

Summary

Colombia is becoming an increasingly important market for Swedish companies. Between 2009 and 2011, the value of Swedish exports to Colombia doubled.ⁱ Colombia is a market with great potential, but it is also a complex environment with serious human rights risks. The country is characterised by half a century of civil war, and companies risk becoming involved in human rights violations through their operations, not least in relation to the extraction of natural resources. At the same time, they can have a positive impact on the preconditions for sustainable peace. With this report, Swedwatch wants to develop the discussion about corporate responsibility in conflict areas, while also calling on Swedish companies in Colombia to strengthen their systems for conducting human rights due diligence.

The international guidelines that Sweden and Swedish companies are obliged to follow, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and the EU's CSR strategy, place great demands on companies to be aware of their human rights related risks and to work actively to prevent and mitigate adverse human rights impacts.ⁱⁱ Many Swedish companies in Colombia are suppliers of goods and services to large projects, which can mean they have limited possibilities to influence the way that clients and those in charge of running the project address human rights. Despite the challenges, companies do have a responsibility to respect human rights in the customer chain. Even if companies have not themselves contributed to adverse human rights impacts, they should try to prevent and mitigate adverse human rights impacts that are directly linked to their operations, products or services through their business relationships.ⁱⁱⁱ The report also underlines the importance of the Swedish Embassy informing companies about human rights risks in Colombia, in line with the UN Guiding Principles. The Embassy should provide clear information about what companies are expected to do to live up to the Guiding Principles that Sweden supports. The Embassy should also have the capacity to provide active support and guidance to companies on how these principles should be put into practice.^{iv}

The report is based on the ongoing construction of the Hidroituango hydropower plant, in which Atlas Copco and Scania are involved as suppliers, to illustrate the kinds of risks that companies must be able to deal with in the customer chain. The hydropower plant will be one of the largest in Latin America, and Swedish companies are supplying personnel and equipment. The plant is being built in a region that is heavily affected by the Colombian conflict. While there have been several positive effects of the project, including many new jobs and improved infrastructure, the construction has also had an adverse impact on human rights. The project has affected the security situation, as the guerrilla has designated the construction as a military target, and it has also resulted in an increased presence of police, military and private security guards. All of these groups are guilty of abusing civilians in the local communities. In some of the affected communities, people have stated that they have lost their basic livelihoods because of the project and have not received any kind of compensation. In addition to this, there is a clear threat to the human rights activists who have opposed the construction. Through their presence and their business relations with the CCC Ituango consortium, which is building the hydropower plant, and by extension the consortium's commissioning body, the public service company EPM, both Scania and Atlas Copco are, according to the UN Guiding Principles, directly linked to adverse human rights impacts associated with the



construction. According to the same framework, this link means that companies should use their leverage to influence these actors to address the risk of adverse human rights impacts.^v

As the Swedish companies do not just deliver equipment, but also have service personnel on site, they are dependent on the public and private security actors that have been enlisted to protect the project area. The Colombian military has been accused of serious human rights violations and of not respecting the principles of proportionality and distinction, which are fundamental components of international humanitarian law. In the Hidroituango project area, reliable sources are reporting that the military is subjecting the civilian population to disproportional danger as part of their military operations. Swedwatch does not have enough information to be able to determine whether there is a direct link between this and the military's protection of the hydropower plant. However, Swedwatch sees major risks, as the Swedish companies are dependent on security actors that may be contravening international humanitarian law.

When Swedwatch began investigating the case in the autumn of 2013, around 300 people from the movement Ríos Vivos had left the region where the power plant is being built, including many women and children. According to them, the construction had resulted in an intolerable situation as it had both exacerbated their poverty and led to increased threats from armed groups, in particular the public and private security staff that have been enlisted to protect the site. Those who left the area lived in an old sports centre at a university in Medellín for more than six months. When one of the group's leaders, Nelson Giraldo, returned to the region in September 2013 to see whether it was possible for them to return, he was murdered. Later during the autumn, another member of the group was murdered. Neither the Swedish companies involved in the project, nor the Swedish Embassy, were aware of the situation when Swedwatch contacted them, even though organisations such as Amnesty International and the Inter-American Commission on Human Rights have drawn attention to this.^{vi} Scania and Atlas Copco are both global companies that actively work with sustainability. However, neither Scania nor Atlas Copco yet have adequate systems in place for human rights due diligence in the customer chain. Indeed most companies still do not have such systems. They fail to perform an overall evaluation of their clients based on their human rights performance.

Swedwatch regards it as very positive that both companies have taken various measures to obtain more knowledge about the problems and have got in touch with relevant actors after being made aware of the problems. The Swedish companies should now continue to develop an advocacy plan on how to use their leverage to influence their business partner CCC Ituango, as well as EPM. The Embassy should assist with this process. Both Atlas Copco and Scania should also strengthen their local capacity to perform human rights due diligence. Operations in conflict areas require an enhanced human rights due diligence, as well as a conflict sensitive approach and a specific analysis of how companies' operations affect the conflict.^{vii} Neither company has implemented such processes. Moreover, both companies and the Swedish Embassy also need to develop systems of early warning to quickly be able to detect and act if there are indicators of adverse human rights impacts as part of projects in which Swedish companies are involved. Swedwatch also recommends all Swedish companies in Colombia to develop joint ethical guidelines for operations in Colombia together with the Embassy and experts in this field. These guidelines should both cover the



companies' human rights responsibilities and those parts of international humanitarian law that apply in Colombia.

Since reporting began, Scania and Atlas Copco have informed Swedwatch that they have taken several measures to further improve the general routines concerning customer relations, and that they have begun collaborating on these issues in Colombia. The Swedish Embassy in Colombia also has plans to step up its work on corporate responsibility. Swedwatch welcomes these initiatives.

Recommendations

To Scania and Atlas Copco regarding the Hidroituango case

Further investigate the human rights risks linked to the hydropower plant together with international and Colombian experts. Get in contact with and collect information from those who are directly affected and the organisations that represent them. Demand that the CCC Ituango consortium and EPM address the risks and remediate for the adverse impacts in an appropriate manner. Use your leverage to influence the customer to prioritize the mitigation and remediation of the most severe impacts on human rights. Place extra importance on the following:

Security situation: Commission international experts to investigate the risk of contracted security staff violating international humanitarian law as part of the protection of the hydropower plant. Investigate the risk of security staff lacking competence and clear guidelines on how they should respect human rights. Try to assist in addressing the shortcomings by providing training, for example.

Compensation system: Investigate to what extent the compensation system has failed to compensate those affected by the project, in particular the artisanal gold miners and other groups that have been dependent on them for survival. The compensation system should live up to international standards in this area, such as the IFC's Performance Standards and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests. Investigate whether grievance mechanisms set up by the company live up to the criteria defined in the UN Guiding Principles on Business and Human Rights, which they should do. Forced displacement must be avoided as far as possible, and always be carried out in accordance to international standards in this area, following adequate compensation to those affected.

Human rights defenders: Investigate the risks that the project and the actors involved in the project increase the vulnerability of human rights defenders who criticise the construction. The project must be carried out with respect for basic civil and political rights, such as freedom of expression and freedom of assembly. Try to promote constructive dialogue between those affected by and those responsible for the project.

To Swedish companies with clients in Colombia and other conflict areas

- Adopt a joint policy on how to address human rights risks in Colombia adapted to the conflict, with reference to both international human rights law and international humanitarian law. This can be done with Swedish companies in cooperation with the Swedish Embassy and experts in this field.



- Perform an enhanced human rights due diligence for each new project and business partner. Take the entire project's adverse impacts and the company's risk of contributing or being directly linked to adverse impacts into consideration, as well as the client's ability to adequately address the problems.
- Make demands, if possible, already in the contract, for the client to live up to relevant international standards. Communicate clearly with the client about what is expected of them when it comes to addressing human rights.
- Pay particular attention to investigating the client's security arrangements and demand that these be organised according to best practice and with respect for the rights of the local population. Ensure that the security staff have been trained in human rights.
- Introduce effective systems of early warnings when adverse human rights impacts may occur. Train your own staff on a local level on how to register, follow up and, in consultation with the Head Office, act on such indicators continuously, based on several different sources of information, and in contact with those who are directly affected.
- Develop methods to use your leverage to influence the client when human rights are threatened, in cooperation with the Swedish Embassy, other business partners, international organisations and civil society organisations, for example.
- Terminate the contract with the client if they are entirely incapable or uninterested in addressing and remediating adverse human rights impacts.

To the Swedish Embassy in Colombia

- Encourage Swedish companies to follow the recommendations outlined above.
- Clearly communicate what is demanded of Swedish companies to live up to the international standards that Sweden supports, and provide guidance to Swedish companies on how they can put these principles into practice.
- Introduce your own effective systems of early warning when adverse human rights impacts may occur within projects in which Swedish companies are participating. Train Embassy staff in different areas to detect and follow up on such indicators continuously, based on several different sources of information, and in contact with those who are directly affected.
- Proactively contact Swedish companies that participate in high-risk projects to communicate expectations concerning human rights, and provide information about what the Embassy can do to help. Offer assistance with contacts and mediation, in particular for public projects.
- Inform Swedish companies about the risk of continuing business relations with clients if they are incapable or uninterested in addressing and remediating adverse human rights impacts.
- Develop ethical guidelines for Swedish companies with operations in Colombia on how to address human rights risks, together with Swedish companies, and international and Colombian experts. These guidelines should both cover the companies' responsibilities to respect human rights and those parts of international humanitarian law that apply in Colombia.

To the Swedish state

- Review existing legislation, regulations and guidelines for Swedish companies' operations both inside and outside the nation's borders based on the UN Guiding Principles on Business and Human Rights, and implement all demands that these principles place on

states within each respective area. One aspect of the state's responsibility to protect human rights is to provide companies with appropriate guidance on how human rights should be respected.

- Introduce legislation that places demands on Swedish multinational companies to live up to the UN Guiding Principles on Business and Human Rights, both in Sweden and abroad. This also includes enabling Swedish courts to try cases that concern Swedish companies' adverse human rights impact abroad.

ⁱ Information from the Swedish embassy in Bogotá, received via email in May 2014.

ⁱⁱ UN 2011, *UN Guiding Principles on Business and Human Rights*, available in Swedish at

<http://www.regeringen.se/sb/d/16705/a/205163>

OECD 2011, *OECD Guidelines for Multinational Enterprises*

<http://www.oecd.org/daf/inv/mne/MNEguidelinesSVENSKA.pdf>

EU 2011, *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL*

COMMITTEE AND THE COMMITTEE OF THE REGIONS A renewed EU strategy 2011-14 for Corporate Social Responsibility

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>

ⁱⁱⁱ UN 2011, *UN Guiding Principles on Business and Human Rights*, 13.b

<http://www.regeringen.se/sb/d/16705/a/205163>

^{iv} According to the UN Guiding Principles, Pillar 1: The state's responsibility to protect human rights.

^v <http://www.regeringen.se/sb/d/16705/a/205163> 13.b

^{vi} http://www.oas.org/en/iachr/media_center/PReleases/2013/071.asp

<http://www.amnesty.org/en/library/asset/AMR23/044/2013/en/04fa73db-c3af-4093-b022-121e6208e5d6/amr230442013en.pdf>

^{vii} http://www.icrc.org/eng/assets/files/other/icrc_002_0882.pdf

http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf