

Investor Obligations in Occupied Territories: A Report on the Norwegian Government Pension Fund – Global

Essex Business and Human Rights Project
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Report Summary

Scope and Applicability of the Report

- The Report examines the human rights responsibilities of the Government Pension Fund - Global (Statens Pensjonsfond Utland – “SPU”) in regard to investments in companies that operate in Occupied Palestinian Territories (“OPT”), one of the most problematic human rights contexts.
- After illustrating the applicability of existing international standards on business and human rights to institutional investors, the Report assesses what SPU needs to do in order to fully comply with its “Responsibility to Respect” human rights, a concept articulated in the UN Guiding Principles on Business and Human Rights (UNGPR).
- The legal standards set out in this Report are true for all occupied territories.
- Similarly, while some of the final recommendations are specific to SPU, many are appropriate for all institutional investors with investments in occupied territories.

Key findings

- SPU is *linked to* violations of human rights in the OPT through investments in companies that are often knowingly and directly contributing to violations of human rights. This type of involvement with third-party abuses is referred to by the UNGPR as ‘non-legal complicity’ (p. 9).
- SPU may, in certain cases, not just be linked to violations, but be *contributing* to them (a type of involvement defined by the UNGPR as ‘legal complicity’) through its investments. This might happen when SPU’s investment in a company that causes or contributes to violations increases the likelihood of the adverse human rights impacts (pp. 8-9).
- There is a *continuum* between having a ‘direct link’ to an adverse human rights impact and ‘contributing to’ that impact: when the investor is aware of abuses caused/contributed to by one of its investees, and fails to take the necessary steps to prevent or mitigate those negative impacts within a reasonable timeframe, it can eventually find itself in a situation of contributing (p. 10). Exercising due diligence is key to avoiding contribution to human rights violations.
- In many cases, SPU’s Responsibility to Respect (as defined under the UNGPR) will only be discharged by **divesting** from companies that cause/contribute to Israeli settlements and to the human rights violations that stem from the Government of Israel’s approach to settlements (p. 19).
 - When the adverse impacts can not be stopped or mitigated by exercising leverage over the investee company, divestment is a necessity.
 - In a context of widespread and systematic abuses, such as the OPT, in many instances human rights due diligence (HRDD) cannot be reasonably expected to end or mitigate business-related human rights violations (p. 8), making divestment the only option.
 - Liability and responsibility do not necessarily overlap: even when the financial transactions of a non-controlling minority shareholder are too far removed from the violations carried out by their recipients to give rise to legal liability for the investor, the latter might still be required, under the UNGPR, to immediately divest from the abusing entity (p. 9).
- All investments linked to business operations in the OPT should receive **enhanced due diligence**, a high standard of care recommended by the UNGPR for companies operating in high-risk contexts. While the Council on Ethics tends to target only companies linked to the “worst cases” of human rights impacts, no investee company operating in the OPT should remain under the radar (p. 11).

- The **ethics assessment process** carried out through the Council on Ethics, which has so far focused on a limited number of investees and might entail several years of observation, will not *per se* be sufficient to discharge NBIM's due diligence requirements, especially in regard to companies operating in high-risk human rights contexts (p. 11)

Recommendations (pp. 22-25)

- **SPU should conduct human rights due diligence for all companies in its portfolio that operate in the OPT, and communicate externally the actions taken.**
 - No investee company with ties to OPT should remain under the radar, as all activities carried out in the OPT raise concerns over complicity in adverse human rights impacts.
 - Exercising leverage to try and effect change in the conduct of an investee company that is causing/contributing to human rights violations is a precise requirement under the UNGP.
 - The exercise of leverage over an investee has a temporal limit: The more severe the human rights impact, the more quickly SPU needs to see change in the investee's conduct before it decides to divest.
- **Divestment is (often) needed immediately**
 - In some instances (e.g. investments in Israeli banks financing the settlements), SPU will not be able to exercise leverage in a manner that ends or mitigates the adverse human rights impacts. In those cases, SPU must divest quickly.
 - SPU should divest immediately from companies involved in war crimes, breaches of norms of IHL and IOL, and serious or repeated violations of IHRL.
- **The Council on Ethics' Guidelines for observation and exclusion of companies should be revised**
 - The definition of "severity" of human rights impacts, which is currently prone to arbitrary interpretations in the Guidelines, should reflect that given by the UNGP, namely the "scale, scope, and irremediable character" of a human rights impact.
 - In line with the UNGP's approach, severity should be only one among several factors influencing the chosen pattern of HRDD. Other factors to be considered include the investor's ability to mitigate such risks through leverage and how crucial the business relationship is to the investor.
 - The choice to divest can not be a priori circumscribed to clear-cut cases of contribution amounting to "legal" complicity in human rights violations. In line with the UNGP, divestment must be considered also when human rights violations to which SPU has not directly contributed are linked to it by its investment relationships and can not be mitigated through HRDD.
 - The Guidelines should specifically mention that companies involved in violations of IHL, IOL and human rights will be excluded from the portfolio.
- **The work of the Council on Ethics must be more clearly and systematically integrated with human rights due diligence processes put in place by NBIM.**
 - NBIM has a distinct responsibility, under international standards, to carry out HRDD to discharge its Responsibility to Respect. Such responsibility cannot be fully discharged by only delegating to the Council on Ethics the assessment of a limited number of cases deemed to be of particular concern.
 - The dialogue between NBIM and the Council should be systematised as an information-gathering process whereby all investee companies operating in high-risk contexts are screened.
- **SPU needs to adopt remedial efforts**
 - When SPU has contributed to breaches of human rights, it has a responsibility to provide adequate forms of reparations to the victims.
- **The Government of Norway need to adopt clearer due diligence requirements**
 - the Government must, expeditiously, adopt regulations more clearly outlining SPU's HRDD obligations, and establishing expectations for remedial processes in situations where SPU has been slow to act and therefore contributed to human rights abuses.