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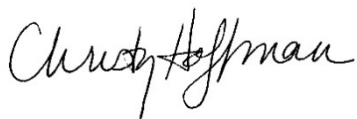
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Nyon, 3 March 2020

Dear members of the Review Committee,

On behalf of UNI Global Union and the International Trade Union Confederation, attached please find a submission to the Committee to review the ethical guidelines for the Government Pension Fund Global.

Best regards,



Christy Hoffman  
General Secretary  
UNI Global Union



Sharan Burrow  
General Secretary  
ITUC

## **Submission to the Ethics Committee on the Guidelines for Observation and Exclusion of Companies from the Government Pension Fund**

We write on behalf of UNI Global Union, the global union in the services sectors representing workers in 150 countries, and the International Trade Union Confederation, the global union confederation representing over 200 million workers across the world.

For many years UNI has engaged with the entities of the Government Pension Fund Global (the Fund), primarily with Norges Bank Investment Management (NBIM). We have written to the Bank on questions concerning companies within the portfolio, participated in the strategic review process in 2014 and were stakeholders consulted on NBIM's Human Rights Expectations Towards Companies. We appreciate the importance that the Fund plays with the broader world of responsible investment and that its decisions set the example for many others.

In this context, we write to you in connection with the Ethics Committee's review of the ethical guidelines for the Fund. Specifically, we write in connection to the rules which govern investment into the Occupied Palestinian Territories and to express support for the submission from Norwegian's People Aid and the Norwegian Union of Municipal and General Employees on that topic.

Although we understand that we may be outside of the deadline for consultation, we submit our comments in light of the recent publication of the UN Human Rights Office database of businesses involved in the Occupied Palestinian Territories and further note that political leaders in Israel have expressed an intention to annex the settlements within the occupied territories soon after the Israeli elections take place on March 2.

UNI Global Union is firmly committed to justice and peace between Israel and Palestine. At its last two World Congresses, the delegates adopted resolutions to reflect the commitment of UNI and its affiliates to this cause: Resolution 12 on "Peace between Israel and Palestine" in Cape Town in 2014, and Resolution 5 on "Working for a World of Peace, Democracy, and Human Rights" in Liverpool in 2018. The resolutions specifically highlight the need to end all economic support for the illegal settlements that Israel has erected on occupied Palestinian land, in line with UN Security Council Resolution 2334 of 2016.<sup>1</sup>

The ITUC adopted a similar resolution at its 2018 Congress:

"The continued Israeli occupation of the West Bank, the existence of illegal Israeli settlements there and their impact on the lives of Palestinians impose severe constraints on the potential for Palestinian economic and social development. Under the current conditions, hundreds of thousands of Palestinian workers are unable to find employment, causing widespread despair and disillusion. Many Palestinian workers, dependent on

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<sup>1</sup> United Nations Security Council Resolution 2334 (2016), 23 December 2016.

precarious work in Israel and the settlements, find themselves working in exploitative conditions. Action to promote decent work opportunities for them is urgent. States and businesses should be dissuaded from directly or indirectly enabling or profiting from activities related to the illegal settlements.”

### **The settlements under international law**

There is broad international agreement that Israeli settlements in the Occupied Palestinian Territories are illegal under international law. The UN Security Council has stated that the settlements are illegal in a number of resolutions, most recently in 2016, stating that they have “no legal validity” and constitute “a flagrant violation under international law,” referring in particular to the Fourth Geneva Convention on the Protection of Civilian Persons in Time of War and the prohibition of an occupying state to “transfer parts of its civilian population into the territory it occupies”. The International Court of Justice in its Advisory Opinion of 2004 similarly concluded that the settlements are in breach of international law.<sup>2</sup>

In this context, businesses involved with the settlements are contributing to this internationally recognised illegal practice and cannot meet their responsibilities to protect human rights under international law and the UN Guiding Principles for Business and Human Rights (UNGPs). In its 2018 report on business enterprises linked to the occupation, the UN Office of the High Commissioner for Human Rights (OHCHR) concludes that:

“considering the weight of the international legal consensus concerning the illegal nature of the settlements themselves, and the systemic and pervasive nature of the negative human rights impact caused by them, it is difficult to imagine a scenario in which a company could engage in listed activities in a way that is consistent with the Guiding Principles and international law.”<sup>3</sup>

In February 2020, the UN Human Rights Office published a database of 112 businesses identified as involved in activities in the Occupied Palestinian Territories that “raised particular human rights concerns,”<sup>4</sup> as mandated under the Human Rights Council resolution 31/36, adopted on 24 March 2016. The publication is a welcome step to provide clarity and promote needed due diligence on corporate involvement in human rights abuses. It is worth noting that the publication of a database of companies by the UN is not unique to the illegal settlements in the Occupied Palestinian Territories, but rather an approach used in cases of grave human rights concerns such as the conflict in the Democratic Republic of Congo or with ties to the military in Myanmar.<sup>5</sup>

Investors in these firms enable the continuation of the internationally recognised illegal settlements, and so in turn may not meet their own human rights responsibilities. As established under the OECD’s guidance for Responsible Business Conduct for Institutional Investors, institutional investors, even as minority shareholders, have a business relationship with their portfolio companies, which may mean they are directly linked to adverse impacts. Investors are expected to undertake due diligence to avoid and address involvement in such adverse impacts. The UN database of identified companies involved in the settlements based on an extensive fact-

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<sup>2</sup> “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory”, International Court of Justice, Advisory Opinion of 9 July 2004.

<sup>3</sup> UN Office of the High Commissioner for Human Rights, A/HRC/37/39/, para. 41.

<sup>4</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25542&LangID=E>

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[https://www.ecfr.eu/article/commentary\\_the\\_un\\_is\\_right\\_to\\_track\\_businesses\\_in\\_israeli\\_settlements](https://www.ecfr.eu/article/commentary_the_un_is_right_to_track_businesses_in_israeli_settlements)

finding process is a resource that should be welcomed by institutional investors and acted upon under their due diligence responsibilities.

### **The Fund's policies and investments**

The Fund is invested in several companies involved in the settlements. 28 of the 112 companies (25%) identified by the UN as involved in serious human rights 'concerns are held in the Fund's 2019 equity portfolio. This is not the full extent of the Fund's exposure as the UN notes that "the database does not cover all business activity related to settlements, and does not extend to wider business activity in the Occupied Palestinian Territory that may raise human rights concerns." The European Council for Foreign Relations notes, for example, because the scope did not include companies involved in illegal exploitation of Palestinian natural resources, there are omissions such as Heidelberg Cement or Cemex, both of which have well documented operations of plants and quarries in West Bank settlement zones.<sup>6</sup> The Fund is invested in both of these companies, according to the 2019 equities portfolio. Previous estimates against the research of the Israeli research organization Who Profits, found the Fund holds shares in more than 40 companies which profit from and contribute to the economy of the occupation.

The Fund has previously excluded some companies over operations in the Occupied Palestinian Territories. However, some are still included, raising issues of inconsistency over this issue.

In line with NBIM's Human Rights Expectations Towards Companies, the Fund may have had dialogue with companies on this issue or exercised other forms of ownership rights. However, if this has taken place, the outcomes are unclear.

As highlighted in the submission from Norwegian's People Aid and the Norwegian Union of Municipal and General Employees, this situation may be caused by the limitations of the focus of ethical risks under the Ethics Guidelines. Currently they cite reference that conflict areas were not included in the systematic review of areas with high ethical risks, according to a meeting 26 September 2019. This would create a clear gap, as the UN Guiding Principles interpretive guide notes:

"Perhaps the greatest risks arise in conflict-affected areas, though they are not limited to such regions."<sup>7</sup>

The current phrasing of the human rights criterion raises concerns of an overly narrow focus and inconsistencies arising. The definition of what constitutes "serious or systematic" human rights violations is unclear, raising possibilities of varying interpretations. The citation of examples of "murder, torture, deprivation of liberty, forced labour, and the worst forms of child labour" imply the Fund will only focus on directly physical violent violations of human rights. Under the international standards of the UN Guiding Principles for Business and Human Rights, the UN Global Compact, and the OECD Guidelines for Multinational Enterprises, the requirements of business to respect human rights go beyond these extreme examples but rather to respect all human rights internationally agreed through standards such as the International Bill of Human

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[https://www.ecfr.eu/article/commentary\\_the\\_un\\_is\\_right\\_to\\_track\\_businesses\\_in\\_israeli\\_settlements](https://www.ecfr.eu/article/commentary_the_un_is_right_to_track_businesses_in_israeli_settlements)

<sup>7</sup> The United Nations Human Rights Office. (2012). "The Corporate Responsibility To Respect Human Rights: An Interpretive Guide" [https://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf)  
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Rights and the core ILO conventions, as a minimum. This is reflected in NBIM's Human Rights Expectations Towards Companies.

## Recommendations

We echo the recommendations provided by the submission from Norwegian People's Aid and the Norwegian Union of Municipal and General Employees as important steps to ensure the Fund is not supporting practices illegal under international law or contributing to human rights violations. Taking these steps would also assist in further developing the Fund's approach to human rights concerns more broadly, in line with the updates in human rights standards and expectations since the publication of the ethical guidelines.

These recommendations include:

1. Include a point under §3 to the effect that an unacceptable risk that a portfolio company participates in or is itself responsible for violations of international law or supports the continuation of an international illegality is sufficient to establish "criteria for observation of conduct and exclusion of companies".
2. Revise § 5 in the guidelines, which deals with the work of the Ethics council regarding observation and exclusion (in particular points 1 and 2) to take into account the need for increased caution when investing in high risk or conflict areas. This is in line with international standards for business and human rights such as the UNGPs and OECD Guidelines, and means in practice that all portfolio companies that have activity in conflict areas shall be subject to an especially thorough and continuous assessment.
3. Elaborate a clear definition of "gross or systematic" and "serious" violations of human rights ("§3. Criteria for observation of conduct and exclusion companies") and incorporate this into the guidelines in line with the international standards for business and human rights considering the "scale, scope and irremediable character."
4. Revise the basis for portfolio companies' involvement in violations through sales ("a strong element of involvement" e.g. in the Caterpillar case so that exclusion is considered also in matters where the company knows – and has been informed over a long time – that products that they deliver to a specific customer are used to commit violations of human rights. The approach of the Ethics Council to these issues is not currently in line with the UN Guiding Principles, as explained in the report *Investor Obligations in Occupied Territories*, written by Essex Business and Human Rights Project.<sup>8</sup> Many of the above-mentioned points are also elaborated upon in the report.

In addition, we would recommend the following:

5. In light of the UN's publication of a database of 112 businesses identified as involved in activities in the Occupied Palestinian Territory that "raised particular human rights concerns" in relation to the illegal settlements, the Fund should undertake the necessary due diligence to review its investments in these firms against the ethical guidelines. There is a clear case for the Fund to consider exclusion of companies on this list if they continue

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<sup>8</sup> Macchi, Chiara & Ho, Tara & Yanes, Luis. (2019). "Investor Obligations in Occupied Territories: A Report on the Norwegian Government Pension Fund -Global." Essex Business and Human Rights Project.

[https://www.researchgate.net/publication/332684209\\_Investor\\_Obligations\\_in\\_Occupied\\_Territories\\_A\\_Report\\_on\\_the\\_Norwegian\\_Government\\_Pension\\_Fund\\_Global/citation/download](https://www.researchgate.net/publication/332684209_Investor_Obligations_in_Occupied_Territories_A_Report_on_the_Norwegian_Government_Pension_Fund_Global/citation/download)

involvement with the settlements, as the list reflects the findings of the relevant international authority following an extensive fact-finding process. This would be an important step to enact the recommended updated criteria in line with recommendation 1 above.

6. In line with recommendations 2 and 3 above, the Fund should more widely align its human rights considerations to the follow the due diligence processes established in international guidance such as the OECD's guidance on Responsible Business Conduct for Institutional Investors.
7. To strengthen the practice of exercising the Fund's ownership rights, the Fund should increase transparency on outcomes of when it exercises its ownership rights, rather than using the measures of observation and exclusion. Such reporting would provide clarity on the steps taken to reduce risk of future violations of the Ethics Guidelines and increase the public accountability of companies in dialogue with the Fund, which could increase the Fund's leverage to reach a positive outcome. For example, reporting on outcomes of dialogue would demonstrate the Fund's due diligence activities regarding companies which have been highlighted for their involvement with the illegal settlements for many years. Communicating results is also a key component of the OECD's guidance on Responsible Business Conduct for Institutional Investors.

We are available for further discussion or information in the Ethics Review, and once again thank you for the opportunity to provide input. We wish the Committee success in this important work.