

# **Parallel Report**

## **Sweden's Extraterritorial State Obligations on ESCR**

### **Sweden's 6<sup>th</sup> State Report**

**on the International Covenant On Economic, Social and Cultural Rights (ICESCR)**



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## **List of abbreviations**

AP-Funds - The Swedish National Pension Funds

bclMC - British Columbia Investment Management Corporation

Caisse - Caisse de dépôt et placement du Québec

COPAE - The Pastoral Commission for Peace and Ecology

Council - Joint Ethical Council

ESCRs - Extraterritorial obligations in the area of economic, social and cultural rights

ETOs - Extraterritorial obligations

HRC - The Human Rights Council

IACHR - Inter-American Commission on Human Rights

INACIF - Guatemalan National Institute of Forensic Science

IPCC - Intergovernmental Panel on Climate Change

NGO – Non Governmental Organization

OCG - Common Ground Consultants

PRI - Principles for Responsible Investment Initiative

RAI - Principles on Responsible Agricultural Investment

SAL - Solidarity Sweden-Latin America

SweFOR - Swedish Fellowship of Reconciliation

TCGA - TIAA-CREF Global Agriculture

TNCs - Transnational corporations

UN – United Nations

USD - USA Dollar

UUSC - Unitarian Universalist Service Committee

## Introduction

This is a parallel report written by FIAN Sweden, together with FIAN International, SweFOR (Swedish Fellowship of Reconciliation) and SAL (Solidarity Sweden-Latin America) to contribute to the Committee's analysis of the ETOs of Sweden in the area of economic, social and cultural rights, in the review of Sweden in June 2016.

Regardless of the universality of human rights, many States still interpret their human rights obligations as being applicable only within their own borders. This attempt to limit the understanding of obligations has created a gap in human rights protection and a lack of adequate regulation for the protection of human rights. In the context of globalization, this gap has grown during the last 25 years. Such gaps include for example the lack of human rights regulation and accountability of transnational corporations (TNCs), the absence of human rights accountability of international financial institutions and the ineffective application of human rights law to investment and trade law, policies and disputes. However, this interpretation is now changing as the concept of extraterritorial obligations (ETOs) is gaining ground as the missing link in the universal human rights protection system. The current state of human rights law, as well as a growing corpus of its jurisprudence requires States to respect, protect and fulfil economic, social and cultural rights universally, meaning that obligations also relate to conduct beyond a state's territory<sup>1</sup>. These obligations are outlined in the Maastricht Principles on ETOs<sup>2</sup>, which clarify States' ETOs on the basis of standing international law.

Equally, the global dimensions of climate change and eco-destruction require a universal response to the great challenges our planet and populations are facing. Climate change, with fossil fuels as its single major driver, is already impairing the right to adequate food and nutrition, the right to water and the right to health and to a healthy environment, among other rights. Human rights obligations relating to the environment are well established and their extraterritorial dimensions increasingly recognized. Extraterritorial obligations are a critical legal tool in the effort not only to protect human rights, but also to avoid environmental and climate destruction.<sup>3</sup>

This report focuses on three cases related to Sweden's non-compliance with its extraterritorial obligations on economic, social and cultural rights. The cases focus on the investments of the Swedish National Pension Funds in different sectors such as mining, agricultural land and the fossil fuel industry. Based on a number of legal sources such as the Maastricht principles on the

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<sup>1</sup> See Maastricht Principle 3

<sup>2</sup> The Maastricht Principles constitute an international expert opinion, restating human rights law on ETOs. The Maastricht Principles were issued on 28 September 2011 by 40 international law experts from all regions of the world, including current and former members of international human rights treaty bodies, regional human rights bodies, as well as former and current Special Rapporteurs of the United Nations Human Rights Council. The Maastricht Principles do not purport to establish new elements of human rights law. Rather, the Maastricht Principles clarify extraterritorial obligations of States on the basis of standing international law.

<sup>3</sup> FIAN International, *Extraterritorial obligations in the context of eco-destruction and climate change*, 2014, p. 6. [http://www.etoconsortium.org/nc/en/library/documents/?tx\\_drblob\\_pi1%5BdownloadUid%5D=128](http://www.etoconsortium.org/nc/en/library/documents/?tx_drblob_pi1%5BdownloadUid%5D=128).

ETOs of States and Statements, General Comments and Concluding observations issued by the Committee , this report argues that the Swedish government should be held accountable for breaches of the right to adequate food and nutrition and related rights taking place in the mining project in Guatemala. The Swedish State should make available necessary information in order for independent parties to carry out a human rights-based analysis in the case of agricultural land investments in Brazil. Finally, the Swedish State should initiate divestment from the fossil fuel industry and mandate the pension funds to actively make investments that promote sustainable development and human rights.

FIAN Sweden is a part of FIAN International. FIAN envisions a world free from hunger and malnutrition, in which every person fully enjoys all human rights in dignity and self-determination, particularly the human right to adequate food and nutrition. SweFOR is a nonviolence movement that works for peace and justice. SAL is a solidarity movement supporting indigenous and peasant's organisations in Latin America.

In presenting this report, the submitting organizations aim to contribute with information to Committee's interactive dialog with the State and request for specific concluding observations regarding Sweden's human rights accountability in the analysed issues as well as recommendations to stop the identified breaches.

## 1. Extraterritorial obligations in the area of economic, social and cultural rights (ESCRs)

The textual departure for States' obligations to *respect*, *protect* and *fulfil* ESCRs extraterritorially, as laid down in the Maastricht Principles, is Article 2(1), in the International Covenant on Economic, Social and Cultural Rights<sup>4</sup> which requires States to take steps, individually and through international cooperation, to progressively realise the rights, which is supported and complemented by other articles in the Covenant such as Articles 11, 15, 22 and 23.

States are obliged to *respect* economic, social and cultural rights, meaning that they should refrain from any action that would impair or nullify the enjoyment of ESCRs of those also living extraterritorially<sup>5</sup>. States must also refrain from any conduct which impairs the ability of other States or international organisations to comply with their obligations<sup>6</sup>.

Furthermore, States have the obligation to *protect* the ESCRs of individuals by regulating the activities of non-state actors<sup>7</sup>. States are obliged to regulate and/or influence the business sector in order to protect those affected by them outside their territory<sup>8</sup>. All States have an obligation as well to cooperate in order to ensure that non-State actors do not impair the enjoyment of the ESCRs of any persons<sup>9</sup>.

The obligation to *fulfil* requires States to create, through international cooperation, an enabling environment conducive to the universal fulfilment of the human rights to food, health and water and related ESCRs<sup>10</sup>. There is a need for States to collaborate through finance, investment, trade and ecological agrarian reforms in order to contribute to the creation of an enabling environment.

In order to prevent violations, States must conduct prior impact assessment, with public participation, of the risks of their laws, policies and practices on the enjoyment of economic, social and cultural rights. The results of these prior impact assessments must be made public<sup>11</sup>.

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<sup>4</sup> Hereafter "the Covenant".

<sup>5</sup> Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights, CESCR, para. 4, U.N. Doc. E/C.12/2011/1 (2011); Concluding Observations CESCR on Belgium, UN Doc.E/C.12/bel/co/4 (2013), para 22; Maastricht Principles 13, 19-22

<sup>6</sup> Maastricht Principle 21

<sup>7</sup> Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights, CESCR, para. 5, U.N. Doc. E/C.12/2011/1 (2011); Maastricht Principles 23-27

<sup>8</sup> General Comment No. 22: The Right to Sexual and Reproductive Health, CESCR, 57th Sess., U.N. Doc. E/C.12/GC/22, para. 60 (2016); General Comment No. 23: The Right to just and favourable conditions of work, CESCR, 57th Sess., U.N. Doc. E/C.12/GC/23, para. 70 (2016); General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC, 62nd Sess., U.N. Doc. CRC/C/GC/16 (2013), para. 38- 46

<sup>9</sup> UN Charter Article 55, 56; International Covenant on Economic, Social and Cultural Rights Article 2(1); Maastricht Principle 23

<sup>10</sup> UN Charter Article 55; Universal Declaration of Human Rights Article 28; Maastricht Principles 28-35

<sup>11</sup> Concluding Observations CESCR on Austria (2013), (E/C.12/AUT/CO/4), para. 11; Concluding Observations CESCR on Norway (2013), (E/C.12/NOR/CO/5), para. 6; Maastricht Principle 14

When violations do occur, States must ensure the availability of effective mechanisms for accountability. To that end, States must establish systems and procedures for monitoring the compliance of their human rights obligations as well as ensuring access to effective remedies to victims<sup>12</sup>.

### 1.1 Extraterritorial obligations in the area of climate change and eco-destruction

ETOs are crucial in addressing the various human rights challenges arising from (and contributing) to eco-destruction and climate change. During the last decades, the right to live in a healthy environment has emerged as a key legal tool in the struggle for global environmental justice and the protection of the planet.

Human rights obligations related to the environment are well established and their extraterritorial dimensions increasingly recognized. The 2011 Office of the High Commissioner on Human Rights report on human rights and the environment states that: *“One country’s pollution can become another country’s environmental and human rights problem, particularly where the polluting media, like air and water, are capable of easily crossing boundaries.... These issues are of particular importance in the environmental context, in the light of the number and intensity of transboundary and global environmental threats to the full enjoyment of human rights.”*<sup>13</sup> On 24 December 2012, the UN Human Rights Council received the preliminary report of John H. Knox, the UN Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, stating that: *“The application of human rights law to transboundary and global environmental harm requires consideration of questions regarding the extraterritorial reach of human rights norms.... Recent years have seen heightened attention to the extraterritoriality of human rights obligations, but there is still a need for more detailed clarification (see A/HRC/19/34, para. 64). These issues are of particular importance in the environmental context, in the light of the number and intensity of transboundary and global environmental threats to the full enjoyment of human rights.”* (A/HRC/22/43)

The Human Rights Council’s (HRC) seven resolutions on climate change clearly detailed the impact of climate change on the enjoyment of human rights. In 2008 the HRC recognized<sup>14</sup> *“...that climate change is a global problem requiring a global solution, and that effective international cooperation to enable the full, effective and sustained implementation of the United Nations Framework Convention on Climate Change in accordance with the provisions and principles of the Convention is important in order to support national efforts for the realization of human rights implicated by climate change-related impacts.”* The HRC also declared *“... that human rights obligations and commitments have the potential to inform and*

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<sup>12</sup> Universal Declaration of Human Rights Article 8; Concluding observations on the fourth periodic report of Austria, E/C.12/AUT/CO/4 (2013), para. 11-12; Maastricht Principle 37.

<sup>13</sup> HRC Resolution, 19/34, para. 65.

<sup>14</sup> HRC Resolution 7/23, Human Rights and Climate Change, 28 March, 2008. [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_7\\_23.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf)



*strengthen international and national policymaking in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes.”*

In October 2011, the HRC recalled the previously mentioned statements and also “*reiterates its concern that climate change poses an immediate and far-reaching threat to people and communities around the world and has adverse implications for the full enjoyment of human rights*”.<sup>15</sup>

In the climate change context, several UN Human Rights Bodies support the commitments that are enshrined in the Maastricht Principles on ETOs. In 2010, the Conference of Parties to the UN Framework Convention on Climate Change UNFCCC reproduced the HRC’s language identifying the relationship between human rights and climate change in its report on the Cancun Conference on climate change. The report on the outcome of the Conference emphasized that “*Parties should, in all climate change related actions, fully respect human rights.*”<sup>16</sup> The implementation of these provisions in the climate regime has been highlighted by the The United Nations Special Rapporteurs in the process leading up to the Paris agreement. At the climate change conference in Lima, Peru in 2014, UN Independent Expert on human rights and international solidarity Virginia B. Dandan stated that “*Climate change is a global challenge and the central issue is human survival. It is the duty of all governments in the world to unite and cut emissions so that global warming can be maintained below two degrees Centigrade. The human rights consequences of inaction will especially affect the most vulnerable and marginalized populations worldwide who will suffer the gravest deprivations including on their right to food.*” During the conference in Paris in 2015 The United Nations Special Rapporteur on human rights and the environment, John Knox, stated “*Every State in the climate negotiations belongs to at least one human rights treaty, and they must ensure that all of their actions comply with their human rights obligations. That includes their actions relating to climate change.*”<sup>17</sup>

As awareness increase regarding the harmful impacts of fossil fuels on the climate system, international law will be increasingly confronted with demands for accountability for the consequential impairment of human rights. Fossil fuel companies increasingly run the risk of being held responsible for human rights abuses. Olivier De Schutter, former UN Special Rapporteur on the right to food, considers that there is huge scope for human rights courts to treat climate change as an immediate threat to human rights, for example in cases related to fossil fuel mining.<sup>18</sup>

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<sup>15</sup> HRC Resolution 18/22, Human rights and Climate Change,

<http://www.ohchr.org/Documents/Issues/ClimateChange/A.HRC.RES.18.22.pdf>

<sup>16</sup> UNFCCC, Decision 1/CP.16, para 8. <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>

<sup>17</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16836&LangID=E>

<sup>18</sup> O. De Schutter, ‘Climate change is a human rights issue – and that’s how we can solve it’, The Guardian, 24 April, 2012, [www.guardian.co.uk/environment/2012/apr/24/climate-change-human-rights-issue](http://www.guardian.co.uk/environment/2012/apr/24/climate-change-human-rights-issue)

## 2. Methodology and sources

As the Swedish State is becoming an increasingly active player world-wide, i.e. through growing investments by its national pension funds, it is crucial to ensure that it complies with its obligations beyond its borders.

The purpose of this report is to contribute to the Committee's analysis of the ETOs of Sweden in the area of economic, social and cultural rights. FIAN requests the Committee to raise the concerns stated in this report in their dialogue with the Swedish government.

This report draws on a number of legal sources, including General Comments, concluding observations, the Maastricht Principles, documents prepared by special procedures of the HRC, and other academic sources.

The case studies were chosen on the background of FIAN's and Solidarity Sweden – Latin America's prior expertise and engagement, as well as the expertise of other organisations such as the SweFOR and Swedwatch. In terms of the Marlin Mine in Guatemala, FIAN, through its broad network, has been involved in the case since the beginning in 2004. The International Secretariat of FIAN has been visiting the mining area on a regular basis since 2004, and worked with local partner organisations in Guatemala for fact-finding. FIAN Sweden and Solidarity Sweden – Latin America have also had continuous dialogues with the Ethical Council who coordinates the ethical and environmental work of the First to the Fourth Swedish National PensionFunds. This long-term commitment has made FIAN able to understand the situation in and around the Marlin Mine. Sources also include research made by other organisations such as Peace Brigades International, the Goldcorp website and the human rights impact assessment report conducted on behalf of Goldcorp, newspaper articles, radio programmes, and annual reports by the national pension funds.

The case of agricultural land investments by the pension funds in Brazil is based to a large extent on two different extensive researches. One made by Swedwatch who during a visit to Brazil, made several interviews with decision makers, NGO's, but also representatives from the Swedish national pension fund, AP2. The results are presented in the report '*Investering utan insyn*'.<sup>19</sup> The second was made by researchers from Brazil's Social Network for Justice and Human Rights, Grain and SAL that investigated several public documents and conducted field visits interviewing neighbouring communities and local authorities. Their report '*Foreign pension funds and land grabbing in Brazil*' was released in 2015.<sup>20</sup>

The third case, describing the investments in fossil fuels by the national pension funds, builds to a large extent on documents prepared by the Intergovernmental Panel on Climate Change (IPCC) and by Oxfam.

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<sup>19</sup> Swedwatch, *Investering utan insyn*, 2013. [http://www.swedwatch.org/sites/default/files/swedwatch\\_-\\_investering\\_utan\\_insyn.pdf](http://www.swedwatch.org/sites/default/files/swedwatch_-_investering_utan_insyn.pdf)

<sup>20</sup> GRAIN, Intern Pares, *Latinamerikagrupperna, Rede Social de Justiça e Direitos Humanos, Foreign pension funds and land grabbing in Brazil 2015*. [http://www.latinamerikagrupperna.se/sites/latinamerikagrupperna.se/files/notisfiler/tcga-brazil\\_en\\_04.pdf](http://www.latinamerikagrupperna.se/sites/latinamerikagrupperna.se/files/notisfiler/tcga-brazil_en_04.pdf)

In 2009 SAL and SweFOR began to raise the issue of the AP-Funds investing in companies responsible for human rights abuses and environmental damage, and the weakness of current regulations regarding the funds' investments. FIAN joined in 2011 and since 2013 the work is coordinated through the campaign *Schyssta pensioner (Fair pensions)*, supported by eleven Swedish organisations<sup>21</sup>. The campaign coordinates joint activities such as common demands, opinion articles, seminars, dialogue with responsible MP's. The campaign allows for collective research and expertise from various important perspectives on the issue of the investments of pension funds in relation to human rights and the environment. In recent the campaign has triggered a lively public debate regarding the responsibility and the human rights impacts of the Swedish national pension funds' operations abroad.

### 3. The Swedish National Pension Funds

#### 3.1 Mission and regulations

The Swedish National Pension Funds (the AP-Funds) administer more than 1500 billion SEK (some 160 billion EUR) most of which is being invested in company stocks in thousands of companies worldwide. All funds, except the Seventh AP-Fund, are so-called buffer funds whose assets are intended to be used when there are deficits in the public pension system. The AP-Funds are state agencies that operate under the Finance Ministry on the mission of the parliament. However, they differ from most agencies in that their mission and activities are regulated by law rather than regulations.<sup>22</sup> The legal framework guiding the investment rules of the funds is decided by the Swedish parliament and the current system was adopted through an agreement<sup>23</sup> between five parties in 1999. These parties – the liberal/right government parties and the Social Democrats – are represented in a group of parliamentarians called the Pension group which has the responsibility to oversee the mentioned agreement and the pension system. In the autumn 2014 the Green Party formed government with the Social democrats and has since then been included in the group.

The government's influence is limited to the appointment of the funds' boards and to appointing external auditors who evaluate the funds' activities. These evaluations result in reports to the Swedish parliament where the government presents the results and its view on the funds' activities. The mission of the AP-Funds is to invest the pension assets of the Swedish population in order to obtain high yields at a low risk.<sup>24</sup>

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<sup>21</sup> Organisations participating in the campaign: Afrikagrupperna, Emmaus Stockholm, Fair Trade Center, FIAN Sweden, Forum Syd, Fossil Free Sweden, Jordens Vänner, Klimataktion, Kristna Fredsrörelsen, Latinamerikagrupperna and WWF.

<sup>22</sup> Law (2000:192) about national pension funds and Law (2000:193) about 6:th AP-fund.

<sup>23</sup> Agreement Ds 2009:53. <http://www.regeringen.se/contentassets/ecad37e66e7942aba96bdbfad4b0c8e6/detta-ar-pensionsoverenskommelsen-ds-200953>

<sup>24</sup> Law about national pension funds (2000:192), chapter 4, paragraph 1.

The AP-Funds should as state agencies achieve “public trust” by making ethical and environmental consideration in their operations<sup>25</sup>. According to the preparatory work of their current framework, “*the funds should take into account ethical and environmental issues without compromising the overall objective of high revenue.*”<sup>26</sup> No further guidance regarding the content of the directives is provided; the funds are themselves responsible for the interpretation and application of the directives. This means that the pertinent regulation do not include any references to human rights.

### 3.2 The Ethical Council

In the AP-Funds’ ownership and investment policies, the funds explain how they interpret and implement government directives on ethical and environmental considerations. As the AP-Funds are Swedish state agencies, they argue that they should have the same set of core values as the Swedish government.<sup>27</sup> According to the Funds, the Swedish State’s set of values are expressed through the international conventions which Sweden has signed. Among these, several funds highlight conventions that they consider particularly important, such as the UN Declaration of Human Rights, the ILO Core Conventions and the Rio Declaration on Environment and Development. Some funds also refer to the Swedish form of government exemplified by values such as democracy and sustainable development<sup>28</sup>. The funds approach is in line with the UN’s code of conduct Global Compact and the OECD’s Guidelines for Multinational Companies, which the AP-Funds refer to as guidelines. The AP-Funds have also signed the UN Principles for Responsible Investment (PRI), meaning that they have committed themselves to integrate ethical and environmental criteria in their investment decisions.<sup>29</sup>

The ethical and environmental work of the First to the Fourth AP Funds is coordinated through the joint Ethical Council (hereafter the Council) established in 2007. The purpose of the Council is to “*through engagement and joint action work for positive change in companies outside Sweden associated with violations of international conventions on the environment and human rights.*”<sup>30</sup> The Council consists of representatives from the funds themselves and has no independent body that examines whether or to which extent the funds take human rights and environment issues into consideration.

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<sup>25</sup> Prop. 1999/2000:46 ’AP-fonden i det reformerade pensionssystemet’. [http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/AP-fonden-i-det-reformerade-pe\\_GN0346/?text=true](http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/AP-fonden-i-det-reformerade-pe_GN0346/?text=true), p. 76.

<sup>26</sup> Prop. 1999/2000:46 ’AP-fonden i det reformerade pensionssystemet’. [http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/AP-fonden-i-det-reformerade-pe\\_GN0346/?text=true](http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/AP-fonden-i-det-reformerade-pe_GN0346/?text=true)

<sup>27</sup> <http://etikradet.se/etikradets-arbete/vardegrund/?lang=en>

<sup>28</sup> *Ibid.*

<sup>29</sup> Ethical Councils Annual Report, 2015, p. 6, [http://media.etikradet.se/2016/04/Ethical\\_conuncil%C2%B4s-AR-2015.pdf](http://media.etikradet.se/2016/04/Ethical_conuncil%C2%B4s-AR-2015.pdf)

<sup>30</sup> Swedwatch Report #42, *Swedish pension funds’ investments in Latin American mines* (2011). See: [http://www.swedwatch.org/sites/default/files/ap-report\\_english.pdf](http://www.swedwatch.org/sites/default/files/ap-report_english.pdf)

The Council works both pro-actively and reactively with ethical and environmental issues. The proactive work includes supporting a selection of international initiatives<sup>31</sup> aimed at increasing the transparency of companies. The Council is also involved in a number of less formal initiatives, together with other investors, where various issues are discussed with the companies.

Most of the work of the Council is however carried out in a reactive manner i.e. taking action only when individual companies are accused of infringing international conventions. As the funds invest in several thousand companies, the Council does not act on all reported cases of abuses. Instead, companies are selected where *“the problems are deemed to be evident and well documented and the Council considers there to be a possibility to influence in a positive direction”*.<sup>32</sup> The aim of engaging dialogue with companies is to persuade them to stop the abusive activities and to improve management operations in order to prevent abuses. As long as the dialogue continues to make progress and the Council believes there to be a possibility to influence the companies in a positive direction, the funds remain as owners and the dialogue continues. The Council argues that this is more responsible than selling the shares. As a last resort, however, funds can choose to terminate the ownership. This is decided by each individual fund on the recommendation of the Council, however, there are no clear criteria for when a company should be excluded. In an interview for a Swedish Radio station, the general secretary for the Council, John Howchin explained that they only consider to cease their investments from a company when a company *“during many, many years, in their work have consciously, in a systematic way, been violating human rights”*<sup>33</sup> Starting in 2014, the Council set a four year limit to dialogue processes concerning violations of international conventions. If the Council’s aim with a dialogue has not been reached, it will end the dialogue and recommend the funds to end their investments in the company.<sup>34</sup>

In addition to the active dialogues undertaken with the 10-15 companies through the Council, the funds also work with ethical consultants who engage in dialogue with additional companies. In 2014 the Council was involved in dialogues with 308 companies. The transparency surrounding these dialogues is limited and the reports of the consultants are not published publicly.<sup>35</sup>

The above shows that the funds take the legal requirement(s) on ethical and environmental issues seriously whilst at the same time often referring to their overall objective as spelled out in the law which is to achieve high revenues, preventing them from investing differently.<sup>36 37</sup>

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<sup>31</sup> Initiatives such as the Extractive Industries Transparency Initiative (EITI), Carbon Disclosure Project (CDP), and the Institutional Investors Group on Climate Change (IIGCC).

<sup>32</sup> <http://etikradet.se/etikradets-arbete/reaktiva-dialoger-vid-krankning/?lang=en>

<sup>33</sup> Interview in Swedish public radio, 11 November 2015,

<http://sverigesradio.se/sida/artikel.aspx?programid=1650&artikel=6293151>

<sup>34</sup> Ethical Councils Annual Report, 2015, p.11, [http://media.etikradet.se/2016/04/Ethical\\_conuncil%C2%B4s-AR-2015.pdf](http://media.etikradet.se/2016/04/Ethical_conuncil%C2%B4s-AR-2015.pdf)

<sup>35</sup> <http://media.etikradet.se/2015/04/etikr%C3%A5det-150320-SVE.pdf>

<sup>36</sup> Regeringens skrivelse 2014/15:130

<sup>37</sup> Florén & Gröttheim AP7, ”Svenskar vill inte att etiska hänsyn sänker pensionen”, Dagens Nyheter, 27 October, 2014

## 4. CASE 1: The Marlin mine in Guatemala

### 4.1 Background

The Marlin mine *is* located in the municipalities of San Miguel Ixtahuacán and Sipacapa in the San Marcos region, one of the poorest and most densely populated regions in Guatemala. The local municipalities consisting of 18 communities are predominantly Mayan (the majority in San Miguel being Maya Mam, and the majority in Sipacapa being Maya Sipakapense).

The extraction began in 2005 after initial exploration in the early 2000s. The mine was built with the help of a World Bank loan of 45 million USD and demand that the rights indigenous peoples' be respected and that the mine lead to sustainable development in the area.

The Swedish national pension funds own a total of 133 million Swedish kronor (USD 16, 5 million, December 2015) in the Canadian mining company Goldcorp<sup>38</sup> that runs the mine through its subsidiary Montana Exploradora. In 2013, it generated USD 447 million in revenue and produced 202,200 ounces of gold – about 7.6% of the 2.67 million ounces produced overall by Goldcorp in 2013.<sup>39</sup> In 2015, the company expects Marlin to produce between 160,000 and 175,000 ounces of gold.<sup>40</sup>

### 4.2 Damages suffered by the victims

Since the beginning, the Marlin project has been accompanied by growing social conflict, harassment and violence against its opponents and criminalization of social protest.<sup>41</sup> The criticism towards the mine has been brought forward by the local communities and the Catholic Church in support of international human rights and environmental organisations. The criticism is related to several areas.

#### *Loss of traditional land and natural resources*

The majority of the population in San Marcos belongs to the indigenous Mayan population, who have a legal right to their traditional territory. Some villagers around the Marlin mine have been pressured to sell their land and those who have refused have been subjected to threats and intimidation. In 2010, activist Diodora Hernandez, who refused to sell her land to Goldcorp, was shot point-blank in the eye by two men who entered her home one evening.<sup>42</sup> Contamination, as described below, has also destroyed water reserves and natural resources which the communities depend on for their livelihoods. A human rights impact assessment carried out in 2010 by the Canadian consultancy firm, On Common Ground Consultants (OCG), on the recommendation of the Swedish national pension funds, states that “*there is a pattern of*

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<sup>38</sup> Goldcorp is one of the largest, and fastest growing, gold producing multinational companies in the world with more than 16 000 employees and with a considerable focus on Latin America.

<sup>39</sup> Goldcorp Annual Report, 2013.

<sup>40</sup> H. Woodin, ‘Goldcorps Marlin mine, a decade of operations and controversy in Guatemala’, Business in Vancouver, 4 May, 2015. <http://www.biv.com/article/2015/5/goldcorps-marlin-mine-decade-operations-and-contro/>.

<sup>41</sup> See summary on human rights issues in UN General Assembly (7 June 2011): Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya (A/HRC/18/35/Add.3).

<sup>42</sup> H. Woodin, ‘Goldcorps Marlin mine, a decade of operations and controversy in Guatemala’, Business in Vancouver, 4 May, 2015. <http://www.biv.com/article/2015/5/goldcorps-marlin-mine-decade-operations-and-contro/>.

*allegations about coercion and pressure in the land sales that undermines the voluntary nature of the transactions and would infringe upon the right to own property”.*<sup>43</sup>

### *Health problems and water shortage*

Various monitoring studies of the impacts of the mining activities have throughout the years proven the existence of heavy contamination of the river water in the region. The Pastoral Commission for Peace and Ecology (COPAE) of the Diocese of San Marcos has regularly published reports on their findings, which have been supported by the Centre for Ocean and Aquaculture at the Guatemalan University of San Carlos who have pursued independent monitoring of the drinking water. The studies indicate that the river water is contaminated with heavy metals such as aluminium and arsenic, eight to ten times higher than the World Bank standards for opencast mining.<sup>44</sup> An on-site investigation by the Norwegian University of Life Sciences in 2011 further supported previous findings regarding heavy water pollution of the river system.<sup>45</sup> Physicians for Human Rights from the University of Michigan, found that people living closer to the mines in this area have higher concentrations of toxins in their blood<sup>46</sup>. Skin rashes, hair loss, and respiratory difficulties, particularly in the elderly and children have also been reported. People testify that cattle have died after drinking the contaminated water.<sup>47</sup> The OCG study also confirms the problems relating to water and health.<sup>48</sup>

The project absorbs large amounts of water (45,000 litres per hour, according to the company), which leads to shortages affecting the population. Women and children have been especially affected because wells have dried up and they have to walk longer distances to collect water. In addition, women reported that, on the market of San Marcos, it is more difficult to sell fruits and vegetables harvested near the mine, as buyers fear the risk of contamination.<sup>49</sup>

Based on the results of the research carried out, the Inter-American Commission on Human Rights (IACHR) demanded the Guatemalan Government to suspend operations at the mine by June 24<sup>th</sup> 2010. In 2011, after considering additional information, the IACHR changed some of the recommendations and stated that the mine did not constitute a risk of irreversible damage for the lives and the environment of the indigenous communities. Nevertheless, the IACHR repeated its demand to the Guatemalan government to guarantee access to clean drinking water

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<sup>43</sup> On Common Ground Consultants Inc, Human Rights Assessment of Goldcorp Inc.’s Marlin Mine. May 2010. [http://csr.goldcorp.com/2011/docs/2010\\_human\\_full\\_en.pdf](http://csr.goldcorp.com/2011/docs/2010_human_full_en.pdf)

<sup>44</sup> COPAE, Second annual report on the monitoring and analysis of the water quality, July 2009. [http://www.ciel.org/Law\\_Communities/Guatemala/copae%202nd\\_water\\_report%20english.pdf](http://www.ciel.org/Law_Communities/Guatemala/copae%202nd_water_report%20english.pdf)

<sup>45</sup> A. R. Almás and González, Investigation of Arsenic and other trace elements concentrations in sediments and water samples collected from rivers near the Goldcorp Inc. Marlin Mine project, in North West Guatemala, 2011. Department of Plant and Environmental Sciences, Norwegian University of Life Sciences, Ås

<sup>46</sup> Basu, N. & Hu, H. Toxic Metals and Indigenous Peoples Near the Marlin Mine in Western Guatemala – Potential Exposures and Impacts on Health. University of Michigan, May, 2010, p. 10. [https://s3.amazonaws.com/PHR\\_Reports/guatemala-toxic-metals.pdf](https://s3.amazonaws.com/PHR_Reports/guatemala-toxic-metals.pdf)

<sup>47</sup> *Ibid.* p. 12-13.

<sup>48</sup> On Common Ground Consultants Inc, Human Rights Assessment of Goldcorp Inc.’s Marlin Mine. May 2010. [http://csr.goldcorp.com/2011/docs/2010\\_human\\_full\\_en.pdf](http://csr.goldcorp.com/2011/docs/2010_human_full_en.pdf)

<sup>49</sup> FIAN International, The Right to Food in Guatemala, final report of the international fact finding mission, March, 2010. [http://www.rtfn-watch.org/uploads/media/The\\_Right\\_to\\_Food\\_in\\_Guatemala.pdf](http://www.rtfn-watch.org/uploads/media/The_Right_to_Food_in_Guatemala.pdf)

of the communities.<sup>50</sup> Goldcorp and the Guatemalan state have since commissioned their own environmental assessments, finding that Marlin is operating within internationally recognized environmental standards for toxic emissions and tailings dam design.<sup>51</sup> Various organisations have criticized the Guatemalan government for not fulfilling the recommendations made by the IACHR.<sup>52</sup> New findings in 2014, backed by the Guatemalan National Institute of Forensic Science (INACIF) and pursued in the Santa Rosa Criminal Court have confirmed ongoing water contamination in San Marcos.<sup>53</sup> <sup>54</sup>A study carried out by the Guatemalan Ministry of Health in 2014 also confirmed the health problems in the communities, but denies that these are caused by the mine.<sup>55</sup>

### *Criminalization, harassment and impunity*

Resistance from local indigenous people and allegations of human rights violations have been present from the outset in 2005. Since then, multiple attacks as well as intimidations of human rights defenders, community representatives, researchers and people connected to the church, who have spoken out against the Marlin project have been documented.<sup>56</sup> In the beginning of 2005, people tried to block the passage of heavy mining equipment heading towards the Marlin Project. In the clash between the protesters and the Guatemalan security forces, consisting of members of the army and the police, Raul Casto Bocel, an indigenous farmer, was killed and many others were injured.<sup>57</sup> Moreover, an off-duty security guard murdered a local resident in 2005.<sup>58</sup> Bishop Alvaro Ramazzini faced such severe death threats for his anti-Marlin activism during the project's planning stages that he had to be placed under police protection.

There have been several court cases against women and men, which have been perceived by the local communities as a mean of criminalizing social protest against the mine. However, the ones responsible for the violence against the villagers have not been charged. The OCG study found that "the lack of access to remedy has led to confrontation and escalation of violence,

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<sup>50</sup> Mining Watch Canada, 'CIDH retiró recomendación de cerrar la mina Marlin', 10 January, 2012.

<http://www.conflictosmineros.net/contenidos/3-latinoamerica/9326-cidh-retiro-recomendacion-de-cerrar-la-mina-marlin>

<sup>51</sup> Goldcorp, Goldcorp's second up-date to the Marlin Mine Human Rights Assessment Report, 29 April, 2011, p. 7-8.

[http://www.goldcorp.com/files/docs\\_operations/Goldcorp\\_Response\\_to\\_Marlin\\_Mine\\_HRA\\_Report\\_Update\\_04\\_29\\_2011\\_English.pdf](http://www.goldcorp.com/files/docs_operations/Goldcorp_Response_to_Marlin_Mine_HRA_Report_Update_04_29_2011_English.pdf).

<sup>52</sup> C. Álvarez, 'Piden cumplir medidas cautelares de pobladores de San Marcos', Prensa Libre, 21 May, 2014.

[http://www.prensalibre.com/noticias/politica/Medidas\\_cautelares-San\\_Marcos-mina-Calas\\_0\\_1141686057.html](http://www.prensalibre.com/noticias/politica/Medidas_cautelares-San_Marcos-mina-Calas_0_1141686057.html)

<sup>53</sup> Rey Rosa, Magali. 'Efectos Perversos.' Prensa Libre, 27 November, 2014.

<http://plurijur.blogspot.ca/2014/11/peritaje-inacif-y-plano-de-marlin.html#more>

<sup>54</sup> 'Peritaje INACIF y plano de Marlin conprueban continuación mina Marlin y mina San Rafael. 20 November, 2014. <http://plurijur.blogspot.ca/2014/11/peritaje-inacif-y-plano-de-marlin.html#more>.

<sup>55</sup> Radio program available at :

<https://ia902602.us.archive.org/1/items/RRVN38360Min/Guatemala%20Carolina%20383.mp3>

<sup>56</sup> See summary on human rights issues in UN General Assembly (7 June 2011): Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya (A/HRC/18/35/Add.3).

<sup>57</sup> FIAN International & Miserior, Open Pit Gold Mining: Human Rights Violations and Environmental Destruction: The Case of the Marlin Gold Mine - San Marcos, Guatemala, September 2005.

<http://www.bhrd.org/fe/view.php?id=198>.

<sup>58</sup> On Common Grounds Consultants Inc. Human Rights Assessment of Goldcorp's Marlin mine, May 2010, p. 207. [http://csr.goldcorp.com/2011/docs/2010\\_human\\_full\\_en.pdf](http://csr.goldcorp.com/2011/docs/2010_human_full_en.pdf).



and thus creates human rights risks for community members, as well as for the safety of private security contractors and employees of the mine”. Testimonies from the local villagers have reported threats by Montana’s employees who have tried to manipulate families to sell their land, threatened opponents to the mine, as well as ignored national and international norms regarding contamination. According to Plurijur, who is the legal predecessor for the human rights defenders and organisations in San Marcos, the authorities deliberately delay the legal processes which impede the access to justice of the villagers.<sup>59</sup>

The miners at the Marlin Mine have testified that the company has threatened employees who are engaged in the union, and that workers are afraid to join the union out of fear of repercussions – which constitutes an abuse against the freedom of association, ILO 87. The oppression against opponents to the mine persists.<sup>60</sup>

#### *Housing damages*

According to a study of COPAE, more than one hundred houses have suffered damages since the mining operations began such as fissures in the walls and floors, which have been provoked by the vibrations from the explosions in the mine and the traffic of heavy trucks. COPAE, with the support from the American human rights organisation Unitarian Universalist Service Committee (UUSC), monitored 33 houses for a period of two years. The OCG study also confirms the problems of cracked houses and says that the issue has been a significant grievance for community members since 2006.<sup>61</sup>

#### *Lack of consent*

The State of Guatemala has ratified the ILO Convention 169, thereby recognizing that any kind of project which affects the life and the territory of indigenous peoples requires their free and informed consent. The community consultations undertaken hitherto in Guatemala show that the indigenous population rejects the open-pit mining project. Over 25 consultations have been held with the participation of 500,000 people, where 98-99 per cent have voted against Goldcorp’s mining operations.<sup>62</sup> However despite these results, the Guatemalan government judged that the consultations were not legitimate enough for the State to suspend the mine. In 2005, the UN Special Rapporteur on the right to food, Jean Ziegler, visited Guatemala and said that the Government had granted the permission for the Marlin Mine without the free and informed consent of the affected indigenous communities<sup>63</sup>. This was later confirmed by James

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<sup>59</sup> V. Alas, ‘Rätten till rent vatten i skuggan av Marlingruvan’, KRF, 12 April, 2015.

<http://guatemala.krf.se/2015/04/12/fordjupning-ratten-till-rent-vatten-i-skuggan-av-marlingruvan/>

<sup>60</sup> D. Mercer, ‘Goldmine drives wedge in Guatemala community’, Aljazeera, 25 October, 2012.

<http://www.aljazeera.com/indepth/features/2012/10/2012102591134181236.html>

<sup>61</sup> On Common Grounds Consultants Inc. Human Rights Assessment of Goldcorp’s Marlin mine, May 2010, p.82. [http://csr.goldcorp.com/2011/docs/2010\\_human\\_full\\_en.pdf](http://csr.goldcorp.com/2011/docs/2010_human_full_en.pdf)

<sup>62</sup> S. Imai, L. Mehranvar and J. Sander (2007). Breaching Indigenous Law: Canadian Mining in Guatemala. Indigenous Law Journal/Volume 6/Issue 1/2007 Canadian Mining in Guatemala Pg. 114

[http://papers.ssrn.com/sol3/Delivery.cfm/SSRN\\_ID1267902\\_code1019085.pdf?abstractid=1267902&mirid=](http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1267902_code1019085.pdf?abstractid=1267902&mirid=)

<sup>63</sup> Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, MISSION TO GUATEMALA, E/CN.4/2006/44/Add.1, para. 51

Anaya, the UN Special Rapporteur on the Rights of Indigenous Peoples who in 2011 visited the Marlin Mine, with an expert committee from the International Labor Organization.<sup>64</sup>

#### *Unsatisfactory closure plans for the mine*

The Marlin mine is expected to continue its activities until 2017. The huge amount of hazardous waste that the mine generates needs to be stored safely for thousands of years. The closure costs are low compared to norms and it is uncertain if the security will be guaranteed and the damages will be repaired.<sup>65</sup> The OCG study states that *“to date there has been no consultation with local communities about mine closure plans and impacts on communities”*.<sup>66</sup> Hence, there is a failure to respect the human rights of local communities due to the shortcomings of the mine’s closure planning.

### **4.3 Measures taken by the Swedish Pension Funds**

The Ethical Council visited the Marlin Mine in February 2008 along with Canadian investors. The team concluded that it could be very likely that violations were occurring and engaged the Canadian consultancy firm OCG, to pursue an independent human rights impact assessment of the Marlin Mine on behalf of Goldcorp. The report uses a human right-based approach and supports a number of the allegations made by the local community.<sup>67</sup> Goldcorp responded by presenting a plan of action to ensure that human rights are respected in ongoing and future projects in Guatemala. Goldcorp has also presented two reports regarding the implementation of the recommendations made. In the second up-date Goldcorp states that *“many of the recommendations have been met and are integrated into Goldcorp’s management and operational processes. In particular, those recommendations dealing with ongoing consultation and communication have been adopted and will be relied upon to communicate further developments regarding the continued review and revision of Goldcorp’s policies and practices with respect to human rights”*.<sup>68</sup>

The Ethical Council claims that measures have now been taken according to the action plan and most of them have been verified or carried out by a third party, either in cooperation with the company or separately. The company has also developed policies for its conduct in similar situations in the future, and on that basis, the Ethical Council *“considers that the objectives of the dialogue have been fulfilled”* and will continue to monitor the company. According to the Ethical Council, Goldcorp states that the dialogue with the Ethical Council *“has led to both*

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<sup>64</sup> FIAN Norway, The right to adequate food and the compliance of Norway with its extraterritorial obligations, on ESCR. Parallel Report in Response to the 5th Periodic Report of Norway on the Implementation of the International Covenant on Economic, Social and Cultural Rights, September, 2013, p.11.

[http://www.etoconsortium.org/nc/en/library/documents/?tx\\_drblob\\_pi1%5BdownloadUId%5D=92](http://www.etoconsortium.org/nc/en/library/documents/?tx_drblob_pi1%5BdownloadUId%5D=92)

<sup>65</sup> On Common Grounds Consultants Inc. Human Rights Assessment of Goldcorp’s Marlin mine, May 2010, p.82. [http://csr.goldcorp.com/2011/docs/2010\\_human\\_full\\_en.pdf](http://csr.goldcorp.com/2011/docs/2010_human_full_en.pdf)

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> Goldcorp, Goldcorps second up-date to the Marlin Mine Human Rights Assessment Report, 29 April, 2011, p. 2.

[http://www.goldcorp.com/files/docs\\_operations/Goldcorp\\_Response\\_to\\_Marlin\\_Mine\\_HRA\\_Report\\_Update\\_04\\_29\\_2011\\_English.pdf](http://www.goldcorp.com/files/docs_operations/Goldcorp_Response_to_Marlin_Mine_HRA_Report_Update_04_29_2011_English.pdf)

*crucial changes to their way of viewing operations at the Marlin Mine, and also had an important impact on their overall CSR work*". The company believes that the dialogue has also affected the mining industry as a whole and the way in which it addresses issues relating to the impact of mining operations on human rights. However, says the Ethical Council, "*the Marlin Mine will most likely continue to be the subject of criticism, as there are groups that do not want the mine there*". As the documentation of the dialogues between the Ethical Council and Goldcorp is not made public, nor the criteria set by the Ethical Council, civil society has no possibility to assess the achieved results.

The Danish pension fund, Sam Pension, sold their shares in Goldcorp in early 2012 citing the continued pollution from the Marlin Mine.<sup>69</sup> In December 2015 the Swedish National pension fund AP7 put Goldcorp on their blacklist due to the grave offenses against of human rights but the other funds' investments remains.<sup>70</sup>

#### **4.4 Conclusion and recommendations**

In this case, it is possible to identify various and continuous breaches of human rights such as the right to adequate food and nutrition, the right to water, the right to health and a healthy environment as well as the right to adequate housing. Furthermore, the rights to freedom and to personal integrity, as well as the rights of indigenous peoples enshrined in the ILO Convention 169 have been breached.

The submitting organizations welcomes the fact that the AP-funds, in line with principle 14 of the Maastricht Principles and concluding observations from CESCR<sup>71</sup>, initiated the human rights impact assessment study in 2010, as well as the continuous dialogue with Goldcorp regarding respect for human rights and the environment. The Ethical Council concludes that the objectives of the dialogue have been fulfilled. Nevertheless, severe problems regarding human rights and the environment persist. According to interviews made by civil society organisations the action plan has severe limitations. For instance, Goldcorp claims they work with inclusive consultation with Maya leaders and civil society. The people interviewed witness that such consultation has taken place with a much selected group which suits the company's interests. People who are critical to the mine are not invited nor welcome, which makes the consultation effort toothless. Witnesses also state that the company has offered them free private schooling for their children, but only if they end their resistance to the mine, which is a way of buying support and undermining democratic rights. Goldcorp continues to deny the severe health impacts of the mine, and maintains that the problems spring from other social problems. Nevertheless, they have built a hospital to address local health problems. The company has initiated a handful of social projects via the NGO Fundación Sierra Madre. Witnesses however, claim that the projects are top-down implemented, superficial and only a way to buy popularity with small treats. The initiatives do not make up for the problems the mine has caused such as

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<sup>69</sup> Responsible Investor, 1 March 2012, 'Danish pension fund divests mining firm over pollution'. [www.responsible-investor.com/home/article/ri\\_governance\\_march\\_1/](http://www.responsible-investor.com/home/article/ri_governance_march_1/)

<sup>70</sup> [https://www.ap7.se/globalassets/svarta-listan/svarta-listan\\_dec\\_2015.pdf](https://www.ap7.se/globalassets/svarta-listan/svarta-listan_dec_2015.pdf)

<sup>71</sup> Concluding Observations CESCR on Austria (2013), (E/C.12/AUT/CO/4), para. 11; Concluding Observations CESCR on Norway (2013), (E/C.12/NOR/CO/5), para. 6; Maastricht Principle 14

abuses of basic human rights like the right to adequate food and water, freedom of speech and organization.<sup>72</sup>

The obligation to avoid causing harm, spelled out in Principle 13 of the Maastricht Principles obligates all States who have ratified the ICESCR to avoid causing harm.<sup>73</sup> More specifically, “*States must desist from actions and omissions that create a real risk of nullifying or impairing the enjoyment of ESCRs extraterritorially*”. Accordingly, the Swedish State is contributing to causing harm by investing in Goldcorp through the AP-Funds. In order to comply with its extraterritorial human rights obligations, the Swedish State, represented in this case by the AP-funds, should withdraw its investment in Goldcorp, considering the surmountable evidence of serious and on-going human rights breaches and risks.

When it comes to the obligation to protect, States that are in a position to influence the conduct of non-State actors such as Goldcorp, even if they are not in a position to regulate such conduct, should exercise such influence, in accordance with the Charter of the United Nations and general international law, in order to protect economic, social and cultural rights<sup>74</sup>. Moreover, the Swedish State has the obligation to fulfil, meaning that it must take steps to create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights, including in matters relating to for example investment and environmental protection<sup>75</sup>.

When the human rights of individuals or groups have been harmed as in the Marlin case, there must be appropriate and credible means to have their concerns or allegations addressed.<sup>76</sup> States have the general obligation to ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority, including, where necessary, recourse to a judicial authority for violations of economic, social and cultural rights. The on-going lack of access to remedy has a considerable impact on the effective exercise of human rights in the Marlin case. The Swedish State should facilitate effective remedy for those already affected in line with its obligations under international human rights law<sup>77</sup>.

**In order to comply with its extraterritorial human rights obligations, we suggest that the Swedish State should:**

- **Request the AP-funds to withdraw its investment in Goldcorp, considering the surmountable evidence of serious and on-going human rights breaches and risks,**
- **Request that adequate independent monitoring mechanisms with respect to human rights are in place in projects run by companies in which the pension funds invest,**

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<sup>72</sup> Interviews made by Anna Nylander, Sweden Latin America Solidarity, with representatives from the organisation Pueblo Maya Sipakapense in Sipakapa on March 10, 2014) and representatives from the Church in San Miguel and Ixtahuacan on March 11, 2014.

<sup>73</sup> Also stated by CESCR: Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights, CESCR, para. 4, U.N. Doc. E/C.12/2011/1 (2011); Concluding Observations CESCR on Belgium, UN Doc.E/C.12/bel/co/4 (2013), para 22.

<sup>74</sup> Maastricht Principle 26

<sup>75</sup> UN Charter Article 56; Universal Declaration of Human Rights Article 28; Maastricht Principle 29.

<sup>77</sup> Universal Declaration of Human Rights Article 8; Concluding observations on the fourth periodic report of Austria, E/C.12/AUT/CO/4 (2013), para. 11-12; Maastricht Principles 37,38

**in accordance with the principles of transparency, inclusion, participation and non-discrimination,**

- **Facilitate effective remedy for those already affected and ensure the participation of victims in the determination of appropriate remedies.**

## **5. CASE 2: Agricultural land investments in Brazil**

### **5.1 Background**

The Second Swedish National Pension Funds has joined the increasing competition for the world's arable land, and made investments in agricultural land in Brazil. In 2011, AP2 and the U.S. pension fund TIAA-CREF formed a joint company, TIAA-CREF Global Agriculture (TCGA), whose objective is to acquire agricultural land in Brazil, the U.S. and Australia. Two Canadian pension funds have also invested in the company, British Columbia Investment Management Corporation (bcIMC) and Caisse de dépôt et placement du Québec (Caisse) as well as the German pension funds Private Pensionskassen, Lebensversicherungen and Versorgungswerke.

A survey conducted by the FAO (Food and Agricultural Organisation) regarding land concentration in Latin America shows that large scale foreign land investments have increased considerably, mostly in Brazil and Argentina.<sup>78</sup> In Brazil a prohibition on selling land to foreign individuals and companies has been in place since 2010 as an attempt to hinder the accelerating land concentration in the country. The TCGA investments in Brazil are therefore managed by the Brazilian company Radar Propriedades Agricola which buys the land for TCGA and subsequently leases it to large agricultural companies such as Raízen, Vanguarda, SLC Agricola and AgriInvest. All agricultural real estate is leased to tenant farmers. These leasing agreements state that lessees shall respect the Brazilian authorities' environmental regulations, according to the AP2.<sup>79</sup> The investments are made in the States of São Paulo, Goiás, Minas Gerais, Bahia, Tocantins, Mato Grosso, Maranhão and Piauí and involve large scale industrial production of soy, sugar cane, cotton and corn on the 633 392 acres.<sup>80</sup> AP2's financial commitment to the joint company is now estimated to USD 450 million and have committed to another USD750 million in a second company, TCGA II<sup>81</sup>

The AP2 has not been willing to disclose any detailed information concerning the location of the land purchased by TCGA, claiming fear of competition. The fund argues that they want to

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<sup>78</sup> FAO 2011, Acaparamiento de tierras – Estudios de 17 países de América Latina y el Caribe

<sup>79</sup> AP2, Corporate Governance Report, July 1 2001-June 30, 2012, p.11.

[http://www.ap2.se/Global/Agarrapporter/Agarrapport%202012%20\\_GB\\_web.pdf](http://www.ap2.se/Global/Agarrapporter/Agarrapport%202012%20_GB_web.pdf).

<sup>80</sup>TIAA CREF, Responsible Investment in farmland report, 2015, p 14.

[https://www.tiaa.org/public/pdf/C26304\\_2015\\_Farmland\\_Report.pdf](https://www.tiaa.org/public/pdf/C26304_2015_Farmland_Report.pdf) .

<sup>81</sup> AP2, Sustainability and corporate governance report, 1 July 2014 – June 30 2015, 2015, p. 13.

<http://www.ap2.se/Global/Agarrapporter/H%C3%A5llbarhets-%20och%20C3%A4garstyrningsrapport%202015.pdf>

buy land while it is still cheap, and by revealing the location, others might be interested in buying the land, thus leading the price to rise.

## 5.2 Damages suffered by the victims

Investments in agricultural land are associated with stable long-term returns, but also risk having serious negative impacts on the environment and human rights. In 2013, Swedwatch had the intention to carry out a field research to investigate the potential problems. However, the refusal of AP2 to disclose the location of the land made this impossible. In the study conducted by Swedwatch, general problems of Brazilian agriculture in the states where TCGA has invested, namely São Paulo, Mato Grosso, Maranhão and Piauí, are addressed.<sup>82</sup> SAL, GRAIN, Inter Pares and Brazil's Social Network for Justice and Human Rights were also denied information on the location of the land by TIAA-CREF but nevertheless still managed to identify four farms in the southern parts of the states of Maranhão and Piauí.<sup>83</sup>

### *High use of pesticides*

Large scale industrial farming of crops such as soy, sugar cane, cotton and corn, relies heavily on chemical inputs such as synthetic fertilizers and pesticides. The use of pesticides is associated with serious health risks and Brazilian regulators warn that the government hasn't been able to ensure the safe use of herbicides, insecticides and fungicides. In 2012, Brazil overtook the United States and became the largest buyer of pesticides.<sup>84</sup> Pesticides used for the production of soy, sugar cane, cotton and corn contain various substances that are prohibited in Sweden and in the EU, such as the poisonous substance Paraquat. Research shows that chemicals from the pesticides stay in the blood and urine of agricultural workers and that these chemicals are also spreading to ground water, drinking water and cultivations as well as in the breast milk of mothers in Mato Grosso, which is one of the regions where the investments of the AP2 takes place.<sup>85 86 87</sup> Neighbouring communities testify that they suffer from the pollution of water sources and destroyed crops.<sup>88</sup>

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<sup>82</sup> Swedwatch, *Investering utan insyn*, 2013

<sup>83</sup> GRAIN, Inter Pares, *Latinamerikagrupperna, Rede Social de Justiça e Direitos Humanos, Foreign pension funds and land grabbing in Brazil*, 2015

<sup>84</sup> P. Prada, 'Why Brazil has the biggest appetite for risky pesticides', *Reuter Investigates*, April 2, 2015. <http://www.reuters.com/investigates/special-report/brazil-pesticides/>

<sup>85</sup> J C. Moreira, F Peres, AC Simões, WA Pignati, C Dores Ede, SN Vieira, C Strüssmann, T Mott. *Groundwater and rainwater contamination by pesticides in an agricultural region of Mato Grosso state in central Brazil*, Centro de Estudos da Saúde do Trabalhador e Ecologia Humana, Escola Nacional de Saúde Pública Sergio Arouca, Fundação Oswaldo Cruz, June, 2012. <http://www.ncbi.nlm.nih.gov/pubmed/22699646>

<sup>86</sup> Folha de S. Paulo, 'Agrotóxicos em amostras de ar, água da chuva, sangue e urina', 31 August, 2010. <http://www1.folha.uol.com.br/paywall/login.shtml?http://www1.folha.uol.com.br/fsp/mercado/me3108201018.htm>

<sup>87</sup> Swedwatch, *Mera soja, minde mångfald*, June, 2012. [http://www.swedwatch.org/sites/default/files/mera\\_soja\\_-\\_mindre\\_mangfald2.pdf](http://www.swedwatch.org/sites/default/files/mera_soja_-_mindre_mangfald2.pdf)

<sup>88</sup> GRAIN, Inter Pares, *Latinamerikagrupperna, Rede Social de Justiça e Direitos Humanos, Foreign pension funds and land grabbing in Brazil*, 2015, p.11.

Pulmonary diseases and problems are also common among sugar cane workers and people living close to the plantations due to sugar cane burning.<sup>89</sup> Sugar cane field burning is carried out before harvesting the cane to make the process easier and require less manual labour. The sugar cane waste is also often burned to produce energy.

### *Poor working conditions*

Within the Brazilian agriculture sector there are also several problems regarding labour conditions. Forced labour still prevails where workers are held against their will at agricultural farms.<sup>90</sup> Many are victims of debt slavery, particularly in the Amazon region, where poor workers are lured to plantations where they incur debts to employers they can never pay off.<sup>91</sup> According to the Labour Ministry of Brazil, 44,415 people were rescued from slave-like working conditions at agricultural farms between 1995 and 2012.<sup>92</sup>

The mechanisation of the sugar industry has led to a decline in employment especially with regards to harsh and unhealthy jobs. At the same time, reports show that the problems regarding labour conditions persist or are even worse in areas where mechanisation is wide spread.<sup>93</sup>

A company involved in TCGA's land investments has been accused of human rights abuses, which were noted by AP2 in the initial phase of the investment. The sugar cane producer Cosan, an associate of Radar that administers the land, was temporarily black listed by the Brazilian government due to forced labour in 2010. The case involved the liberation of 42 sugar cane workers from a subsidiary of Cosan in the State of São Paulo in 2007.<sup>94</sup>

The Swedish State is well aware of these problems since their own documents about Brazil highlights problems with labour conditions within the Brazilian agricultural sector.<sup>95</sup>

### *Loss of biodiversity*

Both the soy and sugar cane industry constitute a threat to the biodiversity of the Brazilian savannah (cerrado) and the Amazon.<sup>96</sup> In the States of Maranhão, Piauí and Mato Grosso where

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<sup>89</sup> H. Riberiro, Sugar cane burning in Brazil, respiratory health effects. Rev. Saúde Pública vol.42 no.2 São Paulo Apr. 2008 Epub Feb 29, 2008 [http://www.scielo.br/scielo.php?pid=S0034-89102008000200026&script=sci\\_arttext&tlng=en](http://www.scielo.br/scielo.php?pid=S0034-89102008000200026&script=sci_arttext&tlng=en)

<sup>90</sup> P. Trindade Maranhão Costa, Fighting forced labour, the example of Brazil. ILO, 2009, p.106-108.

[http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_111297.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_111297.pdf)

<sup>91</sup> BBC News, 'Brazil steps up fight against slave labour', 4 January, 2012. <http://www.bbc.com/news/world-latin-america-16404193>

<sup>92</sup> F. Ortiz, 'Face of slave labour changing in Brazil', IPS News, 30 April. 2014.

<http://www.ipsnews.net/2014/04/face-slave-labour-changing-brazil/>

<sup>93</sup> Mendonça, G. L., F. T. Pitta and C. V. Xavier, "The Sugarcane Industry and the global economic crisis", 2013, p.15-17. TNI Agrarian Justice Programme, June

<sup>94</sup> M. Gomez, 'Cosan damaged the public image of the companies in 2009, but was not the only.', Reporter Brazil, 18 March, 2010. <http://reporterbrasil.org.br/biofuel/exibe.php?id=121>

<sup>95</sup> Swedish Foreign Ministry, Mänskliga rättigheter i Brasilien 2012, p.12, and Swedish Embassy, Brasilia, Landrapport Brasilien oktober 2015, p. 13.

<sup>96</sup> See for example: Swedwatch, Mera soja – mindre mångfald. June 2012, [http://www.swedwatch.org/sites/default/files/mera\\_soja\\_-\\_mindre\\_mangfald2.pdf](http://www.swedwatch.org/sites/default/files/mera_soja_-_mindre_mangfald2.pdf) and FIAN International, Red sugar, green deserts. December, 2009.

the investments are located, the cerrado is disappearing most rapidly. According to the Brazilian government, the deforestation is directly related to the soy and sugar cane cultivations.<sup>97</sup> In the State of São Paulo the majority of the land is already cultivated.

#### *Indigenous peoples' right to their territory*

Many documented cases have shown that large scale agricultural industry in Brazil has impacted on indigenous people's right to territory as well as their right to adequate food, water and health. As the large agricultural industries expand, forests are disappearing leaving indigenous populations traditionally living from the forest without means of subsistence. The production of sugar cane and soy require large amounts of water and have subsequently contributed to the drying up of neighbouring land and the contamination by pesticides of water reserves.

This issue is also highlighted in Sweden's own report concerning human rights in Brazil, "Serious land conflicts occur as well as work under slave-like conditions".<sup>98</sup>

The findings from the investigation made by SAL, GRAIN, Rede Social de Justiça e Direitos Humanos and Inter Pares, shows that some of the farms acquired by TCGA were purchased from a Brazilian businessman accused of using violence and murder to acquire land in the area<sup>99</sup>. The farms that the organisations were able to identify are situated in the south of the states Maranhão and Piauí in areas where land conflicts and land grabbing is rife. A common method of the land grabbers is to fence off public land and evict local people who have been living on the land for generations, using private security forces. Local authorities and government officials then are involved to secure property titles to the land.<sup>100</sup>

### **5.3 Measures taken by the Swedish national pension funds**

The AP2 and TIAA-CREF argue that they contribute to a more sustainable agriculture by using environmentally friendly methods and new technology. Radar employs satellite imaging to analyse how the land use has changed over time. Through satellite images from the 1960s and onward Radar can verify changes and control that leases respect environmental laws regarding protected areas. The mapping of the farms through satellite imaging also helps to avoid land conflicts and breaches of indigenous people's rights, Radar claims.<sup>101</sup>

The leasing agreements state that lessees shall respect the Brazilian authorities' environmental regulations. These agreements also include requirements concerning soil quality, waste management and labour rights. Should the lessee use child labour and/or have slave-like labour

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[http://www.fian.org/library/publication/detail/red\\_sugar\\_green\\_deserts\\_report\\_on\\_monocultures\\_and\\_human\\_rights/](http://www.fian.org/library/publication/detail/red_sugar_green_deserts_report_on_monocultures_and_human_rights/)

<sup>97</sup> Instituto Centro da Vida [http://www.icv.org.br/site/eng/noticias\\_exibe.php?id=186](http://www.icv.org.br/site/eng/noticias_exibe.php?id=186)

<sup>98</sup> Swedish Embassy, Brasilia, Landrapport Brasilien oktober 2015, p. 13.

<sup>99</sup> <sup>99</sup> GRAIN, Intern Pares, Latinamerikagrupperna, Rede Social de Justiça e Direitos Humanos, *Foreign pension funds and land grabbing in Brazil*, 2015, p. 2

<sup>100</sup> GRAIN, Intern Pares, Latinamerikagrupperna, Rede Social de Justiça e Direitos Humanos, *Foreign pension funds and land grabbing in Brazil*, 2015, p. 8

<sup>101</sup> PRI, Responsible investment in farmland, A compendium of case studies. October, 2012. <http://www.spainsif.es/sites/default/files/upload/publicaciones/2012.10RIinfarmland.pdf>



conditions, the agreement can be revoked with immediate effect. To ensure employees' rights were being respected, two independent audits were conducted in 2010 of all sugar cane plantations for which Radar was responsible. Furthermore, a review of all the grain-producing farms was conducted in 2011. No incidents were observed.<sup>102</sup>

However, the audits were conducted before the land was acquired and there are no regular controls by TCGA once the land is leased.<sup>103</sup> Radar (that administers the land) hires the consultant Ethos Institute in order to carry out sustainability evaluations of the company. These evaluations however, build only from a questionnaire where Radar's employees are asked to define how they believe the company measures up to environmental goals and labour conditions. No visits to the farms that Radar administers are being made.<sup>104</sup> According to the AP2 many of the lessees are members of sustainability certifications for sugar cane and soy production such as Bonsucro and Roundtable of Responsible Soy Association and are hence controlled by them. Since 2014 TCGA has taken measures to conduct an audit on their properties in Brazil.<sup>105</sup> The results of the audit have not yet been published.

As a response to the information revealed in the report from SAL and partners, TIAA-CREF did two external audits of the due diligence process when acquiring the properties from the Brazilian businessman accused of land grabbing. According to AP2 the process was done properly. AP2 has not seen the audits and they are not available for examination.<sup>106/107</sup>

The AP2 together with a group of international investors initiated the elaboration of the *Farmland Principles* which is part of the UN supported *Principles for Responsible Investment (PRI) Initiative*. AP2 reports on these principles in its annual reports. Moreover, the AP2 has followed the process of developing the *FAO Principles on Responsible Agricultural Investment (RAI)* and carries out regular farm visits and inspections. In dialogue with AP2 they argue that Brazil has clearly defined legislation regarding proprietary rights and that the AP2 considers to be an equal partner.<sup>108</sup> Therefore they do not consider investments in agricultural land as problematic. The AP2 does not refer to the *FAO Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests*, which is the only instrument that has been developed with broad participation of various actors and achieved credibility among civil society and social movements.

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<sup>102</sup> AP2, Corporate Governance Report, July 1 2001-June 30, 2012, p.11.

[http://www.ap2.se/Global/Agarrapporter/Agarrapport%202012%20\\_GB\\_web.pdf](http://www.ap2.se/Global/Agarrapporter/Agarrapport%202012%20_GB_web.pdf)

<sup>103</sup> Swedwatch, *Investerings utan insyn*, 2013, p. 20. [http://www.swedwatch.org/sites/default/files/swedwatch\\_-\\_investering\\_utan\\_insyn.pdf](http://www.swedwatch.org/sites/default/files/swedwatch_-_investering_utan_insyn.pdf)

<sup>104</sup> *Ibid.*

<sup>105</sup> AP2, Sustainability and corporate governance report, 1 July 2014 – June 30 2015, 2015, p. 13.

<http://www.ap2.se/Global/Agarrapporter/H%C3%A5llbarhets-%20och%20C3%A4garstyrningsrapport%202015.pdf>

<sup>106</sup> Meeting between SAL, FIAN and AP2 in Gothenburg, 17 February 2016.

<sup>107</sup> Svenska Dagbladet, 21 March 2016, <http://www.svd.se/ap-fond-fornekar-markstold--hanvisar-till-hemlig-utredning>

<sup>108</sup> Meeting between SAL, FIAN and AP2 in Gothenburg, 17 February 2016.

## 5.4 Conclusion and recommendations

The submitting organizations recognises the efforts taken by the AP2 when it comes to guaranteeing the respect of human rights and the environment. Nevertheless, the refusal of the AP2 to disclose the location of the land made it extremely difficult to evaluate whether the agricultural investments live up to international standards of human rights and the environment. The information from the two farms that SAL and partners managed to locate show that not only do they not follow international standards, they also breach their own internal standards by not pursuing the rigorous due diligence prior to investments as they claim to do in their reporting<sup>109</sup>. Investments made by the Swedish National Pension Funds should allow for revision and insight in line with the principles of transparency and accountability<sup>110</sup>. As shown in these reports, the investments in large scale industrial farming of crops such as soy, sugar cane, cotton and corn in these regions in Brazil may impact on the right to adequate food and nutrition, the right to water, the right to health and to a healthy environment, labour rights and the rights of indigenous peoples.

As in the case of the Marlin mine, the Swedish State has the obligation to desist from actions and omissions that create a real risk of nullifying or impairing the enjoyment of ESCRs extraterritorially<sup>111</sup>. When making investments, Sweden also has the obligation to take steps to create an international enabling environment for the fulfilment of economic, social and cultural rights<sup>112</sup>. One step in that direction would be to evaluate the current mandate of the pension funds in accordance with the extraterritorial human rights obligations of Sweden and make the mandate coherent with the FAO Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.

Before the acquisition of the farms, an environmental assessment and audit of working conditions was undertaken, but there has been one subsequent commissions by the AP2, for any regular external monitoring of human rights and environmental issues on the farms. States have an extraterritorial obligations to conduct a prior assessment, with public participation, of the risks and potential extraterritorial impacts of their laws, policies and practices on the enjoyment of economic, social and cultural rights<sup>113</sup>. It is important that such assessment should be guided by a human rights approach and should meet the minimum conditions of interdependence, transparency, inclusive participation, expertise and funding as well as status.<sup>114</sup>

**In order to comply with its extraterritorial human rights obligations, we suggest that the Swedish State should:**

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<sup>109</sup> <https://www.tiaa-cref.org/public/pdf/2014-Farmland-Sustainability-Report.pdf>

<sup>110</sup> Universal Declaration of Human Rights Article 19; Maastricht Principle 2

<sup>111</sup> Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights, CESCR, para. 4, U.N. Doc. E/C.12/2011/1 (2011); Concluding Observations CESCR on Belgium, UN Doc.E/C.12/bel/co/4 (2013), para 22; Maastricht Principles 13, 19-22

<sup>112</sup> UN Charter Article 55; Universal Declaration of Human Rights Article 28; Maastricht Principles 28-35

<sup>113</sup> Concluding Observations CESCR on Austria (2013), (E/C.12/AUT/CO/4), para. 11; Concluding Observations CESCR on Norway (2013), (E/C.12/NOR/CO/5), para. 6; Maastricht Principle 14, 36...

<sup>114</sup> See *Guiding principles on human rights impact assessment of trade and investment agreements* presented by the United Nations Special Rapporteur on the right to food, Dr. Olivier De Schutter, 2011.

[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5_en.pdf)

- **Ensure that AP2 disclose information about the location of the land and facilitate increased level of transparency and accountability of the Swedish National Pension funds,**
- **Ensure that investments by the Swedish National Pension Funds in foreign companies operating in third countries are subject to a comprehensive human rights impact assessment (prior to and during the investment) in accordance with the principles of transparency, inclusion and participation,**
- **Facilitate improved regular external human rights-based monitoring in projects run by companies in which the Swedish National Pension Funds invest,**
- **Make the mandate of the Swedish National Pension Funds coherent with the FAO Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests**

## **6. CASE 3: Fossil fuels impairing economic, social and cultural rights**

### **6.1 Background**

Climate change is already impairing the right to adequate food and nutrition, the right to water and the right to a healthy environment, among other rights, and the use of fossil fuels is largely responsible for that, representing the single largest source of greenhouse gas emissions globally. Current trends estimate that the globe will be 4–6°C hotter by the end of the century, exceeding the 2 °C goal by 2046. This development would cause severe human damage and hunger, exceeding even the ‘worst case scenarios’ outlined by the Intergovernmental Panel on Climate Change (IPCC).<sup>115</sup> This could put up to 400 million people across some of the poorest countries at risk of severe food and water shortages by the middle of the century,<sup>116</sup> with 25 million more malnourished children.<sup>117</sup>

The Swedish National Pension Funds invest 36 billion SEK in 115 of the world’s 200 most carbon dioxide- intensive public carbon, oil and gas companies such as Exxon Mobil, Chevron and BP.<sup>118</sup> The investments have increased; in 2014 Swedish pension savers own fossil reserves equivalent to future emissions of 588 million tons of carbon dioxide, compared to 585 million

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<sup>115</sup> Oxfam, Food, fossil fuels and filthy finance, 17 October, 2014, p. 2.

[https://www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/bp191-fossil-fuels-finance-climate-change-171014-summ-en.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp191-fossil-fuels-finance-climate-change-171014-summ-en.pdf)

<sup>116</sup> M. New et al. Migration and Global Environmental Change: The possible impacts of high levels of climate change in 2060 and implications for migration”, UK Government Office for Science, 2011.

<http://kevinanderson.info/blog/wp-content/uploads/2013/02/Impact-high-levels-climate-change-2060-for-migration2.pdf> 4

<sup>116</sup> G.C. Nelson, M.W. Rosegrant, J. Koo, R. Robertson, T. Sulser, T. Zhu, C. Ringler, S. Msangi, A. Palazzo, M. Batka, M. Magalhaes, R. Valmonte-Santos, M. Ewing and D. Lee. Climate Change: Impact on Agriculture and Costs of Adaptation, Washington DC: International Food Policy Research Institute, 2009.

<http://www.ifpri.org/sites/default/files/publications/pr21.pdf>; data for under-five populations of USA and Canada from UNICEF’s statistical tables, [http://www.unicef.org/statistics/index\\_24183.html](http://www.unicef.org/statistics/index_24183.html)

<sup>118</sup> WWF, ‘Ny granskning avslöjar AP-fondernas reserver av miljöförstörande kol ökar’. 19 March, 2015.

<http://www.wwf.se/press/pressrum/pressmeddelanden/1592004-ny-granskning-avsljar-ap-fondernas-reserver-av-miljfrstrande-kol-kar>

tons in 2013. That corresponds to ten times more than the yearly carbon dioxide emissions of Sweden.

## 6.2 Damages suffered by the victims

A temperature rise of 2°C would have widespread impact on humans and pose serious challenges for people's ability to grow and access food. The severe hunger impacts of fossil fuels are set to be among the most savage impacts of climate change for millions of people globally. Moreover, fossil fuel extraction often leads to widespread community displacement and negatively affects people's ability to grow and access food.

### *Decreasing yields in agriculture and fisheries*

Decreases in agricultural yields are one likely impact, in particular in Africa where surface temperature increases significantly higher than some other regions. According to the IPCC, yields can, even with adaptation measures, decline with up to two per cent per decade for the rest of the century, with the risk of even more severe impacts increasing after 2050.<sup>119</sup> In Africa, projected reductions in yields in some countries could be as much as 50% by 2020, and crop net revenues could fall by as much as 90% by 2100, with small-scale farmers, many of whom are already very highly vulnerable, being the most affected.<sup>120</sup>

Fisheries play an important role in ensuring global food security. 90 per cent of people worldwide engaged in fishing are employed in small-scale fisheries, many in poorer countries. With a temperature increase of 2°C, by 2055 there may be a drop of 40–60 per cent in yields for fisheries in tropical latitudes. Moreover, coral reefs provide food and other resources to approximately 500 million people, and the IPCC finds that ocean acidification will have a negative impact on coral reefs under all emissions scenarios, reducing the availability of fish.<sup>121</sup>

These impacts will take place within a context of persisting hunger and malnutrition, a rising global population, and changing global diets – which together are expected to lead to a rise in demand for food by 14 percent per decade.<sup>122</sup> As many of the region's most vulnerable to climate change are among the poorest, poorer communities will be most affected. Food price rises caused by climate shocks will also hit poorer countries and communities harder, as they spend a much higher proportion of their income on food.

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<sup>119</sup> Oxfam, Food, fossil fuels and filthy finance, 17 October, 2014, p. 6.  
[https://www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/bp191-fossil-fuels-finance-climate-change-171014-en.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp191-fossil-fuels-finance-climate-change-171014-en.pdf)

<sup>120</sup> Boko, M., I. Niang, A. Nyong, C. Vogel, A. Githeko, M. Medany, B. Osman-Elasha, R. Tabo and P. Yanda, 2007: Africa. Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, M.L. Parry, O.F. Canziani, J.P. Palutikof, P.J. van der Linden and C.E. Hanson, Eds. Cambridge University Press, p.435.  
<https://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-chapter9.pdf>

<sup>121</sup> IPCC WGII AR5, Chapter 7. Food Security and Food Production Systems. 28 October, 2013, p.8. [http://ipcc-wg2.gov/AR5/images/uploads/WGIIAR5-Chap7\\_FGDall.pdf](http://ipcc-wg2.gov/AR5/images/uploads/WGIIAR5-Chap7_FGDall.pdf)

<sup>122</sup> Oxfam, Food, fossil fuels and filthy finance, 17 October, 2014.  
[https://www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/bp191-fossil-fuels-finance-climate-change-171014-en.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp191-fossil-fuels-finance-climate-change-171014-en.pdf)

### *Water scarcity*

Among the various challenges climate change will present, its effects felt through water will be some of the most hard hitting. The IPCC has warned that in many regions of the globe, changes to the supply and quality of freshwater resources resulting from climate change may endanger sustainable development, the right to water and sanitation, poverty reduction and child mortality goals.<sup>123</sup>

Climate change will aggravate the water stress currently faced in many regions of the world, while some countries that currently do not experience problems will become at risk of water stress. Currently, 1.6 billion people live in countries and regions with absolute water scarcity and the number is expected to rise to 2.8 billion people by 2025.<sup>124</sup> Even without climate change, several countries in Africa, particularly in northern Africa, will exceed the limits of their economically usable land-based water resources before 2025.<sup>125</sup>

### *Loss of land and livelihoods*

Fossil fuel extraction frequently leads to widespread community displacement and negatively affects people's ability to grow and access food due to the loss of agricultural land.

The Swedish AP Funds invest 1.2 billion SEK in the mining company Rio Tinto, operating in for example Mozambique. Thousands of local people have experienced continuous breaches of the right to food and nutrition, water, health and work as a result of the coal mining company operations of Rio Tinto and Vale.<sup>126</sup> The loss of capacity to produce sufficient food or to earn enough money to buy food off the market through activities such as selling firewood and charcoal, has led to interferences with the human rights of the local communities. Their inability to produce their normal staple crops of maize and sorghum also negatively impacts their right to have sufficient and adequate food and nutrition corresponding to their cultural traditions.

The Swedish AP-Funds have also invested 1.3 billion SEK in Glencore, BHP Billiton and Anglo American that runs the Cerrejón open-pit coal mine in Colombia. The mine is the largest of its kind in Latin America and the ninth largest producer of thermal coal globally, exporting heavily to the US and Europe. It extends over 69,000 hectares on land of the indigenous Wayuu

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<sup>123</sup> Bryson Bates, Zbigniew W. Kundzewicz, Shaohong Wu and Jean Palutikof eds., *Climate Change and Water*, Technical Paper VI, International Panel on Climate Change, April 2008, p. 47.

<https://www.ipcc.ch/meetings/session28/doc13.pdf>

<sup>124</sup> World Bank, 'Water and Climate Change', <http://water.worldbank.org/topics/water-resources-management/water-and-climate-change>

<sup>125</sup> Boko, M., I. Niang, A. Nyong, C. Vogel, A. Githeko, M. Medany, B. Osman-Elasha, R. Tabo and P. Yanda, 2007: Africa. *Climate Change 2007: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, M.L. Parry, O.F. Canziani, J.P. Palutikof, P.J. van der Linden and C.E. Hanson, Eds. Cambridge University Press, p.435.

<https://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-chapter9.pdf>

<sup>126</sup> Human Right's Watch. What is a house without food? Mozambique's coal mining boom and resettlements. 2013. [http://www.hrw.org/sites/default/files/reports/mozambique0513\\_Upload\\_0.pdf](http://www.hrw.org/sites/default/files/reports/mozambique0513_Upload_0.pdf)

and Afro-Colombian communities,<sup>127</sup> many of whom have been forced to relocate from their ancestral lands, hence violating their right to food and nutrition, water and traditional territories.<sup>128</sup>

### 6.3 Conclusion and recommendations

Fossil fuels are the single biggest driver of climate change, impacting negatively on ESCRs such as the right to adequate food and nutrition, the right to water, the right to health, to a health environment, indigenous rights and related rights. States' extraterritorial obligations outlined in the Maastricht Principles and all other sources in which these are based are directly relevant to addressing global and trans-boundary climate change related issues that affect human rights. For example, the 'Obligation to avoid causing harm', as described in Maastricht Principle 13 confirms that States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct. Uncertainty about potential impacts does not constitute justification for such conduct.

The Maastricht Principles recall the obligations of States to take deliberate, concrete and targeted steps, separately and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfilment of ESCRs, including in matters relating to environmental and climate protection<sup>129</sup>

States must elaborate, interpret and apply relevant international agreements and standards in a manner consistent with their human rights obligations, including those pertaining to environmental protection<sup>130</sup>. Moreover, States have a duty to regulate to ensure that non-State actors do not nullify or impair the enjoyment of economic, social and cultural rights, inter alia by administrative, legislative, investigative and adjudicative measures<sup>131</sup>). Without ETOs in the area of the protection of the environment, human rights cannot assume their proper role as the primary legal basis for addressing the challenges of globalization and ensuring universal protection for all.

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<sup>127</sup> E.ON (2011) „Counter-Motions and Electoral Proposals for the E.ON 2011 Annual Shareholders Meeting“, p. 2.

<sup>128</sup> D. Rømer Adamsen, A.S. Pulsen, M. Urban Swart, *The Curse of Coal: Our coal consumption causes diseases, pollution, and poverty in Colombia*, Danwatch, 2010.  
[http://www.multiwatch.ch/cm\\_data/100505\\_danwatch\\_cerrejon.pdf](http://www.multiwatch.ch/cm_data/100505_danwatch_cerrejon.pdf)

<sup>129</sup> UN Charter Article 55; Universal Declaration of Human Rights Article 28; Maastricht Principles 28, 29, 30-35

<sup>130</sup> General Comment No. 12: The Right to adequate food (Art. 11), CESCR, 20th Session, 1999, U.N. Doc. E/C.12/1999/5, para. 36; General Comment No. 14: The Right to the Highest Attainable Standard of Health, CESCR, 22nd Sess, 2000, U.N. Doc. E/C.12/2000/4, para. 39; General Comment No 15 on the Right to Water, CESCR, 29th session, 2003, UN Doc. E/C.12/2002/11, para. 31, 35-36; Maastricht Principle 17

<sup>131</sup> Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights, CESCR, 2011, U.N. Doc. E/C.12/2011/1, para. 5; Maastricht Principles 23-27

A human rights-based approach to climate change also means active application by States of the principles of non-discrimination and equality, recognized as core principles and rights in human rights covenants<sup>132</sup>.

In order to avoid the devastating climate change impacts, a rapid and urgent transition to low-carbon economies globally must take place. According to the IPCC, fossil investments need to decrease by 100-359 billion dollars annually in order to avoid exceeding global warming of 2 °C. A recent study suggests that, globally, a third of oil reserves, half of gas reserves and over 80 per cent of current coal reserves should remain unused from 2010 to 2050 in order to meet the target of 2 °C.<sup>133</sup> Governments must therefore commit to phase out fossil fuel emissions by early in the second half of this century, with rich countries like Sweden leading the way. Along with the fossil fuel divestment, parallel investments in energy effectiveness and renewable energy of USD 450-800 billion must be made each year, according to the IPCC.

**In order to comply with their extraterritorial human rights obligations, the internationally agreed 2 degree target, as well as the Swedish Policy for Global Development, we urge the Swedish State to:**

- **Immediately initiate the divestment from the fossil fuel industry, and set a goal stating when the Swedish AP-Funds will be free from direct and indirect ownership in the fossil fuel industry,**
- **Clarify the directive of the Swedish parliament to the AP-Funds so that investments must be made with the respect of human rights and the environment as well as be in line with the internationally agreed 2 degrees target,**

**Mandate the AP-Funds to actively make investments that promote sustainable development and human rights.**

## **7. Recommendations regarding the new framework law of the AP-Funds**

On the 18<sup>th</sup> of June 2015 the Governments´ Finance Department and the Pension Group of the Swedish Parliament came out with a proposal for a new framework law. The new proposal highlights responsible investment and ownership and makes references to Swedish environmental goals and international conventions signed by Sweden on human rights and the environment.

We recognize the progress made with the new proposal. Nevertheless, the new proposal maintains that overall objective of high revenue of high returns is superior. Human rights are a legal issue and the state of Sweden must not be involved in investments that fail to respect

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<sup>132</sup> See e.g. International Covenant on Economic, Social and Cultural Rights, Article 2(2)

<sup>133</sup> C. McGlade, P. Ekins, The geographical distribution of fossil fuels unused when limiting global warming to 2 °C. Nature, 7 January, 2015. <http://www.nature.com/nature/journal/v517/n7533/full/nature14016.html>

human rights. The proposal also still lacks important issues. We kindly ask the Committee to highlight these issues during the interactive dialogue with the Swedish government:

**- How will the Swedish Government ensure that the AP Funds' investments respect human rights and the agreed 2 degrees target?**

**- When will the Swedish government make human rights impacts assessments mandatory for the investments of the Swedish AP Funds?**

**- Does Sweden consider developing criteria to regulate the exclusion of companies from the portfolios of the AP Funds?**

**- Sweden does not have an independent monitoring mechanism in respect of human rights risk in projects run by companies in which the AP Funds invest. It is up to the funds to do the monitoring themselves. Considering the human rights problems in the funds' investments and the lack of transparency for the public in the work of the Ethical Council, would the Swedish government consider implementing an independent monitoring mechanism in accordance with the principles of transparency, inclusion, participation and non-discrimination?**

**- Could a remedy mechanism in Sweden be established for the groups and people affected by companies where the funds have/or have had investments and where Sweden breached its obligation to refrain from conduct that nullifies or impairs the enjoyment and exercise of economic, social and cultural rights of persons outside its territory?**