

COUNCIL ON ETHICS

THE GOVERNMENT PENSION FUND GLOBAL

To the Ministry of Finance

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UNOFFICIAL ENGLISH TRANSLATION

Recommendation on the exclusion of Daewoo International Corporation, Oil and Natural Gas Corporation Ltd., GAIL India and Korea Gas Corporation from the investment universe of the Government Pension Fund Global

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1 Introduction

At its meeting of 16 June 2006, the Council on Ethics decided to assess whether investments in the Korean companies Daewoo International Corporation (Daewoo) and Korea Gas Corporation (KOGAS), as well as the Indian companies Oil and Natural Gas Corporation Ltd. (ONGC) and GAIL India Ltd. (GAIL), could be in conflict with the ethical guidelines for the Government Pension Fund Global (GPFG). The companies were already engaged in the extraction of oil and gas on the Shwe-field off the coast of Burma, and it was understood that they would also take part in the planned construction of a pipeline to transport the gas from the Shwe-field over land to India. At the time it was assumed that India would be the most probable purchaser of the gas. The Council operated under the understanding that the construction of the pipeline over land through Burma would lead to serious human rights violations.

The market value of the shares held by the Government Pension Fund Global in the respective companies as of 31 December 2010 amounted to the following: Daewoo NOK 7.7 million; KOGAS NOK 5.5 million; ONGC NOK 263 million; and GAIL NOK 500.2 million.

The point of departure for the current recommendation is that Daewoo, ONGC, GAIL and KOGAS purchased shares in the Hong Kong based joint venture company which is responsible for building and operating the pipeline which will carry the gas from the Shwe-field, off the Burmese coast, to China.¹ The company responsible for the pipeline is a joint venture. It is led and controlled by a Chinese state company, China National Petroleum Corporation (CNPC), while Daewoo, ONGC, GAIL and KOGAS are minority owners with shares ranging from 25.04 percent to 4.1735 percent. The pipeline corridor traverses 800 kilometers on Burmese land, from the city of Kyauk Phyu on Burma's west coast to Yunnan Province in China.

Ever since November of 2005, when it issued its recommendation concerning the activities of the French company Total, the Council on Ethics has kept a close eye on companies operating in the country. Total was the operator of an international joint venture which was responsible for the construction of the so-called Yadana Gas Pipeline in 1995-98. Throughout the preparation of the corridor and the building of the pipeline, military forces carried out extensive and serious abuses against civilians in the form of forced relocation, forced labour, violence, torture and summary executions. The Council believes that the project discussed in this recommendation shares a number of similarities with the Yadana project as concerns the kind of project, the use of military forces and the risk of human rights violations.

In October 2007 the Ministry of Finance asked the Council on Ethics for a clarification of the Council's work concerning companies operating in Burma. In its response to the Ministry, the Council wrote that 'If companies in the Fund's portfolio were to enter into contract agreements regarding the construction of such pipelines, the Council may recommend the exclusion of these companies already from the time of entering into the agreements. Because such undertakings would most likely involve an unacceptable risk of contributing to human rights violations, it is not considered necessary to wait until the violations actually take place.'

The building of a gas pipeline has recently begun on Burma's west coast. It is to be placed parallel to, and in the same corridor as, an oil pipeline which CNPC is responsible for building. Both pipelines will cross areas populated by ethnic minorities as well as areas where extensive use of forced labour and other abuses against civilians have previously been

¹ ONGC's letter to the Council on Ethics 30 December 2010.

reported. There are reports of an increased military presence along the pipeline's corridor as well as of land confiscation in areas where the construction of the pipeline started.

The companies are not aware of any human rights violations so far in the project. They highlight that they are concerned with preventing human rights violations, and that this is something they repeatedly have conveyed to CNPC and the Burmese government. They also inform that matters of human rights are often discussed in the joint venture.

Some of the companies maintain that, as minority shareholders, they have little influence over decisions concerning the planning and construction of the pipeline; these are controlled by CNPC. In the present case the Council finds that the degree of influence in the project is not decisive. The companies have entered into a joint venture with one single purpose: to build a pipeline through Burma. When choosing to participate in the project, the companies also accepted that the Burmese military would be in charge of securing the pipeline. In other words, it is the kind of project in question and the military's role in the project that pose a significant risk for human rights violations. The Council considers it improbable that the companies' commitment and their possible influence over the Burmese government will hinder Burmese military forces from carrying out abuses in connection with the construction of the pipeline.

The Council operates under the understanding that the construction of an almost 800 kilometre-long pipeline on Burmese land through areas of conflict involving diverse ethnic groups will lead to serious and systematic violations of human rights. The Council also takes for granted that the militarisation of the area along the corridor will increase as work on the pipeline progresses. It is well known that the scope of forced labour and other abuses against civilians increase when soldiers are stationed in an area. This seems to be a basic, structural characteristic of the regime and the way in which the military is employed in projects of this nature. Even though it is the Burmese authorities, rather than the companies, who carry out the abuses, there is a connection between the violations of human rights and the companies' activities insofar as the violations take place with the aim of facilitating the companies' activities. The Council's view is that this results in an unacceptable risk of the company contributing to future violations of human rights.

For this reason the Council recommends that Daewoo International Corporation, Oil and Natural Gas Corporation Ltd, GAIL India Ltd. and Korea Gas Corporation be excluded from the investment universe of the Government Pension Fund Global.

2 Sources

The Council has based this recommendation on reports and documents from United Nations organisations, voluntary organisations and information from the companies. The Council has also commissioned its own studies to map the status of the construction of the pipelines as well as to gather information on the militarisation along the pipeline's corridor and the related risk for human rights violations.

Sources are referred to in footnotes.

3 Concerning the pipeline and human rights violations

3.1 The companies involved in the construction of the pipeline

In 2000, Daewoo signed two production sharing contracts with the Myanmar Oil and Gas Enterprise (MOGE)² in order to explore, develop and market the gas from the blocks A-1 and A-3 on the Shwe gas field.³ Commercially exploitable finds were discovered four years later. Daewoo has since sold its share in the blocks to ONGC Videsh (a wholly-owned subsidiary of ONGC), GAIL and KOGAS to form a joint venture. Daewoo is the operator of the consortium.⁴

In 2008, Daewoo signed a Memorandum of Understanding (MoU) with the state owned China National Petroleum Corporation (CNPC) for the sales of natural gas produced from blocks A-1 and A-3. This required the transportation of the gas to China, and on 27 March 2009, the Chinese government signed an agreement with the Burmese government for the construction of two pipelines: a pipeline for the transport of gas from the Shwe-field on the west coast of Burma to China, and a parallel pipeline for the transport of crude oil.⁵

In February 2010, the Indian government approved the participation of ONGC and GAIL in the construction of the gas pipeline. According to information available on ONGC Videsh's website, the pipeline will be built, owned and operated by the joint-venture company. Through its subsidiary Southeast Asia Gas Pipeline Co., CNPC holds a 50.9 per cent ownership of the company. Daewoo International owns 25.04 per cent, while ONGC owns 8.347 per cent. GAIL and KOGAS own 4.1735 per cent each, and MOGE owns 7.365 per cent.⁶

3.2 The rights and obligations of the joint venture and MOGE's role

According to CNPC, a shareholder agreement and an agreement concerning the rights and obligations of the pipeline company were signed on 4 June 2010. The agreements defined CNPC as the controlling party of the joint venture, in charge of the design, construction, operation and maintenance of the pipeline.⁷

In its letter, ONGC informs the Council that the agreement requires the joint venture partners to pay reasonable compensation for the acquisition of private land, the relocation of houses, as well as losses of – or damages to – crops. Furthermore, the joint venture shall endeavour to employ Burmese citizens and to pay for the education and training of qualified nationals and MOGE personnel in the field of petroleum science, engineering and management.⁸

There is little specific information available on which rights and obligations the pipeline company must fulfil with regard to security issues. In a press release posted on CNPC's

² MOGE is a wholly-owned Burmese state corporation.

³ http://www.daewoo.com/english/online/brand/invest.jsp?d_id=5 and Shwe Gas Movement 2006: *Supply and Command. Natural gas in western Burma set to entrench military rule*, p 11, available at <http://www.shwe.org/>

⁴ The stakes in the two gas blocks currently appear to be distributed as follows: Daewoo International, 51 per cent, ONGC Videsh 17 per cent, GAIL India 8.5 per cent, KOGAS 8.5 per cent and MOGE 15 per cent. http://www.businessworld.in/bw/2010_02_18_ONGC_GAIL_Allowed_To_Take_China_Gas_Pipeline_Stake.html

⁵ http://www.atimes.com/atimes/South_Asia/KD03Df03.html

⁶ <http://www.ongcvidesh.com/Assets.aspx>

⁷ http://www.cnpc.com.cn/en/press/newsreleases/MyanmarChinaOilandGasPipelineprojectcommenced_.htm.

⁸ ONGC's letter to the Council 30 December 2010.

homepage it appears that the agreement between the two parties ‘stipulates that Myanmar government shall ensure the [pipeline] company’s ownership and exclusionary right to the pipeline and guarantee the safety of the pipeline.’⁹

Due to the fact that both of the pipelines will run in parallel in the same pipeline corridor,¹⁰ it is likely that Burmese authorities will be responsible for the preparation of the pipeline corridor and the security for both pipelines. This is the same role that MOGE has had in similar pipeline projects before.¹¹ The contract between MOGE and the French company Total concerning the construction of the Yadana Pipeline stipulates that ‘MOGE shall assist and expedite Contractor’s execution of the Work Programme by providing cost, facilities, supplies and personnel including, but not limited to, supplying and making available..., security protection and right of way and easements as may be requested by Contractor and made available from the resources under MOGE’s control.’¹²

In other contracts which MOGE has signed with CNPC, but which are not directly related to the pipeline, the very same clause is present.¹³ This may indicate a standard wording which MOGE employs in its contracts with international oil companies. It follows also from these contracts that MOGEs costs for performing said services will be refunded in US dollars. The Council therefore assumes that MOGE and the Burmese authorities will be responsible for matters of security throughout the preparation of the pipeline corridor and the construction of the gas pipeline.

3.3 The construction of the pipeline

According to a press release from CNPC, the construction of the Myanmar-China Oil and Gas pipeline project officially started on 3 June 2010.¹⁴

Both pipelines will start from the port of Kyauk Phyu in the Rakhine State, on the west coast of Burma, and will cross the Chinese border by the cities of Nam Khan Ruili in Yunnan province.¹⁵ The pipelines will traverse Burma along some 800 km.¹⁶ On the Chinese side, the gas pipeline will go through Kunming and end up in Nanning, the capital of the Guangxi Zhuang Region (see figure 1).¹⁷ The pipelines are expected to be completed by 2013.

⁹<http://www.cnpc.com.cn/en/press/newsreleases/RightsandobligationagreementsignedofMyanmar—ChinaCrudePipeline.htm> ‘The agreement explicitly defines the obligations of the CNPC- holding Southeast Asia Crude Pipeline Company Ltd. and the rights authorized by the Myanmar government to the company. According to the agreement, the Southeast Asia Crude Pipeline Company Ltd. is endowed with franchise rights of the Myanmar-China Crude Pipeline, and will be responsible for the construction and operation of the pipeline. The company also has related rights of tax remission, crude transit, import and export customs clearance and right-of-way operation. The agreement also stipulates that Myanmar government shall ensure the company’s ownership and exclusionary right to the pipeline and guarantee the safety of the pipeline.’

¹⁰ Confirmed in ONGC’s letter to the Council 28 February 2011.

¹¹ This is apparent from the joint venture agreement between MOGE and the Total-consortium on the Yadana-pipeline, see the Council’s recommendation on Total, available at www.etikkradet.no.

¹² Production Sharing Contract for Appraisal, Development and Production of Petroleum in the Moattama Area Between Myanmar Oil and Gas Enterprise and Total Myanmar Exploration and Production §17.1 (c) Rights and Obligations of MOGE and Contractor.

¹³ Production sharing contract between MOGE and CNPC.

¹⁴ See footnote 7.

¹⁵ <http://www.reuters.com/article/rbssEnergyNews/idUSPEK1796020090616>.

¹⁶ CNPC confirms that: ‘ the Myanmar -China Crude Pipeline starts from Madeira [Island of Maday] at the west coast of Myanmar, running 771 kilometres through Rakhine (Arakan), Magway, Mandalay and Shan State, and enters into China from Ruili of Yunnan Province.’

<http://www.cnpc.com.cn/en/press/newsreleases/2009/210a7949-5718-4248-a913-697f672b67a1.htm>.

¹⁷ http://news.xinhuanet.com/english/2009-06/16/content_11552020.htm.

To the Council's knowledge, both pipelines are being built at the same time and construction has started at a number of points along the pipeline corridor. Work is well under way around the city of Kyauk Phyu in Rakhine State, where the gas is brought onshore. Much of the work, however, seems to be tied to the expansion of the port and the construction of the gas terminal as well as the construction of roads and other infrastructure. Work is also started along the corridor further east, around Yenanyuang Township in Magway Division and in the eastern part of Mandalay, where the pipeline will cross the Irrawaddy River. This work is expected to be completed by the end of May, before the start of the rainy season.¹⁸ Assessments have also been carried out in the Shan State, in the northern end of the pipeline on the border with China, but construction has not yet started.¹⁹ The project seems to still be in an early phase, where preparation and construction has not started along much of the corridor



Figure 1: Map over the pipeline corridor²⁰

3.4 Human Rights Violations

The organisation Earthrights International has reported human rights violations in Rakhine state, which allegedly have been carried out in connection with the construction of infrastructure and landing of gas. These are mainly related to the confiscation of land, where local people have been forced to abandon their properties and farmland on short notice and without being offered compensation.²¹ So far there is limited information about violations at other locations along the pipeline corridor, probably because the clearing of the pipeline corridor appears not to have started yet.

Reports from among others the International Labour Organization (ILO) and The United Nations Special Rapporteur on Human Rights in Myanmar do not indicate that the human rights situation in Burma has improved, notwithstanding the election in November 2010.

¹⁸ Earthrights International, March 2011: *The Burma-China Pipelines: Human Rights Violation, Applicable Law and Revenue Secrecy, Situation Brief No. 1*, available www.earthrights.org, and the Council's own research

¹⁹ See footnote 18.

²⁰ Reuters is the source of the figure, which is available at http://www.irrawaddy.org/article.php?art_id=21030

²¹ See footnote 18.

These reports document that it is mainly the military that perpetrates violations against the local population. The organisation Human Rights Watch describes the situation as follows:

‘Abuses by the Burmese military against civilians in violation of international humanitarian law include the widespread use of anti-personnel landmines, sexual violence against women and girls, extrajudicial killings, forced labour, torture, beatings, targeting of food production and means of civilian livelihood, and confiscation of land and property.’²²

The Council operates under the understanding that as long as Burma’s military forces are responsible for security under the construction of the pipeline, the abuse of civilians will be probable. Based on previous experience, the construction of pipelines and other infrastructure projects leads to increased militarisation of the area, which again increases the risk of human rights violations.²³ In connection with the construction of the Yadana pipeline in 1995-1998, where Total was the operator, the increased militarisation of the area around the pipeline led to extensive abuses against civilians, including the systematic use of forced labour. Local people were required to build military camps, roads and infrastructure for the pipeline corridor, as well as clear land for the corridor itself. Other abuses on the part of the security forces against the civilian population included violence, torture, summary executions of what the military regarded as ethnic rebels, as well as punishment and violence in connection with forced labour, not least against women and children.²⁴

The gas pipeline to China will run for nearly 800 kilometres across central Burma and pass through 22 townships. So far at least 28 battalions²⁵ are reportedly stationed in areas along the pipeline corridor including regions such as the Rakhine and Shan states, where there is an ongoing conflict between the regime and local ethnic groups.²⁶ Burmese military forces have been stationed in Shan-state for many years and seem now to increase their presence in the state, but it is not clear whether this is due to the pipeline. The pipeline will run through areas which are controlled by ethnic militia groups fighting Burmese forces. In 2009, the conflict led to 10,000-30,000 people fleeing to China.²⁷ According to Human Rights Watch, military forces carry out direct assaults on civilians in these areas. One of the conflict areas, home to the ethnic group Wa, lies in the area where the pipeline will cross the Chinese border. Due to the fear of increased tensions, polls were not conducted there in November.²⁸ There have also been reports that the army and the navy have increased their presence in the area around Kyauk Pyu in Rakhine state.²⁹

A detailed report submitted by the International Trade Union Confederation (ITUC) to the ILO in 2007, documented the extensive use of forced labour in a number of states, including the Rakhine and Shan states. The report states that the military forces local people to porter, construct and maintain military camps, provide services to the soldiers such as cooking and cleaning, as well as generate an income for the troops in agricultural or industrial projects

²² <http://www.hrw.org/en/world-report-2011>

²³ Human Rights Foundation of Monland 2009: *Laid Waste: Human Rights along the Kanbauk to Myaing kalay gas pipeline*, available at <http://remonnya.org/archives/793>

²⁴ Earth Rights International 2000: *Total Denial Continues* p. 84-87 and 100-121, La Federation des droits de l’Homme 2005: *Total pollutes democracy*, p.26, 28.

²⁵ A battalion counts 300-1000 soldiers.

²⁶ http://www.irrawaddy.org/print_article.php?art_id=20985

²⁷ <http://www.unhcr.org/4a97cb0e9.html> ;

²⁸ <http://www.hrw.org/en/world-report-2011/burma>

²⁹ Earthrights International, March 2011: *The Burma-China Pipelines: Human Rights Violation, Applicable Law and Revenue Secrecy, Situation Brief No. 1*, available www.earthrights.org, and the Council’s own research.

owned by the military. Also the organisation Minority Rights International describes a similar picture:

‘Military and other government authorities are persistently reported as still engaged in 2006 and 2007 in patterns of gross violation of human rights, including forced labour, conscription, arbitrary detention, torture, rape, sexual slavery and extra-judicial killings, especially in central and southern Shan State as the SPDC’s armed forces engage the Shan State Army-South.’³⁰

The US State Department’s 2009 report on the human rights situation in Burma,³¹ and not least the reports from the UN Special Rapporteur to Burma, confirm that the military’s unacceptable practice continues.³²

4 The companies’ positions and communication with the Council on Ethics

4.1 The companies’ communication with the Council

The Council has communicated with the companies since early 2007. On 17 January 2007 and in accordance with the ethical guidelines, Norges Bank sent a Draft Recommendation on exclusion to Daewoo, ONGC, GAIL and KOGAS on behalf of the Council on Ethics. The draft was based on information that these companies were involved in the planned overland pipeline for the transport of gas from the Shwe-field to India. At the time India was considered to be the most likely buyer of the gas. The companies were given the opportunity to comment on the Council’s Draft Recommendation and provide any new information pertinent to the case.

In a letter of 30 January 2007, Daewoo clarified that no decision had been made so far with regard to the pipeline route, and that also other alternatives for the transportation of gas were being considered. This was confirmed in letters from GAIL and ONGC (both dated 8 February 2007) as well as KOGAS (e-mail dated 29 May 2007). Based on the information the companies provided, the Council chose to await developments.

Following information in the press that the joint venture companies on 20 June 2008 had signed a MOU with CNPC for the sale of gas, as well as information in Daewoo’s own newsletter of 2nd quarter of 2008 stating that Daewoo also will be responsible for the construction of the pipeline, the Council wrote another letter to Daewoo. The Council requested that Daewoo clarify its role and responsibilities in the pipeline project.

In its response to the Council, dated 31 October 2008, Daewoo informed that the onshore pipeline to China, including construction, would be operated by CNPC. ‘The members of the Shwe consortium, as gas producer and seller, have been considering participating in the onshore pipeline project as shareholders. However, the individual members of the Shwe

³⁰ Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Myanmar/Burma: Shan*, 2008, available at: <http://www.unhcr.org/refworld/docid/49749cdb28.html>.

³¹ United States Department of State, *2009 Country Reports on Human Rights Practices - Burma*, 11 March 2010, available at: <http://www.unhcr.org/refworld/docid/4b9e530b87.html>.

³² For example UN General Assembly 10 March 2010, Human Rights Council, 13th session, *Progress report of the Special Rapporteur on the situation of human rights in Myanmar*, Tomás Ojea Quintana, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/119/15/PDF/G1011915.pdf?OpenElement> and other reports at http://ap.ohchr.org/documents/dpage_e.aspx?m=89.

consortium have not finally decided whether each will join in the pipeline project.³³ Accordingly, the Council chose to await further developments.

In spring 2010 the Indian government approved ONGC and GAIL's participation in the pipeline project. On 1 July 2010, the Council requested information from these companies about their role and responsibilities in the pipeline project, and which measures the companies would implement to prevent serious human rights violations. A similar letter was sent to Daewoo and KOGAS 20 December 2010, after it became clear that these companies also participated in the pipeline project.

GAIL, ONGC and Daewoo confirmed that the companies were minority shareholders in the joint venture company that is responsible for the construction of the gas pipeline. KOGAS did not respond. A new draft recommendation was sent to the companies on 1 February 2011; ONGC and Daewoo responded with their comments. The companies' views are presented below.

4.2 The companies' position

Role and responsibilities in the pipeline project

Daewoo, GAIL and ONGC confirm that the companies are minority shareholders in the joint venture company that is responsible for constructing the Burma-China gas pipeline. CNPC is the majority shareholder. The companies claim not to have any direct role in the construction or management of the project, but as shareholders they each have one Director Position on the board of the joint venture.³⁴ ONGC adds that as a minority shareholder it has limited influence on the decision making process in the joint venture.

Daewoo informs that its role and responsibilities 'are to procure an investment necessary for the development of the Project, as a stakeholder.' The company is entitled to participate in decisions associated with the development of the project, which enables the company to monitor procedures and the implementation of the project in line with industry practice and international standards.³⁵ Furthermore, Daewoo writes that the company contributes to the project through its experience and expertise acquired as operator of other projects.

Measures to prevent human rights violations

The companies' responses show that all are concerned with preventing human rights violations and that this is conveyed to the project management.

GAIL states that

'The issue of human rights violations has been discussed at length among the shareholders including CNPC and MOGE. The shareholders have agreed to exercise necessary care and caution to prevent any violation in execution of the project. CNPC, who shall be executing the project, have conveyed that they are aware of the issues and have proper mechanism in place to handle the situation effectively and also with sensitivity.'³⁶

For its part Daewoo also states: 'The significance of avoiding any kind of human rights abuse has been repeatedly addressed by Daewoo to the management of the Project Company.

³³ Daewoo's letter to NBIM/Council on Ethics 31 October 2008.

³⁴ GAIL's letter to the Council, 6 August 2010, and ONGC letter to the Council 20 December 2010.

³⁵ Daewoo's letter to the Council, 23 February 2011.

³⁶ GAIL's letter to the Council, 6 August 2010.

Daewoo's own guidelines (such as Code of Corporate Conduct & Ethics and land/crop compensation manuals) were given to them as well.³⁷

According to ONGC, the fact that a number of companies participate in the joint venture contributes to improved monitoring. The company points out that 'despite being a minority shareholder we do have an appointed director on the board of the Company and are therefore in an ideal position to keep a diligent watch over the Company's operations.' ONGC also informs that the Pipeline Company is required 'to pay reasonable compensation for the acquisition of private land, relocations of houses and/or losses of or damages to crops to any owner thereof affected by the grant to the Right-of-Way or the construction, expansion, operation or maintenance of the Onshore Transportation System or the Company's facilities and equipment within the union of Myanmar'.³⁸ Daewoo informs that the company last year provided compensation for land without involvement of the military.³⁹

Both Daewoo and ONGC state that human rights violations have not been reported so far: '... to the best of our knowledge and information available, we can report that there has been no instance or issue of human rights violations (in particular, that of land confiscation, use of forced labour and forced displacement of people) in the project.'⁴⁰ Daewoo adds:

'Some organizations might imply the human right violation in connection with the Pipeline, but we wish you would understand that there can be different interpretation on the facts in accordance with what the interpreting parties wish to achieve. As we previously pointed out, there was no known report of human rights issue regarding the Yetagun Project, which came after the Yadana project. This illustrates that the human rights issue can be avoided as long as the participating stakeholders are determined to it.'⁴¹

Daewoo also informs that Burmese authorities on several occasions have modified the pipeline route to avoid populated areas.

The companies' view on the Council's assessment

Daewoo is critical of the Council's reasoning that it may exclude companies in anticipation of future human rights violations, rather than base its assessment on the factual occurrence of events. The company emphasizes that human rights violations will not take place if the companies are willing to prevent abuses. Daewoo also would appreciate an assessment of whether the participation of foreign companies contributes positively to the prevention of human rights violations in the project.

5 The Council on Ethics' assessment

The Council has assessed whether the operation of the joint venture is in conflict with the Fund's Ethical Guidelines under the criteria for contributing to serious or systematic human rights violations. In its letter to the Ministry of Finance dated 11 October 2007, the Council states that 'If companies in the Fund's portfolio were to enter into contract agreements regarding the construction of such pipelines, the Council may recommend the exclusion of these companies already from the time of entering into the agreements. Because such

³⁷ See footnote 35.

³⁸ ONGC letter to the Council 20 December 2010.

³⁹ Daewoo's letter to the Council 9 March 2010.

⁴⁰ See footnote 39.

⁴¹ Daewoo's letter to the Council on Ethics, 9 March 2010.

undertakings would most likely involve an unacceptable risk of contributing to human rights violations, it is not considered necessary to wait until the violations actually take place.⁴²

The Council's point of departure is thus that the risk of serious or systematic human rights violations associated with infrastructure projects in Burma is imminent. Nevertheless, the Council will assess each case individually. Even though it is the Burmese authorities and not the company who in principle will commit the violations, there is a link between the violations and the company's operations in the sense that the violations take place in order to facilitate the companies' future operations.

The pipeline is being built by a joint venture company, managed and controlled by the Chinese state owned company CNPC. The pipeline's security appears to be organised in the same way as was the case at the Yadana pipeline and at other pipelines in Burma of which the Council has knowledge. The Burmese state-owned oil company MOGE is responsible for security, but the work is carried out by the military on behalf of the company. Daewoo, ONGC, GAIL and KOGAS have minority shares in the joint venture. GAIL and ONGC therefore claim to have little leverage on decisions pertaining to the management and construction of the pipeline, while Daewoo points out that it is entitled to take part in decisions concerning the development of the pipeline. In this case the Council finds that the degree of influence in the project is not decisive. The companies have entered into a joint venture with one single purpose: to build a pipeline through Burma. When choosing to participate in the project, the companies also accepted that the Burmese military would be in charge of securing the pipeline. In other words, it is the kind of project – and the military's role in it – which pose a significant risk for human rights violations.

The Council considers it positive that the companies are concerned about preventing human rights violations, and that this is an issue which is conveyed to CNPC and the Burmese government. This notwithstanding, the Council emphasizes the fact that human rights violations continue to take place in Burma, and that the UN, the ILO and other international actors are deeply worried about the situation in the country. Considering that the pipeline which is being built by CNPC, Daewoo, KOGAS, GAIL and ONGC is 15 times longer than the Yadana pipeline, and that it runs through areas of serious ethnic conflict, the Council finds reason to believe that human rights violations associated with the gas pipeline will be similar to, and more extensive than, those which occurred during the construction of the Yadana pipeline.⁴³ The Council finds it unlikely that the companies' involvement and leverage will prevent the Burmese forces to commit abuses in connection with the construction of the pipeline.

The construction of the pipeline seems so far to be on-going in the coastal areas where the gas will be landed. NGOs have reported abuses against civilians in these areas. This is rejected by the companies. The Council's task is to assess whether there is an unacceptable risk of gross or systematic human rights violations in the future. Even in the event that abuses have not taken place to date, this does not necessarily reduce the future risk of their taking place.

It is a fact that the construction of the 800 km pipeline has just started. It will run through populated areas and across areas of serious ethnic conflicts, which in itself increases the risk of conflicts with security forces and serious human rights abuses. Moreover, it is probable that the militarisation of areas along the pipeline corridor will increase as the construction work proceeds. As previously mentioned, the building of the Yadana pipeline at the end of the

⁴² The Council on Ethics letter to the Ministry of Finance regarding the Council's assessment of companies with operations in Burma, 11 October 2007.

⁴³ See the Council on Ethics recommendation on Total.

1990s led to extensive and serious human rights violations. Reports from among others, the UN Special Rapporteur on the human rights situation in Myanmar, confirm that systematic abuses perpetrated by the military against local people are on-going, extensive and follow the same pattern as before. It is well-documented that when Burmese soldiers, who often are insufficiently equipped and lack basic supplies, are stationed in an area, the scope of forced labour and other abuses against civilians increases. Local inhabitants may be forced to carry the soldiers' equipment, build barracks, supply food and carry out other services. This appears to be a basic, structural characteristic of the regime and of how the military uses this kind of projects. The situation today is not substantially different from how conditions were 20 years ago when the Yadana pipeline was first built. It is therefore difficult to see how such extensive and systematic abuses will be avoided in regards to the on-going construction of the gas pipeline. In the Council's opinion this carries with it an unacceptable risk of the companies contributing to future violations of human rights.

6 Recommendation

The Council on Ethics recommends the exclusion of Daewoo International Corporation, Oil and Natural Gas Corporation Ltd, GAIL India Ltd. and Korea Gas Corporation from the investment universe of the Government Pension Fund Global because of an unacceptable risk of the companies contributing to serious or systematic human rights violations associated with the construction of a gas pipeline in Burma.

Ola Mestad
Chairman

(sign.)

Dag Olav Hessen

(sign.)

Ylva Lindberg

(sign.)

Gro Nystuen

(sign.)

Bente Rathe

(sign.)