



Submission to the Commission reviewing the ethical guidelines for the Government Pension Fund Global

Shadow World Investigations

December 2019

Introduction:

Shadow World Investigations (formerly Corruption Watch UK) is a London-based NGO that undertakes path-breaking investigations into cases of grand corruption, corporate malfeasance and militarism, predominantly but not exclusively in the global arms trade. These case-studies are used to highlight the blurred lines between business and state, and to indicate the legal and political reforms that are needed to halt the corrosive impact of criminal and institutional corruption. You can peruse our work at <https://shadowworldinvestigations.org/>

The authors of this submission, Andrew Feinstein and Paul Holden, are both directors of Shadow World Investigations. Feinstein is a former South African ANC MP and the author of *Shadow World: Inside the Global Arms Trade* (2011), which has been described by the *Washington Post* as “the most complete account of the arms trade ever written.” He has participated in numerous submissions to the British, EU and other European country Parliaments. Paul Holden worked as the lead researcher on Feinstein’s *Shadow World* and on the documentary film of the same name. He is the lead author and editor of *Indefensible: Seven Myths That Sustain The Global Arms Trade* (2017), and has authored three other books on corruption. Together they were named anti-corruption champions and whistle-blowers of the year in 2015. Andrew was named amongst the 100 most influential people in the world working in armed violence reduction by Action on Armed Violence (AOAV). He serves on the Boards of The Platform to Protect Whistleblowers in Africa (PPLAAF), Lighthouse Reports, an NGO promoting investigative journalism, including on the global arms trade, and *DeClassified*, a new online journal covering foreign policy, defence, the arms trade and intelligence.

In the interests of full disclosure: We have, on occasion, undertaken research work for the Norwegian Council on Ethics and are in fairly regular contact with staff members of the Council through a variety of anti-corruption fora.

We are grateful for this opportunity to make a submission to the Commission appointed to review the ethical guidelines for the Government Pension Fund Global.

Our submission covers two areas:

- 1) Guidelines pertaining to corruption; and
- 2) The defence sector.

We contend that the corruption criteria is currently inadequately applied and as a consequence undermines global anti-corruption work; and that it is unsustainable for an ethical fund to be invested in the defence sector given its central role in global corruption and its ongoing, systemic violation of human rights that is currently the subject of an ICC enquiry request.

Guidelines Pertaining to Corruption:

The battle against corruption has always been a difficult one. If anything, it is becoming more difficult and more urgent as the phenomenon of state capture becomes more pervasive in countries as diverse as South Africa and Angola on the one hand to the United States and Hungary on the other.¹

The consequences of corruption are profound and devastating. For instance, it is estimated that State Capture in South Africa cost the country approximately one-third of its GDP during President Zuma's second term in office.² The reality of this is countless lives lost as a consequence of underinvestment in health, policing, basic nutrition and housing. Corruption is never a victimless crime.

The commitment of the GPFG to avoid investing in corrupt companies is an important one. However, the manner in which it has been applied in practice is, in our opinion, detrimental to the fight against corruption and might even be doing more harm than good.

The Council on Ethics advises the GPFG to divest from companies, or to place them under observation, in relation to the perceived future risk of corruption. However, it is virtually impossible to determine this future risk. The mechanisms currently utilised by the Council are wholly inadequate. Assurances from new, senior management teams and the creation, or strengthening, of compliance departments and procedures is a wholly insufficient

¹ State capture refers to the capture of the highest levels and institutions of the state for private benefit, the topic of the most recent gathering of Norad's Corruption Hunters' Network. This is the most extreme form of corruption.

² *State Capture wipes out third of SA's R4.9-trillion GDP – never mind lost trust, confidence, opportunity*, Daily Maverick, 1 March 2019. <https://www.dailymaverick.co.za/article/2019-03-01-state-capture-wipes-out-third-of-sas-r4-9-trillion-gdp-never-mind-lost-trust-confidence-opportunity/>

measure of the risk of future corrupt activities. It is essential to take much more cognisance of granular corruption history of the company concerned, as well as the weight of corruption allegations over a meaningful period.

The current practice results in the GPFG retaining companies in its portfolio that are amongst the most corrupt in the world, because their managements have persuaded the Council on Ethics that they have made changes and 'turned over a new leaf'. In reality we will only know if this has actually been the case many years down the line if corrupt behaviour is uncovered.

As a consequence, the GPFG is invested in companies that are currently facing investigation and/or criminal charges for systemically corrupt behaviour over many years. This includes companies as notorious in the anti-corruption world as Petrobras, Leonardo/Finmeccanica and Rheinmettal.

These companies utilise the fact that the GPFG hasn't excluded them in order to burnish their images. For example, the Council on Ethics recommended the exclusion of Leonardo/Finmeccanica, a company embroiled in multiple corruption investigations. Norges Bank rejected the recommendation and decided instead to keep the company under observation. This observation status has been renewed despite continuing investigations into the company, the jailing of a senior Korean for accepting money from Leonardo for illegal lobbying and the retention of key leadership figures who were in crucial positions while corrupt transactions were occurring. The company has utilised the fact of the GPFG's continuing investment informally with shareholders, analysts, law enforcement and prosecutorial bodies and journalists to deny corruption allegations.

This is extremely damaging to anti-corruption efforts.

We believe that there are a number of options available to the GPFG:

- 1) Amend the guidelines so that the GPFG is obliged to exclude companies that have a history of documented systemic corruption that has not ended in the previous eight years, on the basis of more granular research of multiple years of a company's activities;
- 2) Exclude sectors that are known to be dominated by endemic, systemic corruption, such as the defence sector. See below; or
- 3) Accept that the GPFG is invested in companies that have engaged in systemic corruption and might continue to engage in corruption.

Investment in the Corrupt, Unethical Defence Sector:

The GPFG is invested in a number of companies in the defence sector, specifically weapons manufacturers. While governments have legitimate and enshrined rights and responsibilities to defend their countries, the manufacture and trade of weapons which contribute to this national defence, have unfortunately become the locus of massive corruption and under- or un-regulated exports resulting in violations of international

humanitarian and human rights law, and profound suffering and immiseration. It is our contention that no fund can claim to be investing ethically while making profit from a sector that accounts for a massive amount of all corruption in world trade and that is involved in the deaths of over half a million people annually.

A breadth of anti-corruption researchers have determined that the trade in weapons accounts for between 40% and 50% of all corruption in world trade.³ The arms trade is susceptible to corruption for a number of reasons. The primary reason is secrecy: Due to national security concerns, defence budgets are frequently declared top-secret, preventing civilian oversight. Arms transactions are similarly covered by the same imperative, preventing meaningful oversight and enabling corruption.

Other factors that enable or encourage corruption in the arms trade include:

- A problematically close relationship between arms manufacturers, politicians and other state actors. This is most clearly seen in the revolving door, in which arms executives and employees take up government employment and vice versa;
- The use of long supply chains and complicated multi-country subsidiary company structures provides ample opportunity for the insertion of corrupt middlemen (as agents or intermediaries) and/or false contracts;
- The high-tech nature of procurements, which can limit civilian oversight; and
- The widespread use of offsets, which are particularly susceptible to corruption
- The persistent use of single-source contracts, in the UK and abroad, which often presents a severe corruption risk;

This is exacerbated by the relative legal impunity with which corruption and other malfeasance in the arms trade is often treated. For instance, of 502 recorded violations of UN Arms Embargoes, many of them characterised by corruption, only two have been subject to any legal accountability, and only one of these cases led to prosecution.⁴

The trade in weapons is systemically corrupt. Corruption is built into the structure and economics of the trade. As the Transparency International Defence Index reveals, there are certain countries with whom it is virtually impossible to do business without engaging in corruption. But all of the defence companies included in the GPF's portfolio do business with at least one, and often numerous, of these institutionally corrupt countries. It is not possible to engage in the arms trade without participating in corruption.

The Council on Ethics exists to ensure that the GPF "Respects fundamental rights by not investing where there is an unacceptable risk that the Fund contributes to grossly unethical

³ See, amongst others, *National Export Strategy: Working for America*. Trade Promotion Coordinating Committee. Daley, William M. 2000 (which found 50% of all corrupt transactions undertaken by US companies in a five year period were in the defence sector); *Hard Wired for Corruption: The Arms Trade and Corruption*. Roeber, Joe. *Prospect*, August 28, 2005 (which estimates that the arms trade accounts for 40% of all corruption in world trade, based on access to intelligence and Treasury figures); and *Corruption in the Arms Trade: Sins of Commission*. Feinstein, A., Holden, P., and Pace, B. 2011. SIPRI Yearbook 2011 <https://www.sipri.org/yearbook/2011/01>.

⁴ Based on the work of Professor James Stewart, quoted in *The Shadow World: Inside the Global Arms Trade*, Feinstein, A., 2011.

conditions.” However, the weapons manufacturers in the portfolio are often engaged in enabling death, suffering, immiseration and climate degradation. This has been explicitly identified recently in the role of numerous defence companies in supplying weapons into the on-going Yemen conflict.

The General Secretary of the United Nations has described the Yemen conflict as the world’s worst humanitarian crisis, with over 8 million people are in current danger of malnutrition and disease.⁵ Over 10, 000 innocent civilians have been killed in the conflict, most of them not as “collateral damage” but as intentional targets of the Saudi-led coalition, which has targeted hospitals, schools, homes, places of work and worship with jets, bombs, missiles and explosives supplied by a number of the weapons makers in the GPF’s portfolio. These flagrant violations of International Humanitarian Law (IHL) and war crimes have been documented in UN Expert Panel reports in which the specific weapons used have been identified.⁶

On 12 December 2019, the European Centre for Constitutional and Human Rights (ECCHR) presented a legal communication to the International Criminal Court calling for the investigation and charging under international law of a number of defence companies and their governments which are responsible for allowing the continued export of deadly arms to the members of the Saudi-led coalition in spite of the evidence of violations of IHL and war crimes.⁷ The GPF invests in a number of these companies, thereby suggesting that they do not undermine ethical conduct when, in fact, there is significant evidence to the contrary.

The Yemen conflict is but the latest manifestation of the horrific levels of human suffering, immiseration, and climate catastrophe caused by conflict, and enabled by the lax regulation of arms manufacture and export, both by governments and the companies themselves. Syria, Iraq, Afghanistan, DRC, Sudan, Rwanda, East Timor, Angola, El Salvador, Nicaragua, Vietnam, Korea are just a few reminders over the past 70 years of how the arms industry has profited from human suffering.

It is, therefore, recommended that the GPF should:

1. Divest from companies against which there is significant evidence of their enabling violations of IHL or the committing of war crimes; or
2. Divest from all weapons producers on the basis that they are responsible for a significant amount of systemic corruption, and that their products are often used not only for legitimate national defence, but also in offensive wars in which IHL is

⁵ “The Yemen war is the world’s worst humanitarian crisis, UN says”, CNN, 3 April, 2018.

<https://edition.cnn.com/2018/04/03/middleeast/yemen-worlds-worst-humanitarian-crisis-un-intl/index.html>

⁶ “Yemen: United Nations Experts point to possible war crimes by parties to the conflict”, UN Office of the High Commissioner for Human Rights, 28 August 2018:

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23479&LangID=E>;

“Yemen: Collective failure, collective responsibility – UN expert report”, UN Office of the High Commissioner for Human Rights, 3 September 2019:

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24937&LangID=E>

⁷ “Made in Europe, Bombed in Yemen: ICC must investigate European responsibility in alleged war crimes in Yemen”, ECCHR, 12 December, 2019: <https://www.ecchr.eu/en/case/made-in-europe-bombed-in-yemen/>

violated and/or war crimes are committed, thus, contributing to egregious human suffering and immiseration.

Conclusion:

The existence of the Council of Ethics, and the concomitant claim by the GPFG that it is an ethical investor, bestows a level of ethical credibility on the companies in its portfolio, despite significant evidence to the contrary in the case of a number of companies, especially those in the defence sector linked to corruption and/or violations of IHL and war crimes.

It is our considered view that the GPFG should either accept that it is not an ethical investor, and make that explicit to the people of Norway and the world, or the guidelines should be considerably strengthened and their application far more rigorously enforced by a larger, better equipped Council on Ethics. Maintenance of the status quo undermines the very objectives that led to the creation of the Council on Ethics.

We are available and willing to provide additional information, either in writing or in person, should the Commission so desire.