

COUNCIL ON ETHICS  
THE GOVERNMENT PENSION FUND GLOBAL

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To Norges Bank

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**Recommendation to place UPL Ltd. under observation**

## Summary

The Council on Ethics recommends that UPL Ltd. (UPL) be placed under observation due to the use of child labour in connection with its seed business in India.

Over a period of several years, the Council on Ethics has investigated the extent of child labour on behalf of the seed company Advanta Seeds (Advanta), which is a wholly owned subsidiary of UPL. Field studies carried out in the 2016–2017 growing season indicate that children under the age of 15 still make up approximately 10 per cent of the workers engaged in seed production for the company.

The Council considers that this must be deemed to be among the worst forms of child labour, due to the youth of the children and the health hazards associated with the work, and because children who work in this industry generally receive very little or no education. In addition, most of the child workers are separated their families or guardians, and often belong to groups which, in Indian society, have a low social status. This makes the children particularly vulnerable to exploitation.

Since their merger in 2016, UPL and Advanta must be reckoned to constitute one company. In a letter to the Council on Ethics, UPL has explained that it will continue and reinforce its efforts to scale back the use of child labour, for example through unannounced spot checks at production sites. Advanta's measures against child labour are now included in UPL's legal compliance procedures and its auditing plan. The Council presumes that this will add greater weight to and result in closer follow up of the improvement initiatives than was previously the case at Advanta.

The Council on Ethics considers that the conditions, in and of themselves, are sufficient grounds to recommend the company's exclusion from investment by the Government Pension Fund Global (GPF). The Council's decision to recommend that the company be placed under observation springs from a wish to wait and see the outcome of these additional efforts. However, if the conditions concerned do not improve during the proposed three-year observation period, the Council may recommend that the company be excluded from the GPF.

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# 1 Introduction

The Council on Ethics for the Government Pension Fund Global (GPF) has assessed the fund's investments in UPL Ltd (UPL)<sup>1</sup> against the human rights criterion in the guidelines for observation and exclusion from the GPF (ethical guidelines).<sup>2</sup> In 2016, UPL merged with Advanta Ltd. UPL's wholly owned subsidiary Advanta Seeds (Advanta) produces different seed varieties in India. Field studies have shown that around 10 per cent of the workers on a number of farms that produce exclusively for Advanta are children.

At the close of 2017, the GPF owned 2.25 per cent of the UPL's shares, with a market value of NOK 1,119 million. UPL produces fertilisers, seeds and other input factors for the agricultural sector. The company has operations worldwide, and is listed on the stock exchange in India.

## 1.1 Matters considered by the Council

The Council on Ethics has assessed the fund's investment in UPL against s 3(a) of the ethical guidelines, which states that companies "*may be put under observation or be excluded if there is an unacceptable risk that the company contributes to or is responsible for: a) serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour and the worst forms of child labour ...*"

To assess whether child labour falls within the scope of the guidelines' provision relating to "*the worst forms of child labour*", the Council on Ethics takes as its starting point the wording of the UN Convention on the Rights of the Child which, in article 32, requires states to protect children from any work that is likely to be hazardous or to interfere with the child's education or development.<sup>3</sup>

The Council also bases its assessment on the wording of ILO Convention 182, whose definition of the worst forms of child labour includes work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. It also states that submitting children to all forms of slavery or practices similar to slavery, such as debt bondage and serfdom, shall also be deemed the worst forms of child labour.<sup>4</sup>

Although international human rights conventions impose obligations primarily on states and not companies, companies may be said to contribute to human rights violations. The Council on Ethics takes no position on the extent to which the state is responsible for any human rights

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<sup>1</sup> Issuer ID: 8623716.

<sup>2</sup> Guidelines for Observation and Exclusion from the Government Pension Fund Global (GPF): [http://etikkradet.no/files/2017/04/Etikkradet\\_Guidelines- eng 2017\\_web.pdf](http://etikkradet.no/files/2017/04/Etikkradet_Guidelines- eng 2017_web.pdf)

<sup>3</sup> UN Convention on the Rights of the Child, article 32: "*States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*", <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

<sup>4</sup> ILO Convention 182, article 3: "*For the purposes of this Convention, the term "the worst forms of child labour" comprises:*

(a) *all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; [...]*

(d) *work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.*" <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chic.htm>.

violations. In the Council's view, it is sufficient to establish that companies act in such a way as to cause or contribute to serious or systematic violations of internationally recognised human rights. This applies irrespective of whether the state in question has ratified the conventions against which the situation is being assessed.

The Council on Ethics considers that the following factors may form the basis for its assessment of whether there exists an unacceptable risk that a company is contributing to human rights violations: There must be a specific connection between the company's operations and the violations in question, the violations must, moreover, be ongoing or there must be an unacceptable risk that they will occur in the future. In addition, the extent to which the company's operations have led to wide-ranging and enduring negative consequences for those affected, the extent to which particularly vulnerable groups have been affected, and what the company has done to improve the situation, also play a key role in the Council's assessment.

Seed production in India is organised such that seed companies, directly or through intermediaries, enter into agreements with local farmers for the cultivation of seeds. The seed company generally provides the input factors, such as the seed for planting and pesticides, and regularly visits the farms to offer advice and carry out quality controls. The seed companies do not themselves use child labour, i.e. they do not have children on their own payrolls. Their contribution to any use of child labour occurs through the local farmers for whom the children do work.

Based on the information provided by the company about the measures being implemented to scale back the use of child labour, the Council on Ethics has considered whether placing the company under observation may be a suitable response. Section 6(4) of the GPFG's ethical guidelines states that:

*“Observation may be decided when there is doubt as to whether the conditions for exclusion are met or as to future developments, or where observation is deemed appropriate for other reasons.”*

In this case, the Council on Ethics' decision to recommend observation rests primarily on the uncertainty surrounding future developments.

## **1.2 Sources**

This recommendation rests on field studies carried out in 2011, 2014 and 2016 at the behest of the Council on Ethics, information provided by the company, as well as publicly available information as specified in footnotes.

## **2 Background**

### **2.1 The use of child labour in the Indian seed industry**

Despite a decrease in recent years, the scale of child labour in the Indian seed industry remains substantial,. A study conducted in 2010 estimated that around 150,000 children,

60,000 of whom under the age of 14, are engaged in the growing of vegetable seeds in India.<sup>5</sup> A study conducted in 2015 estimated the number of children under the age of 14 at around 50,000.<sup>6</sup> This study also found that only 20–30 per cent of the children had any familial ties to their workplace. In other words, in the majority of cases, these children are not merely helping out in their parents' fields, but are working as hired labour outside the family.

The cultivation of seeds can be extremely labour intensive, particularly when the plants must be pollinated by hand, or other operations must be performed manually on each individual plant. Working conditions are generally poor, with long working days, physically heavy work and continuous exposure to pesticides. In a number of cases, children work under conditions akin to slavery, such as debt bondage or other forms of forced labour. Previous studies have shown that the majority of the children belong to groups which, in Indian society, have a low social status.<sup>7</sup>

## 2.2 Previous cases

On several occasions (in 2005, 2007, 2011, 2014 and 2016<sup>8</sup>) the Council on Ethics has examined the scale of child labour in Indian seed production. In this connection, the Council has investigated conditions at over 1,000 farms in total. These surveys were prompted in 2005 by reports of the widespread use of child labour in cottonseed production. The Council's surveys have gradually been expanded to also encompass various vegetable seeds, including tomato and chilli seeds, which are particularly labour-intensive to produce. The extent of child labour in this area has proved to be as great as in cottonseed production, although it has generally received less attention. However, at the recommendation of the Council on Ethics, Zuari Agro Chemicals Ltd was excluded from the GPFG in 2013 on the grounds of extensive use of child labour in its seed production.<sup>9</sup>

## 3 Scope and nature of the Council on Ethics' surveys

### 3.1 Methodology

On several occasions since 2005, the Council on Ethics has commissioned studies to examine the extent of child labour in the production of different seed varieties for a number of companies.

The surveys were carried out during unannounced visits to the farms. The age of the workers was determined by talking to them and observing them. In connection with the surveys, all those over the age of 15 were classified as adults, while those under the age of 15 were classified as children. Cases where it was not possible to determine whether the individual was aged over or under 15 were classified as "uncertain".

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<sup>5</sup> Dr Venkateswarlu (2010) "Growing up in the Danger Fields: Child and Adult Labor in Vegetable Seed Production in India", ICN, ILRF et al: <http://www.indianet.nl/pdf/dangerfields.pdf>.

<sup>6</sup> Dr Venkateswarlu, (2015) "Soiled Seeds – Child Labour and Underpayment of Women in Vegetable Seed Production in India", ICN: <http://www.indianet.nl/pdf/SoiledSeeds.pdf>.

<sup>7</sup> Often referred to as *Dalits*, *Adivasi*, *Scheduled Castes*, *Scheduled Tribes* or *Backward Tribes*.

<sup>8</sup> Due to the nature of the growing season, the studies have been carried out on either side of the new year, such that studies commenced in 2005 covered the season 2005–2006, etc.

<sup>9</sup> Council on Ethics, 18 April 2013: Recommendation to exclude Zuari Agro Chemicals Ltd, [http://etikkradet.no/files/2017/02/Tilrad\\_Zuari\\_2013.pdf](http://etikkradet.no/files/2017/02/Tilrad_Zuari_2013.pdf).

### 3.2 Findings of the Council on Ethics’ surveys in 2016–2017

In the 2016–2017 season, conditions at a total of 450 farms were examined, 48 of which produced seeds for Advanta in the state of Karnataka.

The results of the Council on Ethics studies of seed production for Advanta are presented in the table below:

Seed variety	No. of farms surveyed	No. of workers	Children under 15 years of age		Children aged 15 – 18
			Confirmed cases	Unconfirmed cases	
Tomatoes	15	216	23 (11%)	11 (5%)	74 (34%)
Chili (“Hot pepper”)	15	113	8 (7%)	4 (4%)	31 (29%)
Other	18	101	8 (8%)	5 (5%)	29 (29%)
Total	48	430	39 (9%)	20 (5%)	31%

*Table 1 The result of the Council on Ethics’ surveys into the extent of child labour used in the production of seeds for Advanta, 2016.*

The surveys indicate that children under the age of 15 account for around 10 per cent of the workforce, and that people aged between 15 and 18 account for around 30 per cent. 70–80 per cent of the children were girls. Over 70 per cent of the children were under the age of 14, and some of them were younger than 10.

Children confirmed to be under the age of 15 were found to be working at 32 of the 48 farms surveyed that were engaged in the production of seeds for Advanta. Seven out of ten children had no familial ties to the farm. Over 90 per cent of the children belonged to social groups described as “scheduled” or “backward”.<sup>10</sup>

The use of various types of pesticides was observed in connection with vegetable seed production.<sup>11</sup> Some of these are extremely harmful to human health, and children are more susceptible to harm than adults are.<sup>12</sup> The presence of workers, including children, in the fields while they were being sprayed with pesticides or immediately afterwards was also observed. Use of protective equipment was limited, and where utilised, was restricted to those actually carrying out the spraying.

### 3.3 Findings from previous surveys

As part of the Council on Ethics surveys into the use of child labour and working conditions in the Indian seed industry, surveys of production on behalf of Advanta, among others, were carried out in 2011 and 2014. Those surveys indicated that around 10 per cent of the workforce engaged in vegetable seed production could be children under the age of 15. The

<sup>10</sup> 38% “Scheduled castes” and “Scheduled tribes”, 56% “Backward castes”.

<sup>11</sup> The most common are Chlorothalonil, Azoxystrobin, Imidacloprid, Phorate, and Phenylpyrazole (Fipronil).

<sup>12</sup> For example, Phorate and Fipronil are classified as highly toxic on skin contact, and strict safety measures are to be observed.

Phorate (PPBD): <http://sitem.herts.ac.uk/aeru/ppdb/en/Reports/519.htm>,

Fipronil (PPBD): <http://sitem.herts.ac.uk/aeru/ppdb/en/Reports/316.htm>.

proportion of children engaged in the production of cottonseed was over 25 per cent in 2011 and around 15 per cent in 2014. Since UPL, which then owned 49 per cent of Advanta, was nevertheless not included in the GPFG's investment portfolio in the period following these surveys, the Council on Ethics put the matter to one side.

## 4 Information from the company

In response to a request for information from the Council on Ethics in 2011, Advanta stated that the production agreements the company enters into contain clauses forbidding child labour, and that this is an issue that is regularly raised with the company's growers. The company also wrote that it, at that time, was planning more wide-ranging surveys into the extent of possible child labour in connection with seed production.<sup>13</sup>

The Council on Ethics wrote to UPL in September 2017, enquiring about the measures it currently has in place to prevent child labour at its production facilities.<sup>14</sup> The company did not respond to the Council's letter.

UPL was presented with a draft recommendation to exclude the company from investment by the GPFG in November 2017, and invited to submit any comments it may have. The company responded in January 2018.<sup>15</sup>

The company pointed out that Advanta accounts for only a relatively small proportion of the overall volume of vegetable seeds it produces in India (0.7–2 per cent, depending on the seed variety). UPL acknowledged that child labour does occur at farms producing for Advanta, and that the company has a responsibility to prevent child labour at its growers, farmers and organisers, which it refers to collectively as its business partners:

*"We understand that an organisation is required to take several steps to reduce use of child labour. In our view, these would include compliance with applicable laws, contractual binding clauses, awareness initiatives, periodical inspection / audit of the sited, financial incentives for full compliances and necessary action in case of violations."*

Furthermore, the company gave an account of the various measures that have been initiated or are being planned to achieve a reduction in the scale of child labour being used. These range from the inclusion in all contracts of clauses prohibiting child labour, to inspections (also unannounced spot checks), programmes to raise awareness of the child labour issue at the local level, as well as participation in industry-wide initiatives to combat child labour.

The company has also contributed to the establishment of three village schools. UPL considers child labour to be a matter of legal compliance, and includes child labour in its annual auditing plan.

## 5 The assessment of the Council on Ethics

According to the GPFG's ethical guidelines, the Council on Ethics may advise that a company be excluded or placed under observation if there is an unacceptable risk that it contributes to

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<sup>13</sup> Letter from Advanta India Ltd to the Council on Ethics, 1 August 2011.

<sup>14</sup> Letter from the Council of Ethics to UPL Ltd, 5 September 2017.

<sup>15</sup> Letter from UPL Ltd to the Council on Ethics, 15 January 2018.



or is itself responsible for systematic violations of human rights, such as making use of the worst forms of child labour.

In this case, the Council has considered firstly whether UPL, through the business activities of Advanta, can be said to contribute to child labour, and whether the child labour concerned must be deemed to constitute *the worst forms of child labour*. It has then considered whether it seems likely that this violation of ethical norms will continue.

The Council on Ethics is well aware that the child labour does not formally take place within UPL, in the sense that UPL or Advanta have not themselves employed children. UPL is linked to the child labour through the contracts that have been entered into between Advanta and local growers. Advanta enters into agreements with local growers, in some cases via an intermediary, for the production of seeds. The company supplies the input factors, inspects the crops and advises the farmers. The Council considers that this constitutes a clear connection between the company's operations and the child labour used in production on its behalf.

The Council on Ethics' surveys indicate that around 10 per cent of the workers engaged in seed production for the company are children. The exact scale of the child labour is difficult to determine, and varies between different seed varieties and geographic areas. However, a total of 400–500 children probably worked on production for Advanta in 2016–2017.<sup>16</sup>

The proportion of children shown to be producing vegetable seeds for Advanta in 2016–2017 accords with the findings of previous surveys of the same company. The Council on Ethics concludes that the surveys on which this assessment is based provide a realistic picture of the prevailing conditions with respect to seed production for Advanta. Since child labourers were found at at least two-thirds of the farms producing for the company, the Council on Ethics takes the view that these are clearly not isolated incidents.

Furthermore, the Council considers that the identified cases of child labour must be deemed to qualify as "*the worst forms of child labour*". This conclusion rests on several factors.

The young age of the children is an important point. In the Council's surveys, it was estimated that 70 per cent of the children were under 14 years of age, with some younger than 10. The surveys show that the vast majority of the children have no familial ties to the farm where they work, and many are separated from their own families or guardians. The vast majority are hired labour, not children helping out in their parents' fields. Furthermore, the majority of the children belong to groups which, in Indian society, have a low social status, making them particularly vulnerable to exploitation.

Another material factor underpinning the conclusion that this falls within the worst forms of child labour, is the health risk to which the children are subject due to their almost constant exposure to pesticides. Children work in the fields with no form of protection during or immediately after they have been sprayed. A large quantity of pesticide is used, with fields often sprayed several times a week. On the whole, the pesticides used are harmful both on contact with the skin and when inhaled. Long-term exposure can cause serious and permanent damage to human health.

The children are, moreover, often obliged to work extremely long hours (over 12 hours per day is not unusual), performing demanding physical labour. Because the seed-cultivation season is long, the children generally receive little or no schooling.

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<sup>16</sup> This estimate is arrived at by multiplying the number of child labourers found per unit of area producing different seed varieties in the various states with the total area in which the respective seed varieties are cultivated.

It is hardly realistic to expect that this kind of agricultural activity in India can be undertaken without sporadic cases of child labour. However, the scale of child labour in the production of seed for Advanta is unacceptably high. The Council has investigated production for the company over several years, and the scale of child labour in vegetable seed production does not so far seem to have decreased by any noticeable amount.

On the above basis, the Council on Ethics considers that there are sufficient grounds to recommend that UPL be excluded from investment by the GPF. The Council's decision not to do so is attributable to several factors:

UPL and Advanta merged in 2016, and are now deemed to constitute one company. Advanta's measures to combat child labour are encompassed by UPL's legal compliance procedures and are included in the company's audit plan. The Council presumes that this may result in a more systematic approach to and greater emphasis on these improvement measures, and will lead to closer follow-up of the issue than has previously been the case at Advanta. UPL has, furthermore, explained that additional measures will be implemented to achieve improvements.

When assessing the GPF's investment in UPL, what has been decisive for the Council on Ethics is that the scale of child labour does actually decrease. The Council's experience of seed companies shows that a combination of measures corresponding to those proposed have proved capable of being effective, if they are supported by company management and followed up at all levels. Beyond this, the Council has not assessed the appropriateness of each individual measure described by UPL.

On this basis, the Council on Ethics recommends that UPL be placed under observation for a period of three years. Should the scale of child labour not have been adequately reduced at the end of the observation period, the Council may recommend that UPL be excluded from the GPF.

## 6 Recommendation

The Council on Ethics hereby recommends that UPL Ltd. be placed under observation for a period of three years, due to the company's contribution to child labour.

Johan H. Andresen Chair	Hans Christian Bugge	Cecilie Hellestveit	Trude Myklebust	Brit K. S. Rugland
(Sign.)	(Sign.)	(Sign.)	(Sign.)	(Sign.)