

**To the Ministry of Finance**

21 June 2012

**UNOFFICIAL ENGLISH TRANSLATION**

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

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# 1 Summary

The Council on Ethics upholds its recommendation of 2 May 2011 concerning the exclusion of the companies Daewoo International Corporation, Korea Gas Corporation, Oil and Natural Gas Corporation Ltd. and GAIL India Ltd. from the investment universe of the Government Pension Fund Global (GPF) because of an unacceptable risk of the companies contributing to severe or systematic human rights violations in connection with the construction of an overland gas pipeline in Myanmar. The companies take part in a joint venture with the Chinese state-owned company China National Petroleum Corporation where the latter is responsible for the construction and operation of the pipeline. The Council on Ethics also recommends that the Korean company POSCO, which has a controlling ownership of Daewoo International, be excluded for the same reason.

On 8 May 2012, the Ministry of Finance requested that the Council update its recommendation of 2 May 2011 on the exclusion of these companies in light of the recent political developments in Myanmar. The country's government has decided to carry out important political reforms, of which a number have been implemented this past year. Political prisoners have been released, freedom of expression has been extended, supplementary elections were carried out in April this year and ceasefires have been agreed with a number of ethnic groups in the country. The EU and Norway removed their economic sanctions against Myanmar in April of this year in order to support the democratisation process.

In accordance with the Ministry's request, this recommendation assesses whether these political changes have led to changes, especially as concerns the military's behaviour in the areas affected by conflict.

The companies' participation in the project has not changed, but because POSCO has acquired a 68.15 per cent ownership in Daewoo the Council has decided to include the company in the recommendation insofar as POSCO has a controlling ownership over Daewoo.

The gas pipeline is scheduled for completion in early 2013. Construction work continues in Rhakine State but is being concluded in Myanmar's central regions. In the northern part of Shan State, the northern route towards the Chinese border has been delineated but work does not yet seem to have been initiated.

Myanmar's army has increased its presence in areas along the pipeline during the course of the last 12 months. To the Council's knowledge they now amount to 13,000-15,000 soldiers who are particularly grouped around the beginning of the pipeline in Rhakine State and towards the end of the pipeline in Shan State. In the latter, forces have been strengthened during the last year in order to secure land for the pipeline. This is an area with numerous ethnic groups; the pipeline seems to have become a catalyst for conflict and the focus of violent activities which are taking place in the area. There are reports of severe and systematic human rights violations in this area, perpetrated by military forces against civilians. These include murder, torture, rape, forced labour and other serious abuses following patterns which are well known from earlier infrastructure projects in Myanmar involving the military. These abuses are currently taking place and appear to have increased as the military has sought control over new areas along the pipeline corridor. The Council therefore finds it plausible that the construction of the pipeline leads to serious and systematic human rights violations.

In the Council's view, the positive political development in Myanmar has had little practical impact on how Myanmar's military behaves towards civilians in conflict areas. It is the Council's understanding that the basis for excluding the companies in the joint venture – including POSCO as Daewoo's parent company – remains in place and is in fact strengthened since the Council's recommendation of 2 May 2011. Even though it is Myanmar's military, not the companies, who are carrying out these violations of human rights, there is a clear connection between the violations and the companies insofar as they are being perpetrated in order to facilitate the companies' future activities. The Council is of the opinion that the measures taken by the companies to avoid human rights violations are insufficient to hinder them from taking place.

As the pipeline will also be secured by military forces once it comes into operation, it is reasonable to assume that there will continue to be a strong military presence along the corridor beyond 2013. The Council attaches importance to the fact that forced labour and other abuses carried out by military forces appear to be commonplace, also in areas which are not characterised by a high level of conflict. The Council therefore finds an unacceptable risk that the companies in the future will continue to contribute to human rights violations in connection with the pipeline.

The Council therefore recommends excluding Daewoo International Corporation, Korea Gas Corporation, Oil and Natural Gas Corporation Ltd., GAIL India Ltd. and POSCO from the investment universe of the GPFG because of an unacceptable risk of the companies contributing to on-going and future severe and systematic human rights violations.

## 2 Introduction

On 27 March 2009, the Chinese and Myanmar authorities concluded an agreement for the construction of two pipelines: a pipeline to transport gas from the Shwe field off the coast of Myanmar, and a parallel pipeline to transport oil. The Myanmar part of the pipeline is almost 800 km long and crosses Myanmar, from the port of Kyauk Phyu (Sittwe) in Rhakine State to Yunnan Province in China. The pipeline crosses areas populated by various ethnic groups. Construction work began in 2010 and is expected to be completed in 2013. Myanmar's military is responsible for the security of the pipeline. There has been increased militarisation along the route of the pipeline, and there have been reports of the use of forced labour and other gross human rights violations.

The Chinese state-owned company China National Petroleum Corporation (CNPC) is the operator for the construction and operation of the pipeline. The Korean companies Daewoo International Corporation (Daewoo) and Korea Gas Corporation (KOGAS), along with the Indian companies Oil and Natural Gas Corporation Ltd. (ONGC)<sup>1</sup> and GAIL India Ltd. (GAIL) take part in the construction of the pipeline through a joint venture company with CNPC.<sup>2</sup>

On 26 May 2010, the Council on Ethics recommended the exclusion of CNPC's subsidiary, PetroChina, due to PetroChina's unusually close relationship with CNPC and the risk of the company contributing to gross human rights violations in connection with the construction of

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<sup>1</sup> ONGC participates through its wholly-owned subsidiary ONGC Videsh Ltd.

<sup>2</sup> CNPC owns a 50.9 percent share in this company through its subsidiary Southeast Asia Pipeline Company Ltd. Daewoo owns a 25.04 per cent share while ONGC owns 8.347 per cent through its wholly-owned subsidiary ONGC Caspian E&P BV (OCEBV). GAIL India and KOGAS own 4,1735 per cent each and Myanmar Oil and Gas Enterprise (MOGE) owns 7,365 per cent. <http://www.ongcvidesh.com/Assets.aspx>

the pipelines.<sup>3</sup> The Ministry of Finance did not follow the recommendation regarding PetroChina, as it took the view that PetroChina's links with CNPC were not such that the two companies should be regarded as one unit.

On 2 May 2011, the Council on Ethics recommended the exclusion of CNPC's partners in the joint venture from the investment universe of the GPFG on the same grounds. In the Council's opinion, by participating in the project the partners in the joint venture were accepting that the military would be responsible for the security of the pipeline. In the Council's view, both the type of project and the role of the military in the project would present an unacceptable risk of the companies contributing to gross human rights violations.

On 22 February 2012, the Ministry of Finance requested the Council on Ethics' opinion concerning companies in the GPFG operating in Myanmar, given the recent changes to the political situation in the country. The Council on Ethics responded on 11 April 2012 that companies' activities in Myanmar would thereafter be assessed under the same conditions as their operations elsewhere, but that the Council will continue to be vigilant concerning companies' possible contribution to any human rights violations in connection with the development of infrastructure.

On 8 May 2012, the Ministry of Finance requested that the Council update its recommendation of 2 May 2011 on the exclusion of Daewoo, KOGAS, GAIL and ONGC in light of the latest political developments in Myanmar. This recommendation therefore considers whether this development has led to changes in the military's practice in the areas where the companies are building the pipeline.

By the end of 2012, the GPFG owned shares in POSCO worth NOK 1,357 billion, corresponding to a 0.79 per cent ownership in the company. The Fund's ownership in ONGC amounted to NOK 218.8 million (0.4 per cent) and NOK 211 million in GAIL India (0.09 per cent). The GPFG did not own shares in Daewoo International Corporation or KOGAS by the end of 2012, but both of these companies remain in the Fund's investment universe

## **2.1 What the Council has assessed**

There is no doubt that the political situation in Myanmar has changed considerably since the Council issued its recommendation to exclude the four companies. Important democratic and political reforms have taken place in the country during the last year. Political prisoners have been released, freedom of expression has been extended, supplementary elections were carried out in April this year and ceasefires have been agreed with a number of ethnic groups in the country. The EU and Norway removed their economic sanctions against Myanmar in April of this year in order to support the democratisation process. Sanctions concerning the import of weapons remain in place. According to the United Nations' Special Rapporteur on Human Rights in Myanmar, this development has been positive for the Human Rights situation in the country but there remains a lot to be done:

'The steps taken by the Government have had a positive impact on the human rights situation in Myanmar. Nonetheless, many serious human rights issues encompassing the broad range of civil, political, economic, social and cultural rights remain and should be addressed. There is also a risk of backtracking on the progress achieved to date.'<sup>4</sup>

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<sup>3</sup> The Council on Ethics' recommendation to exclude PetroChina is available at [www.etikkradet.no](http://www.etikkradet.no).

<sup>4</sup> Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-67\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-67_en.pdf)

The Council has considered whether the basis for the exclusion of the companies Daewoo, KOGAS, ONGC and GAIL continues to be present in light of the political development in Myanmar. The Council has also included the Korean company POSCO, Daewoo's parent company, in the recommendation.

## **2.2 Sources**

The Council has commissioned its own research aimed at clarifying the status of the construction of the pipelines, gathering information on the military presence in the pipeline corridor and on human rights abuses known to have taken place along the pipeline route. Information gathering has been carried out in Burma, China and Thailand during the course of February and March 2012. This includes on-the-ground enquiries with a wide range of individuals familiar with the pipeline project, the military and the human rights situation in Myanmar. It also includes fact-finding in areas around the pipeline corridor in the Shan state.

The recommendation is mainly based on this research. Other sources are referred to in footnotes.

## **3 Update of the situation along the corridor**

### **3.1 The status of the project**

#### *The companies*

The Council has provided a detailed account on the joint venture and the partners' rights and obligations in the recommendation of 2 May 2011. According to information on the companies' web sites and annual reports, there appear to be no changes in their participation or in the distribution of shares in the joint venture.

The Korean company POSCO has acquired a 68.15 per cent share in Daewoo, and Daewoo is consequently considered a subsidiary of POSCO. The Council has therefore included POSCO in this recommendation as it has a controlling interest in Daewoo.

#### *Status of the construction work*

The pipelines are expected to be operational in early 2013. Construction is underway in Rakhine State, including where the pipeline crosses the Bengal Bay from Madaya Island to the mainland. Work on associated infrastructure is also underway, including the building of a deep-water port. Work on the pipeline is nearing completion in Myanmar's central areas (Magway and Mandalay Divisions) which have not been characterized by ethnic conflict. In the northern part of Shan State, the Northern route towards the Chinese border has been delineated, but work does not yet seem to have been initiated.

### **3.2 The military presence**

Myanmar's military has increased its presence along the pipeline corridor during the last 12 months. To the Council's knowledge there are now 44 battalions positioned in these areas. Each battalion is thought to have 250-300 soldiers. All in all some 13,000-15,000 Burmese soldiers appear to have been deployed along the pipeline route, mainly around the southern and northern ends of the pipeline (Rakhine State and Shan State respectively, see figure 1).

There are important ethnic populations in both of these states, where conflict and unrest have increased during the last year.

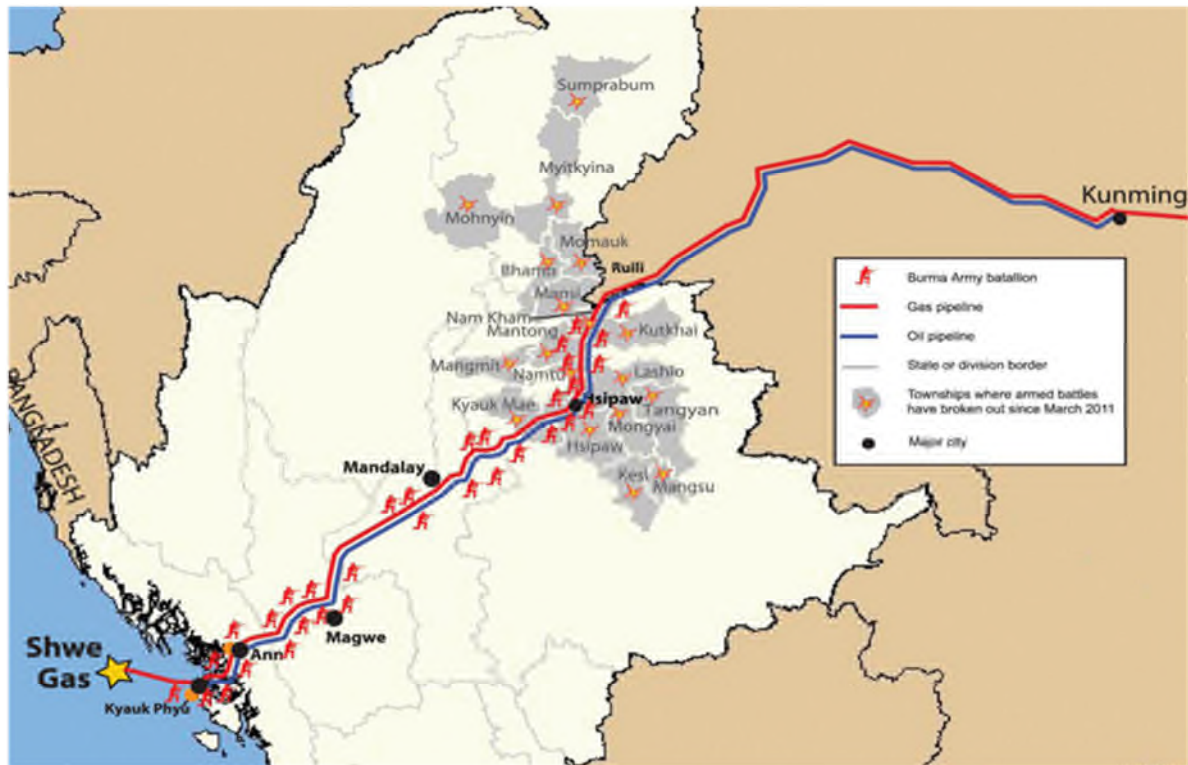


Figure 1: Map over the pipeline corridor showing the position of Myanmar’s military forces<sup>5</sup>

There appears to be a growing unrest in Rhakine State, especially among ethnic Rhakine groups. The unrest seems to be particularly linked to growing resentment against the Chinese presence and the assertion that locals should benefit from the resource extraction.<sup>6</sup> This has been a contributing factor to the creation of a new, armed guerilla group this past year. This is in addition to the Arakan Liberation Army (ALA), the largest armed ethnic insurgency in Rhakine State, which is in open conflict with the military.<sup>7</sup> In January 2012, the ALA was invited for peace talks with Myanmar’s government, and there are reports that a preliminary ceasefire agreement was signed in May.<sup>8</sup> The increased military presence in southern Burma is seen as a response to the increased opposition in the area.

The ethnic conflict in Kachin State and in the north of Shan State is long-lasting and severe, and during the last year the fighting between ethnic groups and military forces has increased in Shan State’s northern areas, which the pipeline will cross.<sup>9</sup> The pipeline will pass through territory held by the Kachin Independence Army (KIA) and ruled by the Kachin

<sup>5</sup> Published by Shwe Gas Movement, 4 September 2011.

<sup>6</sup> See for example Narinjara, 7 March 2012: “Local youths campaign for share of benefits from Shwe gas”, <http://www.narinjara.com/main/index.php/local-youths-campaign-for-share-of-benefits-from-shwe-gas/>

<sup>7</sup> Myanmar News International, 12 December 2011: “ALA and Burmese Army clash”, <http://www.bnionline.net/index.php/news/narinjara/12260-ala-and-burmese-army-clash.html>

<sup>8</sup> Democratic Voice of Myanmar, 6 April 2012: “Armed groups hold talks with government”, <http://www.dvb.no/news/armed-groups-hold-talks-with-government/21433>

<sup>9</sup> Kachin News writes on 23 March 2012: “Over the past few months heavy fighting has been frequent along a stretch of KIO-controlled territory between Namtu and Mandong townships where the massive Shwe gas pipeline project is currently under construction,” <http://www.kachinnews.com/news/war/2254-fighting-resumes-after-kachin-talks-falter.html>

Independence Organisation (KIO), the KIA's political counterpart.<sup>10</sup> Originally the pipeline was not intended to cross KIO's territory, but in 2011 the government decided to reroute the corridor through the northern Shan State and into KIO-controlled territory.<sup>11</sup> Since the summer of 2011 there have been regular reports of fighting between the armed ethnic groups and Myanmar's forces in areas which the pipeline is to cross.<sup>12</sup> As late as in March 2012, the military is to have sent 1,500 additional soldiers to the region in order to control the territories which the pipeline will traverse.<sup>13</sup> There has been fierce fighting during the last few months along the pipeline in the KIA-controlled territory.

According to the Council's investigations, there has been an increased militarization in the northern areas of the Shan State where the pipeline is scheduled to cross, and the military presence (battalions, military camps and weaponry) continues to grow. Despite peace talks in the region, armed clashes have been continuous in various parts of Kachin State and northern Shan State since July 2011, and appear to be ongoing.<sup>14</sup> The fighting seems to be directly linked to the military's task of securing territory for the pipeline.

### 3.3 Human rights violations

Numerous human rights violations have been reported in areas along the pipeline route where the Burmese military is present. As with previous infrastructure projects in Burma, there appears to be a relationship between the increased militarisation along the pipeline corridor and human rights violations, especially in areas with ethnic populations. A similar view is expressed in a recent report by the independent organization International Crisis Group:

'The worst abuses take place in areas of insecurity or armed conflict, which are almost exclusively in ethnic minority areas. Though human rights abuses - and even atrocities- have been committed by all sides, the Myanmar army is responsible for the vast majority of such incidents.'<sup>15</sup>

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<sup>10</sup> Besides the KIA there are other armed, active ethnic groups in the area including the Shan State Armies and the United Wa State Army.

<sup>11</sup> According to Kachin News, the original corridor was to continue east of Hsipaw via Lashio before turning northwards towards Kunmin. The new corridor swings 90 degrees at Hsipaw and goes straight north through KIO-controlled territory (see figure 1). <http://www.kachinnews.com/news/2249-fighting-in-n-shan-state-continues-along-shwe-pipeline-route.html>. Changes to the corridor have also been confirmed by the Council's own studies.

<sup>12</sup> Smith, Matthew, 26 July 2011: "Burmese Crossroads: Oil & Gas Rush Stokes Civil War." <http://www.corpwatch.org/article.php?id=15651&printsafe=1>, Kachinland News 28 September 2011: "Burmese Army arrived near KIA's 4th Brigade headquarter area" <http://kachinlandnews.com/?p=20181> Fighting took place around Kutkai (see figure 1). Human Rights Watch, March 2012: "Untold Miseries. War time abuses and forced displacement in Kachin State," p. 33, [http://www.hrw.org/sites/default/files/reports/Myanmar0312ForUpload\\_1.pdf](http://www.hrw.org/sites/default/files/reports/Myanmar0312ForUpload_1.pdf). Burma Net News 25 January 2012, <http://www.burmanet.org/news/2012/01/25/kachin-news-group-burma-army-sends-more-troops-to-fight-kia-along-shwe-pipeline-route/>. Local sources reported in January 2012 that Myanmar's army had sent reinforcements in the northern areas which the pipeline will cross. There were also reports that Myanmar's army had attacked the KIA in important points along the pipeline in Namtu, Mandong, Nam Kham and Muse (see figure 1).

<sup>13</sup> According to Asian Tribune 15 March 2012, this took place in the area between Namtu and Mandong townships (see figure 1), <http://www.asiantribune.com/news/2012/03/14/peace-question-war-torn-kachin-state-Myanmar>.

<sup>14</sup> Irrawaddy 12 May 2012, <http://www.irrawaddy.org/archives/3951>.

<sup>15</sup> International Crisis Group, "A New Peace Initiative" Asia Report N°214; 30 Nov 2011, p. 13. <http://www.crisisgroup.org>



Human rights violations appear to take place primarily in the southern and northern ends of the pipeline corridor, in Rhakine State and Shan State, while the central areas of Myanmar (Magway and Mandalay divisions) appear to be less affected.

The human rights violations which seem to have taken place in Rhakine State appear to be different from those reported further north, along the pipeline corridor. Rather than physical violence, the concern here is that the project damages the livelihoods of many through the confiscation of territory and loss of fishing rights. There are also reports that compensation being paid is often in violation of prior agreements. Reports indicate further that there are numerous work-related accidents and that those affected rarely receive compensation for any resulting damages. As previously mentioned, the fact that the project only marginally will result in benefits for local populations is an important source of discontent.

Human rights violations appear to be far more serious in areas along the pipeline's corridor in the north of the Shan State. These range from very serious and violent abuses, including rape, torture and extrajudicial killings, to persecution, discrimination, land confiscation, and inadequate compensation. The most serious allegations – those of rape, murder and torture – are difficult to corroborate; however, a number of the individuals contacted in connection with the Council's research reported such violations this last year in areas along the pipeline where military troops are stationed.

The organization Human Rights Watch published a report in March 2012 entitled “Untold Miseries” which provides a grim picture of human rights abuses committed by the Burmese Army in Kachin State:

‘The Burmese army has been responsible for numerous human rights violations since armed conflict resumed in Kachin State in June 2011. It has forced men, women, and children to serve as porters in the front lines of the fighting, at grave risk. It has deliberately attacked ethnic Kachin villages, killing civilians, engaging in torture and other ill-treatment of detainees, and committing rape and other forms of sexual violence. Violent threats have often been made with ethnic slurs. The Burmese army has pillaged and razed homes and destroyed civilian property, impacting immediate and long-term food security. The Burmese army—as well as the KIA [...] has used antipersonnel landmines that have caused dozens of deaths and seriously wounded many others. Children under 18 have been conscripted into Burmese army ranks.’<sup>16</sup>

Also the The Kachin Women's Association Thailand (KWAT) has documented human rights violations in Kachin and Shan States over the past year. In October 2011, the group released a report entitled “Burma's Cover up War: Atrocities Against The Kachin People” in which it documents abuses carried out by the Burmese army, including killings, torture and 34 cases of rape.<sup>17</sup>

Testimonies gathered in the pipeline corridor in connection with the Council's investigation give similar accounts of how the Burmese Army operates. There are reports that the Burmese Army enters villages, harshly interrogates civilians and has tortured and killed civilians, including children. The rape and harassment of ethnic women has also been reported as common, and people are reportedly forced into relocation sites where they can be controlled and used for forced labour (so-called “portering”). This practice of conscripting forced labour

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<sup>16</sup> Human Rights Watch, Untold Miseries. “War time abuses and forced displacement in Kachin State” p. 36.

<sup>17</sup> The report is available at <http://www.kachinwomen.com/publications/reports/84-reported-atrocities-against-the-kachin-people-within-months-.html>

affects men, women and children and implies civilians carrying equipment and supplies under the threat of violence and other reprisals.

There are also reports of a growing number of internal refugees as a result of the fighting. Many have been displaced from their homes or have chosen to flee to avoid attacks. This is explained in the aforementioned Human Rights Watch report and in other media reports:

‘Towards the end of last year when fighting became increasingly severe in northern Shan state, several thousand villagers who live along the proposed route of the pipelines were forced to flee their homes. Few if any of the displaced people appear to know anything about the pipeline project’.<sup>18</sup>

An important element in the military’s strategy in areas with ethnic conflicts is to focus their activities against civilians in order to sever supply lines, access to information and recruitment to ethnic militia groups.<sup>19</sup> Villagers are forcefully relocated to areas under military control while their villages are burnt down and their crops and other belongings are plundered or destroyed. According to International Crisis Group, abuses of this kind are part of the military’s *modus operandi* and the aim of ensuring that military units be self-sustaining incentivizes and legitimizes behaviour of this kind:

‘While it is not clear whether such abuses stem from direct orders by the military hierarchy, they have occurred with enough regularity for decades that they undoubtedly form a part of military culture that senior commanders must be aware of and for which they should be held accountable. The long-standing “self-reliance” policy of the army, whereby units in the field are expected to be self-sufficient - leading to confiscation of and, forced labour for cultivation of food and informal taxations - also has a significant impact on local populations.’<sup>20</sup>

In areas of ethnic conflict, abuses against civilians are neither investigated nor punished, and consequently there is nothing to stop this practice from continuing.<sup>21</sup>

#### **4 Information provided by the companies**

The Council’s communication with the companies in the joint venture is presented in the recommendation of 2 May 2011. The Council has not contacted the companies since then. Meanwhile, on 29 May 2012 Daewoo sent two reports to the Council of its own initiative entitled “A Comprehensive Report to better understand the Shwe Project” and “Land Acquisition Activities - Kyauk Phyu, Rakhine State 2009-2010”. According to Daewoo, the former shows that the company’s approach to the project ‘meets and goes beyond what are the generally accepted international standards in fulfilling our corporate social responsibility to the people of Myanmar.’ The latter explains how territories in Kyauk Phyu have been appropriated in connection with the transportation of gas from the Shwe-field off the coast of Myanmar.

The Shwe project concerns the extraction and transportation of gas from two off-shore blocks to a land-based terminal in Kyauk Phyu. Daewoo is the operator. Both reports concern this project. The Shwe project is not part of the Council’s recommendation insofar as the Council

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<sup>18</sup> Kachin News 7 March 2012: “Fighting in N.Shan state continues along Shwe pipeline route,” <http://www.kachinnews.com/news/2249-fighting-in-n-shan-state-continues-along-shwe-pipeline-route.html>

<sup>19</sup> See footnote **Feil! Bokmerke er ikke definert.**, p. 13.

<sup>20</sup> Se footnote **Feil! Bokmerke er ikke definert.**, p. 13.

<sup>21</sup> Se footnote **Feil! Bokmerke er ikke definert.**, p. 14.

only has assessed the transport of gas *from* the gas terminal and through Myanmar's territory. The aforementioned reports are therefore not discussed further.

Since POSCO was not included in the original recommendation, and since the Ministry of Finance had not reached a decision concerning the recommendation of 2 May 2011, the Council on Ethics sent a copy of the draft recommendation from 2011 to POSCO for comments on 16 May 2012.

POSCO responded to the Council on 8 June 2012. The company stressed that it is not possible to base an evaluation of human rights violations today on what took place when the Yadana pipeline was built: 'it will be overestimated to deduce what happened in the past would happen again in the future. Daewoo carefully studied the Yadana case, and is determined to avoid such mishap not only for the project we are operating, but also the project we take part in.'<sup>22</sup> The company also states that Daewoo has contributed with advice to the project based on experiences resulting from the Shwe-project:

'Daewoo reiterated the significance of avoiding human right violation to the Chinese party and advised them to establish the Code of Corporate Conduct and Ethics as well as the proper procedure and mechanism for land/crop compensation program complying with international standard. The detailed information in respect of such manuals and whole process was provided to the management of SEAGP.'<sup>23</sup>

According to POSCO more than half of the territory necessary for the pipeline had been acquired by the end of April 2012, and the SEAGP 'has paid its utmost attention to prevent human rights violation and consequently there was no single report of human rights abuse.' POSCO believes that this means that participating in the construction of the gas pipeline does not necessarily lead to the violation of human rights. In this regard, the company also points to the aforementioned Human Rights Watch report and states that nothing in this report indicates that it is the pipeline which has led to the conflict between the KIA and the military.

POSCO also states that the Group has a code of conduct and that it has strengthened its human rights efforts but does not go into further detail. The company has also introduced a risk management system. Through these measures 'POSCO tries to improve human rights management and prevent human rights risk around POSCO Family. Concerning Myanmar issues, POSCO will protect human rights by monitoring them.'

## **5 The Council on Ethics' assessment**

On 2 May 2011, the Council on Ethics recommended the exclusion of Daewoo, KOGAS, GAIL and ONGC from the GPFG because of an unacceptable risk of contributing to violations of human rights in connection with the construction of an 800 km-long gas pipeline through Myanmar. At the request of the Ministry of Finance, the Council has again assessed the situation in light of Myanmar's recent political development. The political and economic reforms have certainly been positive for the situation of human rights in the country. Political prisoners have been released, freedom of expression has been extended and supplementary elections were carried out in April this year.

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<sup>22</sup> Letter from POSCO to the Council on Ethics dated 12 June 2012. All quotes in this section are taken from this letter. The Council also received the report "Shwe-project; Socio-economic program; Annual report 2010".

This concerns only the Shwe project and is therefore not discussed further here.

<sup>23</sup> POSCO refers to SEGAP (South East Asia Gas Pipeline Company) as the operator of the gas pipeline.

The Council has consequently assessed whether there continues to be an unacceptable risk of the companies contributing to serious violations of human rights. In this regard the Council has considered whether there have been changes to the companies' participation in the project, the status of the pipeline, whether there has been an increase in the militarisation of the pipeline corridor and whether there have been reports of human rights violations perpetrated by the military in connection with the building of the pipeline.

As concerns the companies' participation in the project, the Council is not aware of any changes to their participation or ownerships. Since POSCO has acquired a 68.15 per cent ownership in Daewoo, the Council considers that POSCO should be included in the recommendation as it has a controlling interest in Daewoo.

The pipeline is expected to be completed in 2013. Large sections of the pipeline appear to be finished, but construction has not yet started in the Shan State in the north. This is an area characterised by ethnic conflicts. It is uncertain whether the conflict with ethnic groups will affect the conclusion of the project. POSCO points out in its letter that the construction of the pipeline has not *caused* the conflicts in the area. This is irrelevant to the Council's assessment of whether human rights are being violated in connection with the project.

The Council finds that the increased militarisation of the area around the pipeline is documented, especially in Rhakine State and Shan State, at the southern and northern ends of the pipeline respectively. These are areas with important ethnic populations. It looks like the conflict around the northern area has been intensified by the pipeline, which is central in the acts of violence taking place in the area. In these areas the military forces have strengthened their presence during the last year in order to ensure the pipeline's territories.

Based on the information assembled by the Council, together with reports from reputable organisations such as Human Rights Watch and news reports, it does not look like the political development in Myanmar has had any effect on how Myanmar's forces behave towards civilians in areas of ethnic conflict. The Council attaches importance to the fact that many different sources confirm that the military in Myanmar continues to carry out systematic and serious human rights violations, and that torture, murder, rape, forced labour and other forms of abuse continue to take place in areas through which the pipeline will pass. These abuses are on-going and appear to have increased as the military has sought to control the territories along the pipeline corridor. Consequently, the Council finds it plausible that the construction of the pipeline leads to serious and systematic human rights violations.

In the Council's opinion, the basis for recommending the exclusion of the companies in the joint venture and POSCO, Daewoo's parent company, continues to be present and has in fact been strengthened since the Council's recommendation of 2 May 2011. Even though it is Myanmar's military – not the companies – who carry out the violations of human rights, there is a clear connection between the violations and the companies insofar as these take place in order to facilitate the companies' future activities. It is also clear that the companies have formed a joint venture with a single purpose: building an overland pipeline in Myanmar. They have also accepted that the military be responsible for securing the territories and ensure security along the pipeline.

There has been considerable media-coverage of the conflict in the north of Shan State. The Council considers it likely that the companies in the joint venture have or should have knowledge about the abuses taking place in connection with the preparations of the pipeline. In the Council's opinion, the measures initiated by the companies as described in the recommendation of 2 May 2011 and in section four above, are insufficient to prevent human rights violations.

The pipeline is expected to be finished in 2013. As the pipeline will also be secured by military forces once it comes into operation, it is reasonable to assume that there will continue to be a strong military presence along the corridor beyond 2013. The Council attaches importance to the fact that forced labour and other abuses carried out by military forces appear to be usual, also in areas which are not characterised by a high level of conflict. It does not look like changes in the country's political situation so far have led to actual changes in the way the military treats civilians in conflict areas in Myanmar. The Council therefore finds that there continues to be an unacceptable future risk of the companies contributing to human rights violations in connection with the pipeline.

## 6 Recommendation

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

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| Ola Mestad<br>Leader<br>(sign.) | Dag Olav Hessen<br>(sign.) | Ylva Lindberg<br>(sign.) | Gro Nystuen<br>(sign.) | Bente Rathe<br>(sign.) |
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