



The Council's work under the human rights criteria

Section 3 of the GPFG's guidelines states that "Companies may be put under observation or be excluded if there is an unacceptable risk that the company contributes to or is responsible for

- a) serious or systematic human rights violations (...)
- b) serious violations of the rights of individuals in situations of war or conflict."



Serious or systematic human rights violations

In the field of human rights, the Council works in accordance with a plan drawn up in 2019, which points to prioritised areas where the risk of human rights abuses is particularly high. In line with this plan, the Council has continued working on cases involving labour rights in the Southeast Asian textiles industry and conditions bordering on forced labour for migrant workers in the Gulf and Malaysia. Due to the global Covid-19 pandemic, however, it has not been possible to undertake field studies, which has made the Council's efforts more difficult in these areas.

In other areas, where the Council's investigations are based on written sources, it has been possible to continue the work as before. This applies, for example, to the identification of companies that sell surveillance systems to governments that use these products or services to commit serious human rights violations. In addition to these sector studies, the Council has been working on cases picked up from the Council's news monitoring. These news articles often build on reports published by international human rights organisations. Among the most serious cases that the Council has picked up on in this way are those where indigenous people or other particularly vulnerable groups find their living conditions materially impaired as a result, for example, of the exploitation of natural resources.

Work bordering on forced labour: Since 2015, the Council has been investigating the recruitment of migrant workers to companies in the Gulf states, focusing on the use of recruitment fees, misleading contractual terms and conditions, and restrictions on workers' freedom of movement, for example through the confiscation of their identity papers. In 2020, the Council has entered into a framework contract with a firm of consultants, which will help the Council to further investigate these issues, both in the Gulf and in other countries.

In 2020, the Council also took a closer look at working conditions bordering on forced labour in factories producing rubber gloves in Malaysia. As in the Gulf, many migrant workers travel to Malaysia for work, particularly from Bangladesh. Many of the same norm

violations as those to which migrant workers are subjected in the Gulf are also found in Malaysia. Despite information emerging that the government in Malaysia is taking steps to improve the recruitment practices for migrant workers, the Council notes that there are still reports of migrant workers living under extremely difficult conditions. Due to the pandemic, it has not been possible to undertake field studies, and the Council is therefore trying to investigate recruitment practices and working conditions at the companies' factories remotely.

After several news bulletins and reports from civil society actors, the Council has embarked on an investigation to determine whether companies in the GPFs portfolio make use of workers from the internment camps in the Xinjiang province of China. It is estimated that at least 800,000 people from Muslim minority groups have been interned in such camps. It is reported that during and after their internment, detainees must work at factories in and outside Xinjiang. Although media and research reports generally focus on western companies' links to forced labour through their supply chains, the Council will initially investigate whether companies in the GPFs portfolio themselves make use of this type of labour.

Working conditions in the textiles industry: In 2015, the Council began systematically investigating companies producing yarn, fabrics and garments in certain countries where the risk of labour rights violations is particularly high. The Council's efforts have been focused on companies in the GPFs portfolio that produce textiles themselves. These companies employ thousands of people in many countries, and are directly responsible for the working conditions at their factories. Working conditions at the factories are examined by external consultants on the basis of interviews with employees and, when the companies' give permission, on factory inspections.

So far, around 30 factories have been investigated in Cambodia, Vietnam, Bangladesh, Myanmar, Lesotho, Ethiopia, India, Indonesia and Haiti. Working conditions at many of these factories have proved to be extremely poor, and often violate national law, despite the factories being regularly inspected by their customers. The majority of the companies that have been



sent a draft Council recommendation to exclude them from the GPFG have, after contact with the Council, started implementing measures to improve working conditions. In 2020, the Council's efforts have largely consisted of following up investigations undertaken in previous years and drawing a conclusions based on its dialogue with the companies concerned. The Council attaches importance to companies not only remedying the norm violations that have been uncovered, but also making changes in their organisations and management systems that can contribute to permanent improvements both at the factory that has been examined and at their other production facilities.

Five textiles companies have been excluded to date, the exclusion of one of these were revoked in 2020, and three companies are placed under observation. In 2020, the exclusion of a further company was recommended. The Council remains engaged in a dialogue with several textiles companies, both with those already under observation and those still under investigation. The Council plans to continue its investigations into working conditions at a few textile companies in 2021, as well as starting a similar investigations into the production of footwear.

Infrastructure projects and the exploitation of natural resources in indigenous areas: Among the factors that influence the Council's prioritisation of cases are the scope and seriousness of the norm violation concerned. Since indigenous people often depend on nature for their livelihoods and have a strong cultural connection to the natural environment in which they live, the realisation of large-scale projects that change the environment or lead to forced relocation have a major impact on them. The Council therefore considers such cases carefully. In 2020, one company was excluded because of the impact on indigenous peoples and other vulnerable groups of a hydropower project that both harmed their chances of making a living and led to more than 20,000 people having to relocate. With respect to another company, which has been placed under observation, the measures intended to improve living standards for indigenous people who live on its oil palm plantation are one of the factors the Council is monitoring. The Council is also assessing cases where companies extract oil or establish mines in indigenous areas.

Surveillance technology

In 2019, the Council began assessing whether companies in the GPFGs portfolio may contribute to serious human rights abuses through the development and sale of surveillance equipment. In January 2020, the Council issued its first recommendation to exclude a company on these grounds. The recommendation relates to the company Hikvision, which has attracted considerable international attention for its sale of surveillance equipment to the authorities in Xinjiang, China, whose inhabitants have been subjected to mass surveillance. The information thus obtained is used to select individuals for detention in internment camps.

In September 2020, the Council received a letter from Norges Bank stating that this case would not be considered on its merits by its Executive Board because the GPFG was no longer invested in the company. In line with its previous practice, the Council therefore withdrew its recommendation and published it on its website. Other companies that the Council had begun to examine with regard to this issue left the portfolio before the Council had concluded its assessment. This applied particularly to Chinese companies. The Council's investigations are therefore now concentrating on companies domiciled in other parts of the world. One element that it is nevertheless important to take away from the Hikvision case is that companies' products or services may be included as part of states' mass surveillance systems. For the Council, the question will often be what the company knew about the way its products or services were being used. In the Council's view, what the company knew when the contract was signed is not, by itself, decisive. The company must also respond to new information that becomes known after that point in time.

In 2020, The Council has commissioned two reports to learn how companies in the GPFGs portfolio can contribute to human rights abuses enabled by surveillance technology. The first report describes how various surveillance systems work, and paints a broad picture of the different ways companies can be involved in such human rights abuses. The report raises challenging human rights issues about how far states can go in surveilling their own populations. The



right to private life is not absolute – but at what point does restrictions on this right cross the line? There is no hard and fast rule, and each state have a margin of appreciation as regards what measures are considered necessary. The Council will therefore largely focus on cases where the information obtained by means of companies' systems has been used to commit norm violations that can never be justified, such as arbitrary detention, torture and even murder. This is also in line with the Ethics Commission's assessment in NOU 2020: 7 "Values and responsibility" (p. 181). At the same time, the Council does not rule out the possibility of circumstances in which the information gathering process itself, and not the way the information is used, is so intrusive as to constitute grounds for exclusion from investment by the GPFG. This may apply, for example, where deeply sensitive information is obtained on a large scale, without reasonable grounds, consent or necessary safety mechanisms.

On the basis of the first report, the Council progressed to identifying companies in the funds portfolio engaged in the surveillance sector, with the focus on cases where the information collected leads to serious abuses. Because of the nature of these products and services, there is a great deal of secrecy surrounding the companies and who they sell to. It is therefore difficult to obtain specific information about the companies' complicity. Information also often emerge many years after an event is a challenge given the ethical guidelines' forward-looking framing. The Council elected to restrict the focus of a follow-up report to allegations that have been made in the past five years.

The second report was delivered at the end of August 2020. It contains a list of ten companies which have been accused of contributing to norm violations through the sale of surveillance technology to states that have used it to subject its population to serious human rights violations, including torture and arbitrary detention. The victims are primarily ethnic or religious minorities, political opponents and journalists. The Council will continue to work on this issue in 2021.

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

In 2020, the Council examined the operations of several companies with businesses in the West Bank. The Council investigated whether companies, through their business activities, have contributed to the violation of international law. Previously, the Council has recommended the exclusion of construction companies that build Israeli settlements in the West Bank. In 2020, the Council also considered the GPFG's investments in companies engaged in other commercial activities in the area.

In 2020, furthermore, the Council has considered cases under the war and conflict criterion pertaining to companies operating in Myanmar and South Sudan, where non-international armed conflicts are ongoing. The cases relate to GPFG companies that have entered into business partnerships with actors responsible for extreme abuses. The subject of the Council's assessments in these cases is whether there is an unacceptable risk that these companies, through such business partnerships, contribute to serious violations of the rights of individuals in situations of war or conflict. In the Council's view, any assessment of whether the level of risk is acceptable or not depends on the type of norm violation the company risks contributing to. Where the company operates in an area with a known risk of contributing to extreme abuse, particularly high standards of due diligence must, in the Council's view, be evinced by the company if it is to avoid contributing to serious abuses.

Due to the high risk of contributing to serious norm violations in areas of war or conflict, several international guides and guidelines have been drawn up to ensure that companies operating in such areas perform particularly thorough due diligence assessments and implement measures to ensure that they do not contribute to norm violations. In 2010, for example, the UN Global Compact and Principles for Responsible Investment (PRI) published Guidance on Responsible Business in Conflict-Affected and High-Risk



Areas: A Resource for Companies and Investors.¹ This guide points to the risk of contributing to states' serious abuses, for example through the use of security forces and the furnishing of financial and material assistance to parties engaged in a conflict. Companies are encouraged to "take all necessary measures to avoid complicity in human rights violations by government actors in relation to all aspects of the company's operations". In 2020, the UN Working Group on Business and Human Rights published the report *Business, Human Rights and Conflict-Affected regions: Towards Heightened Action*.² In this report, the working group points out that a higher risk of contributing to norm violations necessitates a higher level of diligence on the part of the companies concerned. The working group also provides practical guidance to companies with respect to the particular risk inherent in financial partnerships with armed forces. Another relevant guide is *The Voluntary Principles on Security and Human Rights*, which recommends that companies which cooperate with government security forces must, in their risk analyses, consider whether those forces have previously been responsible for human rights abuses.³

1 Global Compact/PRI's *Guidance on Responsible Business in Conflict-Affected and High-Risk Areas: A Resource for Companies and Investors*, https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FPeace_and_Business%2FGuidance_RB.pdf.

2 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, *Business, Human Rights and Conflict-Affected Regions: Towards Heightened Action*, <https://undocs.org/en/A/75/212>

3 *The Voluntary Principles on Security and Human Rights*, <https://www.voluntaryprinciples.org/the-principles/>