have an acute toxic effect on many aquatic organisms, while total metals have a bearing on long-term effects, as sediment may act as a storage medium for hazardous substances. The metals content in sediment, however, may also have an acute toxic effect on sediment feeders, for instance catfish, which are common in the Strickland River.

The table below presents PJV's own monitoring data for 1999 relating to dissolved and total concentrations of heavy metals in the water at SG3, 165 km downstream from the discharge point. The data are presented as an average for the whole year of 1999. The compliance levels are also stated in the table.

	Dissolved (µg/l)	**Totalt (µg/l)**	**Compliance value** *(Dissolved µg/l)*
Arsenic	4	82	50
Cadmium	0,2	3	1
Crom	1	39	10
Copper	2	84	10
Iron	174	45,500	No compliance
Lead	1,3	254	3
Mercury	0,2	0,7	No compliance
Nickel	4	52	50
Silver	0,8	2	4
Zink	11	463	50
Ammonia (cyanide)	30		50
Sulphate	34,000		
pH	7,7		7,0 – 9,0

Table 2: Mean Contaminant Levels Recorded by PJV at the Compliance Point SG3 in 1999 and Compliance Levels in the Environmental Permit (right column).[51]

Barrick informs the Council that the discharge from the mine today still meets the requirements laid down by the authorities, which means that the water quality at the compliance point SG3 shall not exceed the levels referred to in table 2, based on a monthly average.[52] However, Barrick does not provide any new discharge monitoring data that may substantiate this claim.

Table 2 shows that the government bases its requirements on the concentrations of dissolved metals and not total metal content.[53] Dissolved concentrations are relevant to aquatic organisms. In order to assess the risk to humans who use the water for drinking or other purposes and in order to assess the long-term effect on water quality and sediments, it is more relevant to look at total metal content. According to the table, the heavy metals chiefly appear as particulate metal. Besides, it shows that there is no compliance value for mercury.

Also relevant to the evaluation of compliance is the fact that the compliance point is located 165 km downstream of the mine. The distance between the mine and the compliance point is referred to as a mixing zone. According to the ANZECC water quality guidelines, a mixing zone is *"an explicitly defined area around an effluent discharge where certain environmental values are not protected"* and furthermore *"Effective discharge controls that consider both the concentration and the total mass of contaminants, combined with in situ dilution and waste treatment, should ensure that the area of a mixing zone is limited and the values of the waterbody as a whole are not jeopardised.…If mixing zones are to be applied, then management should ensure that impacts are effectively contained within the mixing zone, that the combined size of these zones is small and, most importantly, that the agreed and designated values and uses of the broader ecosystem are not compromised."*[54]

In the Council's opinion, Porgera's mixing zone does not constitute a mixing zone in the internationally accepted sense of that term. If the above guidelines are used as a basis, mixing zones should not be used for the management of bioaccumulative substances or particulates, nor for discharges that affect the whole river system, as described in more detail below.[55]

Besides, the compliance with discharge requirements is no guarantee that negative environmental effects will not occur. For example, a requirement based on a monthly average may conceal high concentrations in the discharge, which at worst may cause the extinction of all aquatic life. As early as in 1996, CSIRO stated that the concentration of arsenic, zinc and lead had increased 7 to 10 times since 1990 at SG3.[56] They concluded that *"It is possible to detect an effect of the mine in the enrichment of the TSS*[57] *by metals measured at the compliance point, SG3. Particulate metals (As, Pb, Ag, Hg, Ni on a per gram TSS) basis are steadily increasing and may now exceed concentrations that have been shown elsewhere to have a long-term ecosystem effects, particularly when the river is at low flow."*[58]

The Council has not had access to data that show the current situation. However, according to the assessments commissioned by the Council, there is little reason to believe that it has improved during the past ten years. There is a considerable risk that the water quality has deteriorated while the heavy metals concentration has increased.[59]

5.3 Environmental effects on the flood plain and Lake Murray

The most serious and long-lasting environmental impact seems to be related to the accumulation of arsenic and heavy metals in the sediment in the Lower Strickland River and Lake Murray. The CSIRO report from 1996 warned against the risk of heavy metals producing long-term and negative environmental and health effects. *"Sediments will be deposited both in-and off-river in this environment. … There is therefore an increasing risk of long-term low-level metal effects from mine-derived sediment in the region."*[60]

In 1997–98 the *Porgera Joint Venture* commissioned a team of experts from three Australian consultancies to examine the extent of sediment deposition and heavy metals contamination at different locations in the Lower Strickland River.[61] Sediment cores were collected at six key points on the flood plain and in five off-river water bodies. Consistent evidence of enrichment of arsenic, lead and zinc in surface sediments was found at all sites across the flood plain. All five off-river water bodies studied showed elevated levels of arsenic and lead. Two water bodies with short tie channels to the main river also showed higher levels of mercury and zinc in the sediments.[62] Moreover, the study found that at several sites on the flood plain and in the off-river water bodies, the concentrations of arsenic, nickel, lead and mercury exceeded Australian sediment quality guidelines.[63] The study concluded that: *"The delivery of sediment into the ORWBs [Off River Water Bodies] has the potential to affect the aquatic ecology of the Strickland floodplain system. The Strickland has relatively few ORWBs [] and as such, any loss of habitat caused by mine-derived sediment deposition may have a more important impact."*[64]

In May 2001, another CSIRO study was published.[65] The study, aimed at finding tracer metals to track the deposition of tailings in the river, confirmed that heavy metal enriched tailings were being deposited in the lower reaches of the river, in overbank depositions, and in off-river water bodies. The study found that silver, arsenic, cadmium, zinc, and lead were all present in the sediments in far higher concentrations than in rivers not affected by the tailings.

In 2003, the results from this study were applied in a new survey of sedimentation processes on the flood plain. Lead and silver found in the tailings were used as indicators and measured in sediments on the flood plain. The survey confirmed previous findings that heavy metal enriched tailings are sedimented across the greater part of the alluvial plain. In general, the highest lead concentrations were found in surface sediments and at a distance of 5–100 m from the riverbank, but with local variations. Sediments from the mine were traced more than 1 km from the main river. The survey also showed that heavy metal concentrations can increase significantly during periods of drought or low flow and decrease during periods of high flow.[66] Some of the highest values were found in an ox-bow lake linked to the main river. *"All core samples to a depth of 40 cm [] were contaminated out of a distance of 0.5 km. Elevated metal concentrations were found to depths of 7 cm over 3 km from the tie channel inlet"*[67] Sediment samples from the Momboi River, which is a tributary to the Strickland River and empties into Lake Murray *"revealed that mine-derived sediment was present through the entire system."*[68]

In its first letter to the Council, Barrick claims that the heavy metal content in the sediments does not have any serious negative effects on the river system: *"In sum, there are no irreversible significant and adverse chemical impacts on this river system."* In its second letter to the Council, Barrick does not broach this issue other than confirming that *"Studies have identified elevated metals indicative of mine-derived sediment at locations on the floodplain."*

The Council takes as its point of departure that all surveys it has had access to show an unambiguous trend of elevated heavy metal concentrations in the sediments. What effects this actually has on the natural environment and on the people who live in the area do not seem to have been examined. The Council therefore does not find Barrick's statements credible.

It is well known that sediments can function as a repository for hazardous substances where the metals may be released over time and be absorbed by the food chain. Whether this actually will happen is a complex issue that depends on various factors.[69] Barrick's first letter to the Council states that it is not likely that metals will be released because limestone, which occurs naturally around Porgera, will act as a buffer against acidification and thus prevent the leaching of metals: *"The water chemistry of the system accordingly reflects high buffering capacity and pH. As a result, rather than being mobilized, the metals that are contained in the solid fraction remain there and much of dissolved metal fraction adsorbs onto sediments."*

This seems to be a simplification of a very complex issue. Even if the tailings are alkaline, it is well known that an element like arsenic is relatively easily released. Cadmium and zinc are also known to be mobile in an aquatic environment, something that is evident from the investigations initiated by PJV itself.[70] Moreover, weathering processes may increase in the presence of oxygen and when the river is at low flow, thereby affecting the metal release. In this context, it is natural to refer to the experience from the Ok Tedi mine in Papua New Guinea.[71] In the past, Ok Tedi Mining Limited also claimed that the presence of large quantities of natural limestone would effectively limit the mobility of heavy metals in the Fly River system, which receives tailings from its mine. It is now known that this is not the case, and it has been documented that during periods of low flow heavy metals are released from sediments on levees and islands down to Suki Creek 600 km downstream of the mine.[72]

The Council has not had access to surveys regarding the uptake of arsenic and heavy metals into the food chain or other effects on humans and the natural environment in the area. PJV's sustainability reports from 1999 to 2003[73] show that PJV has performed sediment analyses, as well as initiated other studies related to environmental impacts of sediments. It is not clear which of these studies have been made public.

5.3.1 Mercury pollution

High mercury concentrations in the entire river system and in the Lake Murray area is not only an important environmental problem, but also a major health issue for local people.

The mine waste from Porgera has significantly elevated mercury concentrations. According to a survey from 2001, the mercury concentration in the mine tailings is 2,400 ng/g (dry weight), whereas the mercury concentration in natural sediments from the uncontaminated tributaries is <100 ng/g.[74] As the mine waste is dumped into the Porgera-Strickland river system, mercury is transported downstream – with potential negative impact on aquatic biota and human health.

Particulate mercury, such as it occurs in the tailings, can be converted, or methylated, by micro-organisms into methylmercury, a fat-soluble substance that is absorbed by plants and animals. Being highly toxic, methylmercury bioaccumulates in organisms and biomagnifies in the food chain, thus inflicting the greatest harm on organisms in the highest trophic levels.[75] Although both inorganic and organic forms of mercury can be taken up by aquatic organisms, methylmercury bioaccumulates much more readily than inorganic mercury, and most of the mercury found in fish is methylmercury.

Mercury compounds are highly toxic to many aquatic organisms and mammals, and may produce chronic toxic effects even in very small concentrations. Mercury may cause contact allergy, kidney failure and damage to the central nervous system. Foetuses and small children are more vulnerable than adults. Methylmercury may lead to brain damage and disrupt the motor and mental development. Fish consumption is the main source of human methylmercury intake.

Lake Murray is the largest lake in Papua New Guinea, with a surface area of about 647 km^2 at high water and an average depth varying between 4–10 m, depending on climatic conditions. The main tributary rivers flow into Lake Murray from the north, and the lake usually drains via the Herbert River in the south, which flows into the Strickland River. However, under certain hydrological conditions, such as flooding, the water flow from the Herbert River may reverse, resulting in water entering Lake Murray from the Strickland River. Flow reversal events vary in duration from a few hours to two weeks, with a cumulative total of some 95 days a year. [76] The CSIRO report from 1996 estimated that about 150 000 tons per year of mine-derived sediments are transported to the lake, which may account for 20 per cent of the total sediment transported to the lake from the Strickland River.[77]

The human inhabitants around the lake have some of the highest recorded concentrations of mercury for people not occupationally exposed to mercury. This is attributed to consumption of locally caught fish, which has naturally high mercury concentrations, often exceeding the World Health Organisation's recommended limit (0.5 mg/kg).[78]

The ecosystem of Lake Murray is susceptible to mercury contamination as a result of biomagnification of methylmercury in the food chain.[79] A study on the mercury concentrations in the waters and sediments of Lake Murray and the surrounding rivers showed that mercury concentrations in sediments from the southern end of the lake were elevated compared to the northern and central part of the lake.[80] The mercury concentration in the southern part of the lake was comparable to mercury concentrations in suspended sediments from the Herbert and Strickland Rivers. The reason for this is that mercury is transported by suspended sediments from the Strickland River to the southern part of Lake Murray.

Measurements of the concentration of methylmercury showed levels more than ten times higher in the surface sediments of the southern part of Lake Murray than in suspended sediments from the Strickland River. The considerable differences indicate that mercury methylation occurs in recently deposited sediments.[81]

In its second letter to the Council, Barrick claims that the Council's presentation of these results from Bowles et al (2002)[82] is misleading.[83] Barrick highlights one sentence in the Bowles article that says the deposition of fluvial sediments alone cannot explain the concentrations of methyl mercury in the southern end of the lake:

"This large concentration difference indicates that the deposition of fluvial sediments alone cannot account for the observed MeHg concentrations in the bottom sediments."[84] Furthermore, Barrick states that the conclusion of the article *"is supportive of the fact that it is primarily the unique food chain in Lake Murray that results in the mercury levels of inhabitants, not mine-derived sediments."*

Based on analyses obtained by the Council, Barrick does not provide new arguments for the assessment. In the article, Bowles et al (2002) use precisely the differences in concentration between fluvial sediments (particulate river material) and in sediments in the south

end of the lake to support their argument that the methylation occurs in the sediment transported by the Strickland River.[85] The suspended sediments in the Strickland River present high mercury content, but show lower methylmercury levels than the sediments in the lake. This is understandable as methylation rarely occurs in an oxygen-rich riverine environment, but rather happens after the sediments have been deposited in an oxygen-poor/free reductive environment near the bottom of the lake.[86]

According to the Council's assessment, there is little doubt that large quantities of mercury pollutants are transported by the Strickland River into Lake Murray, causing the sediments in the southern part of the lake to have an elevated (total) mercury content. There does not seem to be any doubt that after the sedimentation significant methylation of the imported mercury occurs, transforming it into a more bioavailable form, which has a great potential for accumulation in food chains.

The mercury levels in fish and human residents in the area near Lake Murray were elevated even before the development of the Porgera mine. This demonstrates that the natural background levels of mercury are high, but also that the lake's ecosystem is vulnerable to mercury pollution. In an aquatic system with already naturally elevated mercury concentrations, such as Lake Murray, any further anthropogenic supplement of mercury to the system is unfavourable and should be avoided.[87]

5.3.2 Health and social effects associated with the tailings disposal

In 2000, Porgera had an estimated population of 10,000 Ipili (the original local landowners) and 12,000 migrants, people who have immigrated to the valley after the mining operations started.[88] The population has probably increased in the last years, mostly by people who have been attracted by business and employment opportunities in the area.

There are a number of villages within or adjacent to the mining lease area, some of them in close vicinity to the waste rock dumps and the area where the tailings are discharged. Villagers here are often in direct physical contact with the mine waste.[89] There are well-trodden paths traversing the unsecured deposit sites, and many of the locals look for gold in the tailings, waste rock piles, or the open pit itself.[90] In some villages, vegetables are grown in the immediate vicinity of the tailings. People are undoubtedly exposed to arsenic, heavy metals and other harmful substances found in the tailings, which may inflict serious and long-term health effects.

The houses in these villages lack running water, and people fetch water from nearby creeks or collect rainwater. Former sources of drinking water have been covered by tailings and are spoilt. Villagers are deeply concerned about the water quality and fear that the water is contaminated by the tailings. Moreover, smoke and gas from the processing plant, dust from the opencast mine and the gravel roads add to the pollution of both air and water.

It appears that local residents have no access to information regarding the content of hazardous substances in the tailings, air emissions and air quality, or the quality of the drinking water. People believe that the tailings and the emissions contain toxic substances, and are worried about possible health impacts. However, they do not know which hazardous substances these are or the possible harmful effects they may cause in the long term. To the Council's knowledge, no systematic investigations have been carried out in order to evaluate the long-term health hazards faced by the local population because of mine-derived pollution and waste. Many of the villagers complain that Barrick

does little to address their concerns.[91]

In 1995, the Australian NGO, the Mineral Policy Institute, estimated that some 7,000 people lived between the discharge point and the compliance point 165 km downstream of the mine, in other words the part of the river where the water is most polluted.[92] PJV has disputed this estimate and claims that only about 2,000 people live in this area.[93] The Council does not know how many people currently live downstream of the mine and are affected by the discharges.

In the CSIRO report from 1996, the population's health risk in the mixing zone was assessed as low.[94] The reason for this, according to the report, was that the villagers did not live near the river and therefore had limited exposure to the water. There is no information available to assess whether this reflects the present situation. Experience from other mines in PNG shows that significant changes in local communities and people's way of life can occur in the proximity of mine sites, influencing people's exposure to the contaminants in the water.[95] This may be the case here as well. In the Council's opinion, this is a matter of concern, given the high concentrations of arsenic and heavy metals in the water.

The aforementioned CSIRO 1996-report concluded that the potential health risk associated with the discharges most probably would be limited to the inhabitants of the Lower Strickland River and the lower middle half of the Lake Murray region.[96] This is where the population was considered to be most susceptible to metal contamination, particularly through fish consumption. At the same time, the report draws attention to the need for detailed risk assessments: *"Risk assessments are needed for all people living downstream from the mine including the people living along the erodible dump along the Kogai River, and extending to villagers living along the Porgera, Lagaip and Strickland Rivers, Lake Murray, and the Fly River delta."*[97] Barrick, on the other hand, claims that *"health risk assessments and medical assessments of downriver populations have been conducted and interim reports are posted from time-to-time. We do not believe that there is evidence of health risks to the downstream populations."* In this context, the company refers to the website of the Porgera Environmental Advisory Komiti (PEAK).[98]

The Council has accessed the PEAK website, but has not been able to find any significant reports on health risks associated with the Porgera mine, except the CSIRO report from 1996 (which was not available) and a study by Taufa et al. (2001).[99] The latter is a limited health assessment of a small sample of residents in nine villages above SG3. Other available reports comprise brief accounts of field visits to villages and dietary surveys. The PEAK site also refers to a Community Health Study, but this is not available.

In the Council's view, the CSIRO recommendation regarding a comprehensive and detailed assessment of health risks encompassing the whole riverine population does not seem to have been carried out. Neither does the Council consider the other studies referred to by the company to provide a scientific basis for claiming that health risks do not occur.

There is no information available on the social impacts either. On the whole, the population downstream of the mine is engaged in subsistence farming, fishing and hunting. The CSIRO report from 1996 states that people living on the flood plain make extensive use of aquatic food supplies as well as growing food crops on the riverbank, which may be affected by the tailings.[100] The Council has not been able to find any updated information on how this situation has developed. However, there is reason to believe that the tailings

disposal have had and will continue to have an adverse impact on the local population's economic base in addition to potential health effects. In the Council's opinion, these possible effects should have been investigated to provide a better understanding of what consequences the mining operation entails.

6 Barrick's response to the Council

As previously mentioned, the Council has, via Norges Bank, made two enquiries to Barrick Gold. The first was a request of access to the company's environmental reports for the Porgera mine, a matter referred to in more detail in chapter 2. The other enquiry gave the company an opportunity to comment on the Council's draft recommendation, as prescribed by the Guidelines. The draft recommendation was sent to Barrick on 7 April 2008 with a deadline for reply on 4 May. On 24 April the company contacted Norges Bank, via e-mail, requesting a postponement of the deadline until 9 May, which was granted. The Council received a letter from Barrick on 14 May 2008. The letter is dated 25 April 2008.

In this letter, Barrick dismisses the Council's draft recommendation, which, according to the company, *"mixes allegations, data, unattributed hearsay and other information into single sentences and paragraphs. In addition it alleges that certain conditions exist without any geographic context. Accordingly, it is difficult to dissect the document, separate the facts from the errors and respond to the individual points."* Moreover, the company sustains that the Council does not take into sufficient consideration that the discharges from the Porgera mine are minor, that they are released into a massive river system, and that they are not comparable with the discharges from Freeport's Grasberg mine.[101] Barrick also thinks that the Council is against riverine tailings disposal on principle. *"It therefore appears that addressing each and every allegation would be of no consequence. Instead of attempting to do so, our response is limited to a few comments that we believe demonstrate that the [Council's] report is not fair and balanced."*

Barrick focuses chiefly on three factors in its letter to the Council – that the physical effects of sediment deposition on the flood plain is negligible, that the Council's assessments of the risk related to mercury contamination is misleading, and that the company is in the process of evaluating alternatives to riverine tailings disposal.

As is shown in chapter 5.2 and in the draft recommendation that has been sent to Barrick, the Council does not have information indicating that the physical impact of the sediment deposition poses a major environmental risk. On the other hand, the Council has been concerned with the heavy metal contamination caused by the discharges. An account of this is given here (section 5.2.2 and 5.3) and in the document that Barrick received for comments. In the Council's view, this is what constitutes the biggest threat of severe and long-term environmental damage. The Council deems it unfortunate that the company does not address the issue in its reply to the Council. Even if Barrick acknowledges that elevated levels of heavy metals have been detected in the sediments on the flood plain, the company does not discuss what potential risks this implies, nor does it provide any indications that this is an issue of concern.

As mentioned above, Barrick is of the opinion that the Council's presentation gives a misleading impression with regard to the mercury contamination of Lake Murray. The company claims that the Council has omitted relevant information from the publications on which its assessment is based,[102] and that this is done to strengthen the Council's argument about the mine's contribution to the mercury pollution.[103] In light of the company's objec-

tions, the Council has reviewed the material and asked for expert opinion from the Norwegian Institute for Water Research, among others. Based on this, the Council finds that the conclusion remains valid (as has also been clarified in section 5.3.1) and that Barrick's reply does not bring new arguments to the case.[104] In this context, the Council also refers to Bowles' conclusion (from 2002): *"Intermittent inputs of turbid water from the Strickland River inject particulates and filterable MeHg into the southern end of Lake Murray. This has resulted in the formation of a depositional footprint that contains higher concentrations of particulate mercury and other elements compared with the rest of the lake."*[105]

Finally, Barrick informs that the company is in the process of evaluating alternatives to riverine tailings disposal, including the building of a dam and the possibility of returning tailings to the mine. *"We are considering all of the technical considerations outlined in the new IFC Guidelines and more, specifically, social issues such as relocation and the impact on alluvial miners, who [] work the tailings stream."* According to its web page, the company has *"engaged a team of experts to study and assess options to improve, reduce or eliminate the discharge of riverine tailings. Environmental, social, technical, and regulatory considerations will drive selection of the preferred tailings management methodology."*[106] This assessment is to be concluded by the end of 2008. However, the company does not give any concrete indications that it actually will stop the riverine disposal. In its letter to the Council, Barrick also gives the impression that riverine tailings disposal must be accepted if other disposal methods prove difficult.

Lastly, the Council would like to point out that neither in its second reply to the Council does Barrick provide any substantial information on the mining operation. The company continues to make reference to the CSIRO report from 1996, in addition to a few technical reports, which the Council already has found out about on its own. It is still unclear whether this represents all the company's research on the mining operation's environmental impact. The Council finds that this lack of transparency contributes to weaken the credibility of Barrick's claims that the environmental impact of the mine is insignificant.

7 The Council's assessment

Based on the documentation at hand, the Council has assessed whether there is an unacceptable risk that the Fund, through its ownership in Barrick Gold, may contribute to severe environmental damage under the Ethical Guidelines, point 4.4.

The first element in the assessment refers to the *scale of the damage and to what extent it causes irreversible effects*. In this context, the Council has investigated Barrick's mining operation at Porgera, basing its assessment on the information provided in chapter 5.

The Council deems it highly probable that the riverine tailings disposal causes severe environmental damage. The amount of tailings discharge is substantial and contains a number of hazardous substances, including arsenic and heavy metals, which are deposited over a very long river distance. Already in 1996 the effects of the mining operation were detected in the Lower Strickland River, in the Herbert River, and at the outlet of Lake Murray (see section 5.2 and 5.3). The Council attaches particular importance to the risk of bioaccumulation and biomagnification of heavy metals, especially mercury, in the environment. Research findings from 1996 gave clear indications that these processes were under way, something that has also been confirmed by more recent studies. It is hardly probable that these effects have abated with time, and neither will they cease after the mining operation has closed down. If the heavy metals in the sediments are mobilized, it will be almost

impossible to stop the process in this river system, which means that the local population will have to deal with the contamination for decades. Based on the information at hand, the Council finds it probable that the riverine disposal from the Porgera mine may lead to considerable and lasting environmental damage.

The Council also finds that the pollution from the mining operations at Porgera may have substantial effects on human life and health. The practice of riverine disposal seems to increase the local population's exposure to heavy metals, including mercury. This has taken place and will continue to take place over a long period of time, posing a significant risk of severe and long-term health effects. It is particularly serious as the population groups in the area already are subject to naturally elevated background levels of mercury, and additional exposure may have extremely severe health effects (see section 5.3.1). The lack of systematic health surveys means that there is no information available as to how the mining operation affects the health conditions among the inhabitants of the mining area and downstream from the mine. In the Council's view, the worries local residents in the mining area have for their future health are well founded, given the high values of arsenic and heavy metals found in the discharge, and which are also detectable in water and sediment.

The third element in the assessment is whether the environmental damage is a result of *violations of national laws or international norms*. Barrick claims to comply with official discharge requirements. The Council finds that in practice this is impossible to assess as long as it is not documented through monitoring data. In this context, the Council would like to note that the waste management rules the company has to obey in PNG are significantly laxer than those applicable in the company's home country, Canada, where riverine disposal is prohibited. Weak environmental requirements, which, moreover, are scarcely enforced, imply that there is no system in place to prompt the reduction of mine-related damage. This contributes to further increase the risk of severe environmental damage.

Today Papua New Guinea and Indonesia are, as far as the Council knows, the only countries that allow riverine tailings disposal. In Europe, the mining industry has to act in accordance with a new directive for extractive industries from 2008, with stringent environmental requirements.[107] The World Bank no longer finances projects that make use of riverine tailings disposal, neither does the *International Finance Corporation* accept riverine disposal.[108] The World Bank's *"The Extractive Industries Review"* (EIR) from 2003[109] and the international project *"Mining, Minerals and Sustainable Development"* (MMSD) [110] also advise against riverine tailings disposal because of the environmental damage this implies. The EIR states that *"Scientific evidence clearly demonstrates that this method of waste disposal causes severe damage to water bodies and surrounding environments... In practice, this technology is being phased out due to recognition of its negative consequences."*[111]

The Council therefore stresses that internationally riverine disposal is considered an unacceptable disposal method for mine waste, due to the environmental damage it provokes. On these grounds the Council assesses Barrick's practice in Papua New Guinea as clearly in breach of international norms.

It is also the Council's task to assess whether the company has neglected to act in order to prevent the damage, or whether adequate measures have been implemented to rectify the damage. Two years have passed since Barrick acquired the Porgera mine, but no significant changes in mine waste management seem to have been effected. Even if the company states that it considers the possibility of other tailings disposal measures, it has not given

any concrete indications that it will actually abandon riverine disposal.

The Council is not aware that the company has initiated comprehensive environmental and health assessments to obtain updated knowledge on the environmental and health status of the local population and future risks related to this. Considering the pollution in question, this is particularly serious. The Council assumes that such studies will be necessary to be able to implement measures aimed at mitigating a severe pollution situation downstream of the mine.

In its letters to the Council, the company has hardly touched on the impact of heavy metals. In the Council's view, the company attempts to give the impression that the environmental effects of the mining operation are insignificant and without lasting consequences. At the same time, the company does not strive for transparency in this respect. The fact that Barrick does not wish to disclose its environmental reports, but continues to refer to the CSIRO environmental review from 1996 rather than publishing contemporary data, suggests that the management is not willing to substantiate its claims with concrete data. In the Council's view, the company's statements that the discharges do not have long-term harmful effects are therefore not convincing. The Council also finds it regrettable that the population who is affected by the discharges does not have access to information on the pollution and what health and environmental effects it may cause.

The Council takes as its point of departure that Barrick has not implemented any significant measures aimed at reducing the damage caused by the mining operation and fails to substantiate its claims that the mining operation does not produce severe environmental damage in the short or long term. The Council finds that the lack of environmental measures and transparency relating to environmental information increases the risk of the Fund's contributing to severe environmental damage.

Finally, the Council must evaluate whether *the company's unacceptable practice may be expected to continue in the future.* In the last quarterly report for 2007, Barrick informs that the company plans to expand the mine and extend its lifespan. The authorities have granted a concession for discharge into water for as long as the mine is in operation. Riverine disposal is practiced by several mining companies in PNG, and the Council has no indications that the government will order Barrick to use other disposal methods. The discharge of tailings into a natural river is a very cheap waste disposal method in terms of both infrastructure and maintenance. Even if Barrick states that other disposal methods are being studied, the Council assumes that it will take many years before the company voluntarily builds a new, and probably very costly, waste disposal site.

Based on the above, the Council deems it probable that the company's unacceptable practice will continue.

8 Conclusion

In light of the documentation at hand, the Council finds that Barrick's operation of the Porgera mine entails an unacceptable risk of extensive and irreversible damage to the natural environment. According to the Council's assessment, the company's riverine disposal practice is in breach of international norms. In the Council's view, the company's assertions that its operations do not cause long-term and irreversible environmental damage carry little credibility. This is reinforced by the lack of openness and transparency in the compa-

ny's environmental reporting. Considering the intentions presented by the company with regard to production expansion, the Council finds reason to believe that the company's unacceptable practice will continue in the future.

9 Recommendation

After this assessment of the gist of the accusations against Barrick Gold Corporation and in light of the Ethical Guidelines, point 4.4, the Council will recommend that the company be excluded from the investment universe of the Government Pension Fund - Global due to an unacceptable risk of contributing to ongoing and future severe environmental damage.

Gro Nystuen	Andreas Føllesdal	Anne Lill Gade	Ola Mestad	Bjørn Østbø
(Chair)	(sign.)	(sign.)	(sign.)	(sign.)
sign				

Notes

1 Hereinafter referred to as Barrick's first letter to the Council.

2 Barrick's letter is dated 25 April 2008, but was only received on 14 May. This letter is hereinafter referred to as Barrick's second letter to the Council.

3 Barrick has a 95 per cent stake in the Porgera Joint Venture (PJV), which runs the mine; see chapter 5.

4 CSIRO 1996: Review of riverine impacts. Porgera Joint Venture. In 1995 PJV commissioned the Australian research institute CSIRO to make an environmental impact assessment of the mining operation on the river system downstream of the mine. The survey was comprehensive, covering the health and environmental effects of the discharge, assessing the risk of long-term impact and providing recommendations regarding measures, control and monitoring, as well as further surveys. In this recommendation the report is also referred to as the CSIRO report from 1996. It is on file with the Council.

5 See the recommendations regarding Freeport McMoRan Inc., DRD Gold Ltd. and Vedanta Resources plc.; available at www.etikkradet.no

6 For example the Mineral Policy Institute in Australia and Mining Watch Canada.

7 This case has been examined by various organizations. The Oxfam Mining Ombudsman in Australia has conducted field surveys and scientific studies, which are available at http://www.oxfam.org.au/campaigns/mining/ombudsman/cases/marinduque/. Much information can also be found on the web pages of the American law firm Diamond McCarthy LLP, which is involved in the lawsuit against Placer Dome/Barrick on behalf of the Provincial Government of Marinduque; see http://www.diamondmccarthy.com/current-events-pom.html. The US Geological Survey has examined the pollution in the area several times and published reports on this at http://pubs.usgs.gov/of/2001/ofr-01-0441/. After the tailings disposal from the Marcopper mine into the Makulapnit and Boac Rivers, the UNEP conducted a survey of the environmental damage. The report is available at http://www.reliefweb.int/ocha_ol/programs/rcb/unep4.html

8 USGS 2000: Preliminary Survey of Marine Contamination from Mining-related Activities on Marinduque Island, Philippines: Porewater Toxicity and Chemistry Results from a Field Trip - October 14-19, 2000, USGS 2000: An Overview of Mining-Related Environmental and Human Health Issues, Marinduque Island, Philippines: Observations from a Joint U.S. Geological Survey -- Armed Forces Institute of Pathology Reconnaissance Field Evaluation, May 12-19, 2000. Both reports are available at http://pubs.usgs.gov/of/2001/ofr-01-0441/ , A&SR Tingay PTY LTD Environmental Scientists 2004: Water Quality in the MogPog River, Marinduque Island, Republic of the Philippines; see http://www.oxfam.org.au/campaigns/mining/ombudsman/cases/marinduque/docs/scientific_report.pdf, and Regis, Emelina 2005: Assessment of the effects of Acid Mine Drainage on Mogpog River Ecosystem, Marinduque, Philippines, and Possible Impacts on Human Communities; see http://www.oxfam.org.au/campaigns/mining/docs/assessment-of-acid-mine-drainage-mopog-river.pdf

9 Oxfam Mining Ombudsman 2005: Case Report on Marinduque, p. 3; available at http://www.oxfam.

org.au/campaigns/mining/ombudsman/cases/marinduque/docs/report.pdf

10 http://www.diamondmccarthy.com/pdf/sac.pdf

11 Barrick Gold: Financial Report 2007, pp. 28-29; available at www.barrick.com

12 Dirección General de Aguas (The General Water Directorate under the Chilean Ministry for Public Works) 2005: Informe de Comisión de Servicio a la III Región.Visita a Pascua Lama. 12.01.2005; on file with the Council.

13 Observatorio Latino de Conflictos Ambientales, (OLCA) Presentación de las organizaciones del Valle del Huasco ante Comisión de Recursos Naturales y Medio Ambiente Cámara de diputados; available at http://www.olca.cl/oca/chile/region03/presentacioncomisiondiputados.pdf. The American Corpwatch http://www.googlesyndicatedsearch.com/u/corpwatch?q=Pascua+Lama&is=corpwatch.org; Mining Watch Canada, http://www.miningwatch.ca/, and the Chilean organization Observatorio de Derechos de los Pueblos Indígenas, (ODPI) http://www.observatorio.cl, have also worked on this case.

14 EFE, A exigir comisión investigadora de diputados por Pascua Lama. 11.07.2007; see http://www.olca.cl/oca/chile/region03/pascualama265.htm

15 Observatorio de Derechos de los Pueblos Indígenas 2005: Denuncia Comision Interamericana de Derechos Humanos Comunidad agrícola Diaguita de los Huascoaltinos vs Estado de Chile. October. http://www.observatorio.cl/contenidos/datos/docs/20051021152909/Proyecto%20Minero%20Pascua%20Lama_Nancy%20Yáñez%20IMPRENTA[Octubre%202005].pdf

16 EFE, Gobierno condiciona Pascua Lama a cumplir exigencias ambientales. 02.08.2007 http://www.olca.cl/oca/chile/region03/pascualama266.htm

17 Barrick Gold: Letter to NBIM/Council on Ethics, dated 25April 2008. In the letter Barrick also refers to its website http://www.barrick.com/CorporateResponsibility/KeyTopics/PascuaLama/PascuaLamabrQA/default.aspx

18 http://www.barrick.com/GlobalOperations/default.aspx

19 In 2007 DRD Gold sold its share of the Porgera mine to Barrick, which consequently increased its stake from 75 to 95 per cent; see http://www.barrick.com/News/PressReleases/2007/BarrickCompletesAcquisitionofAdditionalStakeinPorgera/default.aspx

20 IIED 2002. Mining for the Future. Appendix1: Porgera Riverine Disposal Case Study p I-5; available at http://www.iied.org/mmsd/mmsd_pdfs/068b_mftf-i.pdf

21 Nita, Albert 2002: Independent Review of the Porgera Mine Impact on the Porgera River and Compensation: 1990-2002, p. 3, Environmental Science Discipline, University of Papua New Guinea; on file with the Council.

22 http://www.mining-technology.com/projects/porgera/

23 See footnote 20, p I-4.

24 In 2006 and 2007, the production was lower than in 1999. According to Barrick, the production in 2006 was affected by remediation work and power cuts, in addition to a 10 day shutdown of operations due to a dispute with landowners. In 2006, the total ore processed was 4.53 million tons, and in the 9 months to 30 September 2007 it was 3.5 million tons. See Barrick's Fourth Quarter and Year-End Report 2007 p. 23; available at http://www.barrick.com/Theme/Barrick/files/docs_annualquarterly/2007%20Complete%20Year-End%20Results%20v2c.pdf p.23.

25 IIED 2002. Mining for the Future. Appendix1: Porgera Riverine Disposal Case Study, p I-6.

26 CSIRO 1996 report p 2-2, on file with the Council, and http://www.mining-technology.com/projects/porgera/

27 The tailings are discharged into the Maiapam River, which is a tributary to the Porgera River, which, in turn, runs into the Lagaip River. The Lagaip is the most important feeder of the Strickland River – a river of several hundred kilometres that passes the east side of Lake Murray before joining the Fly River and running into the Gulf of Papua. The Fly River has the country's largest drainage basin, covering an area of some 79 000 sq km. The drainage basin consists of 6 main parts – Upper, Middle and South Fly, Strickland River and Fly River Delta. See footnote 20, p. I-5 and footnote 71.

28 IIED 2002. Mining for the Future. Appendix 1: Porgera Riverine Disposal Case Study, p. I-4.

29 Mineral Policy Institute 1995: The Porgera Files, p. 6; available at http://users.nlc.net.au/mpi/reports/porgera_report.html

30 Barrick Gold: Annual Report 2006, p. 130. Based on 7 million ounces of proven and probable reserves.

31 Barrick Gold: 2007 Fourth Quarter & Year-End Mine Statistics, available at http://www.barrick.com/Theme/Barrick/files/docs_annualquarterly/2007%20Complete%20Year-End%20Results%20v2c.pdf
32 http://www.secinfo.com/d14pb2.v8.html
33 See footnote 32.
34 Barrick Gold: Letter to NBIM/Council on Ethics, dated 25 April 2008, annex including excerpts from the discharge permit and the 1996 CSIRO report, p. ES-3.
35 Shearman, Phil 2001: Giving away another river: an analysis of the impacts of the Porgera mine on the Strickland River system. In Mining in Papua New Guinea: Analysis and Policy Implications. B.Y. Imbun and P.A. McGavin eds., p. 177.
36 Barrick Gold: Annual Report 2006, p 95.
37 IIED 2002. Mining for the Future. Appendix1: Porgera Riverine Disposal Case Study, section 5-1.
38 See footnote, p I-8, which refers to Porgera Joint Venture 1999 data.
39 Concentrations of total suspended solids in the river water (incl. natural sediments) are diluted as the distance from the mine increases. Levels reported in 1999 were: 13 847 mg/l – 8 km from the mine; 2781 mg/l – 42 km; 1 777 mg/l – 165 km; 1 250 mg/l – 360 km, see footnote Feil! Bokmerke er ikke definert., figure I3, which refers to Porgera Joint Venture 1999 data.
40 Apte, S.C. 2001: Tracing mine derived sediments and assessing their impact downstream of the Porgera Gold mine. CSIRO report No ET/IR383. Prepared for the Porgera Joint Venture, p. 1; available at http://www.peakpng.org.pg/docs/Sigreport%20final.pdf , and Day, Apte, Batley and Skinner 1998: Strickland River Floodplain Coring Project. Final Report. Prepared by Ecowise Environmental Ltd, Limnos Environmental Consultants Pty Ltd and CSIRO for the Porgera Joint Venture; on file with the Council.
41 IIED 2002. Mining for the Future. Appendix1: Porgera Riverine Disposal Case Study, Figure I2. SG refers to monitoring stations along the river.
42 See footnote 41, table I2 which refers to PJV 1999 data.
43 1996 CSIRO report, chapter 4.1-4.2, and Tingay, Alan 2008: Assessment commissioned by the Council; on file with the Council.
44 Swanson, K. M., E. Watson, R. Aalto, J. W. Lauer, M. Bera, A. Marshall, M. Taylor, S.C. Apte, W. E. Dietrich 2008: Sediment load and floodplain deposition rates: Comparison of the Fly and Strickland rivers, Papua New Guinea, i Journal of Geophysical Research, vol 113, F01S03, doi:10.1029/2006JF000623, section 25.
45 Tingay, Alan 2008: Assessment for the Council.
46 Mineral Policy Institute 1995: The Porgera Files, p. 26-27.
47 Barrick Gold: Letter to NBIM/Council dated 25 April 08. In its first letter to the Council, of 30.11.07, Barrick states that "stream aggradation has occurred in the Kaiya and Porgera rivers, which are the smaller rivers that flow in steep narrow gorges that make up the first approximately 30 km downstream of Porgera. This aggradation will reverse itself after tailings discharges cease and the carrying capacity of these rivers is freed-up to erode the beds of these rivers. Indeed that process is already occurring in some reaches of those rivers."
48 Swanson et.al 2008: Sediment load and flood plain deposition rates: Comparison of the Fly and Strickland rivers, Papua New Guinea, and Aalto et al 2008: Spatial and temporal dynamics of sediment accumulation and exchange along Strickland River flood plains (Papua New Guinea) over decadal-to-centennial timescales; both articles in Journal of Geophysical Research, vol. 113.
49 Ross, Charles 1991: Staged Development and Environmental Management of the Porgera Gold Mine, Papua New Guinea, in Proceedings of the Torres Strait Baseline Study Conference Kewarra Beach, Cairns, Queensland 19 - 23 November 1990, edited by David Lawrence and Tim Cansfield-Smith; available at http://www.gbrmpa.gov.au/corp_site/info_services/publications/workshop_series/ws016/index.html
50 IIED 2002. Mining for the Future. Appendix1: Porgera Riverine Disposal Case Study, Table I1, which refers to PJV 1999 data.
51 See footnote 50, Table I4, which refers to PJV 1999 data.
52 Barrick Gold: Letter to NBIM/Council, dated 25 April 2008.

53 Dissolved metals represent the metal concentration in the water once the water has been filtered to remove solids. Dissolved metals are thus bioavailable. Total metal content is the sum of particle-bound and dissolved metals. Particulate metal may, however, turn into dissolved metal, depending on pH, organic and particulate material content in the water, the water's hardness, and other factors. It is international practice to require compliance with total concentration levels.

54 ANZECC 2000: Water quality guidelines, Chapter 2 a, Framework for applying guidelines, p. 2-17- available at http://www.mfe.govt.nz/publications/water/anzecc-water-quality-guide-02/anzecc-water-quality-guide-02-pdfs.html. The Australian and New Zealand Environment and Conservation Council (ANZECC) has established authoritative water quality standards that provide guidelines for the protection of aquatic ecosystems in areas such as the tropics, which are relevant in this case.

55 See also Phil Shearman 2001 (footnote 35) and Alan Tingay 2008 (Assessment for the Council), for a discussion on this matter.

56 CSIRO 1996 report, p. 4-10.

57 CSIRO 1996 report, p. 4-10.

58 TSS, total suspended solids, i.e. solid particles suspended in the water.

59 Norwegian Institute for Water Research (NIVA) 2008: The Porgera Mine, Papua New Guinea. Assessment of Environmental Effects, and Tingay, Alan 2008: Assessment commissioned by the Council; both reports on file with the Council.

60 CSIRO 1996 report, p ES-9.

61 Day, G.M., S.C. Apte, G.E. Batley and J. Skinner 1998: Strickland River Coring Project. Final Report. Prepared by Ecowise Environmental Ltd. Limnos Environmental Consultants Pty Ltd and CSIRO for the Porgera Joint Venture; on file with the Council.

62 See footnote 61, p. I, 34.

63 See footnote 61, pp I, 51-52.

64 See footnote 61, p 52.

65 Apte, S.C. 2001: Tracing mine derived sediments and assessing their impact downstream of the Porgera Gold mine. CSIRO report No ET/IR383. Prepared for the Porgera Joint Venture, p. 13.

66 Swanson et.al 2008: Sediment load and floodplain deposition rates: Comparison of the Fly and Strickland Rivers, Papua New Guinea, in Journal of Geophysical Research, vol. 113, chapter 4.

67 See footnote 66, section 38.

68 See footnote 66, section 38.

69 Such as the water's acidity, hardness and organic and particulate material content.

70 See footnote 65, p. 7.

71 PNG`s largest copper mine, the Ok Tedi mine, is located in the mountains near the border with Indonesia. This mine also discharges tailings directly into a river system – the Fly River. The Strickland River joins the Fly River before emptying into the Papua Gulf. This implies that the discharges from the Porgera and Ok Tedi mines flow together in the lower reaches of the Fly River, which continues through the delta and out to sea (see figure 1). See Tingay, Alan 2007: The Ok Tedi mine Papua New Guinea. A summary of Environmental and Health Issues; on file with the Council.

72 Tingay, Alan 2008: Assessment commissioned by the Council; on file with the Council. In its second letter to the Council, Barrick claims that the conditions of the Strickland River cannot be compared with those of the Fly River. The surveys referred to by the company (see footnote 667) that describe this focus on physical differences related to sediment volume and aggradation, which do not necessarily have a bearing on the mobilization of heavy metals in the sediments.

73 The reports are available at http://www.peakpng.org.pg/reports.html

74 See footnote 65, Appendix, survey 1, and NIVA 2008: The Porgera Mine, Papua New Guinea. Assessment of Environmental Effect, p. 8.

75 Bioaccumulation refers to how pollutants enter a food chain. Biomagnification occurs when pollutants concentrate as they move from one trophic level in the food chain to the next. It generally refers to the sequence of processes that result in higher concentrations in organisms at higher levels in the food chain (at higher trophic levels). These processes result in an organism having higher concentrations of a substance than is present in the organism's food.

76 Bowles, K.C. Apte, S.C., Maher, W.A and McNamara, J. 2002: Mercury speciation in waters and sediments of Lake Murray, Papua New Guinea, in Marine and Freshwater Research 53 (4), p. 826.

77 CSIRO 1996 report, p. 5-2.

78 Bowles, K.C. Apte, S.C., Maher, W., Kawei, M. and Smith, R. 2001: Bioaccumulation and biomagnification of mercury in Lake Murray, Papua New Guinea, in Canadian Journal of Fisheries and Aquatic Sciences Volume 58, Number 5, May 2001, p. 895. More than 23% of the collected piscivorous fish showed mercury concentrations above 0.5 mg/kg.

79 See footnote 78 and footnote 76. The ecosystem of Lake Murray is susceptible to Hg contamination due to biomagnification of monomethyl mercury (MeHg) in the planktonic based food web, comprising four trophic levels: phytoplankton, zooplankton, planktivorous and piscivorous (fish-eating) fish.

80 See footnote 76 and NIVA 2008: The Porgera Mine, Papua New Guinea. Assessment of Environmental Effect. According to Bowles et.al 2002, the mercury concentrations in sediments from the south end of the lake were 177 ± 57 ng/. Levels in the northern and central part of the lake were 70 ± 27 ng/g and 89 ± 48 ng/g respectively. The mercury concentration in the southern part of the lake was 142 ± 32 ng/g.

81 See footnote 76 and NIVA 2008: The Porgera Mine, Papua New Guinea. Assessment of Environmental Effect. According to Bowles et.al 2002, the concentration of monomethyl mercury was 0.84 ± 0.39 ng/g in surface sediments of the southern part of Lake Murray and 0.07 ng/g in suspended sediments from the Strickland River.

82 Bowles, K.C. Apte, S.C., Maher, W.A and McNamara, J. 2002: Mercury speciation in waters and sediments of Lake Murray, Papua New Guinea, in Marine and Freshwater Research 53 (4), p. 831.

83 Barrick Gold: Letter to NBIM/Council on Ethics, dated 25April 2008.

84 See footnote 82.

85 NIVA 19 May 2008: Electronic correspondence between the Council's Secretariat and Tingay, Alan; 27 May 2008: Letter to the Council. Both are on file with the Council.

86 NIVA 2008: Electronic correspondence with the Council's Secretariat of 19 May.

87 NIVA 2008: The Porgera Mine, Papua New Guinea. Assessment of Environmental Effect, p. 9.

88 http://www.mineral.gov.pg/GreenPaper/WP2_4.htm

89 First-hand observations by the Council's Secretariat.

90 The locals' gold mining is considered illegal, as it occurs on PJV's property and because the gold, in principle, is owned by PJV. Locals claim that they practiced alluvial gold mining before the mine operation began, and that is was a legal and important source of income. The main reasons why they continue to mine illegally is poverty and lack of land for subsistence farming. Illegal mining is a controversial issue that the Council has not researched further.

91 The Council has not assessed the issue of compensation or the security guards' alleged human rights abuses.

92 Mineral Policy Institute 1995: The Porgera Files, p 10.

93 IIED 2002. Mining for the Future. Appendix1: Porgera Riverine Disposal Case Study, p I-15

94 CSIRO report from 1996, p. ES-6.

95 Tingay, Alan 2008: Assessment commissioned by the Council, and Tingay, Alan 2007: The OK Tedi Mine Papua New Guinea. A summary of Environmental and Health Issues.

96 CSIRO 1996 report, p 3-15.

97 CSIRO 1996 report, p 3-17.

98 Placer Dome established in 1997 a "multi-stakeholder committee called PEAK (Porgera Environmental Advisory Komiti) to oversee the implementation of the CSIRO recommendations." The respected leader of the Foundation for People and Community Development in Papua New Guinea was appointed to chair the committee. In 2001, he withdrew from PEAK because, in his view, Placer Dome did little to implement the CSIRO's recommendation and because he felt that he was used in the company's CSR propaganda. According to his letter to the company: "Placer has now had four years to carry out these studies and implement their recommendations, yet nothing has changed from the situation in 1996 when the CSIRO report was started." http://www.miningwatch.ca/cms/index.php?/porgera_placer_dome/Bun_resignation_ltr . PEAK's website is available at http://www.peakpng.org.pg/

99 Taufa et.al. 2001: The investigation of the "mysterious disease" and deaths in The Strickland Gorge areas of Southern Highlands and the West Sepik provinces of Papua New Guinea. April 2001, available at http://www.peakpng.org.pg/docs/Medical_Survey_Lake_Kopiago.pdf

100 CSIRO 1996 report, p. ES 9.

101 See the Council on Ethics'' recommendation to exclude Freeport McMoRan of 15 February 2006, at www.etikkradet.no.

102 Among others: Bowles, K.C. et al 2002: Mercury speciation in waters and sediments of Lake Murray, Papua New Guinea, in Marine and Freshwater Research 53 (4).

103 Barrick Gold: Letter to NBIM/Council on Ethics, dated 25 April 2008.

104 NIVA 2008: Electronic correspondence with the Council's Secretariat of 19 May

105 See footnote 102, Abstract, p. 825.

106 http://www.barrick.com/CorporateResponsibility/Environment/WasteRockTailings/default.aspx

107 Directive 2006/21/EC of The European Parliament and of the Council of 15 March 2006 on the Management of Waste from Extractive Industries and Amending Directive 2004/35/EC; available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:102:0015:0033:EN:PDF

108 IFC 2007: Environmental, Health and Safety Guidelines for Mining where the IFC declares that riverine tailings disposal is not considered good international practice (p.7); available at http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/gui_EHSGuidelines2007_Mining/$FILE/Final+-+Mining.pdf

109 "The Extractive Industries Review was launched by the World Bank Group to discuss its future role in the extractive industries with concerned stakeholders. The aim of this independent review was to produce a set of recommendations that will guide involvement of the World Bank Group in the oil, gas and mining sectors." Information and reports available at www.worldbank.org

110 "Mining, Minerals and Sustainable Development (MMSD) was an independent two-year process of consultation and research with the objective of understanding how to maximise the contribution of the mining and minerals sector to sustainable development at the global, national, regional and local levels. MMSD was a project of the International Institute for Environment and Development (IIED) commissioned by the World Business Council for Sustainable Development (WBCSD)" Information and reports available at http://www.iied.org/mmsd/

111 EIR 2004: Striking a Better Balance - The World Bank Group and Extractive Industries: The Final Report of the Extractive Industries Review, p 33; available at http://siteresources.worldbank.org/INTOGMC/Resources/finaleirmanagementresponse.pdf. In this context, it may also be mentioned that the world's largest mining company, BHP Billiton, has declared that it does not wish to make use of riverine tailings disposal in new projects. The background for this is the extensive environmental damage that the riverine disposal has caused at the OK Tedi mine in Papua New Guinea, which BHP owned jointly with the Papua New Guinean state until 2002; see www.bhpbilliton.com

To the Ministry of Finance

Oslo, August 26th, 2008
(Published January 30th, 2009)

Recommendation on exclusion of Textron Inc.

1 Introduction

The Council on Ethics for the Government Pension Fund – Global submitted its first recommendation on exclusion of companies that produce cluster munitions on June 16th, 2005. The recommendation was based on the Council's own definition of criteria which defined cluster munitions.

In 2008, an international convention to ban cluster munitions has been negotiated. The convention's technical definition of what constitutes cluster munitions is largely in line with the criteria the Council applied in 2005, but in some areas it is more stringent. This implies that production of munitions which have previously not qualified for recommendation of exclusion may fall inside the treaty's definition of cluster munitions. The Council on Ethics finds it appropriate to base future recommendations of exclusion on the definitions provided in the cluster munitions convention.

The company Textron Inc. produces weapons which, according to the definition of the convention, must be considered cluster munitions. The Council on Ethics therefore recommends that Textron Inc. is excluded from the investment universe of the Government Pensions Fund – Global.

2 Background

In its 2005 recommendation[1], the Council considered that certain types of cluster munitions should not constitute grounds for recommendation of exclusion. These were the so-called *"Advanced Munitions"/"Sensor Fuzed Weapons"* designated CBU-97 and CBU-105. These weapons were characterised by a low number of submunitions able to detect and engage single target objects and designed to engage vehicles. These types of munitions are not meant to strike randomly within a target area. The Council on Ethics considered the risk of civilian casualties from the use of such weapons as low, and that, generally, the use of such weapons could not be viewed as a violation of fundamental humanitarian principles of armed conflict.

Article 2 of the Convention on Cluster Munitions defines the types of cluster munitions which the Convention prohibits. The convention specifies cumulative criteria which must be fulfilled for cluster munitions that are not to be subjected to the convention's definition.[2] These criteria specify that the weapon must have fewer than ten submunitions, each submunition must weigh more than four kilograms and the weapon must have autonomous targeting and self-destruct/self-deactivating mechanisms.

The Council will base its recommendations on exclusions of cluster munitions producers on the convention's definitions.

The Council assumes that future production of cluster munitions will only take place in states that are not parties to the convention. Such production will not be illegal or constitute a breach of the convention. This, however, has no bearing on the Council's assessments.

3 Cluster munitions produced by Textron Inc.

Textron describes the cluster munitions CBU-97 / CBU 105 on its own homepage:

"Known as CBU-97 and CBU-105, Textron Defense Systems' Sensor Fuzed Weapon (SFW) is the first and only combat-proven smart area weapon of its kind in U.S. Air Force inventory designed to accurately detect and defeat multiple threat targets. […]

The SFW, a 1,000-pound class weapon, contains our own BLU-108 submunition and Smart Skeet warheads. Equipped with dual-mode passive infrared and active laser sensors on each warhead, one SFW can simultaneously detect and engage many fixed and moving land combat targets within a 30-acre coverage area.

[…] SFW's 40 warheads are also equipped with timed self- de-activation modes for clean battlefield operation."[3]

The company describes its production of the Sensor Fuzed Weapon (SFW) designated CBU-97 and CBU-105 with submunitions designated BLU-108. It is also stated that SFW contains 40 warheads.

Based on this information, Norges Bank wrote to Textron Inc. on behalf of the Council in June 2008. In its letter, Norges Bank asked Textron to clarify whether the company produces cluster munitions as per the convention's definitions.

Norges Bank received a response on July 15th, 2008.

In its letter to Norges Bank, Textron confirms its production of SFW. The company maintains that this weapon fulfils the convention's criteria for acceptable cluster munitions in several areas, but also states that the convention's criteria of fewer than 10 submunitions, each weighing more than four kilograms, are not met in today's configuration of this weapon.

The Council therefore finds that Textron produces cluster munitions as per the definitions of the Convention on Cluster Munitions.

4 Recommendation

Based on the information given above, the Council recommends that Textron Inc. is excluded from the investment universe of the Government Pension Fund – Global.

Gro Nystuen	Andreas Føllesdal	Anne Lill Gade	Ola Mestad	Bjørn Østbø
(Chair)	(sign.)	(sign.)	(sign.)	(sign.)
sign				

Notes

1 See: http://www.regjeringen.no/pages/1661742/Tilrådning%20klasevåpen%20eng%2015%20juni%20 2005.pdf

2 Convention on Cluster Munitions, Article 2:
Cluster munition means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions. It does not mean the following:
[...] A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics:
Each munition contains fewer than ten explosive submunitions;
Each explosive submunition weighs more than four kilograms;
Each explosive submunition is designed to detect and engage a single target object;
Each explosive submunition is equipped with an electronic self-destruction mechanism;
Each explosive submunition is equipped with an electronic self-deactivating feature;
see: http://www.clusterconvention.org/convention/text/english/#toc-article-2

3 Textron's home page: http://textrondefense.com/products/airlaunched/sfw.htm

To the Ministry of Finance

Oslo, November 14th, 2008
(Published in March 2009)

Recommendation on exclusion of Dongfeng Motor Group Co. Ltd.

1 Introduction

The Council on Ethics has received a letter from the Ministry of Finance dated October 3 rd, 2008, in which an amendment in the ethical guidelines for the Government Pension Fund – Global is communicated.

The amendment implies that investments in companies which sell arms or military equipment to states which are on the list of countries whose government bonds are not investable, are to be avoided. It follows from this that the fund shall not invest in companies which sell weapons or military equipment to Burma.

As of December 31st, 2007, the Government Pension Fund – Global held equities issued by the Chinese company Dongfeng Motor Group Co. Ltd. to the value of NOK 32,356,000.

The Council on Ethics recommends that Dongfeng Motor Group Ltd. be excluded from the Fund's investment universe because the company sells military equipment to the government of Burma.

2 The Council's understanding of the term "arms and military equipment"

The Ministry has decided that the Council on Ethics shall give advice on exclusion of companies that sell "arms and military equipment" to Burma. The Council must therefore consider which products should reasonably be considered "arms and military equipment".

Both the EU and the USA have imposed arms embargos on Burma. In the following, a short description of the criteria applied in the embargo regimes is provided:

EU's arms embargo on Burma
The EU introduced sanctions towards Burma in 1996. These have since been expanded several times. The current sanctions make any form of military equipment from EU countries to Burma illegal: *"The sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles, paramilitary equipment and spare parts for the aforementioned, as well as equipment which might be used for internal repression, to Burma / Myanmar by nationals of Member States or from the territories of Member States […] shall be prohibited whether originating or not in their territories."* [1]

As it is stated, the EU's sanctions specifically mention military vehicles and spare parts for such. Furthermore, it is stated that any kind of technical assistance, transfer or financing in connection with sales of military equipment to Burma is illegal.[2]

USA's arms embargo on Burma

The USA introduced an arms embargo on Burma in 1993. A statement from the Department of State reads: *"Effective immediately, it is the policy of the US Government to deny all applications for licences and other approvals to export or otherwise transfer defense articles and defense services to Burma.[…] This action has been taken in light of the human rights abuses committed by the current Government of Burma."*[3]

The responsibility for upholding the US export control regimes is divided between several government departments. Export of products that may have both civilian and military applications, so called "dual use", is regulated by the US Bureau of Industry and Security's *Commerce Control List*,[4] which provides extensive definitions of products regulated by the export control regime. In general, any product that has significant military application or has been produced or modified for military purposes, is subject to the regulations.[5]

The Council on Ethics will, as a point of departure, use the same definitions as in the above mentioned sanction regimes, and finds that investments in companies that supply trucks or spare parts for trucks to the Burmese army, may constitute a breach in the fund's ethical guidelines.

3 Contact with the company Dongfeng Motor Group Co. Ltd.

The Council has been made aware that large numbers of military trucks produced by the Chinese company Dongfeng Motor Group Co. Ltd. have been observed at border crossings between China and Burma. These are transfers of new military trucks which are driven in convoy across the border.

Based on the information at hand, Norges Bank wrote to the company on behalf of the Council in June 2008. In its letter, Norges Bank made the company aware that by an upcoming amendment in the Fund's ethical guidelines, investments in companies which supply arms and military equipment to Burma are to be avoided. It was enquired whether the company, or any of its subsidiaries, supply vehicles to the Burmese military.

The company responded to Norges Bank in a letter dated July 22nd, 2008. In its letter, the company confirms that one of its subsidiaries, "DFL", as of the first half of 2008, had supplied 900 trucks to Burma.

4 Council's assessment

The Council finds that the trucks delivered by Dongfeng Motor Group Co. Ltd. to the Burmese military are produced or adapted to military purposes and also have significant military application, e.g. in transport of arms and personnel, and must therefore be considered to be military equipment. The Council also assumes that these supplies are ongoing, and that there will be future deliveries of spare parts for the already delivered vehicles.

5 Recommendation

Based on the findings and statements above, the Council finds that the investment in Dongfeng Motor Group Co. Ltd. constitutes a breach of the Fund's ethical guidelines.

The Council recommends that Dongfeng Motor Group Co. Ltd. be excluded from the investment universe of the Government Pension Fund – Global.

Gro Nystuen	Andreas Føllesdal	Anne Lill Gade	Ola Mestad	Bjørn Østbø
(Chair)	(sign.)	(sign.)	(sign.)	(sign.)
sign				

Notes

1 Council Common Position 2006/318/CFSP, Article 1.
See: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:116:0077:0097:EN:PDF

2 Ibid, Article 2.

3 1993, US Department of State, Bureau of Political – Military Affairs, Public Notice 1829:
See: http://pmddtc.state.gov/docs/frnotices/58FR33293.pdf

4 US Bureau of Industry and Security, see: http://www.bis.doc.gov/policiesandregulations/index.htm

5 Ibid, Category XXI – Miscellaneous Articles: "Any article not specifically enumerated in the other categories of the U.S. Munitions List which has substantial military applicability and which has been specifically designed, developed, configured, adapted, or modified for military purposes. The decision on whether any article may be included in this category shall be made by the Director, Office of Defense Trade Controls Policy."

Letter to the Ministry of Finance

Oslo, April 18th, 2008

Council on Ethics' assessment on investments in Israel Electric Corporation

We hereby refer to the letter from the Ministry of Finance, dated March 3rd, 2008, requesting an assessment of whether investments made by the Government Pension Fund – Global in Israel Electric Corporation ("IEC") may constitute a breach of the fund's Ethical Guidelines.

The NGO Norwegian People's Aid has written to the Council requesting that the Council recommend exclusion of the company. A local group of *"Palestinavenner" ("Friends of Palestine")* from the municipality of Hamar has done the same. These requests are based on, i.a., the allegation that IEC has reduced the supply of electricity to Gaza and that this amounts to a form of collective punishment of the civilian population in Gaza.

In connection with this case, the Council on Ethics has held meetings with Norwegian People's Aid and with the Israeli ambassador to Norway. Information has also been gathered from Palestinian energy officials through the Norwegian Ministry of Foreign Affairs. In its assessments, the Council has also referred to a report by the UN Office for the Coordination of Humanitarian Affairs (OCHA): *"Electricity Shortages in the Gaza Strip: Situation Report"*, dated February 8th, 2008, and also to a ruling by the Supreme Court of Israel, dated February 27th, 2008.

1 Background

The Council bases its assessment on the fact that the Fund holds bonds issued by IEC, which is 99.9 per cent owned by the State of Israel. The company produces and distributes electricity to all of Israel and to areas under Palestinian government.

To the Council's knowledge, there are three sources of electricity supply to Gaza: Approximately 10 per cent of the electricity is supplied from Egypt, 30 per cent is generated in Gaza's own power plant, and the remainder, approximately 60 per cent, is supplied by IEC via ten main power lines from Israel. In Gaza, the electricity is distributed by the Gaza Electricity Distribution Company ("GEDCO").

Gaza's own generation of electricity has been reduced following the Israeli bombing of the power plant in 2006, which destroyed half of the plant's production capacity. There have also been restrictions imposed by Israel on the supply of fuel to the power plant.

In the autumn of 2007, the Israeli Defence Ministry instructed IEC to reduce its supply of electricity to Gaza. The reduction was part of an economic blockade of Gaza in response to, i.a., rocket attacks from Gaza on Israel.

It is not disputed that living conditions for the population of Gaza are very difficult, and that the reduction in electricity supply comes in addition to other restrictions on transport of goods and border crossings for the population.

Report from OCHA

The UN body OCHA made public a report on February 8th, 2008, in which the consequences of electricity shortages in Gaza are outlined. In the report, it is described how water supply and sewage treatment are dependant on electrical pumps, and the operation of these is hindered by electricity shortages. It is also described how hospitals in Gaza are affected by electricity shortages. Also, the OCHA report describes that limitations in the distribution system in Gaza make it difficult for GEDCO to make priorities in the distribution of electricity in order to meet humanitarian needs.

With regard to the reduction in electricity supply to Gaza, the following is stated:

"On October 28th, 2007, the Israeli Ministry of Defense declared it would start cutting electricity to Gaza in response to the continued and indiscriminant firing of rockets from Gaza to Israel. It proposed cutting power by a total of 1.5 megawattes, but it appears that it now plans to introduce a cut of 0.5 megawattes per week…"

"On Thursday, 7 February, the Israel Electricity Corporation reduced its supply to Gaza by around 0.5 megawattes under the instruction on the Ministry of Defense. The cut was less than the 1.5 megawattes proposed but still adds to the existing shortfall of 60 mgw."

The report assumes that there has been a plan to reduce the electricity supply to Gaza as a response to rocket attacks on Israel, and that a reduction by 0.5 MW has been implemented. The report is also understood to suggest that there is an escalation plan which involves further, weekly reductions by 0.5 MW per week.

Ruling by the Supreme Court of Israel

The question of legality of IEC's reduction in electricity supply to Gaza has been the subject of a petition for temporary injunction brought before the Supreme Court of Israel. The petition is brought on by a group of private individuals and NGOs in Israel. In the Supreme Court ruling, dated January 27th, 2008, it was found that the reduction in electricity supply is not unlawful. This, however, has no direct bearing on the Council's assessment.

Central to the Supreme Court's assessment of the legality of the reduction in electricity supply, is the question of whether and to which extent it is possible for the distribution company GEDCO to distribute the electricity so that water supply and hospitals are not affected by the reduction. On this matter, the opinions of Israeli authorities and the petitioners differ. The Supreme Court finds that it is possible to distribute the electricity such that humanitarian needs are met. The petitioners maintain that it is physically impossible for GEDCO to distribute the electricity in such a manner that humanitarian needs are not affected by reduced supply. This question is technically complicated and it requires extensive insight into the construction and operations of the electrical distribution system

in Gaza to determine whether such distribution is actually feasible. The Council assumes that, in practice, it is probably difficult to distribute the power according to humanitarian needs.

Meeting with Israel's ambassador to Norway
The Chair of the Council and the secretariat met with Israel's ambassador to Norway on March 10th, 2008, to discuss the issue at hand.

The ambassador described the security situation for the civilian population of Israel which is subjected to repeated rocket attacks from Gaza. She also explained that employees of IEC have been targeted by gunfire when they have conducted maintenance work on the power lines which supply Gaza from Israel, and that Israeli power plants which produce electricity for Gaza are also targeted by rockets launched from Gaza.

The ambassador confirmed that for a short period in February of this year, IEC did reduce the supply of electricity to Gaza by 5 per cent on one of ten power lines. This amounted to a reduction by 0.5 per cent of the total amount of electricity supplied to Gaza by Israel. It was emphasised that this reduction lasted only for a short period and that normal supply of electricity then was resumed.

Meeting with Norwegian People's Aid
The Chair of the Council and the secretariat met with representatives of the NGO Norwegian People's Aid on March 14th, 2008, to discuss the current issue. Norwegian People's Aid, which has representatives present in Gaza, confirmed to a large extent the information which has transpired through UN sources and media, and described the difficult humanitarian situation in Gaza resulting from the Israeli blockades, which render the population without adequate provisions of food, medicines, electricity and other necessities. Norwegian People's Aid could not confirm that the reduction in supply of electricity had ceased.

The Council informed Norwegian People's Aid of its enquiries related to this issue and invited the NGO to submit any further information. Norwegian People's Aid did this in the form of an e-mail sent to the Council on April 10th, 2008. Here, it was stated that based on their own enquiries, Norwegian People's Aid could still not determine that the reduction in supply of electricity had actually ceased, but that it was difficult to bring certainty to this question.

Information from Palestinian energy officials
The Council received an e-mail from the Middle East section of the Norwegian Ministry of Foreign Affairs on February 28th, 2008. Information from Palestinian energy officials had been gathered via the Norwegian representation office in Al Ram. The Palestinian energy officials confirm that there are no ongoing reductions in the electricity supply to Gaza. The 0.5 per cent reduction by IEC, which OCHA and other sources has referred to earlier, had in fact ceased. There are restrictions on the supply of fuel for the Gaza power plant, but that this is unrelated to IEC.

Based on the e-mail from Norwegian People's Aid on April 10th, 2008, a new enquiry was directed from the Council to the Ministry of Foreign Affairs on April 15th, 2008, asking whether new information had come to light regarding the question of reduction in supply of electricity to Gaza. The Council received a response from the Ministry of

Foreign affairs on the same day. Norway's representation office in Al Ram here explained that there are no reductions in the direct electricity supply from Israel to Gaza. It is also advised that Israeli restrictions on energy supply are once more imposed on fuel delivery to the Gaza power plant. These restrictions were imposed following the attack on the Nahal Oz terminal, the main terminal for transfer of fuel to Gaza, on April 9th, 2008.

2 The Council's assessment

The Council recognises that there have been numerous and serious violations of international law in the conflict between Israel and the Palestinians. For example, the UN Security Council has passed several resolutions in which settlements in occupied territories are considered violations of international humanitarian law, and the International Court of Justice has, in an advisory opinion, found the security wall which Israel has constructed to be illegal. There have also been violations of international humanitarian law committed by the Palestinians, i.a. by attacks against civilians. A thorough discussion of the many aspects of international and humanitarian law raised by this conflict is beyond the scope of this letter. It is the role of the Council on Ethics to consider the behaviour of companies, not possible violations of international law conducted by states or other parties.

The Council assumes that IEC acts under orders from Israeli authorities. This has, however, no bearing on the outcome of the Council's assessment. Companies' motives for acts or omissions are, as a general point of departure, not relevant to the Council's deliberations.

Also, the Council assumes that the reduction in IEC's electricity supply to Gaza is not ongoing. It has been specified from both Palestinian and Israeli officials that a limited reduction did take place for a period earlier this year, but that the supply of electricity to Gaza from IEC is now normal. Palestinian authorities have confirmed that the supply of electricity is not reduced as a consequence of reduced supplies by IEC. The escalation plan, which was suggested in the OCHA report, has not been implemented.

According to the Fund's ethical guidelines, breaches of norms must be ongoing or there must be an unacceptable risk of future breaches for the exclusion mechanism to be used. As the reduction in supply of electricity has ceased, this cannot be considered an ongoing breach of norms. The Council assumes that, although the humanitarian situation in Gaza is very alarming, this cannot be attributed to the previous, temporary, reduction by 0.5 per cent in IEC's deliveries.

The question which faces the Council is whether there is an unacceptable risk of the Fund's future contribution, through its investments in bonds issued by IEC, to grave breaches of norms. Such contribution largely depends on whether IEC will again introduce reductions is the electricity supply to Gaza. The Council finds it difficult to have a clear opinion on the likelihood of such possible, future reductions in the supply of electricity to Gaza. Companies' past actions can, however, give indications to future behaviour. Considering the situation in general and the repeated rocket attacks against Israel, it cannot be ruled out that future situations could arise where IEC again is instructed to reduce the electricity supply to Gaza. Assuming, however, that there did exist a plan to escalate the rate of reductions in electricity supply, as suggested in the OCHA report, it seems clear that this plan has not been implemented. It also seems clear that there have been no repetition of the power cuts.

The Council on Ethics will therefore, given the current situation, not recommend exclusion of IEC from the Fund.

If future reductions in the electricity supply to Gaza, causing unacceptable humanitarian conditions for the civilian population, are introduced by IEC, the Council may renew its assessment of the Fund's investment in IEC.

Gro Nystuen	Andreas Føllesdal	Anne Lill Gade	Ola Mestad	Bjørn Østbø
(Chair)	(sign.)	(sign.)	(sign.)	(sign.)
sign				

Letter to the Ministry of Finance

Oslo, September 29th, 2008

Consultation statement from the Council on Ethics concerning the evaluation of the Ethical Guidelines for the Government Pension Fund – Global

We refer to the Ministry of Finance's consultation paper from June 18th, 2008 regarding the evaluation of the Fund's Ethical Guidelines.

Our consultation statement consists of three parts. First, we present the Council on Ethics' most important experiences from close to four years of operations. Second, we comment on the main issues in the evaluation that seem of particular importance from the Council on Ethics' point of view. Third, we discuss some other issues based on the report from the Chesterman/Albright Group.

1 The Council on Ethics' experience

The Council's mandate

In 2004, the Ministry of Finance established the mandate for the Council on Ethics based on the description in the Revised National Budget for 2004, which in turn was founded on the report from the Graver Committee in NOU 2003:22. The Ministry of Finance has also in subsequent reports to the Storting (Report no. 24 (2006-2007) and Report no. 16 (2007–2008)) touched upon aspects of the Council on Ethics' mandate. These papers provide the Council with the guiding principles for interpreting its mandate.

When the Council on Ethics was appointed, great importance was attached to its independence. This has, in the Council's view, worked well. The Ministry of Finance has not sought to influence the Council's work or priorities. A Secretariat has been created specifically for the Council, and the Council has satisfactory budgetary resources at its disposal both to hire consultants and to conduct investigations on its own. The Secretariat is established in separate offices from the Ministry. In the few cases where the Ministry of Finance has requested an assessment of particular companies or issues, this has been communicated in writing to the Council by the Ministry.

When establishing the priorities for its work, the Council has made a point of addressing all types of cases stated in the mandate. The fact that recommendations have not yet covered all areas is not a result of priorities, but rather that the difficulties encountered in some areas are larger than in others.

Negative screening of certain weapons manufacturers

The mandate for negative screening is expressed as follows: *"The Council shall issue recommendations to the Ministry of Finance on negative screening of one or more companies on the basis of production of weapons that through their normal use may violate fundamental humanitarian principles."*

At an early stage, the Council prioritized a review of the portfolio aimed at finding all weapons manufacturing companies that met the criteria of the mandate. This resulted in two major recommendations. Based on the description in the Revised National Budget for 2004 and in the Graver Committee's report, the Council has expanded on its interpretation of the Guidelines with regard to weapons. Experience shows that it is easier to verify that companies manufacture certain weapons than to assess corporate behaviour. Complex ownership structures, however, sometimes make it difficult to assign weapons production to listed companies in the portfolio.

Exclusion based on corporate behaviour

The mandate as regards exclusion on the grounds of expected corporate conduct reads: *"The Council shall issue recommendations on the exclusion of one or several companies from the investment universe because of acts or omissions that constitute an unacceptable risk of the Fund contributing to:*

- *serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other forms of child exploitation*
- *serious violations of individuals' rights in situations of war or conflict*
- *severe environmental damage*
- *gross corruption*
- *other particularly serious violations of fundamental ethical norms."*

When applying the Guidelines, the Council must form an opinion on two main issues: First, whether grossly unethical practices can be ascribed to a company where the Fund is or may be invested, and second, whether there is an unacceptable risk that such practices will continue in the future. Exclusion shall only occur on the basis of future complicity. The guidelines are not intended to punish past behaviour, but previous behaviour may be an indication as to how the company will act in the future.

The Council has made a point of detailing its comprehension of the Guidelines' clauses within each criterion, especially in the initial recommendations. The specifications of the criteria (as gross, serious etc.), as well as the preparatory works, provide clear directions as to how strictly the Guidelines should be practiced. The Council has often used conventions, international law, national legislation in the respective countries, or other non-binding sets of norms as standards for the various issues to be assessed.

The evaluation of what constitutes "an unacceptable risk" for future complicity is in principle an assessment of the probability that the unethical behaviour will continue and an analysis of how grossly unethical the assessed conduct is. In practice, such assessments will vary greatly from one area to another. Assessing future severe environmental damage is, for example, less problematic than gauging future gross corruption, which, as a rule, implies illicit and thus secretive acts. Another example of a complex issue is the relationship between a company's expressed attitudes to human rights violations and actual practice far away from headquarters.

Dividing the tasks of exclusion and active ownership

The Graver Committee's report advised against the exclusion of a company that has committed grave violations if there is reason to believe that results may be achieved through active ownership. This assessment must initially be made by the Council on Ethics, something that has been done regularly even if it is not expressly discussed in the recommendations.

The Revised National Budget for 2004 treats the relationship between active ownership and exclusion in some more detail, stating that:

"The Ministry of Finance bases its decision [regarding exclusion] on, inter alia, the Council's assessment, but will normally also attach weight to Norges Bank's views as to whether active ownership may reduce the risk of grossly unethical conduct."

At the same time, the Guidelines imply that the Council on Ethics may ask Norges Bank for information on how a company is handled with regard to ownership activities. In this way, the stage is set for a two-fold assessment of the possibility to achieve results in the exercise of ownership rights. Report no. 24 to the Storting (2006-2007) presents the formulations on the interaction between active ownership and exclusion, but it does not state clearly who should be responsible for this interaction. Normally, the Council on Ethics does not possess sufficient information to specifically assess Norges Bank's possibilities to reduce the risk of violations through ownership activities. The Council understands its mandate to include at least the consideration of this question, but seeing as the competence to decide exclusion lies with the Ministry of Finance, the Ministry must also form an opinion on this issue.

The Guidelines' regulation of communication with the companies

The Council on Ethics is free to collect data from all sources at the same time as the mandate imposes certain restrictions on its possibility to request information directly from companies in the Fund's investment portfolio. Gathering information from the companies has presented certain challenges. The Council's mandate states: *"The Council shall gather all necessary information at its own discretion and shall ensure that the matter is documented as fully as possible before making a recommendation regarding negative screening or exclusion from the investment universe. The Council may request Norges Bank to provide information as to how specific companies are dealt with in the exercise of ownership rights. Enquiries to such companies shall be channelled through Norges Bank. If the Council is considering recommending exclusion of a company, the company in question shall receive the draft recommendation and the reasons for it, for comment."*

Thus, at this point the Guidelines do not invite the Council on Ethics to engage in any further dialogue with the companies. In line with this, the Council on Ethics adopted a procedure at the outset where it first assessed a company's practices and, if reason was found to recommend exclusion, requested Norges Bank to send a draft recommendation on its behalf to the company for comment. If the company in its reply presented facts that eliminated the foundation for exclusion, the Council on Ethics could put the case aside. If the company responded to the enquiry without offering arguments to counter the key points in the Council on Ethics' assessment, the Council would be able to issue a recommendation to exclude the company. Since this arrangement seems to lack flexibility, the Council on Ethics has lately, in agreement with Norges Bank, sought a more extensive dialogue with individual companies, for instance by asking follow-up questions when key issues have been left unanswered.

The overall scope of the Guidelines

The Guidelines have been formulated so that the Council on Ethics shall assess the most serious violations of ethical standards. When it comes to active ownership, the Guidelines' point 3.1 may be understood as sanctioning the exercise of ownership rights by Norges Bank only if the interest of long-term return and ethical considerations point in the same direction. Less serious violations of ethical standards where it is not in the Fund's financial interest to broach the issue with the companies do therefore not fall within the scope of the Guidelines. In light of the expectations the Ministry of Finance are met with when ethical violations are revealed, it may seem as if this has not been communicated well enough.

There is a grey area of cases that fall outside the "radar" of both the Council on Ethics and Norges Bank. First, there are many cases in which the Council on Ethics does not issue a recommendation on exclusion, either because they are not serious enough, the responsibility for the violations is unclear, or it is difficult to document the violations. The Council on Ethics often keeps on monitoring such cases, but apart from that it does not take any further steps. Second, many of the less serious cases will also pass unnoticed by Norges Bank's ownership activities. Within its mandate, Norges Bank has chosen two priority areas and, as far as we have understood, does not look at violations outside of these areas. Cases that do not qualify for exclusion and do not fall within Norges Bank's priority areas are thus in practice not covered by the Guidelines.

The intention and purpose of exclusions

The Ethical Guidelines establish that companies shall be excluded from the Government Pension Fund in order to prevent the Fund's complicity in grave violations. Even if the intention of exclusion is to avoid complicity in violations, the outcome may still be that the company in question, other companies and other stakeholders are affected by the exclusion mechanism. With regard to companies that are assessed for exclusion, the following takes place: Via Norges Bank, the Council on Ethics sends a letter to the company before issuing any recommendation for exclusion. Most companies reply, and many wish to meet the Council on Ethics to clarify certain points, or to defend themselves. Excluded companies have also contacted the Council on Ethics afterwards to report on changes in the operation's steering documents, or actual changes with the aim of being readmitted to the Fund.

Concerning other companies, the exclusion mechanism seems to have two functions. First, the existence of the exclusion mechanism may, in certain cases, make the companies more receptive to Norges Bank in its ownership activities. Second, companies that are not excluded, but that may perceive themselves as being in the "danger zone" may in some cases look to the recommendations in order to assess what is considered unacceptable.

When it comes to other interested parties, the Council is aware that some pension funds and other institutional investors follow the Council on Ethics' recommendations in their own activities. Furthermore, non-governmental organisations use recommendations in their work to instigate companies to show higher ethical standards. One recommendation has also been been referred to in a court case (India's Supreme Court). Moreover, the recommendations are included and discussed in the literature on corporate social responsibility.

In the Council's view, the leverage of the exclusions and recommendations lies in the combination of the Fund being a large player and the high threshold for exclusion with

clear and relatively few criteria, as well as the fact that the recommendations are made public and that they are thorough and well documented.

Both Norwegian and international media, other investors and non-governmental organisations show a great interest in the activities of the Council on Ethics, and the Council spends much time informing about its work.

Data gathering and prioritizing companies
The biggest challenge in the Council on Ethics' work has been to obtain and quality assure information on corporate behaviour and structures.

The Council has made arrangements for continuous monitoring of the whole portfolio, which currently includes some 7000 companies.

Regarding the weapons criteria, the Council on Ethics has signed agreements with two consultancies that analyse the portfolio systematically with a view to identifying not only companies where the Fund is actually invested, but also companies in the benchmark portfolio that produce weapons incompatible with the criteria. Additionally, we subscribe to a data base on weapons and weapons technology. Overall, this provides a high probability of identifying the relevant companies.

When it comes to the exclusion criteria, daily electronic searches are carried out on a series of news and other sites, combined with numerous search words linked to all 7000 companies in the portfolio. The results of these searches are collected in reports that provide a basis for singling out companies that qualify for further investigations. Moreover, the Council had subscribed to a net-based news service that focuses on reputational risks for companies. The experience with these services are good as far as large Western companies are concerned, but they are less reliable when it comes to small companies and those headquartered in emerging markets.

To fulfil its mandate, the Council on Ethics depends on the revelation and publication of information about violations in some way or another. Companies or sectors where strong NGOs are engaged have a greater probability of appearing on the "radar." There is little information available about companies in so-called emerging markets, something that poses a significant challenge to the disclosure and, not least, the documentation of violations.

When the Council selects companies for a more detailed investigation, it concentrates on violations that seem very serious or systematic and that can be linked directly to a company. Assessments are also made of whole sectors at a time, or of violations within a certain category, such as corruption. However, the Council does not deem it suitable to establish particular focus areas. The idea is that any company with operations at odds with the Ethical Guidelines may be subject to investigations by the Council on Ethics.

The Guidelines imply that each company shall be assessed individually. The fact that a company is part of a sector, or is situated in a geographical area where serious violations are commonplace does not provide sufficient grounds for exclusion. A closer investigation of each individual company is carried out by the Secretariat itself, by selected local consultants, through the assistance of Norwegian and other authorities, and in some instances through the assistance of non-governmental organisations. The Secretariat has obtained public documents, carried out on-site visits and conversations with directly

affected individuals. The Secretariat does at times receive information of a confidential nature. Although such information is utilized, it is public sources which are primarely relied on for substantiating the recommendations. Making the recommendations public requires a high degree of certainty and documentation of the statements that are presented. Experience from the work so far also shows that many allegations in the media regarding ethical transgressions do not qualify for exclusion once they have been more closely examined.

Companies are often accused of violations under several of the Council's assessment criteria, or they are accused of the same kind of violation in various countries. If one offence in itself is sufficient to exclude a company from the Fund, the Council on Ethics does not necessarily make an overall assessment of the whole operation. If a series of violations are presumed, those breaches that may be easiest to document are the ones that are examined further.

2 Key issues

Above we have referred to some of the Council on Ethics' experiences during the past three and a half years. Against this background, we will now raise and comment on some issues that, in the Council's view, are an important part of the evaluation.

In the current Ethical Guidelines, the purpose of *exclusion* is to avoid future complicity in serious violations. The criteria for excluding companies are built on what the Graver Committee called an overlapping consensus in the Norwegian population on ethical principles, with the goal of ensuring that the principles will be stable over time. *Active ownership* is exercised on the basis of widely accepted international standards aimed at safeguarding the Fund's financial interests. The Council would like to stress the importance of having clear purposes and criteria also in the case of any supplementary Ethical Guidelines.

Below we look at some key issues that may have a bearing on the formulation of the Ethical Guidelines and that may have consequences for the Council's work.

Mandate

The rationale behind the exclusion mechanism is to prevent complicity in, or contribution to unethical actions. Based on a general linguistic comprehension, the terms *complicity* and *contribution* are used as synonyms; there are no particular legal or other implications attached to the interpretation of these. The Council on Ethics interprets the Graver Report to the effect that avoiding complicity is the equivalent of ensuring that one's "hands are clean"; i.e. the Norwegian people do not want to contribute, through ownership, to overly unethical acts.

The Chesterman/Albright Group's assessment report points out that even if the express purpose of exclusion is to avoid complicity, the publication of the Council's recommendations in particular indicates that the purpose is also to influence companies. Many of the suggestions in the report imply that the purpose of exclusion should be to play in unison with the ownership activities in order to influence companies and encourage other investors to pull in the same direction as the Government Pension Fund.

In the Council on Ethics' view, the main purpose of the exclusion mechanism should still be to *avoid* the Fund's complicity in particularly serious ethical violations, and not to influence companies. The Council on Ethics should still assess the worst violations and the mandate must be clear in this respect. This has proven to work effectively during the period in which the Council has been operative.

Even if the Council on Ethics' recommendations for exclusion in some cases may also exert an influence on companies, such influence should not be a *purpose* of the exclusion mechanism. Such an arrangement would in fact limit the Council on Ethics' possibility to work on the companies that contribute to the worst violations. It could also cause difficulties in the demarcation vis-à-vis Norges Bank's ownership activities.

It is also important that the mandate is realistic with regard to what factors it is possible to obtain information about. As an example, it will generally be very difficult for the Council on Ethics to collect sufficient relevant data on any violations by non-listed companies.

Communication with the companies

As mentioned above, data gathering is a major challenge in the Council on Ethics' work. This is a question of what information is actually available, how much resources one shall dedicate to finding information about one individual company and what sources to use.

In this context, the Council deems it natural also to be able to obtain data directly from the company that is being assessed, and preferably at an earlier stage in the investigation process than what the existing Guidelines provide for. The Council wants to have the possibility of communicating directly with the companies that are being analysed. Since Norges Bank is the formal owner of the securities, the initial enquiry to the company should still go through Norges Bank, which is able to introduce the Council on Ethics as a representative of the Fund's owner. Subsequently, the Council on Ethics should be able to contact companies directly to shed light on the facts. The mandate should therefore be changed so that the Council on Ethics itself is given explicit opportunity to obtain information from the companies.

Increased engagement with the companies will be a challenge. There is an inherent clash of interests between the openness of the Council's recommendations and companies' desire for confidentiality. The fundamental principle must be transparency, and it should be made clear to the companies that the intention of the enquiry is to clarify facts that may be used as a basis for the Council's possible recommendations, which will be made public. Thus, the exchange of information between the Council on Ethics and the companies should still be mainly in writing.

The possibility of dialogue may provide the Council on Ethics with better information as well as remedying the problem that some companies think they have too little communication with the Council on Ethics, or that they are drawn into the process too late. However, it is generally the case that most companies will plead high ethical standards regardless of the questions that are being asked about their operations. There is no international consensus as to what is ethically acceptable either. A case in point is that none of the companies excluded on the grounds of severe environmental damage think that their activities cause such damage. Consequently, the criticism from companies that are excluded will hardly cease even if the Council on Ethics engages more closely with the companies.

Synergy between exclusion and active ownership

In the consultation paper, the Ministry of Finance seems to attach somewhat more importance to the possibility of influencing companies rather than avoiding complicity in unethical practices through divestment from companies. However, if one looks at the exclusion mechanism by itself there is a connection between avoiding complicity and exercising influence. It is the very thorough and, not least, public reviews of the companies' unethical practices that bring about the influencing effect. We are therefore of the opinion that the Council on Ethics' potential to influence resides precisely in the fact that the mandate focuses so clearly on avoiding complicity.

Many of the suggestions in the report by the Chesterman/Albright Group regarding increased interaction require rather extensive cooperation between Norges Bank and the Council on Ethics. This applies to both the proposal for an agreed observation list and the assessment of which demands one may present to a company for it not to be excluded from the Fund. In all likelihood, only a small number of cases will require such coordination. In its letter to the Ministry of Finance, dated 6th June, 2008, Norges Bank comments on the report by the Albright Group/Simon Chesterman, making the following remark on the interaction and cooperation between the Council on Ethics and Norges Bank: *"In general, we underline the importance of robust procedures which in our view are best achieved through policy co-ordination by the Ministry of Finance and formalised and verifiable communications."*

In principle, the Council on Ethics views a direct cooperation with Norges Bank positively, but if this is not the Bank's desire, it is difficult to see how the benefits of a better cooperation will outweigh the disadvantages by forcing the Bank to a use of resources that it does not find expedient.

To use the resources more efficiently in the work under the Guidelines and enable the Council on Ethics to take into consideration any ongoing ownership activities on the part of Norges Bank vis-à-vis companies that the Council on Ethics wishes to assess, the Council on Ethics proposes the introduction of a system of mutual obligation to inform between Norges Bank and the Council on Ethics regarding activities directed at companies. At the request of Norges Bank, the Council on Ethics will have an obligation to provide all information it possesses on the companies in question. Likewise, Norges Bank will give an account of whether it is engaged with specified companies and, if this is the case, give the Council on Ethics all information on the said companies and the process regarding these.

Should the Council on Ethics recommend exclusion even if Norges Bank is engaged with the company on ownership, the Ministry of Finance must decide which measure shall be used.

The scope of the Guidelines

There may be several companies with dubious ethical practices that are not detected either by the Council on Ethics, or Norges Bank. This is intensified by the fact that the Bank in its ownership activities has singled out certain focus areas and to a lesser extent seems to work with other issues even if they fall within the scope of the UN Global Compact that the Guidelines refer to. It is not reasonable to expect that the Council on Ethics or Norges Bank can develop capacity to address violations in all portfolio companies. This would entail enormous resources and would also require an in-depth knowledge of individual companies that the Council finds impracticable.

Nevertheless, it should be feasible to create a system which captures the borderline cases of companies that almost reach the threshold for exclusion and could lend themselves to active ownership. There may be cases where grave violations exist, but where there still is a certain probability that the company may achieve a positive development within a given time frame.

One possibility would be that the Council on Ethics passes such cases on to Norges Bank.

3 Other issues in the Ministry of Finance's consultation paper or the report by the Chesterman/Albright Group

This section comments on some other issues covered by the consultation paper or the report from the Chesterman/Albright Group.

The Council on Ethics does not take any stance on whether companies that produce certain products, other than the weapon types that are already covered, such as tobacco or alcohol, should be excluded from the GPF.

The assessment report by the Albright Group/Chesterman discusses the establishment of various forms of observation lists destined to increase the Ethical Guidelines' influence. One of these measures is that Norges Bank and the Council on Ethics create a joint plan for each company on such a list. A divided list between Norges Bank and the Council presupposes that the Council's mandate is changed to include active ownership, something that we see as undesirable in principle.

At all times, the Council on Ethics has an internal list of companies that are under assessment. Featuring on this list are companies that the Council has concerns about and where the investigations have reached different stages. A company ends up on the Council on Ethics' "watch-list" if there are concrete suspicions that it contributes to grave breaches of the Guidelines. This list is not suitable for publication as it is made up of companies that have not been sufficiently examined for a recommendation to be issued. A list created on the basis of insufficient information may damage a company's reputation without due foundation. Additional, the credibility of the Council on Ethics and the Ministry of Finance may be undermined. In practice, the publication of an observation list would therefore require investigative work for each individual company on nearly the same scale as a recommendation on exclusion. This would not be a fortunate way to prioritize the Council on Ethics' use of resources.

The report from the Chesterman/Albright Group suggests that one informs the companies of exclusion after the divestment has been completed, but before it is made public. The Guidelines' point 4.7 already allows for such a procedure today.

It has also been suggested that the Council on Ethics should specify for the excluded companies what is required for them to be readmitted to the investment universe. As mentioned, the Council on Ethics may choose one violation which in itself is sufficient to exclude a company from the Fund without necessarily making an overall assessment of the whole operation. This makes it difficult to lay down general criteria for the revocation of exclusion. In some cases, the Council on Ethics has nevertheless engaged with companies after exclusion to discuss what is required for the Council to recommend inclusion. The Council does not find it useful to introduce a general requirement

to describe criteria for readmission of the companies that have been excluded. In general, a recommendation for inclusion may be submitted when the company documents that the actual conditions pointed out by the Council in its original recommendation do no longer exist. On its own initiative, the Council pays attention to the information that emerges on excluded companies, and if the criteria for exclusion no longer are met it will submit a recommendation to the Ministry of Finance.

Yours sincerely,

Gro Nystuen
Chair of the Council on Ethics for the Government Pension Fund – Global

Short introduction of the recommendations on excluded companies

Recommendations to exclude companies on the basis of producing Cluster Munitions

16.06.2005 Companies producing Cluster Munitions *(Published 2 September 2005)*
The companies General Dynamics Corp., L3 Communications Holding Inc., Raytheon Co., Lockheed Martin Corp., Alliant Techsystems Inc., and Thales SA were excluded on the basis of production of components for cluster munitions.

06.09.2006 Poongsan Corp. *(Published 6 December 2006)*
The South-Korean company Poongsan was excluded on the basis of production of cluster munitions.

15.05.2007 Hanwha Corp. *(Published 11 January 2008)*
The South-Korean company Hanwha was excluded on the basis of production of cluster munitions.

26.08.2008 Textron Inc. *(Published 30 January 2009)*
The US-company Textron was excluded on the basis of production of cluster munitions.

Recommendations to exclude companies on the basis of producing key components to Nuclear Weapons

19.09.2005 Companies developing and producing key components for nuclear weapons *(Published 5 January 2006)*
The companies BAE Systems plc., Boeing Co., Finmeccanica Sp. A., Honeywell International Inc., Northrop Grumman Corp., United Technologies Corp. and Safran SA were excluded on the basis of the development and production of key components for nuclear weapons.

18.04.2006 EADS Co. *(Published 10 May 2006)*
The Dutch company EADS (European Aeronautic Defence and Space Company) was excluded in 2005 on the basis of production of cluster munitions. In 2006, this was no longer the case, but as the company was producing key components for nuclear weapons, the decision to exclude the company was upheld.

15.11.2007 GenCorp Inc. *(Published 11 January 2008)*
The US-company GenCorp was excluded on the basis of the production of key components for nuclear weapons.

15.11.2007 Serco Group plc. *(Published 11 January 2008)*
The British company Serco Group was excluded on the basis of the production of key components for nuclear weapons.

Recommendations to exclude companies on the basis of producing Anti Personnel Landmines

22.03.2002 Singapore Technologies Engineering Ltd.

The Ministry of Finance excluded the company Singapore Technologies Engineering because of production of antipersonnel landmines based on a recommendation from the Council on International Law, which preceded the Council on Ethics.

Recommendations to exclude companies supplying weapons and military equipment to Burma

14.11.2008 Dongfeng Motor Group Co. Ltd. *(Published in March 2009)*

The Chinese company Dongfeng Motor Group was excluded because it supplies military trucks to the Burmese government.

Recommendations to exclude companies on the basis of contributions to violation of Human Rights

15.11.2005 Wal-Mart Stores Inc. *(Published 6 June 2006)*

The US-retailer Wal-Mart Stores Inc. and its subsidiary Wal-Mart de Mexico were excluded because of unacceptable working conditions both in some of the company's own stores and among its global suppliers.

Recommendations to exclude companies on the basis of Environmental Damage

15.02.2006 Freeport McMoRan Copper & Gold Inc. *(Published 6 June 2006)*

The US mining company Freeport McMoRan Copper & Gold was excluded owing to environmental damage caused by the company's practice of riverine tailings disposal at the Grasberg mine in Indonesia.

24.08.2006 DRD Gold Ltd. *(Published 11 April 2007)*

The South African mining company DRD Gold Ltd. was excluded on the grounds of severe environmental damage caused by the company's disposal of mine tailings in a natural river system at the Tolukuma mine in Papua New Guinea.

15.05.2007 Vedanta Resources plc. *(Published 6 November 2007)*

The British metals and mining company Vedanta Resources Ltd., including its subsidiaries Sterlite Industries Ltd. and Madras Aluminium Company Ltd. were excluded on the grounds of causing severe environmental damage associated with pollution and irresponsible waste disposal at the companies' copper- and aluminium works in India, as well as human rights violations, including the abuse and forced displacement of tribal peoples.

15.02.2008 Rio Tinto plc. and Rio Tinto Ltd. *(Published 9 September 2008)*

The British/Australian mining group Rio Tinto is a joint venture partner to the Grasberg mine operated by Freeport McMoRan in Indonesia. Freeport McMoRan was excluded from the Fund in 2005 owing to environmental damage caused by the company's riverine tailings disposal. Rio Tinto was excluded because the company is regarded to be directly involved in the severe environmental damage caused by the mining operation.

15.08.2008 Barrick Gold Corp. *(Published 30 January 2009)*

The Canadian mining company Barrick Gold was excluded on the grounds of severe environmental damage caused by the company's riverine tailings disposal from the Porgera mine in Papua New Guinea.

Ethical Guidelines for the Government Pension Fund – Global

This translation is for information purposes only. Legal authenticity remains with the original Norwegian version.

Ethical Guidelines Norwegian Government Pension Fund – Global

Issued 22 December 2005 pursuant to regulation on the Management of the Government Pension Fund – Global, former regulation on the Management of the Government Petroleum Fund issued 19 November 2004.

1 Basis

The ethical guidelines for the Government Pension Fund – Global are based on two premises:

- The Government Pension Fund – Global is an instrument for ensuring that a reasonable portion of the country's petroleum wealth benefits future generations. The financial wealth must be managed so as to generate a sound return in the long term, which is contingent on sustainable development in the economic, environmental and social sense. The financial interests of the Fund shall be consolidated by using the Fund's ownership interests to promote such sustainable development.
- The Government Pension Fund – Global should not make investments which constitute an unacceptable risk that the Fund may contribute to unethical acts or omissions, such as violations of fundamental humanitarian principles, serious violations of human rights, gross corruption or severe environmental damages.

2 Mechanisms

The ethical basis for the Government Pension Fund – Global shall be promoted through the following three measures:

- Exercise of ownership rights in order to promote long-term financial returns based on the UN Global Compact and the OECD Guidelines for Corporate Governance and for Multinational Enterprises.
- Negative screening of companies from the investment universe that either themselves, or through entities they control, produce weapons that through normal use may violate fundamental humanitarian principles.
- Exclusion of companies from the investment universe where there is considered to be an unacceptable risk of contributing to:
  - Serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other child exploitation
  - Grave breaches of individual rights in situations of war or conflict
  - Severe environmental damages
  - Gross corruption
  - Other particularly serious violations of fundamental ethical norms

3 The exercise of ownership rights

3.1 The overall objective of Norges Bank's exercise of ownership rights for the Government Pension Fund – Global is to safeguard the Fund's financial interests. The exercise of ownership rights shall be based on a long-term horizon for the Fund's investments and broad investment diversification in the markets that are included in the investment universe. The exercise of ownership rights shall primarily be based on the UN's

Global Compact and the OECD Guidelines for Corporate Governance and for Multinational Enterprises. Norges Bank's internal guidelines for the exercise of ownership rights shall stipulate how these principles are integrated in the ownership strategy.

3.2 Norges Bank shall report on its exercise of ownership rights in connection with its ordinary annual reporting. An account shall be provided of how the Bank has acted as owner representative – including a description of the work to promote special interests relating to the long-term horizon and diversification of investments in accordance with Sections 3.1.

3.3 Norges Bank may delegate the exercise of ownership rights to external managers in accordance with these guidelines.

4 Negative screening and exclusion

4.1 The Ministry of Finance shall, based on recommendations of the Council on Ethics for the Government Pension Fund – Global, make decisions on negative screening and exclusion of companies from the investment universe.

The recommendations and decisions shall be made public. The Ministry may, in certain cases, postpone the time of public disclosure if this is deemed necessary in order to ensure a financially sound implementation of the exclusion of the company concerned.

4.2 The Council on Ethics for the Government Pension Fund – Global shall consist of five members. The Council shall have its own secretariat. The Council shall submit an annual report on its activities to the Ministry of Finance.

4.3 Upon request of the Ministry of Finance, the Council issues recommendations on whether an investment may constitute a violation of Norway's obligations under international law.

4.4 The Council shall issue recommendations on negative screening of companies that:

- produce weapons that through their normal use violate fundamental humanitarian principles; or
- sell weapons or military materiel to states mentioned in Clause 3.2 of the supplementary guidelines for the management of the Fund.

The Council shall issue recommendations on the exclusion of companies from the investment universe because of acts or omissions that constitute an unacceptable risk of the Fund contributing to:

- serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other forms of child exploitation,
- serious violations of individuals' rights in situations of war or conflict,
- severe environmental damages,
- gross corruption; or
- other particularly serious violations of fundamental ethical norms.

The Council shall raise issues under this provision on its own initiative or at the request of the Ministry of Finance.

4.5 The Council shall gather all necessary information at its own discretion and shall ensure that the matter is documented as fully as possible before making a recommendation regarding negative screening or exclusion from the investment universe. The Council may request Norges Bank to provide information as to how specific companies are dealt with in the exercise of ownership rights. Enquiries to such companies shall be channelled through Norges Bank. If the Council is considering recommending exclusion of a company, the company in question shall receive the draft recommendation and the reasons for it, for comment.

4.6 The Council shall review on a regular basis whether the reasons for exclusion still apply and may against the background of new information recommend that the Ministry of Finance reverse a decision to exclude a company.

4.7 Norges Bank shall receive immediate notification of the decisions made by the Ministry of Finance in connection with the Council's recommendations. The Ministry of Finance may request that Norges Bank inform the companies concerned of the decisions taken by the Ministry and the reasons for the decision.

Foto Bryggepeler (-påler) Kjerkfjorden, Moskenesøya i Lofoten 1998.
©Tor Schmedling
Design Tori Falch
Trykk 07 Gruppen as