

Thank you for the opportunity to contribute to the consultation process for the UN Working Group on Business and Human Rights' project "Business and human rights: towards a decade of global implementation". This stock-taking project, identifying gaps and challenges, is particularly important as legislation requiring mandatory due diligence is passed in an increasing number of jurisdictions, enhancing the policies and processes in the Guiding Principles.

This is a joint submission by the Norwegian Union for General and Municipal Employees (NUMGE), the largest trades union in Norway, and Norwegian People's Aid, the Norwegian labour movement's humanitarian solidarity organisation.

Our submission relates to the question of business and human rights in conflict areas, the subject of the [Working Group's report](#) in July 2020. We welcomed this report as it, amongst other things, underlines the fact that activities linking businesses to conflict are often not perceived as salient human rights issues and therefore might be ignored or underprioritized in standard human rights impact assessments.

We have during the course of the last decade engaged in dialogue with Norwegian financial institutions on the ramifications of having investments in companies involved in high-risk human rights contexts, with a particular focus on the occupied Palestinian territory. During the course of this dialogue we have become aware of various issues that appear to be insufficiently understood or where existing guidance is currently inadequate to be of practical use to institutional investors.

First, as the UN Working Group report from July 2020 points out (paragraph 51), prioritization is an essential part of due diligence, with businesses needing to consider salient risks in terms of both human rights and conflict. However, the need to prioritize the most serious human rights impacts as part of enhanced due diligence does not allow an investor to circumscribe its due diligence efforts solely to those cases, overlooking other violations potentially linked to it by its shareholding relationships. Dialogue with asset managers and others reveals that it is not always the case that *all* investments related to business operations in conflict areas are subject to enhanced due diligence.

Second, as the United Nations Office of the High Commissioner for Human Rights has recognized, there is a continuum between 'directly linked to' and 'contributing to' a human rights impact. Businesses, including institutional investors, move along that continuum if they are aware of their link to a violation and fail to take action. An eventual contribution to a human rights impact will entail a new set of obligations, including remedies, and may also raise the prospect of legal liability.

Third, investors' use of leverage to prevent or mitigate adverse human rights impacts cannot be an indefinite process. There appears to be a reluctance to set clear timelines, even on a case-by-case basis, for active ownership processes between investors and investee companies. This can result in well-documented examples of investee companies contributing to negative impacts over a decade without facing any consequences on the part of investors. As the UN Guiding Principles also make clear, "the more severe the abuse, the more quickly the enterprise will need to see change" (UNGPs 19, Commentary).

Fourth, the Guiding Principles' assert the need for enterprises, in situations of armed conflict, to respect the standards of international humanitarian law. What this implies for the enterprises themselves, but also for enterprises in business relationships with the former, requires further elaboration. For example, the high occurrence of holdings in investee companies with activities in illegal settlements on occupied Palestinian territory, testifies to insufficient awareness of the responsibility incumbent on enterprises "directly linked" to these activities. Even companies engaged in activities tantamount to the war crime of pillage, such as exploitation of natural

resources on occupied territory, regularly appear in the investment portfolios of banks, pension funds and sovereign wealth funds.

In 2018, we commissioned a report from the Essex Business and Human Rights Project at Essex University in the United Kingdom on the Government Pension Fund Global, the world's largest sovereign wealth fund. The report, [Investor Obligations in Occupied Territories: A Report on the Government Pension Fund Global](#), published in 2019, addresses these issues as well as many others related to the due diligence obligations of financial institutions. A 2-page summary of this report will be sent separately to the working group.

A roadmap for scaling up implementation of the UNGPs over the course of the next decade should include the development of additional guidance or instruction that encourages broader understanding of the requirements of context-based enhanced due diligence, including all the issues highlighted above.

Yours sincerely,

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