



Investor Obligations in Occupied Territories:

A Report on the Norwegian Government Pension Fund – Global

Essex Business and Human Rights Project
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Acronyms

HRDD: Human rights due diligence

ICC: International Criminal Court

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

IHL: International Humanitarian Law

IHRL: International Human Rights Law

ILO: International Labour Organization

NBIM: Norges Bank Investment Management

NGO: Non-governmental organisation

OECD: Organisation for Economic Cooperation and Development

OCHA: UN Office for the Coordination of Humanitarian Affairs

OHCHR: United Nations Office of the High Commissioner for Human Rights

OPT: Occupied Palestinian Territories

PA: Palestinian Authority

SPU: Statens Pensjonsfund Utland

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNCTAD: United Nations Conference on Trade and Development

UNGP: United Nations Guiding Principles on Business and Human Rights

UN Special Rapporteur: UN Special Rapporteur on Situation of Human Rights in the Palestinian Territory

WHO: World Health Organization

Executive Summary

All businesses are expected to respect human rights, regardless of their industry, size, ownership structure, or operational context. To realize their responsibility, institutional investors must ensure appropriate policies and undertake careful human rights due diligence. This can be difficult even in the best of circumstances. Situations of armed conflict and occupation are not the best of circumstances. Focusing on the Norwegian Statens Pensjonsfond Utland (“SPU”), this Report examines what institutional investors need to do in order to meet their responsibility to respect human rights when investing in businesses that operate in occupied territories.

The United Nations Guiding Principles on Business and Human Rights articulate an expectation that businesses will avoid causing or contributing to adverse human rights impacts. Where they neither cause nor contribute to those impacts – as is generally the case for institutional investors – but are directly linked to adverse impacts through their operations, products, services, or business relationships, businesses are expected to use leverage to ensure respect for human rights. If leverage proves ineffective, and the impacts are severe, businesses need to consider terminating their relationships. A failure to exercise leverage, or to terminate a relationship where the leverage proves ineffective, can transform a business’s relationship with the human rights impact. Where it would normally only be directly linked to the harm, the failure to take appropriate action can mean the business is now contributing to the impact and owes reparations to those harmed by its activities.

This Report starts by establishing the basis and the content of institutional investors’ responsibility to respect human rights before applying these standards to SPU’s investments in businesses operating in Israeli settlements in the Occupied Palestinian Territories. While the report focuses on the factual situation in the Occupied Palestinian Territories, the lessons are applicable to institutional investors operating in a host of occupied territories.

Demonstrating how businesses should undertake human rights due diligence, the Report first considers the adverse impacts Palestinians experience as a result of the settlements. The Report highlights the impact of settlements on Palestinians’ rights to life, freedom from torture and cruel, inhuman or degrading treatment or punishment, housing, freedom of movement, education, water and sanitation, and non-discrimination. It also considers communal harms and international crimes associated with the settlements. The Report then turns to SPU’s responsibility.

The Report points to several significant findings for SPU. First, SPU is *directly linked to* a wide variety of adverse human rights impacts in the Occupied Palestinian Territories through its investments. Second, SPU is not employing a consistent approach in how it addresses the adverse impacts. It does not target, as it should, all businesses operating in the West Bank for enhanced human rights due diligence, nor does it appear to exercise leverage or exclude businesses operating in the West Bank in a consistent manner. As a result, some businesses are excluded while others are not despite having similar impacts. Where it is not adequately exercising leverage, or where it has attempted to exercise leverage but has not seen adequate change over time, SPU may be contributing to adverse human rights impacts. In such circumstances, SPU owes reparations to the Palestinians harmed by its activities. Third, SPU has fallen behind other institutional investors in Europe, investing in businesses that others have already divested from because of the adverse impacts they cause or contribute to.

To address concerns over its policies and processes, this report recommends NBIM and/or SPU:

- Conduct human rights due diligence for all companies in its portfolio operating in occupied territories;
- Transparently communicate the actions it takes in regards to these investments;
- Quickly divest from companies that cannot, by their nature or due to the Israeli legal structure, meet their own human rights responsibility to respect;
- Revise the Council on Ethics’ Guidelines for observation and exclusion of companies;
- Systematically integrate the Council on Ethics with NBIM’s human rights due diligence processes;
- Adopt remedial efforts for those instances where SPU is no longer simply *linked to* human rights impacts but is now *contributing to* those impacts.

The Report concludes by recommending that the Government of Norway adopt clearer due diligence requirements for all its businesses.



Francesca Fazio, 2018. (See [photo credits](#).)

1. Introduction

This Report examines the human rights responsibilities of the Government Pension Fund - Global (Staten Pensjonsfond Utland – “SPU”) in regard to its investments in companies operating in the West Bank, Occupied Palestinian Territories (“OPT”). Under the UN Guiding Principles on Business and Human Rights (“UNGP”), to date the most authoritative statement on the responsibility of businesses towards human rights, businesses should respect human rights, meaning they should refrain from negatively impacting on human rights.¹ These UNGP have been affirmed by and incorporated into the Organisation for Economic Cooperation and Development (“OECD”) Guidelines for Multinational Enterprises, which are state-endorsed recommendations for businesses operating in or from OECD member states, including Norway.²

SPU is the Norwegian state-owned pension fund. It is managed by Norges Bank Investment Management (“NBIM”) “on behalf of the Ministry of Finance, which owns the fund on behalf of the Norwegian people.”³ The Ministry sets the fund’s investment strategy, but it is NBIM that oversees the fund’s investments.⁴ The Ministry has set ethical “Guidelines for Observation and Exclusion from the Fund,” which state that a company “may be put under observation or be excluded” from investment if it “contributes to or is responsible for ... serious or systematic human rights violations ... [and] serious violations of the rights of individuals in situations of war or conflict.”⁵ To ensure SPU is abiding by these standards, the Ministry appoints a five-person Council on Ethics, which monitors the portfolio and investigates companies to determine whether the company should be observed or excluded.⁶ This Report considers the extent to which SPU, and those entities responsible for its management and ethical oversight, are meeting the standards recognised in the UNGP.

To ensure respect for human rights, businesses should undertake human rights due diligence (“HRDD”) to identify the risks their operations pose towards the realization of human rights.⁷ This responsibility is incumbent upon all businesses – broadly defined – regardless of their size or industry, including institutional investors like SPU.⁸ Situations of occupation, however, are governed by a particular set of international laws, the international law of occupation, which in turns derives its legal content from international humanitarian law (“IHL”) (sometimes referred to as the laws of armed conflict). When applicable, the law of occupation can alter or inform obligations under international human rights law (“IHRL”).⁹ As such, due diligence in regard to these situations needs to look different, and respond differently, than HRDD in other contexts.

The West Bank, including East Jerusalem, is occupied territory.¹⁰ This is a legal determination, not a moral or political one. The definition of occupied territory dates to 1907: “[t]erritory is considered occupied when it

is actually placed under the authority of [a] hostile army.”¹¹ This definition is now recognised as binding in all situations of occupation.¹² The legal standards set out in this Report are true for all occupied territories. As such, while the report focuses on the OPT, its application is not limited to the OPT. In addition to the OPT, this currently includes Western Sahara, Northern Cyprus, Syria’s Golan Heights, Eastern Ukraine, Crimea (Ukraine), South Ossetia (Georgia), Abkhazia (Georgia), and Transnistria (Moldova).

The law of occupation is intentionally temporary.¹³ The occupying power is prohibited from annexing the occupied territory, and occupied lands must eventually be returned to the occupied power.¹⁴ The law of occupation is intended to ensure the situation eventually returns to that which existed before the occupation.¹⁵ That means the advice in this Report is temporally limited: its applicability ceases when Israel withdraws to the 1967 borders and no longer effectively controls the West Bank.¹⁶

The focus on Israel and the OPT is justified by several factual realities. First, the Israeli occupation of Palestine is the longest-running situation of occupation, and has been described as “the most entrenched and institutionalized” and “possibly the most legalized such regime in world history.”¹⁷ Second, the long-standing documentation of human rights abuses by international organizations, Palestinian and Israeli civil society organizations, and academics provide an opportunity for nuance in addressing the responsibility of businesses. The operation of these principles will be dependent factually on each occupying power’s compliance in the occupied territories with IHRL, the law of occupation, and IHL.

Separating Law and Politics

It is at times difficult to separate the law from politics in the context of Israel and Palestine. Any source of information on the OPT faces accusations of bias. We have therefore limited the sources we use. Where we can, we rely on information from UN agencies and international organizations, notably the World Bank, the United Nations Conference on Trade and Development (“UNCTAD”), the United Nations High Commissioner for Human Rights (“OHCHR”), independent experts for the United Nations (“UN”), and the European Parliament’s Directorate-General for External Policies. We additionally use information and analysis from academics and Norwegian institutions. Where supplemental information is needed, we favour documentation from Amnesty International, Human Rights Watch, and three local non-governmental organizations (“NGOs”): Yesh Din, an Israeli human rights organization that brought a lawsuit over the use of quarries in the West Bank; and Al-Haq and B’Tselem, who are members of the International Federation for Human Rights (FIDH) and have a long and well-respected history of accurate documentation and legal analysis on situations in the OPT, including with regard to business and human rights. At times, we have also used factual documentation, but not political or legal conclusions, from WhoProfits, which provides the most comprehensive database available on businesses in the OPT.¹⁸

This Report would have been aided by the comprehensive list on business involvement in the OPT that OHCHR was asked to prepare. That list has not been released to the public, yet.¹⁹ Institutional investors such as SPU should seek the release of this list so as to aid in and streamline their own HRDD processes.

This Report

The international community has unequivocally recognised all businesses as bearers of human rights responsibilities. This has been most authoritatively articulated in the UNGP, adopted by the UN Human Rights Council in 2011. The Norwegian government endorsed the UNGP and was one of the first to adopt a National Action Plan on business and human rights (October 2015).²⁰ The Norwegian government has defined the UNGP as the “gold standard for responsible business conduct”.²¹

This Report focuses on the responsibility of SPU as a business enterprise - one that undertakes commercial transactions for the purpose of increasing monetary value, whether for the benefit of individual beneficiaries or society as a whole. Sovereign Wealth Funds, like SPU, offer a peculiar case in that they are state organs,²² and as such are addressed under both UNGP Pillar II (the business Responsibility to Respect) and UNGP Pillar I (the State Duty to Protect).²³ This Report focuses on the business responsibility to respect human rights with a view to identifying the HRDD requirements enshrined in the UNGP.

In addition to the responsibilities of the corporation, the Government of Norway is obliged to regulate businesses for the benefit and protection of human rights.²⁴ The state's duty to protect, rooted in IHRL and re-affirmed by the UNGP,²⁵ is fundamental to the realization of all human rights, and requires states to identify and respond to risks to human rights posed by non-state actors.²⁶ To fulfil its obligations, the Government of Norway should adopt clear regulation of institutional investors, including SPU, on the expected due diligence process. We address needed reforms to the due diligence process in Section 5, but we do not otherwise analyse the Norwegian government's responsibilities.

In considering the relationships within the OPT that SPU needs to be concerned with, the report concentrates on the impacts and responsibilities of foreign and Israeli businesses operating in "Area C", the area exclusively controlled by Israel.²⁷ Due to differing legal frameworks, Palestinian businesses and foreign businesses operating in Areas "A" and "B" in the West Bank raise different legal issues from those presented by non-Palestinian businesses operating in "Area C."

This Report begins by examining and explaining the human rights responsibilities of institutional investors. It then considers the human rights impacts of businesses operating in the settlements before assessing what SPU needs to do in order to better comply with its responsibility to respect.



Asita, 2018. (See [photo credits](#).)

2. Human Rights Responsibilities of Institutional Investors

The UNGP's conceptualization of the business responsibility to respect human rights implies that all businesses – irrespective of their "size, sector, operational context, ownership and structure"²⁸ – should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.²⁹ Such responsibility exists over and above legal compliance, and independently of a State's ability and/or willingness to fulfil its own human rights obligations.³⁰ Investors, like all businesses, are expected to respect human rights both through their own activities and through their business relationships.³¹ This means that their responsibility can arise not only from their own acts or omissions, but also from their more or less close association with the conduct of third-party entities – private or public – causing adverse human rights impacts. Corporate responsibility for third-party human rights abuses is described by the UNGP as "complicity". This section clarifies the different types of involvement and their consequences as the paradigm against which SPU's responsibility, arising from its business ties to companies operating in the OPT, must be assessed.

2.1. Investor responsibility for human rights abuses: what it means to "cause", "contribute", or be "linked to" adverse human rights impacts

The starting point for this analysis is the UNGP's articulation of the business responsibility to respect human rights, requiring that business enterprises (a) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and (b) seek to prevent or

mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.³²

The OHCHR Interpretive Guide³³ further clarifies the underlying categorization of the types of corporate involvement in human rights abuses as follows:

There are three basic ways in which an enterprise can be involved in an adverse impact on human rights:

- (a) It may **cause** the impact through its own activities;*
- (b) It may **contribute to** the impact through its own activities—either directly or through some outside entity (Government, business or other);*
- (c) It may neither cause nor contribute to the impact, but be involved because the impact is caused by an entity with which it has a business relationship and is **linked to** its own operations, products or services.*

This categorization is fully applicable to the financial sector.³⁴ Below, the different types of involvement are examined with a view to identifying their implications for investors and their possible consequences.

2.1.1. “Causing”

An investor can cause an adverse human rights impact when “its activities (its actions or omissions) *on their own* ‘remove or reduce’ a person’s (or group of persons’) ability to enjoy a human right”.³⁵ The event of an institutional investor directly causing human rights harm through its own activities is relatively unlikely, especially when, as is generally the case for SPU, it has a non-controlling minority shareholding relationship with the investee company.³⁶ It is true that the investor, through its voting rights, retains the ability to influence the company’s board or “hold it to account”.³⁷ However, SPU as a minority shareholder, even when entitled to a considerable percentage of voting rights,³⁸ does not typically have operational control over the activities of the investee company or its management.³⁹ As such, the relevant activity – the financial transaction – is unlikely to be sufficient *per se* to result in the adverse impact. It could, however, directly contribute to or be linked to violations committed by investees.

2.1.2. “Contributing to”

The UNGP embrace both a “legal” definition of complicity and a “non-legal” one.⁴⁰ The legal concept of complicity indicates a “direct contribution” to the human rights abuses and is exemplified in the UNGP by reference to the international criminal law standard for aiding and abetting, i.e., “knowingly providing practical assistance or encouragement that has a substantial effect on the commission” of the violation.⁴¹ Under the UNGP, however, the meaning and limits of responsibility for *contributing to* human rights impacts are not fully explained and appear broader than the strict international criminal law definition of complicity. As clarified by the OHCHR, this type of involvement in adverse human rights impacts “implies

“Contributing to”

“Contribute” should be broadly understood to be an action or omission that assists or helps bring about the underlying violation, or increases the likelihood of the event.

an element of causality” that might arise when the investor’s actions influenced the investee in such a way to make the adverse impact more likely.⁴² It appears, therefore, that “contribute” should be broadly understood to be an action or omission that assists or helps bring about the underlying violation, or increases the likelihood of the event.⁴³

As explained in Section 3 of this Report, there is little doubt that **companies** operating in the OPT are often knowingly and directly contributing to violations of human rights. The OHCHR identified a list of activities carried out by private actors in the OPT specifying that it is

“very 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”.⁴⁴ Those activities include, among others, the supply of equipment, materials and services facilitating the construction, expansion and maintenance of settlements and of the wall, the destruction of Palestinian housing and property, and the use of natural resources for business purposes, as well as practices restricting the freedom of movement of Palestinians.⁴⁵ In some instances, companies operating in the OPT appear as defendants in lawsuits filed by victims of abuses who aim to hold them liable for their contribution to violations in the OPT.⁴⁶

But could an **investor** like SPU be directly contributing, through its investments, to the human rights violations caused or contributed to by one of its investees in the OPT? Yes, this is possible, as the relevant financial transaction needs not be a *conditio sine qua non* for the commission of the violation.⁴⁷ The OHCHR, for instance, concludes that a bank's financing to a client for an infrastructure project entailing clear risks of forced displacements could constitute "contribution" to a human rights violation, if adequate steps to mitigate the impact are not taken.⁴⁸ It does not provide specific guidance as to the level of financial investment needed to reach such a threshold, limiting itself to noting that activities with only a "trivial or minor" effect on the client would probably not rise to the threshold of financial complicity.⁴⁹ In spite of the inevitable degree of indeterminacy of the definition of "contribution" under the UNGP, two important observations can be made:

(i) It is not possible to determine *a priori* whether a certain amount of financial investment will constitute contribution to a human rights violation, as this will need to be evaluated on a case-by-case basis in light of not only the size of the investment, but also of other relevant contextual factors, including, arguably, the severity and the systematic⁵⁰ nature of the violations.

(ii) In general terms, nothing in the UNGP indicates that the clear recommendation to *avoid contributing* to adverse human rights impacts can be interpreted as being limited to only *large-scale* investments in companies that violate human rights.⁵¹ On the contrary, reading the provision in its own context,⁵² a more consistent interpretation appears to be that, especially when serious and systematic human rights abuses are involved, the relatively limited size of a financial investment does not automatically shield the investor from responsibility under the UNGP. This holds true independently of any possible finding of legal liability by a court of law.

A Difficult Standard

It is not possible to determine a priori whether a certain amount of financial investment will constitute contribution to, or will simply be directly linked to, a human rights violation.

When a company contributes to a violation, it has a responsibility to take the necessary steps to cease or prevent its contribution, mitigate any remaining impact, and cooperate in the remediation of the harm.⁵³ This implies that, although the financial transactions of non-controlling minority shareholders may be 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 UNGP, to immediately divest from the abusing entity.⁵⁴

2.1.3. "Directly Linked to"

Besides the notion of "legal complicity" illustrated above, the UNGP embrace the concept of "non-legal" complicity, stemming from a type of involvement that does not constitute "direct contribution" to human rights abuses, but that nevertheless triggers responsibility.⁵⁵ Such responsibility arises when the adverse human rights impact is directly linked to the company's operations, products or services by its business relationship with another entity.⁵⁶

In the case of institutional investors, **minority shareholding** in corporate entities is by all means sufficient to give rise to a "business relationship" for the purpose of the UNGP and of the OECD Guidelines for Multinational Enterprises. Both the UN⁵⁷ and the OECD⁵⁸ have authoritatively confirmed this interpretation. "Directly linked to" involvement in human rights abuses will typically be the most relevant to the activities of institutional investors like SPU.⁵⁹ In this respect, it is important to stress that:

- the investor bears responsibility regardless of the *size* of its investment in a given company. In other words, a minority shareholder should not consider itself absolved of any responsibility under the UNGP due to the relatively limited proportion of shares it owns;⁶⁰
- relevant business relationships reach beyond the first tier,⁶¹ for instance when an investor holds shares in Israeli banking institutions that finance companies involved in the construction and expansion of illegal settlements in the OPT⁶² (See, Section 3.4, below);
- in a context like the OPT, where the exercise of leverage is unlikely to stop or mitigate the adverse human rights impacts caused or contributed to by certain investee companies, the investor must consider whether it can continue the relationship in light of the severity of the harm. As is discussed below (See Section 5), in the OPT divestment will often be the only option for the investor to discharge its responsibility under the UNGP.

"Directly linked to" adverse human rights impacts carry their own peculiar implications for companies and investors. Under the UNGP, besides the requirement to *avoid* causing or directly contributing to human rights violations through its own acts and omissions, a business or investor must *seek to prevent or*

mitigate adverse human rights impacts that are directly linked to it by its business relationships. This wording indicates that if and when an investor becomes aware of its direct link to actual or potential human rights abuses committed by one of its investees, it has a duty of conduct to try and prevent or mitigate those impacts.⁶³ A failure to take steps in that direction while retaining the business link to the abusing entity results in the investor's breach of its responsibility to respect human rights under the UNGP. This also implies that an investor holding shares in companies operating in a high-risk human rights environment is highly unlikely to fully discharge its duties under the UNGP without conducting a comprehensive process of HRDD for all its investee companies.

A Continuum

The United Nations' Office of the High Commissioner for Human Rights recognises that there is a continuum between 'directly linked to' and 'contributing to' a human rights impact. Businesses move along that continuum if they are aware of their link to a violation and fail to take action.

Importantly, the OHCHR recognises that "there is a continuum between 'contributing to' and having a 'direct link' to an adverse human rights impact": an investor that is aware of an ongoing human rights issue directly linked to its operations, products or services that "over time fails to take reasonable steps to seek to prevent or mitigate the impact (...) could eventually be seen to be facilitating the continuance of the situation and thus be in a situation of 'contributing'" to the violation.⁶⁴ In practice, in a context of widespread and systematic abuses such as the OPT (see Section 3 below), where human rights violations are structurally linked to the core activities of certain businesses, in many instances the exercise of HRDD by the investor cannot be reasonably expected to end or mitigate the violations. In such contexts, the line between *contribution* and *directly linked to* abuses becomes thinner, and divestment might in fact be the only possible step for an investor to discharge its responsibility to respect human rights, even when we accept its involvement is, under the UNGP, one of "non-legal complicity". **If SPU cannot use leverage to effect change in its investees' human rights impacts, any continued investment has the potential to move from a situation in which SPU is directly linked to violations to one in which SPU is contributing to those violations.** That will entail a new set of obligations, including remedies and reparations for the Palestinians harmed by SPU's failure to divest.

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2.2. Human Rights Due Diligence: The enhanced standard to be applied in the OPT

As rightly pointed out by a representative of the Norwegian government, "since the endorsement of the UN Guiding Principles by the Human Rights Council in 2011, corporate HRDD has become the norm of expected conduct."⁶⁵ HRDD is the process through which companies must identify, prevent, mitigate, and account for how they address their adverse human rights impacts.⁶⁶ It is by conducting due diligence that companies can avoid causing or contributing to adverse human rights impacts. HRDD is also the standard of conduct that companies must abide by in order to discharge their responsibility for human rights violations that they have not caused or contributed to, but are nevertheless linked to them by their business relationships. While all investors have a responsibility to carry out HRDD, the content of such processes will vary according to the severity of the human rights risks and based on factors like the investor's size, sector, operational context, ownership and structure.⁶⁷ The HRDD requirement entails a cyclical process allowing the investor to periodically re-assess the existence of complicity risks.⁶⁸

2.2.1. Prioritization

As recognised by the main soft law instruments on business and human rights, it can be challenging for an investor with a highly diversified portfolio to carry out due diligence efforts for a high number of investee companies. This requires prioritization of due diligence actions, meaning that investors should "screen their portfolios to identify general areas" where the risk of adverse impacts is most significant "and use this information as a basis for more detailed investigation" on some investee companies.⁶⁹ As discussed in Section 4, below, NBIM does this already to some extent, but we find that the process could be improved.

Severity of identified human rights risks should be the "predominant factor" orienting due diligence actions and their prioritization.⁷⁰ Other factors that will influence the type of actions to be taken will be the size of the investment and the leverage that the investor has over the investee. It must be stressed that the need to prioritise the most serious impacts does not allow the investor to circumscribe its due diligence efforts solely to those cases, overlooking other violations potentially linked to it by its shareholding relationships.

This is all the more true when an institutional investor holds shares in companies operating in the OPT, given the heightened likelihood of being associated with business-related violations of international law.

The UN Working Group on Business and Human Rights expressly points to enhanced due diligence requirements for companies operating in high-risk human rights contexts like the OPT.⁷¹ For this reason, all investments linked to business operations in the OPT should be subject to enhanced due diligence.⁷² The current set of Guidelines for Observation and Exclusion from the Fund “does not aim for an actual investigation of all companies in the portfolio with regard to every incident of human rights violation”, but targets only “the worst cases”.⁷³ While it is in line with the UNGP to apply different degrees of due diligence to different cases, no company operating in the OPT should remain under the radar.⁷⁴ In this respect, as discussed in Section 4 below, the focus of the Guidelines for Observation and Exclusion of companies from SPU on “serious violations” might be problematic, unless it is complemented by HRDD processes targeting *all* companies in the portfolio with ties to the OPT.

Enhanced Due Diligence

Due to the severity of the violations in the OPT, and the potential for any business in the OPT to be implicated in those violations, all investments linked to business operations in the OPT should be subject to enhanced due diligence.

2.2.2. Public perception matters: The need for external accountability

A company’s direct link to human rights abuses is sometimes defined in the UNGP and accompanying documents as “perceived” complicity,⁷⁵ meaning that “the courts of public opinion”⁷⁶ might perceive as complicity an investor’s association to human rights abuses to which it has not directly contributed. “Accountability” requires **communicating externally** “how adverse impacts are addressed”,⁷⁷ especially



Hebron. Francesca Fazio, 2018.
(See [photo credits](#).)

when an investor’s “operating contexts pose risks of severe human rights impacts”.⁷⁸ In the case of SPU and its ties to companies operating in the OPT, this would entail enhanced transparency on how and why certain companies are considered for observations or exclusion while others, sometimes operating in the same industry and context, are not. Part of the task would consist in providing a more precise definition of what is meant in the Council on Ethics’ Guidelines by “serious” violations of human rights. By means of example, it should be clarified on what basis the provision of landline services to Israeli settlements in Area C (see **Partner Communications** in the Annex), or holding land in the OPT for industrial purposes (see **Jerusalem Economy** in the Annex) are not perceived by SPU as breaches requiring at least observation. Accountability also compels disclosing which due diligence steps, if any, are taken towards specific investee companies that are not deemed by the Council on Ethics as being associated to the “worst cases” of human rights risks, and therefore not recommended for observation or exclusion, but that, nonetheless, pose legitimate concerns to the public opinion.⁷⁹ This is arguably a strict requirement when investing in companies that operate in occupied territories characterised by widespread human rights violations.

2.2.3. From Leverage to Divestment

HRDD requires an investor to make use of its **leverage** to prevent or mitigate adverse human rights impacts linked to it by a shareholding relationship.⁸⁰ This requires exercising its ability to influence the conduct of the investee company and may require taking steps to increase that leverage.⁸¹ In fact, lack of leverage over an investee does not relieve the investor from its responsibility to respect human rights.⁸² Large Sovereign Wealth Funds like SPU, even as minority shareholders, typically “have the power to influence the behaviour of investee companies”.⁸³ One way for a minority shareholder to increase its leverage on human rights matters could be, for instance, to collaborate with other investors to exert influence over the company.⁸⁴ Some of the strategies recommended by the OECD to investors as to how to exert leverage⁸⁵ entail activities that seem to be already part of NBIM’s “active ownership” practices.⁸⁶ These include, for instance, exercising voting rights to influence companies or hold them to account, attendance at general meetings and direct engagement with investees, with a “focus on the companies where the fund has its largest investments by market value, and on companies that operate in particularly high-risk sectors”.⁸⁷ It is not clear, however, whether and to what extent these actions are also undertaken

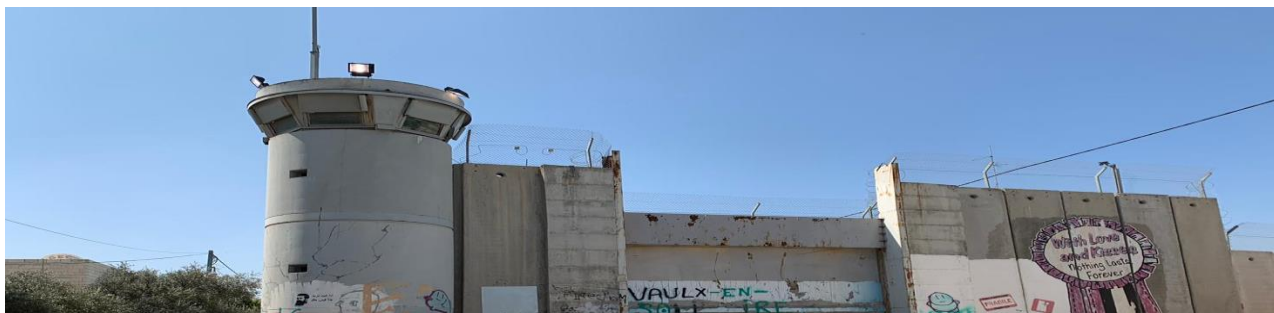
as part of a systematic HRDD process targeting all investee companies whose operations might raise (more or less severe) issues of complicity in human rights abuses (see Section 4 below).

It should be stressed that **divesting** from a company should normally be considered the last resort option,⁸⁸ in that a successful exercise of leverage, capable of effecting change in the conduct of an investee, could allow the investor to retain a business relationship that had raised complicity concerns, and generate a positive human rights impact.⁸⁹ Importantly, under the UNGP, **divestment might be the required solution not only in cases of direct contribution to the abuse, but also when the company or investor has a direct link to the violation through its business relationships.**⁹⁰ Before deciding to withdraw, the investor should consider the possible adverse human rights impacts of the decision.⁹¹ However, attempts to influence the conduct of an investee cannot be protracted indefinitely without seeing progress. The UNGP clarify that “the more severe the abuse, the more quickly the enterprise will need to see change” before it decides to end the relationship.⁹² In this respect, the ethics assessment process carried out through the Council on Ethics, which has so far focused on a limited number of investees and which might entail several years of observation, is not sufficient, per se, to discharge NBIM’s due diligence requirements, especially in regard to companies operating in high-risk human rights contexts. As long as it retains the investment relationship, NBIM “should be able to demonstrate its own ongoing efforts to mitigate the impact,” ensuring external accountability.⁹³

When Divesting Becomes Necessary

Divesting from a company or situation is normally an option of last resort. If the investor can use its leverage to effect change in the investee company’s conduct, divesting may not be necessary. Where that becomes impossible, however, divestment is no longer an option but a responsibility.

Investors should consider that the OPT represents a context in which involvement in international law violations is, as warned by the OHCHR, almost a structural condition for some businesses.⁹⁴ As such, divestment from some companies might be an inevitable decision to ensure compliance with international standards and avoid complicity. PGGM, for instance, has divested from a number of Israeli banks precisely because it recognised the virtual impossibility for those banks to end their involvement in the financing of illegal settlements.⁹⁵ Those banks, however, remain present in SPU’s portfolio.



The Wall. Author unnamed, 2017. (See [photo credits](#).)

3. The Human Rights Impact of Settlement Business Activities

There are now 230 settlements in the West Bank, with 400,000 residents, developed with Israeli government incentives or interventions.⁹⁶ These settlements are illegal under international law.⁹⁷ Both the UN Security Council and the International Court of Justice have confirmed this.⁹⁸ These settlements have also impacted negatively on the human rights of Palestinians in a myriad of ways. The conditions in the West Bank – and the impact of the settlements – are well-documented elsewhere,⁹⁹ but to understand the link between the businesses in which SPU invests and the human rights violations, it is necessary to start with understanding the impact of the settlements and businesses engaged in the settlements. By beginning

with the experiences of the Palestinians and working backwards to address questions of responsibility, each individual business's responsibility becomes clearer. This is also in line with the expectations of HRDD, which requires putting the rights-holders at the centre of the process and delineating responsibility based on the types of harms they experience, the severity of those harms, and the actions that cause, contribute, or are linked to any negative impacts on human rights.

In this Report, we follow the standards outlined in the UNGP, relying on the human rights identified in the Universal Declaration of Human Rights ("UDHR"), the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.¹⁰⁰ Because we do not address labour rights issues, we do not consider the ILO's core labour standards, which would normally be considered under the UNGP.¹⁰¹ This section cannot delineate all the impacts of each company and therefore focuses on a limited number of widespread and systematic violations of IHRL, IHL, and the law of occupation that are felt by Palestinians, individually and collectively, as a result of the settlements. It is SPU's responsibility to ensure complete HRDD for each business it invests in that operates in the OPT (See, Section 2.2.1).

When examining the responsibility of businesses in situations of occupation, it is necessary to consider not only the content of IHRL but also of IHL and the law of occupation.¹⁰² As the International Court of Justice has explained (in a case focused on the occupation of Palestine), IHRL applies at all times, including in periods of armed conflict or occupation.¹⁰³ But, where a more specialised regime of international law exists – such as IHL or the law of occupation – then the rules of those regimes can define the content and limitations of IHRL.¹⁰⁴ In the analysis below, we highlight how these interactions work in practice, building on extensive literature on the application of human rights in situations of occupation.¹⁰⁵

3.1. Individual Violations

Israeli settlements are only open to Jewish Israelis.¹⁰⁶ Palestinians are prohibited from living there.¹⁰⁷ This is a form of discrimination on the basis of race and ethnicity.¹⁰⁸ The settlements are sometimes planned by the Israeli government,¹⁰⁹ a clear breach of IHL, the law of occupation, and international criminal law.¹¹⁰ Other times, the settlements develop by individual Israelis deciding to move to an area, with the government providing protection to this unauthorised move.¹¹¹ According to the World Bank, 68% of Area C is dedicated to Israeli settlements, 21% is closed for military purposes, and 9% for nature reserves.¹¹² This leaves only 2% of the land in Area C available for Palestinian use, housing 180,000 to 300,000 Palestinians.

The land taken for settlements is Palestinian land, either personal property or state-owned property. Where private land has been taken, the Israeli Attorney General has stated that Israeli law allows for the legalization of Israeli construction on that land.¹¹³ The taking of Palestinian property for the purpose of civilian settlement is a violation of IHL, the law of occupation, and international criminal law.¹¹⁴ Taking private property in breach of the more specialised regimes of the law of occupation or international criminal law constitutes a breach of the human right to property as recognised in the UDHR.¹¹⁵

Palestinian Housing Crisis, 2016:

- 123 Housing Units destroyed in East Jerusalem
- 1,093 houses destroyed across West Bank
- 15,000 homes (with 100,000 Palestinian residents) under threat of demolition.

The government's protection of individual Israelis choosing to move to occupied territory without prior permission – and the government's failure to stop the move in the first place – stands in stark contrast to the experience of Palestinians who are, as a matter of international law, entitled to live in Area C. Palestinians are routinely denied planning permission and when they undertake necessary renovations without planning permission they risk eviction, and with the Israeli government routinely destroying Palestinian homes.¹¹⁶ In 2016, 123 housing units were destroyed in East Jerusalem alone;¹¹⁷ 1,093 were destroyed across the entirety of the West Bank.¹¹⁸ Another 15,000 homes – with 100,000 Palestinian residents – were "under threat of demolition," according to the UN Special Rapporteur on Situation of Human Rights in the Palestinian Territory ("UN Special Rapporteur").¹¹⁹ If these threats were carried out, it would displace one-third of the Palestinian residents of East Jerusalem.¹²⁰ The destruction of houses and the forced evictions of Palestinians because they have undertaken renovations necessary to secure the habitability of their homes breaches the right to housing;¹²¹ the discriminatory treatment of Israelis and Palestinians on the basis of nationality, ethnicity, and race breaches the right to non-discrimination.¹²²



Demolished home in Umm al-Kher. Photo by Fadi Arouri. (See [photo credits](#).)

The settlements are also given permits to expand their territory.¹²³ In 2017, the Government of Israel announced “roughly 6,000 new settlement units in the West Bank, including East Jerusalem,” with several of those units in new settlement blocs.¹²⁴ The treatment of the settlements stands in contrast to the planning permission routinely denied to Palestinians. According to the latest report by the UN Special Rapporteur “only 8% of all building permits being issued by the Jerusalem municipality are granted for Palestinian neighbourhoods in East Jerusalem, despite the fact that the population density in Palestinian neighbourhoods is twice that of Israeli neighbourhoods.”¹²⁵ The cramped conditions in the Palestinian neighbourhoods suggest the housing provision is inadequate, indicating a breach of the state’s obligations towards the right to housing.¹²⁶ Since this is done on a discriminatory basis, it is also a breach of the right to non-discrimination.¹²⁷ Once again, where construction occurs without prior permission, Israel often demolishes the homes of Palestinians but not of Israelis in the settlements.¹²⁸ Again, such measures breach the rights to housing and non-discrimination.¹²⁹

The limitation on planning permission is not restricted to housing; Palestinian communities are also restricted in building schools, which are demolished if they are built without necessary permission that, again, is virtually

impossible to get.¹³⁰ This renders education for these Palestinian communities unavailable and inaccessible, breaching the right to education.¹³¹ As it is done on a discriminatory basis, it also breaches the right to non-discrimination.¹³²

Palestinians are often subjected to temporary or permanent roadblocks or checkpoints, which alters their ability to travel to particular cities or restricts the manner in which they can travel.¹³³ According to the UN, “[p]articularly severe restrictions are imposed on the movement of Palestinians who live in close proximity to Israeli settlers.”¹³⁴ In Hebron alone, 6,000 Palestinians are subjected to “approximately 95 physical obstacles, including 19 permanently staffed checkpoints” that restrict the movements of cars and buses, and sometimes even pedestrian movements.¹³⁵ The roadblocks as well as checkpoints limit the ability of West Bank residents to access medical care, particularly medical care that is only available to them in East Jerusalem or elsewhere.¹³⁶ As the UN has explained, “[m]ost Palestinians from the West Bank or Gaza requiring health care in East Jerusalem, Israel or abroad must apply for an Israeli-issued permit. ... 15-30 per cent of the applications are delayed or never approved, and the application process is reportedly slow and complicated.”¹³⁷ Each of these acts constitutes a violation of the right to free movement because the regulation is carried out on a discriminatory basis;¹³⁸ where the impact is on the availability and accessibility of healthcare, the checkpoints also breach the right to health.¹³⁹

The restrictions on the freedom of movement are also known to impact on the right to education. The restrictions prevent the Palestinian Ministry of Education from delivering textbooks, supplies, and furniture to some schools.¹⁴⁰ Checkpoints and roadblocks are one of the reasons that many schoolchildren in remote areas ‘must walk 7-10 km to reach school.’¹⁴¹ In 2015, the UN surveyed 33 communities and found that “almost one in five students in the West Bank must pass a checkpoint to reach school.”¹⁴² At the checkpoints, students and teachers report being subjected to routine harassment, by Israeli soldiers.¹⁴³ From 1 November 2015 to 31 October 2015, “the United Nations Children’s Fund documented 247 cases of attacks on education, including physical assault, detention and checkpoint harassment and delays, affecting 32,055 children.”¹⁴⁴ While Israel is allowed to construct



Himza Checkpoint. Photo courtesy of Al-Haq. (See [photo credits](#).)

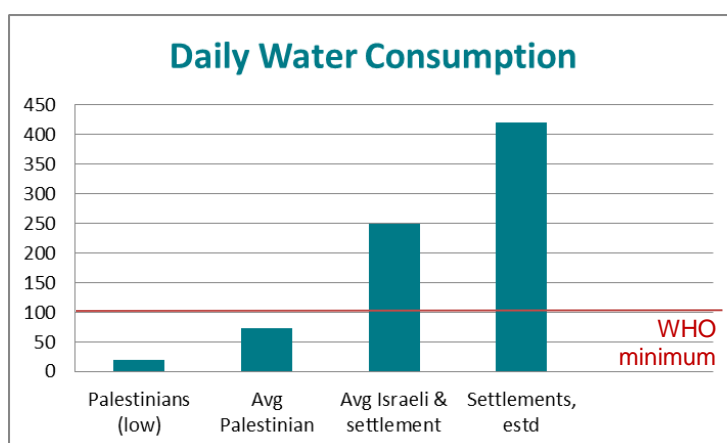
military checkpoints where *necessary* for security purposes,¹⁴⁵ the impact on the ability of Palestinian children to access education are severe and raise questions as to whether Israel is doing what it should to ensure accessible education on a non-discriminatory basis to Palestinians.¹⁴⁶

Once a settlement is established, security forces are known to use excessive force against Palestinians, ostensibly to protect the settlements.¹⁴⁷ Violence in the West Bank is pervasive, and at times it becomes particularly alarming. Between 9 and 16 December 2018 – 7 days – the UN reported that over 400 Palestinians were injured, 200 arrested, and 5 killed.¹⁴⁸ In comparison, 3 Israelis were killed and 13 injured.¹⁴⁹ The UN does not indicate that any Israelis were arrested for their participation in the violence.¹⁵⁰ While some of these deaths likely comply with international law, the disproportionate impact raises serious questions about the use of force. Reports of excessive use of force are also common at checkpoints, roadblocks, and in the carrying out of other police or military operations in the West Bank.¹⁵¹ These reports indicate that the use of force by Israeli forces often breaches the prohibitions on extrajudicial killings and/or torture, cruel inhuman or degrading treatment or punishment.¹⁵² The Government of Israel is under an obligation to ensure the effective investigation, and where appropriate prosecution and punishment, of those directly responsible or who aid and abet torture, extrajudicial killings, or other criminal violations of IHRL and IHL.¹⁵³ Unfortunately, investigations and prosecutions are rare.¹⁵⁴ In addition to a breach of the underlying violations, such failures constitute a breach of the right to an effective remedy.¹⁵⁵

Settlements, even unapproved outposts, enjoy access to water and sewage treatment, electricity, dedicated schools, and easy access to hospitals.¹⁵⁶ Palestinian communities, particularly Bedouins, are routinely denied these services.¹⁵⁷ Israel often says it is not capable of servicing these communities – despite the fact that the distance between the settlement and the community is sometimes simply a wide road – and that for these communities to have access to these provisions they must move to areas approved by Israel, often away from their lands.¹⁵⁸ Palestinian efforts to secure electricity, water, and sanitation services are often blocked, as Israel rarely gives planning permission for these efforts in the West Bank.¹⁵⁹ When Palestinians develop their own resources – for example, if a community uses solar panels to access electricity without permission from the Israeli government – then the Israeli government demolishes or confiscates the relevant infrastructure.¹⁶⁰ The failure to provide adequate and appropriate water and sewage systems, electricity, schools, and accessible hospitals constitutes violations of the rights to an adequate standard of living, education, health, and water and sanitation. Because it occurs on a discriminatory basis, the denial of access to these services violates the right to non-discrimination.¹⁶¹ The effective displacement of Palestinians from their land and housing, with their transfer to other areas of Palestine represents a violation of the rights to housing and non-discrimination.¹⁶² Because this occurs in a situation of occupation, it is also an international crime.¹⁶³

Water use in the West Bank is particularly problematic. Exact figures are difficult to determine, but in 2012 the UN estimated that collectively the settlements consume “approximately six times the [amount of] water used by Palestinians in the West Bank.”¹⁶⁴ While Palestinians are supposed to have access to 138.5 MCM of water each year, they have been unable to draw that, and Palestinians routinely have to pay for tankers to bring them water.¹⁶⁵ Since 1994, Palestinian “per capita water access has declined by more than 30 percent,” and Palestinians, on average, use only 60% of the minimum water consumption recommended by the World Health Organization.¹⁶⁶ The discriminatory provision of water constitutes not only violations of the rights to water and non-discrimination but also the rights to health and food.¹⁶⁷

Because of the essential quality of water, both the UN Human Rights Committee, the body responsible for overseeing compliance with the International Covenant on Civil and Political Rights,¹⁶⁸ and the Inter-American Court of Human Rights have recognised that violations of the right to water can also constitute violations of the right to life.¹⁶⁹ Yet, when Palestinians wish to build water lines or attach new branches to existing lines, they are often denied permits to do so.¹⁷⁰ There is no evidence of Israeli settlements being denied such permits.¹⁷¹ If the Palestinians attempt to secure water by building water lines, these are destroyed.¹⁷² Because this occurs on a discriminatory basis, these acts constitute violations of the right to water, health, food, and life.¹⁷³



Water restrictions have also limited the ability of Palestinians to irrigate farmland.¹⁷⁴ Providing water on a non-discriminatory basis and allowing for the irrigation of the arable land in Area C not currently being used by settlements “would increase (...) production by USD 1.068 billion.”¹⁷⁵ As such, the discriminatory provision of water also constitutes a violation of the right to work.¹⁷⁶

Finally, Palestinians have been subjected to violence by Israeli settlers.¹⁷⁷ There is evidence that the Israeli forces do not intervene to stop settler violence and do not arrest settlers who engage in this violence.¹⁷⁸ The failure of the Government of Israel to exercise due diligence and stop settler violence may constitute a violation of the right to freedom from torture or cruel, inhuman or degrading treatment or punishment. Normally violence by settlers would not give rise to violations of the rights to life or freedom from torture as IHRL generally requires the involvement of a state-actor. However, the failure of Israel to carry out appropriate investigations, and where appropriate prosecute and punish, settlers for their ill-treatment can transform a private act of violence into a breach of the prohibition of these rights.¹⁷⁹ Settler violence impacts on Palestinian access to a variety of other rights, including education and health.¹⁸⁰ According to the UN Office for the Coordination of Humanitarian Affairs (“OCHA”), access to education in 83 residential areas is affected by “settler violence.”¹⁸¹ The impact of settler violence on education and the discriminatory response by the Government of Israel in its refusal to stop such violence gives rise to violations of the rights to education and non-discrimination. Settler violence has also made it impossible for Palestinians to access some of their lands, which means they no longer farm or use the land, allowing the Israeli government to invoke land laws dating back to the Ottoman Empire to declare the land “state land.”¹⁸² This gives rise to immediate violations of the rights to property, adequate standard of living, work, and non-discrimination. The Government of Israel has also determined that it can use such land for settlements,¹⁸³ starting anew the cycle of human rights violations.

3.2. The Communal Harm Experienced by Palestinians

In addition to individual violations, there are two communal harms that need to be addressed: the *de facto* annexation of Palestinian territory; and the deprivation of economic power that would allow for the protection of human rights and the progressive realization of economic, social, and cultural rights.

3.2.1. Annexation

Annexation of occupied territory is strictly prohibited as a matter of international law.¹⁸⁴ The international community no longer accepts the transfer of property and sovereignty through force.¹⁸⁵ Annexation not only breaches the law of occupation but it deprives the individual members of the community of their collective right to self-determination, which is a separate human rights violation.¹⁸⁶ The UN Special Rapporteur’s most recent report has asserted that Israel is, *de facto*, annexing Palestinian territory through the expansion of settlements, the construction of the Wall, and the development of a rail line to serve the settlements in the West Bank.¹⁸⁷ The conclusion is supported by the International Court of Justice, which found that the construction of the Wall “create[s] a ‘*fait accompli*’ on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation.”¹⁸⁸ While *de facto* annexation is not technically a legal term found within IHL or the law of occupation, the concerns raised are pertinent to businesses operating in the West Bank who are expected to account for not only their known violations but also those that they are likely to cause or contribute to in the future.¹⁸⁹ Based on the UN Special Rapporteur’s findings, the very existence of the settlements themselves threaten human rights. Businesses should be aware that the construction of settlements, the Wall, and the rail line may harm the rights of Palestinians to self-determination.

3.2.2. The Deprivation of Economic Power

Finally, the realization of human rights requires economic provision. Whether it is the construction of appropriate prisons or the construction of adequate schools, the training of judges or the training of teachers, the realization of human rights requires money. According to the World Bank, the land in Area C is subject to “a multi-layered system of physical, institutional, and administrative impediment” that restricts Palestinian economic development within Area C.¹⁹⁰ If the restrictions were lifted or eased, the World Bank estimated that “activity and production in Area C is likely to amount to some USD 3.4 billion – or 35 percent of Palestinian GDP in 2011.”¹⁹¹ This figure, according to the World Bank, is “very probably an underestimate.”¹⁹² The economic deprivation is problematic generally, but it also translates into depleted tax revenue for the Palestinian Authority (“PA”), causing further negative impacts on human rights. The preferences given to Israeli settlement activities, and denied to Palestinians in the West Bank, *cause* this

deprivation of economic power. Those businesses that benefit from, and contribute to, the inequality between Israeli settlements and Palestinians in the West Bank are, at a minimum, *directly linked to the* negative human rights impacts that arise from the deprivation of Palestinian economic power.

3.3. International Crimes

In addition to the IHRL concerns, the occupation makes it necessary to highlight some of the violations of IHL, the law of occupation and international criminal law. First, extrajudicial killing of Palestinians by Israeli forces, and the use of force by the Israeli military, by Israeli police, or by settlers with the acquiescence of the Israeli forces, are war crimes prosecutable under the Rome Statute of the International Criminal Court (“Rome Statute”).¹⁹³ Physical forms of violence are not the only war crimes, however. The establishment of settlements is strictly prohibited as a matter of international law and is recognised as a war crime in the Rome Statute.¹⁹⁴ Israel has long defended the establishment of settlements on the grounds that it gives the State a military advantage.¹⁹⁵ The drafters of the relevant treaties were aware that the establishment of settlements could be militarily advantageous for the Occupying Power; but chose to prohibit the transfer of civilian populations without exception.¹⁹⁶ The principle of “military necessity” cannot be used to excuse this international criminal law violation.

The taking of private property is strictly prohibited under IHL and international criminal law, unless it is necessary for military purposes or for the effective administration of the occupation.¹⁹⁷ It cannot be done for the commercial, economic, religious, or personal benefit of the citizens of the Occupying Power.¹⁹⁸ If property is needed for military purposes, it must be returned to the rightful owners, along with compensation, at the end of the conflict or when those purposes are over.¹⁹⁹ The separate international crime of “pillage” arises when an Occupying Power takes and consumes the property of the occupied without consent and with the intent of “depriv[ing] the owner of the property and to appropriate it for private or personal use.”²⁰⁰ The Occupying Power is allowed to use public property in the occupied territories “without damaging or diminishing it, although the property might naturally deteriorate over time.”²⁰¹ There is no minimum threshold for the crime of pillage; one need not appropriate a majority or significant share of the resources to be guilty of this crime.²⁰² The transfer of natural resources from Palestinian control to a privately held company for the purpose of exploiting the resources for commercial gain, permanently depriving Palestinians of the use of those resources, likely constitutes the crime of pillage.



A settlement. Photo courtesy of Al-Haq. (See [photo credits](#).)

Finally, we recognise that some consider the situation in Israel to be a form of “apartheid”, a specific international crime. In light of the other international crimes and systemic discrimination, we do not find that the issue of apartheid would alter our conclusions or recommendations.

3.4. The Responsibility of Businesses SPU Invests in

With the myriad of human rights impacts caused by the settlements, it is difficult to imagine how any business could operate in a West Bank settlement while meeting the responsibility to respect human rights. At a minimum, businesses will use water and other services that are denied to Palestinians on a discriminatory basis, and that Palestinians cannot access because they are reserved for and being used by the settlements, including the businesses. Still, there are particular businesses that the SPU currently invests in which specifically contribute to some of the violations discussed above.

3.4.1. Businesses that Sell Security Equipment to Occupying Forces

Businesses that supply military or security technology to the Israeli military are contributing to, and may be criminally complicit in, extrajudicial killings and torture or cruel and inhuman treatment. While they are not *causing* the criminal conduct, they are knowingly supplying equipment that is being used to monitor Palestinians in a manner that facilitates the criminal conduct. Under international law, the knowledge that equipment will be used for criminal purposes is often sufficient for a finding of complicity.²⁰³ The fact that the equipment could also be used for non-criminal purposes is generally not an adequate defence.²⁰⁴ Given the routine reports of excessive use of force, equipment that supports these operations is contributing to the violations of human rights.

It appears that both Hewlett-Packard Enterprise Co (HPE), USA, and **Motorola Solutions**, USA, supply equipment that is routinely used by the Israeli military for the purpose of monitoring Palestinians. Again, this does not *cause* criminal breaches, but the use of the equipment in these circumstances does *contribute* to the breaches. In turn, by financially supporting such businesses through its shareholding relationship, SPU might be contributing to these breaches, and is, at the very least, directly linked to them.

3.4.2. Businesses Contributing to Home Demolitions

As noted above, the home demolitions are carried out against Palestinians on a discriminatory basis. This constitutes a breach of the rights to housing and non-discrimination. Several businesses provide equipment to the Israeli government that is used in home demolitions in the West Bank. Similar to those companies that sell security equipment to occupying forces, businesses that contribute equipment to home demolitions may not be *causing* the violation, but they are clearly *contributing* to it by providing equipment that they know will be used in this manner. While some companies can claim that they did not initially know their equipment would be used in this manner, the systematic nature of home demolitions in the West Bank suggests that businesses should have, at least, “constructive knowledge” of how their equipment will be used.²⁰⁵ This is enough for them to incur responsibility under the UNGP for contributing to breaches. Where this constructive knowledge becomes actual knowledge, their provision of equipment may constitute criminal complicity.

Council on Ethics: Caterpillar

The Council on Ethics decided that the “dual use” nature of Caterpillar’s equipment meant divesting from the company was unnecessary.

This is not in line with the UNGP. Dual-use equipment can be complicated, but where a company knows its equipment is being used for serious human rights violations, it has a responsibility to take measures to mitigate the harm.

It appears that SPU currently invests in **Caterpillar** (USA), which supplies equipment to the Israeli government that has been used in home demolition.²⁰⁶ It is clear that Caterpillar has actual knowledge of how its equipment is used as it was famously sued over the death of an American woman. Rachel Corrie was run over by a bulldozer in 2003 as she protested a home demolition in the Gaza Strip.²⁰⁷ Caterpillar appears to continue to sell bulldozing and other equipment to the Israeli government.²⁰⁸ The Council on Ethics’ 2006 decision not to exclude Caterpillar based on the fact that the equipment sold “also had legitimate uses for the buyer (i.e. the Israeli Army)”²⁰⁹ exculpates the company in a way that the UNGP do not allow. While “dual use” equipment can be complicated, when a business actively knows that the equipment it is supplying is being used to commit human

rights violations, the business cannot continue to supply that equipment with a simple hope that it will not be used again in this manner. Doing so would constitute “knowingly providing practical assistance” in the commission of the breaches, which, as explained in the UNGP and above, triggers the international criminal law standard for aiding and abetting.²¹⁰ Given the severity of the issue, Caterpillar is expected, under the UNGP, to take action to ensure that Israel does not use its equipment in continuing human rights violations.²¹¹ There is no public information to suggest that this has occurred; instead, Caterpillar appears to continue to sell equipment to the Israeli military despite knowing its use. By failing to exclude Caterpillar, the Council on Ethics applied (and continues to apply) a standard that is inconsistent with the UNGP.

3.4.3. The Responsibility of Quarrying Businesses

SPU’s portfolio includes **Heidelberg Cement**, which is currently engaged in quarrying in the OPT. Quarrying in occupied territory without the permission of the occupied government breaches the law of occupation as it constitutes the war crime of pillage.²¹² These companies are *causing* the international crime of pillage through their operations. While not all war crimes constitute breaches of IHRL, pillage is an international crime specifically because it constitutes a form of theft – a deprivation of resources from those

who rightfully own and control the property.²¹³ The quarries may *contribute to* violations of the right to property rights, since their operation on private property can be “normalised” by the Israeli legal system.²¹⁴ The placement and operations of the quarries in the OPT also *contribute to* widespread and systematic breaches of the right to free movement, and are *directly linked to* violations of the rights to housing, property and water on a non-discriminatory basis. The location of quarries has led to settlement build-up around their operations, leading to closed roads. In the case of **Heidelberg Cement’s** Nahal Raba quarry, the border wall – which does not align with the border and therefore prevents Palestinians from free movement within the occupied territories – is being constructed in a way that ensures discriminatory access to the quarry areas. By generally encouraging the build-up of settlements, quarries are also *directly linked to* violations of the rights to housing and water.

By continuing to invest in Heidelberg Cement without taking targeted steps to mitigate the impacts, SPU is directly linked to, and may be contributing to, the war crime of pillage and the ongoing and serious violations of Palestinians’ human rights. Given its continuing support of Heidelberg Cement, despite the long-term nature of these violations, SPU’s involvement may cross the threshold from *directly linked to* into *contributing to* the violation.

3.4.4. Businesses Engaged in Financing and Constructing Settlements

The construction of the settlements themselves involve the taking of property for purposes that are not militarily necessary, in breach of IHL, the law of occupation, and, as a result, the IHRL right to property. The construction of the settlements also causes or contributes to a myriad of other violations, including the rights to water, health, education, and free movement on a non-discriminatory basis. The SPU appears to invest in at least five Israeli banks that fund the construction of settlements: **Bank Hapoalim**, **Bank Leumi**, **First International Bank of Israel**, **Israel Discount Bank**, and **Mizrahi Tefahot Bank**. SPU also appears to invest in **Cemex**, a Mexican company, and **Heidelberg Cement** from Germany. In addition to Heidelberg Cement’s quarrying operations, these companies supply materials used for settlement construction.

At a minimum, businesses that knowingly fund the construction of settlements, construct the settlements themselves, or provide equipment for the construction of the settlements *contribute to* the human rights impacts caused by that construction. In certain circumstances, the financing or direct construction of the settlements can be understood as *causing* the violations because these businesses’ conduct is essential to the construction, and therefore essential to the resulting violations.

For the banks, their participation appears unavoidable. The Dutch pension fund service provider PGGM found that “[g]iven the day-to-day reality and domestic legal framework they operate in, the banks have limited to no possibilities to end their involvement in the financing of settlements in the occupied Palestinian territories.”²¹⁵ As such, PGGM excluded five Israeli banks from investment – the same five banks SPU appears to have invested in.²¹⁶ The banks may rely on the Israeli legal framework as a defence, but this cannot be used to excuse SPU’s responsibility for financially investing in these banks and therefore contributing to or, at the very least, being directly linked to the violations caused by the settlement development.



Quarry in Hebron. Najeh Hashlamoun / Apaimages (See [photo credits.](#))

Cemex relied on the permission given to it by Israel as evidence that its operations were complying with international and domestic law.²¹⁷ This is an insufficient explanation. Companies cannot rely on the statement of the Israeli government or its judiciary to determine, without further investigation, that activities or operations in or supporting West Bank settlements comply with IHRL, IHL, and the law of occupation. In fact, it is common for states engaged in systematic IHRL violations to excuse or justify those violations. That is why independent HRDD by businesses is necessary generally, and enhanced HRDD is crucial for businesses operating in conflict-affected areas.

3.4.5. The Responsibility of Businesses Engaged in Wall and Rail Construction

The construction of the Palestinian border wall has been acknowledged by the International Court of Justice to breach international law.²¹⁸ Both activities take public and private Palestinian property for purposes that are not militarily necessary. As such, the constructions *cause* breaches of the human rights to property and *contribute* (minimally) to a breach of the right to self-determination. It appears that SPU invests in two companies that undertake such activity. **Alstom** is helping to construct the rail while **Cemex** has provided cement for the construction of the wall. SPU is, therefore, undoubtedly directly linked to these violations.



Photo by Fadi Aroui. (See [photo credits](#).)

4. Understanding SPU's Responsibility

The situation in the OPT is such that any business operating in, in furtherance of, as a consequence of, or in association with a settlement is *causing*, *contributing*, or *directly linked to* serious violations of human rights, including the rights to life, freedom from torture and cruel treatment, water, health, and non-discrimination. There is simply no way for a business to participate in the settlements and still respect human rights.

4.1. Distinguishing Types of Involvement

In many cases, SPU's responsibility to respect human rights will only be discharged by divesting from companies that cause or contribute to the Israeli settlements in the West Bank and to the human rights violations that stem from the Government of Israel's approach to the settlements.

As explained in 3.4.3, above, quarrying businesses are committing the war crime of pillage. They therefore *cause* the human rights impacts associated with that crime because their action is directly responsible for the harm to the Palestinians. By investing in Heidelberg Cement (or any other non-Palestinian quarry business in the West Bank), SPU is providing direct financial support to these violations. This is true no matter how small the investment. In these circumstances, in addition to being *directly linked to* the violations, SPU is likely also *contributing to* them. This is because, as explained in Section 2.1.3, when an investor continues to be linked to abuses committed by one of its investees and fails to take the necessary steps to mitigate the negative impacts within a reasonable timeframe, it can eventually find itself in a situation of contributing to the underlying impacts.

Businesses that sell security equipment, that provide financing, goods, materials, or services for the construction of the wall, the settlements, and Palestinian home demolitions each *contribute* to the violations caused by these activities. These businesses do not directly undertake the violations, but they do play a role in their realisation. While the Government of Israel may still conclude the violations without the input of these specific companies, their goods and services remain a necessary part of the violation.

Businesses are *directly linked* to a violation when there is a clear connection between their operations, products, or services and the violation. This would likely be the standard for some of the many manufacturing companies located in the settlements. These companies do not necessarily take active steps or provide a particular form of support to a violation but their operations benefit from the violations and are used by Israel as a form of oppression that gives rise to all the other violations Palestinians experience. Where SPU is providing support to these companies, it is also *directly linked* to the violations because SPU's activities put it in close proximity to the violations, creating a connection between SPU's investment and the harm experienced by the Palestinians.

Investing appropriately will often be impossible

There is simply no way for a business to participate in the settlements and still respect human rights. As such, SPU's responsibility to respect human rights can only be fulfilled by exerting leverage and seeing quick change in the investee's conduct, or by divesting.

SPU needs to divest from all companies that are *causing* or *contributing* to violations, as well as from those that are *directly linked* to violations when SPU's exercise of HRDD proves to be ineffective. In many cases, due to the large-scale and irremediable character of the human rights impacts occurring in the OPT, divestment needs to happen urgently. Given the duration of the occupation, and the documented problems with the settlements, the time to move from mitigation to divestment and remediation has come. The questions then are: (1) why hasn't SPU done this yet and (2) what does it need to do (and what should the Norwegian government do) so as to ensure SPU and NBIM meet their responsibilities in the future?

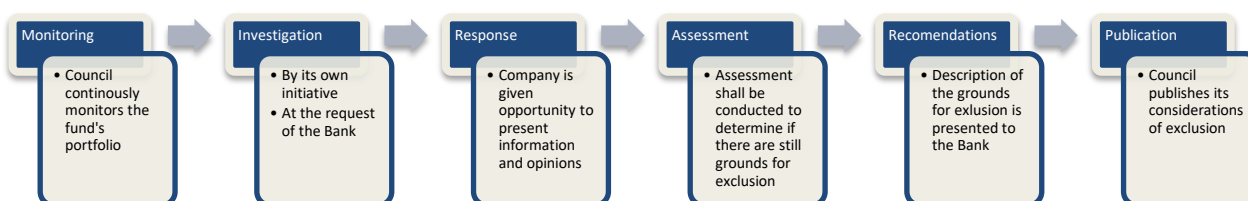
4.2. The Ethical Processes for NBIM and SPU

According to the Guidelines for Observation and Exclusion from the Government Pension Fund - Global, "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; b) serious violations of the rights of individuals in situations of war or conflict; c) severe environmental damage [...] and f) other particularly serious violations of fundamental ethical norms."²¹⁹

For such purposes, the Council on Ethics – composed of five members appointed by the Ministry of Finance and with expertise to perform its functions – is entrusted to continuously monitor and assess the Fund's portfolio and to make recommendations to NBIM in cases where it deems that observation or exclusion is required. The Council has recognised the value of the UNGP, acknowledging that companies "should implement HRDD processes to gain an understanding of what rights they affect through their activities, and how these are affected. Companies are also required to take steps to counteract and prevent any negative consequences, and to monitor the effects of these measures."²²⁰

4.2.1. Observations and Exclusions

The process for recommendations by the Council on Ethics for observations and exclusions is as follows:



The Council on Ethics has indicated that it bases its assessment and recommendations of "what constitutes a violation of the human rights criterion on internationally recognised conventions and

authoritative interpretations thereof.”²²¹ It has also stated that it often uses sector studies to identify and investigate companies deemed to have a high risk of violating ethical norms. Through news reports and other ad-hoc reporting, the Council also receives information about individual companies that may warrant further investigation.²²² The Council has on several occasions assessed companies accused of contributing to human rights violations, for example, in the areas of natural resource management, agriculture, food production and textiles manufacture.²²³ It has recognised that its work in the field of human rights is “challenging in terms of both selecting companies for investigation and assessing the extent of companies’ responsibility for their supply chains.”²²⁴

After NBIM has received the recommendations of the Council on Ethics, it can make decisions on observations or exclusions. For such purposes, NBIM may consider different factors, such as: a) probability of future norm violations; b) severity and extent of the violations; c) connection between the norm violated and the company in which SPU invested; and d) whether the company is doing what can reasonably be expected to reduce risk of future norm violations within a reasonable time frame. Furthermore, before making a decision on exclusion, NBIM shall consider whether other measures, such as the exercise of ownership rights, may be more suited to reduce the risk of continued norm violations.

4.2.2. Divestments

NBIM has three broad bases for excluding companies: product-based exclusion; conduct-based exclusion; and risk-based divestments. Risk-based divestments are part of NBIM’s risk management strategy, which is a process primarily concerned with risks *to the company*. This differs conceptually from the notions of HRDD or “human rights risk” embraced by the UNGP, which are centred on protecting the rights of stakeholders, rather than on the risks for the company’s shareholders.²²⁵ In spite of this, the “sustainability” concerns injected into this risk-management process can also serve as an entry point for divestments based on human rights concerns.

With product-based exclusions, NBIM singles out “companies which themselves, or through entities they control, manufacture weapons that violate fundamental humanitarian principles through their normal use, or sell weapons or military material to certain countries.”²²⁶ It also excludes companies that derive a certain level of their income from coal and coal-based production as well as tobacco products.²²⁷ In 2018, NBIM excluded 6 companies due to product-based concerns. Four companies produce nuclear weapons and two are involved in coal or coal-based production.²²⁸

For the conduct-based exclusions, NBIM focuses on companies whose actions are “considered to constitute a particularly serious violation of ethical norms.”²²⁹ To determine whether divestment and exclusion is necessary, NBIM considers “the probability of future norm violations, the severity and extent of the violations, and the connection between the violation and the company the fund is invested in.”²³⁰ The Executive Board also considers whether the company is changing its policies and practices so as to prevent a reoccurrence of the norm violation.²³¹ This led to 7 companies being excluded in 2018.²³²

4.3. Critical aspects

It is natural to ask why SPU has not put under observation or excluded companies whose activities clearly pose human rights concerns, and that have already been excluded from several other European funds – including KLP (Norway), Storebrand (Norway), Sampensjon (Denmark), FDC (Luxembourg), and PGGM (Netherlands), among others - specifically because of activities in the OPT.²³³ Part of the answer lies in how SPU’s processes are structured.

Although SPU’s commitment to act as a leading responsible investor is to be praised, some critical aspects in its policies and in the ethics assessment process could explain why problematic ties to companies in the OPT have not been accounted for, so far. The Council on Ethics’ narrow focus on **serious and systematic** abuses might lead to arbitrary and contradictory decisions, if not backed up by clear and consistently applied definitions. As acknowledged by the Council itself, “[a]ssessing the threshold for what constitutes serious and systematic human rights violations ... represents a major challenge”.²³⁴ The Council has concluded that “a small number of human rights violations can be sufficient to exclude a company if those violations are extremely serious, while violations do not individually need to be that serious if they occur systematically”.²³⁵ As shown in this Report, some of the companies currently present in SPU’s portfolio are most likely contributing to violations that would squarely fall within this paradigm. Moreover, some of them are engaged in activities that SPU has, on other occasions, considered of sufficient concern to warrant

exclusion from its portfolio (see, **Shikun & Binui Ltd.**, **Africa Israel Investments** and **Danya Cebus**, excluded for their involvement in construction of illegal settlements,²³⁶ or **Elbit Systems Ltd.**, excluded for supplying surveillance systems to the separation Wall²³⁷). Although the Council has claimed that “previous exclusions mean that the Council more easily picks up on new, similar cases”,²³⁸ some problematic companies remain in the portfolio with insufficient evidence of HRDD being exercised by NBIM.

It is worrying that companies present in SPU’s portfolio with links to violations in the OPT are not mentioned in NBIM’s latest reports, including its Responsible Investment Reports, among the ones that have been singled out for “**active ownership**” engagement and **company dialogue**.²³⁹ In fact, even assuming that the Council on Ethics did not consider those companies’ activities to be of sufficient concern to flag them for observation and exclusion, HRDD steps need to be taken for *all companies* within the portfolio that have ties to high-risk or conflict-affected areas, such as the OPT. Moreover, as this Report has detailed, those activities *do* raise issues under international law. As such, NBIM should be communicating externally the ongoing and targeted efforts to exert leverage, alone or collaboratively with others, in order to pressure investee companies to change their conduct. Lastly, if NBIM still deems that some of the investee companies operating in the OPT do not raise complicity issues, they should communicate externally the reasons for that conclusion and be accountable to the public for that assessment.

While product- and conduct-based exclusions are important, and a strong start to addressing the UNGP, they are not the only relevant considerations. The UNGP recognise that there is a heightened risk of businesses causing or contributing to human rights in conflict-affected areas.²⁴⁰ As such, businesses should be engaged in enhanced HRDD in these areas. NBIM should undertake context-based enhanced HRDD for investees operating in the OPT and other situations of occupation.

Finally, it is interesting to note that some of the companies operating in the OPT (see Section 3 above) could arguably be considered for divestment also on grounds of “governance and sustainability risks”, which is an additional basis for withdrawal detailed in NBIM’s annual Responsible Investment Reports.²⁴¹ Risk-based divestment, as explained above, is primarily concerned with risks *to the investor* (and not to human rights *per se*), and can be triggered when NBIM sees “elevated long-term risks”.²⁴² This might happen when a company’s conduct or operations have “externalities for society” and undermine “sustainable economic development in the longer term,” for instance, based on their climate change effects or involvement in corruption.²⁴³ It could be argued that companies structurally linked to or contributing to large-scale human rights violations in the OPT also fall within this category of non-sustainable businesses and could be singled out for divestment even in the framework of the company risk-management process. This assessment would not depend on recommendations by the Council on Ethics.



Photo by Iyad Tawil, Jerusalem. (See [photo credits](#).)

5. Moving Forward Responsibly

SPU is a leading global player committed to responsible investment that has the capacity to act as a standard-setting investor. By focusing on SPU's ties to one of the most problematic human rights contexts, the OPT, this Report has highlighted areas of concern with SPU's responsible investment and ethics assessment policies. In particular, it has been shown how some companies linked to international law violations in the OPT remain in SPU's portfolio seemingly without having been addressees of adequate HRDD actions. The perceived inconsistencies in SPU's conduct in this respect might derive from two main factors: (i) an incomplete understanding of the nature and implications of the "Responsibility to Respect" as articulated by international instruments such as the UNGP and the OECD Guidelines for Multinational Enterprises, and (ii) gaps in the internal mechanisms governing ethics assessment of investees and HRDD.

Recognising SPU's commitment to responsible investment and human rights, and being convinced that SPU should strengthen its capacity to lead by example at the global level, this section presents a set of recommendations aimed at bridging the chasm between SPU's policies and practices and the relevant international standards. While some of the recommendations are specific to the high-risk human rights context represented by the OPT, some of the reforms proposed can reflect positively on the broader spectrum of SPU's investments. Additionally, while some recommendations are specific to SPU, many are appropriate for all institutional investors with investments in the OPT.

SPU should conduct HRDD for all companies in its portfolio that operate in the OPT, and communicate actions taken.

- While prioritizing the most severe human rights risks for due diligence is in line with the UNGP, no investee company with ties to the OPT should remain under the radar. As all activities carried out in occupied territories raise, *per se*, concerns over complicity and contribution to human rights abuses, **HRDD should address, to varying degrees, all investee companies operating in those contexts, exercising context-based enhanced due diligence.** Under the UNGP, the Ministry of Finance is expected to ensure companies are engaged in such enhanced due diligence. NBIM should communicate externally the actions taken, in order to ensure accountability.
- SPU must be aware that exercising **leverage** over investees to try and mitigate human rights impacts is a precise requirement under the UNGP. Additionally, SPU should take steps to increase its leverage, for instance, through collaboration with other shareholders (a good practice that SPU has sometimes adopted). A failure to take steps in that direction while retaining the business link to the abusing entity results in the investor's breach of its responsibility to respect under the UNGP.
- The exercise of leverage over an investee causing or contributing to human rights violations has a **temporal limit** that must be assessed on a case-by-case basis. 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, neither SPU nor the investee company will be able to exercise leverage in a manner that affects change. For example, it appears that Israeli banks cannot avoid financing settlement construction. In order to avoid being complicit in or contributing to human rights abuses caused by settlement construction, SPU must divest quickly. It cannot adopt a "wait and see" approach because there is nothing to be seen by waiting. The exercise itself would be futile and simply prolong the contribution.
- Similarly, SPU needs to immediately divest from companies involved in war crimes, breaches of fundamental norms of IHL and the law of occupation, and serious or repeated violations of IHRL. The conditions in the West Bank are such that companies involved in pillage and in the construction or financing of the settlements, the rail lines, or the "border wall" cannot operate in the West Bank without *causing or contributing to*, and often being legally complicit in, international crimes and serious

violations of IHRL and IHL. The same is true for those companies that provide goods and materials used by the Israeli occupying forces in the demolition of Palestinian homes, communities, or water sources, or by Israeli police and military forces to monitor or detain Palestinians on a discriminatory basis. The severity of these impacts requires immediate divestment.

- The UNGP explain that when divesting, businesses should take care to ensure their conduct does not exacerbate the human rights concerns. In a recent report, Amnesty International noted that businesses often rely on this exception to explain their presence in the West Bank, arguing that they provide jobs to Palestinians.²⁴⁴ Amnesty International noted that the provision of jobs to Palestinians cannot be used to “offset” the variety of severe impacts Palestinians experience as a result of the settlements. We agree with this conclusion. While companies operating in the West Bank may need to consider ways to mitigate the harm experienced by Palestinian employees – for example, working to secure documents and permission for them to work within Israel proper, or paying severance pay – SPU’s divestment is unlikely to require any measures to limit the impact on Palestinians. Instead, SPU can and should divest immediately.

SPU Cannot “Wait and See”

The Israeli legal framework means that Israeli banks cannot avoid financing settlement construction. Quarries operating in the OPT are implicated in war crimes. Given the severity and systematic nature of these violations, SPU cannot “wait and see” with these investments because there is nothing to be seen by waiting.

The Council on Ethics’ Guidelines for observation and exclusion of companies from SPU should be revised

- The policy on observation and exclusion presently rests on a definition of “serious” (or “serious and systematic”) human rights violations prone to arbitrary interpretations. The definition of “severity” should reflect that given by the UNGP, as the “scale, scope and irremediable character” of the human rights impact.²⁴⁵
- Severity should be only one among several factors influencing the chosen pattern of HRDD.²⁴⁶ The UNGP define the flexible and adaptable notion of HRDD based on the consideration of multiple factors: the severity of the human rights risk, the investor’s ability to mitigate such risks through leverage, how crucial the business relationship is to the investor, as well as the possible adverse human rights impacts of divestment.
- The choice to divest must be taken consistently with international standards. In particular, divestment as a potentially necessary solution cannot be arbitrarily circumscribed to clear-cut cases of contribution amounting to “legal” complicity in human rights violations. In line with the UNGP, divestment must be considered as an option also when human rights violations to which SPU has not directly contributed are linked to it by its investment relationships. In these cases, divestment will be the required step when efforts at mitigation of the human rights impacts have failed.
- The criteria for observation and exclusion could benefit from specifically mentioning that companies *will* be excluded if they are involved in violations of IHL, the law of occupation, and serious IHRL violations. This would increase the transparency and consistency of SPU’s approach to “conduct-based exclusions.”

The work of the Council on Ethics must be more clearly and systematically integrated with NBIM’s HRDD processes

- All investee companies operating in the OPT and similarly problematic contexts must be the addressees of HRDD steps. NBIM, as a business entity, has a distinct responsibility, under international standards, to carry out HRDD to discharge its responsibility to respect human rights. Such responsibility cannot be fully discharged by only delegating to the Ethics Council 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 companies operating in high-risk

contexts are screened. After a first screening, some must be flagged out for “company dialogue”, “active ownership”, or other types of engagement as might be necessary to address and mitigate complicity concerns. A more robust process of observation, potentially leading to exclusion, can be maintained for investees that present irreducible human rights concerns or have not adequately responded to HRDD action by the investor.

SPU needs to adopt remedial efforts

- Businesses that have *caused or contributed to* breaches of human rights have a responsibility to pay reparations to the victims.²⁴⁷ When considering adequate remedial processes and substantive reparations, SPU should consult with Palestinian NGOs and the local population. The nature of the occupation means that some remedial processes or forms of reparations normally recommended will be inappropriate for those who have been harmed by SPU’s practices. Consideration of alternatives is needed and, as with all reparations processes, should be guided by the needs of those harmed.

The Government of Norway needs to Adopt Clearer Due Diligence Requirements

- We have thus far focused on the responsibility of SPU and the businesses it invests in. We would be remiss, however, if we did not mention that the primary responsibility here rests with the State of Norway. The State must protect human rights. In the context of business and human rights, as the primary UN treaty bodies have recognised, that duty does not end with Norway’s borders.²⁴⁸ The State should adopt regulations to ensure businesses, including SPU, undertake HRDD throughout their supply chains and across their business relationships, and enhanced HRDD in conflict-affected areas.²⁴⁹ The connection between the state and SPU heightens the government’s responsibility in this area.²⁵⁰ As such, the Government must, expeditiously, adopt regulations 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.

Notes

With appreciation to Professor Noam Lubell, Dr Daragh Murray, Dr Nadia Bernaz, and Mr Andrew Preston for comments on an earlier draft. Any errors are ours alone.

¹ UN Guiding Principles on Business and Human Rights, U.N. Doc. A/HRC/17/31 (2011) (“UNGP”), GP 11, et seq. https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (last accessed 2 April 2019).

² OECD, ‘Guidelines for Multinational Enterprises’, 2011. <http://www.oecd.org/corporate/mne/48004323.pdf> (last accessed 2 April 2019).

³ NBIM, ‘About the Fund’. <https://www.nbim.no/en/the-fund/about-the-fund/> (last accessed 2 April 2019).

⁴ NBIM, ‘About the Fund’. <https://www.nbim.no/en/the-fund/about-the-fund/> (last accessed 2 April 2019).

⁵ ‘Guidelines for observation and exclusion from the fund’, (English translation) (updated 9 February 2016), Section 3(a)-(b). <https://www.nbim.no/en/organisation/governance-model/guidelines-for-observation-and-exclusion-from-the-fund/> (last accessed 2 April 2019).

⁶ Ibid, Section 4-5.

⁷ UNGP, GP 15.

⁸ UNGP, Preamble.

⁹ See, generally, D. Murray, *Practitioners Guide to Human Rights Law in Armed Conflict* (OUP 2016), 10.01-10.03, 10.14-10.82; O. Ben-Naftali, ‘Geneva Law,’ in O. Ben-Naftali, M. Sfar and H. Viterbo, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory* (CUP 2018), 141-161.

¹⁰ International Court of Justice, *Legal Consequence of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p.136, para 78. Throughout this Report, the “West Bank” should be read to include East Jerusalem.

¹¹ Hague Regulations concerning the Laws and Customs of War on Land (Annex to Convention (IV) respecting the Laws and Customs of War on Land) (adopted 18 October 1907, entered into force 26 January 1910) 187 CTS 227 (“Hague Regulations 1907”), Art 42(1).

¹² The Hague Regulations’ definition is now considered “customary international law”, meaning law that is binding because states have consistently acted in accordance with it out of a belief that it is binding. See, *Advisory Opinion on the Wall* 2004 n 10, para 78. As Norway has not recognised Palestine’s statehood, we use the language of Occupied Palestinian Territories out of deference but also note that Palestine has now been recognised as a state by the UN General Assembly and is a party to the Rome Statute of the International Criminal Court.

¹³ Murray 2016 n 9, 10.03. See also, E. Benvenisti, ‘The Security Council and the Law on Occupation: Resolution 143 on Iraq in Historical Perspective’ (2003) 1 *Israeli Defence Forces Law Review* 19, p. 20; M. Sassoli, ‘Legislation and Maintenance of Public Order and Civil Life by Occupying Powers’ (2005) 16(4) *European Journal of International Law* 661, 661; M. Sassoli & A. A. Bouvier, *How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law*, Volume 1, International Committee of the Red Cross (2nd ed., 2006), p. 186; C. McCarthy, ‘The Paradox of the International Law of Military Occupation: Sovereignty and the Reformation of Iraq’ (2005) 10 *Journal of Conflict & Security Law* 1, 43.

¹⁴ See, E. Benvenisti, *The International Law of Occupation* (2nd ed., OUP 2012), pp.1, 93; Y. Dinstein, *The International Law of Belligerent Occupation* (CUP 2009), p. 100; M. Shaw, *International Law* (8th ed., CUP 2017), p. 390; European Parliament – Directorate-General for external policies, ‘Occupation/Annexation of a territory: Respect for international humanitarian law and human rights and consistent EU policy’, 2015, pp. 15-16. [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/534995/EXPO_STU\(2015\)534995_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/534995/EXPO_STU(2015)534995_EN.pdf) (last accessed 2 April 2019).

¹⁵ European Parliament – Directorate-General for external policies 2015 n 14, pp. 15-16.

¹⁶ For more on the question of effective control, see, Murray 2016 n 9, 3.39-3.58.

¹⁷ Ben-Naftali, Sfar, Viterbo 2018 n 9, pp. 2-3.

¹⁸ We have intentionally not used material from the Boycott, Divestment and Sanctions (BDS) movement, which is a political advocacy organization and not a documentation or legal NGO. The authors are not related to the BDS movement, although Dr Van Ho has addressed publicly issues of the legality of BDS under US and international law.

¹⁹ ‘UN again delays “blacklist” of companies doing business with settlements’, *The Times of Israel*, 5 March 2019, <https://www.timesofisrael.com/un-again-delays-blacklist-of-companies-doing-business-with-settlements/> (last accessed 2 April 2019).

²⁰ Even before the adoption of the UNGP in 2011, the Norwegian government, through a series of CSR White Papers, had clearly spelled out the expectation that companies respect human rights in all their activities (National Action Plans on Business and Human Rights, ‘Norway’. <https://globalnaps.org/country/norway/> (last accessed 2 April 2019).

²¹ State Secretary Marianne Hagen, Speech: ‘Business and human rights’, 18 October 2018. https://www.regjeringen.no/en/aktuelt/business_hr/id2616229/ (last accessed 2 April 2019).

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- ²² B. Demeyere, 'Sovereign Wealth Funds and (un)ethical investment: Using due diligence as a yardstick to avoid contributing to human rights violations committed by companies in the investment portfolio', Leuven Centre for Global Governance Studies, Working Paper No. 51 (2010), p. 15. https://ghum.kuleuven.be/ggs/publications/working_papers/2010/51Demeyere (last accessed 2 April 2019); B.J. Richardson, 'International Environmental Law and Sovereign Wealth Funds' in S. Alam et al., *International environmental law and the global South* (CUP 2015), 356-379, p. 370.
- ²³ See, e.g., UNGP, GP 4, Commentary.
- ²⁴ See, e.g., Committee on Economic, Social and Cultural Rights ("CESCR"), General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, UN Doc. E/C.12/GC/24 (2017) ("General Comment No. 24"); Human Rights Committee, Concluding Observations on the Sixth Periodic Report of Canada, UN Doc. CCPR/C/CAN/CO/6 (2015) at para 6; UNGP, GP 2 and Commentary.
- ²⁵ UNGP, Sec. I.
- ²⁶ F. Megret, "Nature of Obligations," in D. Moeckli, S. Shah, S. Sivakumaran, *International Human Rights Law*, 3rd ed. (OUP 2018), 86-109.
- ²⁷ Under the Oslo Accords, the West Bank is divided into Areas A, B, and C. Area A is (supposed to be) exclusively controlled by the Palestinian Authority; Area C is exclusively controlled by Israel; and Area B is subject to Palestinian civil law and Israeli security law.
- ²⁸ UNGP, General Principles.
- ²⁹ UNGP, GP 11.
- ³⁰ *Ibid.*, Commentary.
- ³¹ For a comprehensive analysis, see generally, T.L. Van Ho and M.K. Alshaleel, 'The Mutual Fund Industry and the Protection of Human Rights' (2018) 18 Human Rights Law Review 1, p. 5.
- ³² UNGP, GP 13.
- ³³ OHCHR, 'The corporate responsibility to respect human rights – An interpretive Guide', 2012 ("OHCHR 2012"). <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf> (last accessed 2 April 2019).
- ³⁴ OECD 2011 n 2; OECD, 'Responsible business conduct for institutional investors - Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises', 2017. <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf> (last accessed 2 April 2019); OHCHR, 'Response to request from BankTrack for advice regarding the application of the UNGP in the context of the banking sector', 2017 ("OHCHR 2017"), p. 3. <https://www.ohchr.org/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf> (last accessed 2 April 2019).
- ³⁵ OHCHR 2017 n 34, p. 5.
- ³⁶ NBIM, 'Ownership'. <https://www.nbim.no/en/responsibility/ownership/> (last accessed 2 April 2019).
- ³⁷ *Ibid.*; X. Karametaxas, 'Sovereign Wealth Funds as Socially Responsible Investors', in G. Adinolfi et al., *International Economic Law: Contemporary Issues* (Springer 2017), 271-288, p. 278.
- ³⁸ NBIM, 'Ownership' n 36.
- ³⁹ This is generally true for Sovereign Wealth Funds, as explained in: Richardson n 22, p. 370.
- ⁴⁰ UNGP, GP 17, Commentary.
- ⁴¹ *Ibid.*
- ⁴² OHCHR 2017 n 34, p. 5.
- ⁴³ See, Debevoise Business Integrity Group, Enodo Rights, 'Practical Definitions of Cause, Contribute, and Directly Linked to Inform Business Respect for Human Rights - Discussion Draft', 9 February 2017, pp. 24-25. <https://www.business-humanrights.org/sites/default/files/documents/Debevoise-Enodo-Practical-Meaning-of-Involvement-Draft-2017-02-09.pdf> (last accessed 2 April 2019).
- ⁴⁴ HRC, Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem. Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, UN Doc. A/HRC/37/39 (26 January 2018) ("Special Rapporteur January 2018 Report"), para 41.
- ⁴⁵ HRC, Report of the independent international fact finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/22/63 (7 February 2013), para 96.
- ⁴⁶ Recent examples include a lawsuit against Exxelia Technologies (N. Bernaz, 'Complicity of War Crimes: Criminal Complaint against a French Technology Company', *Rights as Usual*, 30 June 2016. <http://rightsasusual.com/?p=1057>, last accessed 2 April 2019) and one against multiple defendants, including companies like Hewlett-Packard and Volvo AB (J. Stempel, 'Palestinians' lawsuit in U.S. vs Adelson, others is revived', *Reuters*, 19 February 2019).

<https://uk.reuters.com/article/usa-palestinians-lawsuit/palestinians-lawsuit-in-us-vs-adelson-others-is-revived-idUKL1N20E0V1> (last accessed 2 April 2019).

⁴⁷ Debevoise Business Integrity Group, *Enodo Rights* 2017 n 43, pp. 24-25; In re South African Apartheid Litigation, 617 F. Supp. 2d 228, 257-58 (S.D.N.Y. 2009) (citing *Prosecutor v. Furundžija*, Case No. IT-95-17/1, Trial Chamber Judgment, (10 December 1998), para 209).

⁴⁸ OHCHR 2017 n 34, p. 5.

⁴⁹ *Ibid.* In the post-World War II trial against the industrialists Friederich Flick and Otto Steinbrik, the tribunal found that the defendants' donations to the "Circle of Friends of Himmler" had been substantial, therefore enabling the commission of crimes by the Nazi regime (causal link). The industrialists, whose contributions accounted for 10% of total donations, were found to have knowingly contributed to the criminal activities, and therefore to be complicit in the commission of international crimes (N. Bernaz, 'Establishing liability for financial complicity in international crimes', in J. P. Bohoslavsky, J. L. Cernic, *Making Sovereign Financing and Human Rights Work* (Hart Publishing 2014), 61-78, p. 70). One more recent example in which a financial transaction might be found to amount to complicity in war crimes is the lawsuit against LaFarge-Holcim (Business and Human Rights Resource Centre, 'Lafarge lawsuit (re complicity in crimes against humanity in Syria)'. <https://www.business-humanrights.org/en/lafarge-lawsuit-re-complicity-in-crimes-against-humanity-in-syria> (last accessed 2 April 2019).

⁵⁰ "Severity of impacts will be judged by their scale, scope and irremediable character" (UNGP, GP 14, Commentary). Section 3 below illustrates the systematic and widespread nature of violations in the OPT.

⁵¹ UNGP, GP 13(a).

⁵² See UNGP, GP 7, Commentary, GP 14, GP 23.

⁵³ *Ibid.*, GP 19, Commentary, GP 22.

⁵⁴ Van Ho and Alshaleel 2018, n 31, p. 453.

⁵⁵ UNGP, GP 17, Commentary.

⁵⁶ *Ibid.*, GP 13.

⁵⁷ OHCHR 2017 n 34, p. 5.

⁵⁸ OECD, 'Scope and application of 'business relationships' in the financial sector under the OECD Guidelines for Multinational Enterprises', 26-27 June 2014. The Norwegian OECD National Contact Point reached the same conclusion in 2013 in a final statement concerning a complaint filed against NBIM, among others (Norway NCP, 'Final statement: complaint from lok shakti abhiyan, Korean transnational corporations watch, fair green and global alliance and forum for environment and development vs. POSCO (South Korea), ABP/APG (Netherlands) and NBIM (Norway)', 2013, p. 22-23).

⁵⁹ OHCHR 2017 n 34, p. 6.

⁶⁰ The amount of shares owned does, however, influence the content of the due diligence steps that are expected from the investor to discharge its responsibility, as shown in the paragraph on Human Rights Due Diligence.

⁶¹ OHCHR 2017 n 34, p. 6.

⁶² See, for instance, the role of some Israeli banks still included in SPU's portfolio to these days: Norwegian Union of Municipal and General Employees, Norwegian People's Aid, 'Dangerous Liaisons II – Norwegian ties to the Israeli occupation', 2016, pp. 60-61. <https://www.npaid.org/News/News-archive/2016/Dangerous-Liaisons-II-Norwegian-ties-to-the-Israeli-Occupation> (last accessed 2 April 2019).

⁶³ See, J. Bonnitca and R. McCorquodale, 'The concept of 'due diligence' in the Guiding Principles' (2017) 28 *European Journal of International Law* 899, at pp. 912-913.

⁶⁴ OHCHR 2017 n 34, p. 7.

⁶⁵ State Secretary Marianne Hagen 2018 n 21.

⁶⁶ UNGP, GP 17. See also: OECD 2011 n 2, Commentary on General Policies, para 14.

⁶⁷ UNGP, GP 14; OECD 2011 n 2, Ch. IV, p. 31.

⁶⁸ UNGP, GP 18, Commentary.

⁶⁹ OECD 2017 n 34, p. 26.

⁷⁰ OHCHR 2012 n 33, p. 7.

⁷¹ UNWG, 'Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory', 6 June 2014, p. 14. <https://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf> (last accessed 2 April 2019). See also: UNGP, GP 23, Commentary.

⁷² Van Ho and Alshaleel 2018 n 31, p. 9.

⁷³ A. Follesdal, G. Nystuen, O. Mestad, 'Introduction: Human Rights, Corporate Complicity and Disinvestment', in *Human Rights, Corporate Complicity and Disinvestment* (CUP 2011), 1-15, p. 16. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1942320 (last accessed 2 April 2019).

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- ⁷⁴ Van Ho and Alshaleel 2018 n 31, p. 9. On the risk for SPU to overlook some negative impacts linked to its investments, see: Richardson n 22, p. 363
- ⁷⁵ UNGP, GP 17, Commentary; OHCHR 2012 n 33, p. 5.
- ⁷⁶ HRC, Protect, Respect and Remedy: A Framework for Business and Human Rights - Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, UN Doc. A/HRC/8/5 (2008), para 54.
- ⁷⁷ OECD 2017 n 34, p. 16.
- ⁷⁸ UNGP, GP 21.
- ⁷⁹ NBIM's lack of disclosure on its HRDD processes has been highlighted in one case handled by the Norwegian NCP (Norway NCP 2013 n 58, pp. 8-9).
- ⁸⁰ OHCHR 2017 n 34, p. 6; UNGP, GP 19, Commentary.
- ⁸¹ UNGP, GP 19, Commentary.
- ⁸² OHCHR 2017 n 34, p. 7.
- ⁸³ Karametaxas 2017 n 37, p. 278.
- ⁸⁴ OECD 2017 n 34, p. 32. NBIM is not new to this good practice. For instance, in 2012 "it teamed up with Dutch pension fund PGGM to hold talks with mining and power companies in China and India" aiming "to improve the companies' reporting on water-related risks" (GPFG, 'Annual Report 2012', p. 35. <https://www.nbim.no/globalassets/reports/2012/annual-report/annual-report-2012.pdf> (last accessed 2 April 2019).
- ⁸⁵ OECD 2017 n 34, p. 32.
- ⁸⁶ NBIM, 'Ownership' n 37.
- ⁸⁷ Ibid. The OECD also recommends "collaboration with other investors to exert leverage on RBC matters; engagement with regulators and policymakers" and "joining geographic or issue-specific initiatives that seek to prevent and mitigate adverse impacts in the areas identified" (OECD 2017 n 34, pp. 32-33).
- ⁸⁸ UNGP, GP 19, Commentary. This can be particularly true when the business relationship is particularly "crucial" to the investor (ibid.).
- ⁸⁹ OECD 2017 n 34, p. 38.
- ⁹⁰ See, UNGP, GP 19, Commentary.
- ⁹¹ Ibid.
- ⁹² Ibid.
- ⁹³ Ibid.; UNWG 2014 n 71, p. 14.
- ⁹⁴ Special Rapporteur January 2018 Report n 44, para 41.
- ⁹⁵ PGGM, 'Statement regarding exclusion of Israeli banks', 8 January 2014. <https://www.pggm.nl/english/who-we-are/press/Pages/Statement-regarding-exclusion-of-Israeli-banks.aspx> (last accessed 2 April 2019).
- ⁹⁶ See, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UN Doc. A/73/45717 (22 October 2018) ("Special Rapporteur October 2018 Report"), para 25.
- ⁹⁷ See, UN Security Council Res 2334, UN Doc. S/RES/2334 (2016); *Advisory Opinion on the Wall* 2004 n 10, para 120.
- ⁹⁸ Most recently, see UN Security Council 2016 n 97.
- ⁹⁹ See, e.g., *Advisory Opinion on the Wall* 2004 n 10, para 191; UNGA, Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem and the Occupied Syrian Golan, UN Doc. A/71/355 (24 August 2016) ("Secretary-General October 2016 Report"); HRC, Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem and the Occupied Syrian Golan, UN Doc A/HRC/28/44 (9 March 2015) ("Secretary-General 2015 Report"); UNGA, Report of the Secretary-General, Israeli Practices Affecting the Human Rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/71/364 (30 August 2016).
- ¹⁰⁰ UNGP, GP 12.
- ¹⁰¹ Ibid.
- ¹⁰² *Advisory Opinion on the Wall* 2004 n 10, paras 102, et seq.
- ¹⁰³ Ibid, para 106; See also, Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para 11.
- ¹⁰⁴ *Advisory Opinion on the Wall* 2004 n 10, paras 102, et seq. For fuller analysis of the relationship between IHRL and IHL, see e.g., F. Hampson, 'The relationship between international humanitarian law and human rights law from the perspective of a human rights treaty body' (2008) 90 (871) *International Review of the Red Cross* 549; N. Prud'homme, 'Lex specialis: Oversimplifying a more complex and multifaceted relationship?' (2007) 49 *Israel Law Review* 355; *Amicus Curiae* Brief submitted by Professor Francoise Hampson and Professor Noam Lubell of the

Human Rights Centre, University of Essex, *Georgia v. Russia (II)*, Appl'n No. 38263/08 (2014), available at <http://repository.essex.ac.uk/9689/1/hampson-lubell-georgia-russia-amicus-01062014.pdf> (last accessed 2 April 2019).

¹⁰⁵ See, Murray 2016 n 9, pp. 237-257. For a discussion on the underpinning debates, see, N. Lubell, 'Human Rights Obligations in Military Occupation,' (2012) 94 (885) *International Review of the Red Cross* 317, pp. 318-324.

¹⁰⁶ M. Sfar, 'Jewish Settlements' in Ben-Naftali, Sfar, Viterbo 2018 n 9, 200-217, pp. 207-208.

¹⁰⁷ Ibid.

¹⁰⁸ For such prohibitions, see, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ("ICCPR"), Arts 2(1), 26; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 ("ICESCR"), Art 2(2). In the ICCPR, there are two provisions on non-discrimination; article 2(1) addresses only rights within the Covenant but article 26 states that "all people ... are entitled without any discrimination to the equal protection of the law," which requires states to "prohibit any discrimination." Where the legal violation at issue is one protected in the ICCPR, articles 2(1) and 26 are both breached; where the right breached is one protected in the ICESCR or domestic law, only article 26 is applicable. Violations of the right to non-discrimination in the realization of rights in the ICESCR are also a breach of article 2(1) ICESCR.

The repetitive recognition in this report that Israel's actions violate the prohibition on discrimination makes it necessary to explain the difference between accepted conduct to preserve the rights of Jewish people to remain in the West Bank, including East Jerusalem, without discrimination and the expansion of the presence of Jewish settlers at the expense of Palestinians. Jewish people have lived in the West Bank, including East Jerusalem, since before the division of the territory that now encompasses both Israel and Palestine. The rights of these individuals (and others lawfully on the territory of the West Bank and East Jerusalem, including but not exclusively their descendants) to remain in the territory and free from discrimination is unquestionable.

Israel also has an obligation to protect Jewish settlers from violence by Palestinians. Yet, the need to protect Jewish settlers from violence cannot justify the actions taken by Israel, which privilege Israelis over Palestinians. According to the UN Human Rights Committee, differentiated treatment on the grounds of race, religion or ethnicity can be justified only where "the aim is to achieve a purpose which is legitimate under the Covenant" and if the "criteria for such differentiation are reasonable and objective" (Human Rights Committee, General Comment No. 18, para 13). Amongst differentiated treatment that is justifiable are actions aimed at reducing "conditions which cause or help to perpetuate discrimination" (Ibid, para 10). Actions aimed at preserving and protecting the rights of Jewish people to be present in East Jerusalem would therefore be justifiable conduct. However, the need to adopt protections aimed at protecting Israelis and other Jewish people lawfully in the territory of the West Bank and East Jerusalem cannot justify the expansion of settlements that are illegal under international law. Such conduct does not meet the Human Rights Committee's criteria for differentiated treatment: it is not aimed at achieving a purpose that is legitimate under the Covenant.

¹⁰⁹ See, e.g., Secretary-General 2015 Report n 99, para 7; see also, generally, B'tselem, 'Settlements', updated 16 January 2019. <https://www.btselem.org/settlements> (last accessed 2 April 2019).

¹¹⁰ *Advisory Opinion on the Wall* 2004 n 10, at para 120; Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 ("Geneva Convention IV"), Art 49; Sfar 2018 n 106, p. 201.

¹¹¹ As of January 2019, there were an estimated 110 settlements built without Israeli government authorization but with some support and assistance. See, International Criminal Court, 'Report on Preliminary Examination Activities', 2018, para 257. <https://www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf> (last accessed 2 April 2019); B'tselem 2019 n 109.

¹¹² World Bank, 'Area C and the Future of the Palestinian Economy', Report No. AUS2922, 2013. <http://documents.worldbank.org/curated/en/137111468329419171/pdf/AUS29220REPLAC0EVISSION0January02014.pdf> (last accessed 2 April 2019).

¹¹³ HRC, Report of the United Nations High Commissioner for Human Rights: Israeli Settlements in the Occupied Territory, including East Jerusalem, and occupied Syrian Golan, UN Doc. A/HRC/37/43 (6 March 2018), paras 16-17.

¹¹⁴ See, Rome Statute of the ICC, Art 8(2)(b)(xiii); Geneva Convention IV, Art 49; Sfar, 'Jewish Settlements' n 107, pp. 201-202.

¹¹⁵ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) ("UDHR"), Art 17(1).

¹¹⁶ See, e.g., HRC, Report of the Secretary-General: Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, UN Doc. A/HRC/25/38 (12 February 2014) ("Secretary-General 2014 Report"), para 11; UNGA, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UN Doc. A/72/556 (23 October 2017) ("Special Rapporteur October 2017 Report"), para 54; CESCR, Concluding Observations on Israel, UN Doc. CERD/C/ISR/CO/14-16 (2012), para 24.

¹¹⁷ Special Rapporteur October 2018 Report n 96, para 37.

¹¹⁸ HRC, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, UN Doc. A/HRC/34/70 (16 March 2017) ("Special Rapporteur March 2017 Report"), para 10.

¹¹⁹ Special Rapporteur October 2018 Report n 96, para 37.

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- ¹²⁰ Ibid.
- ¹²¹ See, CESCR, Concluding Observations on Israel, UN Doc. E/C.12/ISR/CO3 (16 December 2011), para 26.
- ¹²² For such prohibitions, see n 108.
- ¹²³ Special Rapporteur October 2018 Report n 96, para 37; Special Rapporteur 2017 March Report n 118, para 9.
- ¹²⁴ Special Rapporteur March 2017 Report n 118, para 9.
- ¹²⁵ Ibid, para 10, quoting B'tselem, 'East Jerusalem', updated 27 January 2019. <https://www.btselem.org/jerusalem> (last accessed 2 April 2019). This was measured by population per room.
- ¹²⁶ According to the authoritative guidance of the CESCR, for housing to be "adequate" it must be habitable, which includes ensuring that the occupants have "adequate space" along with physical security. See, ICESCR, Art. 11(1); CESCR, General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant), UN Doc. E/1992/23 (1991), para 8(d). States party to ICESCR have an obligation to respect, protect, and fulfil the right to housing. The "respect" obligation entails refraining from interfering in the activities aimed achieving habitable housing whereas the "fulfil" obligation would entail the state undertaking necessary steps to ensure the habitability of the housing, for instance, by issuing permits or providing financial support to Palestinians who undertake these repairs.
- ¹²⁷ See, n 108.
- ¹²⁸ See, e.g., Special Rapporteur October 2017 Report n 116, para 54.
- ¹²⁹ See n 109, above.
- ¹³⁰ HRC, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UN Doc. A/HRC/37/75 (15 March 2018) ("Special Rapporteur March 2018 Report"), para 15.
- ¹³¹ See, also, CESCR, General Comment No. 13, UN Doc. E/C.12/1999/10 (1999), para 6(a)-(b).
- ¹³² See n 109, above.
- ¹³³ See, e.g., Special Rapporteur March 2018 Report n 130, paras 10, 14, 27.
- ¹³⁴ HRC, Report of the Secretary-General: Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, UN Doc. A/HRC/31/44 (20 January 2016) ("Secretary-General January 2016 Report"), para 23.
- ¹³⁵ Ibid.
- ¹³⁶ See, Secretary-General October 2016 Report n 99, para 57-59.
- ¹³⁷ Secretary-General January 2016 Report, n 134, para 54.
- ¹³⁸ See n 109, above.
- ¹³⁹ CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), UN Doc. E/C.12/2000/4 (2000), para 12(a)-(b).
- ¹⁴⁰ Secretary-General January 2016 Report, n 134, para 47.
- ¹⁴¹ Ibid, para 46.
- ¹⁴² Ibid, para 45.
- ¹⁴³ Ibid.
- ¹⁴⁴ Ibid, para 46.
- ¹⁴⁵ The Fourth Geneva Convention of 1949 recognizes "[p]arties to a conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war." Geneva Convention IV, Art. 27. While the text of Article 27 is specific to parties to a conflict, Article 6 of the same treaty extends this provision to situations of occupation. Ibid, Art. 6.
- ¹⁴⁶ ICESCR, Arts. 2, 13; see also, CESCR, General Comment No. 13: The Right to Education (Art. 13), E/C.12/1999/10, para 6(b).
- ¹⁴⁷ See, e.g., Secretary-General October 2016 Report n 99, paras 36-45.
- ¹⁴⁸ UN Office for the Coordination of Humanitarian Affairs ("UNOCHA"), 'Humanitarian Coordinator expresses concern amidst escalation of violence in the West Bank', 16 December 2018. <https://www.ochaopt.org/content/humanitarian-coordinator-expresses-concern-amidst-escalation-violence-west-bank> (last accessed 2 April 2019).
- ¹⁴⁹ Ibid.
- ¹⁵⁰ Ibid.
- ¹⁵¹ See, e.g., Secretary-General October 2016 Report n 99, paras 36-45.
- ¹⁵² See, *ibid*.
- ¹⁵³ See, Human Rights Committee, General Comment No. 31 n 103, paras 8, 15, 18; ICRC, IHL Database: Customary IHL, 'Rule 158, Prosecution of War Crimes'. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule158 (last accessed 11 April 2019);

¹⁵⁴ B'tselem states that between 2000 and 2015, it requested investigations for "739 cases in which soldiers killed, injured, or beat Palestinians, used them as human shields, or damaged Palestinian property." B'tselem, 'No Accountability' (11 November 2017). <https://www.btselem.org/accountability> (last accessed 11 April 2019). It requested these investigations only after having conducted its own research into the cases. By mid-2016, a quarter of those cases had had no investigation, and in only 25 of these cases were charges ultimately brought. B'tselem has concluded that "the chance of a complaint leading to an indictment is just roughly 3%, while the chances that the [Military Advocate General] Corps loses the actual file is nearly double that." *Ibid.*

¹⁵⁵ See, e.g., Human Rights Committee, General Comment No 31 n 103, paras 8, 15.

¹⁵⁶ Secretary-General February 2014 Report n 116, para 17.

¹⁵⁷ *Ibid.*, paras 21-27, 33.

¹⁵⁸ See, UNOCHA, '46 Bedouin Communities at Risk of Forcible Transfer in the Central West Bank: A Vulnerability Profile'. <https://www.ochaopt.org/page/46-bedouin-communities-risk-forcible-transfer-central-west-bank-vulnerability-profile> (last accessed 2 April 2019).

¹⁵⁹ Secretary-General February 2014 Report n 116, para 33.

¹⁶⁰ See, e.g., generally, Al-Haq, 'The Sun Belongs to Everyone: Israeli Demolitions and Confiscations of Solar Panel Aid Projects in Area C of the West Bank', 17 March 2018. <http://www.alhaq.org/advocacy/topics/housing-land-and-natural-resources/1200-the-sun-belongs-to-everyone-israeli-demolitions-and-confiscations-of-solar-panel-aid-projects-in-area-c-of-the-west-bank> (last accessed 2 April 2019).

¹⁶¹ See n 108.

¹⁶² Both the home destruction and forcible transfers are means of forced eviction, which are prohibited under the right to housing. This does not mean that *all* evictions throughout the world are violations of this standard. Under IHRL, forced evictions refers specifically to "[t]he permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." It does not apply to evictions that are carried out by force but that comply with IHRL. However, an eviction that fails to comply with IHRL is, and will be, in every circumstance, a breach of the human right to housing. See, CESCR, General Comment No. 7: The Right to Adequate Housing (Art. 11.1) Forced evictions, UN Doc. E/1998/22 (1997), paras 3, 9, 11, 14-16.

¹⁶³ See, ICRC, IHL Database: Customary IHL, 'Rule 129, The Act of Displacement'. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule129 (last accessed 2 April 2019); Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 ("Rome Statute of ICC"), Art. 8(b)(viii).

¹⁶⁴ UN OCHA, 'The Humanitarian Impact of Israeli Settlement Policies', updated December 2012. https://www.ochaopt.org/sites/default/files/ocha_opt_settlements_FactSheet_December_2012_english.pdf (last accessed 2 April 2019).

¹⁶⁵ World Bank 2013 n 112, para 18; UNOCHA, 'How Dispossession Happens', March 2012, p. 14. https://www.ochaopt.org/sites/default/files/ocha_opt_springs_report_march_2012_english.pdf (last accessed 2 April 2019).

¹⁶⁶ World Bank 2013 n 112, para 18. The World Health Organization recommends individuals have access to 100 litres of water per capita per day (l/c/d), and Israeli settlers are able to average 300 l/c/d. Over a million Palestinians are "accessing or consuming 60 [l/c/d] or less." (UNOCHA, 'How Dispossession Happens' n 165, p. 14).

¹⁶⁷ See, generally, CESCR, General Comment No. 15: The Right to Water, UN Doc. E/C.12/2002/11 (2003).

¹⁶⁸ Human Rights Committee, General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc CCPR/C/GC/36 (2018), para 26.

¹⁶⁹ See, e.g., Inter-American Court of Human Rights, *Case of Vélez Loor v Panama* (Preliminary Objections, Merits, Reparations and Costs), Judgment of 23 November 2010 para 216.

¹⁷⁰ Secretary-General February 2014 Report n 116, para 33.

¹⁷¹ See, e.g., *ibid.*, para 17.

¹⁷² See, e.g., Special Rapporteur October 2017 Report n 116, para 54; UNOCHA, 'Water, Sanitation and Hygiene'. <https://www.ochaopt.org/theme/water%2C-sanitation-and-hygiene> (last accessed 2 April 2019).

¹⁷³ See, generally, CESCR, General Comment No. 15 n 167.

¹⁷⁴ World Bank 2013 n 112, para 18.

¹⁷⁵ *Ibid.*, para 21.

¹⁷⁶ ICESCR, Art 6.

¹⁷⁷ See, Secretary-General 2015 Report n 99, paras 16-38.

¹⁷⁸ *Ibid.*, paras 39-53.

¹⁷⁹ See, Human Rights Committee, General Comment 31, n 153, para 8. The definition of torture under the Convention against Torture includes actions taken not just directly by state actors but also actions that occur "with the *consent* or

acquiescence of a public official or other person acting in an official capacity.” Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (“CAT”), Art 1. This suggests private acts of violence can become an act of torture because the state fails to respond appropriately. More generally, where the state fails to exercise due diligence prevent or punish those responsible for private acts of violence, the state is failing to protect human rights and can be responsible for a breach of the underlying right. See, Megret n 26 at 97. For a pertinent case from a regional human rights system, see, *Lenahan v United States*, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11 (2011), paras 2, 4, 5, 90.

¹⁸⁰ See, Secretary-General February 2014 Report n 116, para 18.

¹⁸¹ UN OCHA, ‘Occupied Palestinian Territory’s Profile: Education’. <https://public.tableau.com/profile/ocha.opt#!/vizhome/Education-VPP/DashEducation> (last accessed 2 April 2019).

¹⁸² See, generally, Sfard, ‘Jewish Settlements’ n 107, pp. 207-208.

¹⁸³ Ibid.

¹⁸⁴ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (“UN Charter”), Arts 2(3) and (4); see also, R. Hoffman, ‘Annexation’, Max Planck Encyclopedia of Public International Law (2013), available at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1376> (last accessed 2 April 2019).

¹⁸⁵ Ibid.

¹⁸⁶ See, Special Rapporteur October 2018 Report n 96, paras 24-33.

¹⁸⁷ See, *ibid.*, paras 24-33.

¹⁸⁸ *Advisory Opinion on the Wall* 2004 n 10, para 121.

¹⁸⁹ The responsibility to respect human rights requires first and foremost that businesses anticipate likely impacts so as to avoid them. UNGP, GP 11, 17, Commentary.

¹⁹⁰ World Bank 2013 n 112, para 5.

¹⁹¹ Ibid, para ix.

¹⁹² Ibid.

¹⁹³ See, Rome Statute of ICC, Art 8(2)(a)(i)-(iii). See, also, ICRC, Customary IHL Database, ‘Rule 156: Definition of War Crimes’. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule156 (last accessed 2 April 2019). Under the Rome Statute, it is defined as “wilful killing” of a protected person. See Secretary-General 2015 Report n 99.

¹⁹⁴ Rome Statute of ICC, Article 8(2)(b)(viii) establishes the Court’s jurisdiction over “[t]he transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies.” The “indirectly” appears intended to cover situations like those in the West Bank, where the Government offers incentives for those who move, or otherwise encourages and supports the transfer of the population. See, Sfard, ‘Jewish Settlements’ n 107, pp. 207-208. When the drafters of both the Fourth Geneva Convention of 1949 and more recently the Rome Statute wanted to prohibit or criminalise only on *forcible* transfers of populations, they were explicit (*ibid.*). As a result, the Israeli support for the settlements likely constitutes a series of war crimes in violation of the ICC’s Rome Statute.

¹⁹⁵ See, Sfard, ‘Jewish Settlements’ n 107, pp. 207-208.

¹⁹⁶ Ibid, pp. 201-202.

¹⁹⁷ See, ICRC, Customary IHL Database, ‘Rule 51. In Public and Private Property in Occupied Territory’. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule51 (last accessed 2 April 2019).

¹⁹⁸ See, ICRC, Customary IHL Database n 197.

¹⁹⁹ Hague Regulations 1907, Art 53.

²⁰⁰ Ibid.; M. Sfard, ‘Usufruct’ in Ben-Naftali, Sfard, and Viterbo 2018 n 9, 417-430, p. 418; Rome Statute of ICC, Art 8(2)(b)(xvi).

²⁰¹ Sfard 2018 n 200, p. 418.

²⁰² Ibid.

²⁰³ This is a contentious issue, but international criminal tribunals have found this to be the standard. See, e.g., *Prosecutor v Šainović et al.*, Case No. IT-05-87-A, Appeals Chamber Judgment (23 January 2014), paras 1626-1649; *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-A, Judgment (26 September 2013), para 480.

²⁰⁴ See, *ibid.*

²⁰⁵ International Commission of Jurists, ‘Report of the ICJ Expert Legal Panel on Corporate Complicity in International Crimes’, Volume 2, 2008, p. 17.

²⁰⁶ WhoProfits, ‘Caterpillar’. <https://whoprofits.org/company/caterpillar/> (last accessed 2 April 2019).

²⁰⁷ The case against Caterpillar was dismissed as the judiciary was concerned about interfering with the authority of the US political branches’ (*Corrie, et al., v Caterpillar Inc.*, US 9th Cir. Court of Appeal, Case No. 05-36210 (17 September 2017). <https://caselaw.findlaw.com/us-9th-circuit/1403943.html> (last accessed 2 April 2019).

- ²⁰⁸ WhoProfits n 206.
- ²⁰⁹ Council on Ethics for the Government Pension Fund Global, 'Annual Report 2009', p. 31. <https://nettsteder.regjeringen.no/etikkradet3/files/2017/02/Annual-Report-2009-1.pdf> (last accessed 2 April 2019).
- ²¹⁰ See above, section 2.1.2, and UNGP, GP 17, Commentary.
- ²¹¹ See, UNGP, GP 11, 13, 17.
- ²¹² Hague Regulations 1907, Art 55.
- ²¹³ See, See, ICRC, Customary International Law Database, 'Rule 52: Pillage'. available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule52 (last accessed 2 April 2019).
- ²¹⁴ See, United Nations High Commissioner for Human Rights, "Israeli Settlements in the Occupied Territory, including East Jerusalem, and occupied Syrian Golan," UN Doc. A/HRC/37/43 (6 March 2018), paras 16-17.
- ²¹⁵ PGGM n 95.
- ²¹⁶ See full statement at <https://www.pggm.nl/english/who-we-are/press/Pages/Statement-regarding-exclusion-of-Israeli-banks.aspx> (last accessed 2 April 2019).
- ²¹⁷ Cemex, 'Our Neighbors: Operating Responsibly in Occupied Territories.' <https://www.cemex.com/sustainability/stakeholder-engagement/our-neighbors> (last accessed 2 April 2019).
- ²¹⁸ *Advisory Opinion on the Wall* 2004 n 10, paras 121-122.
- ²¹⁹ 'Guidelines for observation and exclusion from the Government Pension Fund Global', updated 17 February 2017. <https://www.regjeringen.no/globalassets/upload/fin/statens-pensjonsfond/formelt-grunnlag/guidelines-for-observation-and-exclusion-from-the-gpfg---17.2.2017.pdf> (last accessed 2 April 2019).
- ²²⁰ Council on Ethics for the Government Pension Fund Global, 'Annual Report 2013', p. 25. https://nettsteder.regjeringen.no/etikkradet3/files/2017/02/Annual_report_2013-1.pdf (last accessed 2 April 2019).
- ²²¹ Council on Ethics for the Norwegian Government Pension Fund Global, 'Annual Report 2017', p. 16. https://nettsteder.regjeringen.no/etikkradet3/files/2018/03/Etikkradet_armelding_2017_eng_UU.pdf (last accessed 2 April 2019).
- ²²² Council on Ethics for the Norwegian Government Pension Fund Global, 'The Council's Work under the human rights criterion', 2017, p. 17. <https://nettsteder.regjeringen.no/etikkradet3/files/2018/08/The-Council's-work-under-the-human-rights-criterion.pdf> (last accessed 12 April 2019).
- ²²³ Council on Ethics for the Norwegian Government Pension Fund Global, 'Annual Report 2014'. <https://nettsteder.regjeringen.no/etikkradet3/files/2017/02/Council-on-Ethics-2014-Annual-Report-1.pdf> (last accessed 2 April 2019).
- ²²⁴ *Ibid*, p. 30.
- ²²⁵ OHCHR 2012 n 33, pp. 6-7.
- ²²⁶ NBIM, 'Responsible Investment - GPF 2018', p. 112. https://www.nbim.no/contentassets/e1632963319146bbb040024114ca65af/responsible_investment_2018_web.pdf (last accessed 2 April 2019).
- ²²⁷ *Ibid*, p. 112-114.
- ²²⁸ *Ibid*, p. 114.
- ²²⁹ *Ibid*.
- ²³⁰ *Ibid*.
- ²³¹ *Ibid*.
- ²³² *Ibid*.
- ²³³ See the Annex to this Report. See also: Norwegian Union of Municipal and General Employees, Norwegian People's Aid n 62, pp. 53-56.
- ²³⁴ Council on Ethics for the Norwegian Government Pension Fund Global, 'The Council's Work under the human rights criterion' n 222.
- ²³⁵ *Ibid*.
- ²³⁶ Council on Ethics for the Government Pension Fund Global 2013 n 211, p. 218; Council on Ethics for the Government Pension Fund Global, 'Annual Report 2012', p. 13. https://nettsteder.regjeringen.no/etikkradet3/files/2017/02/aarsmelding_2012_engelsk-1.pdf (last accessed 2 April 2019).
- ²³⁷ Council on Ethics for the Government Pension Fund Global 2009 n 200, p. 26. <https://nettsteder.regjeringen.no/etikkradet3/files/2017/02/Annual-Report-2009-1.pdf> (last accessed 2 April 2019).
- ²³⁸ Council on Ethics for the Norwegian Government Pension Fund Global, 'Annual Report 2015', p. 11. https://nettsteder.regjeringen.no/etikkradet3/files/2017/02/Etikkradet_AR_2015_web-1.pdf (last accessed 2 April 2019).

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- ²³⁹ See, for instance: NBIM 2018 n 226, pp. 56-81; NBIM, 'Responsible Investment - GPF 2014', p. 34-45. <https://www.nbim.no/globalassets/reports/2014/2014-responsible-investment.pdf> (last accessed 2 April 2019); NBIM, 'Responsible Investment - GPF 2017', p. 40. <https://www.nbim.no/contentassets/67c692a171fa450ca6e3e1e3a7793311/responsible-investment-2017---government-pension-fund-global.pdf> (last accessed 2 April 2019); NBIM, 'Responsible Investment - GPF 2015', pp. 55-56. <https://www.nbim.no/contentassets/96608d5f04eb4a138fa88f8fdf937b70/20160211-responsible-investment-2015.pdf> (last accessed 2 April 2019); NBIM, 'Responsible Investment - GPF 2016', p. 46. <https://www.nbim.no/contentassets/2c3377d07c5a4c4fbd442b345e7cfd67/government-pension-fund-global---responsible-investment-2016.pdf> (last accessed 2 April 2019); GPF 2012 n 79, pp. 32-35; GPF, 'Annual Report 2011', pp. 46-48. https://www.nbim.no/globalassets/reports/2011/annual-report-2011/arsrapport_11_eng_web.pdf (last accessed 2 April 2019).
- ²⁴⁰ UNGP, GP 23, Commentary.
- ²⁴¹ NBIM 2018 n 226, p. 116.
- ²⁴² Ibid.
- ²⁴³ Ibid.
- ²⁴⁴ See, Amnesty International, 'Think Twice! - Can companies do business with Israeli settlements in the Occupied Palestinian Territories while respecting human rights?', 2019, p. 34. <https://www.amnesty.org.uk/files/2019-03/Think%20Twice%20report.pdf?BrN9N0VX3RkzTJROuKYC46LE43hCPtTu=>. (last accessed 2 April 2019).
- ²⁴⁵ UNGP, GP 14, Commentary.
- ²⁴⁶ Ibid, GP 24, Commentary.
- ²⁴⁷ Ibid, GP 22, Commentary.
- ²⁴⁸ See, CESCR, General Comment No. 24 n 25, para 30; Human Rights Committee, Concluding Observations: Canada, UN Doc. CCPR/C/CAN/CO/6 (2015), para 6.
- ²⁴⁹ CESCR, General Comment No. 24 n 25, paras 30-32; UNGP, GP 3, 4, Commentary, 7, Commentary, 15.
- ²⁵⁰ See, UNGP, GP 4.

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Annex ^{1 2}

| Company | Parent Company | Involvement in OPT | Divestments |
|---|---|---|---|
| Alstom (France) | Publicly traded | Construction of train in OPT. | Storebrand (2016) |
| Ashtrom Properties Ltd | Ashtrom Group | involvement in the expansion of Israeli settlements in the occupied Palestinian territory and construction of houses | None |
| B Communications Ltd | Internet Gold – Golden Lines | Builds and maintains telecommunication infrastructure throughout the West Bank and Syrian Golan. | None |
| Bank Hapoalim (Israel) | Controlled by Arison Holdings (20%) | Provides financing for construction projects in Israeli settlements in OPT. | FDC (2014) PGGM (2014) Storebrand (2015) United Methodist Church (2016) Sampensjon (2017) |
| Bank Leumi (Israel) | Publicly traded | Provides financing for the construction of housing projects in Israeli settlements. | FDC (2014) PGGM (2014) Storebrand (2015) United Methodist Church (2016) Sampensjon (2017) |
| Bezeq (Israel) | Publicly traded - B Communications holds 26.34%. | Builds and maintains telecommunication infrastructure throughout the West Bank and Golan. | KLP (2017) Sampensjon (2017) |
| Caterpillar (USA) | Publicly traded | Products used in demolition of Palestinian homes, schools, orchards, olive of war in Gaza; and as a crowd control weapon. | Presbyterian Church of the USA (2014) |
| Cellcom Israel (Israel) | Discount Investment Corporation (controlled by the IDB Group) | Provides cellular, ISP, ILD, landline and network end point services to Israeli settlements in Area C. | None |
| Cemex (Mexico) | Publicly Traded | Through subsidiary Readymix Industries, it has plants in various settlements and has provided concrete elements for the construction of a security wall in the occupied West Bank. | Nordea (2013) KLP (2015) Storebrand (2015) |
| CNH Industrial (Netherlands) | Exor (major shareholder) | Machinery used for the construction of settlements and related infrastructure, settlement industrial zones and the Separation Wall. | None |
| Delek Group (Israel) | Publicly traded | Subsidiary Delek Israel Fuel has gas and service stations across OPT. | None |
| Delta Galil Industries Ltd | Publicly traded | Branches in occupied East Jerusalem and in the occupied West Bank | None |
| Elco Ltd | Publicly traded | Owns 53% of Electra | None |
| Electra Ltd/Israel | Public | Multiple construction, infrastructure and systems provision to the Israeli settlements and bodies in the occupied Palestinian territory. Electra Construction, has been involved in the construction of housing projects in settlements in the occupied West Bank | None |
| Dexia Credit Local (Belgium) | Dexia Group | Loans to local and regional settlement councils. | None |
| Energix-Renewable Energies Ltd (Israel) | Publicly traded | Solar projects located in the occupied West Bank | None |
| First International Bank of Israel | FIBI Holding Ltd | Provides financing for the construction of housing projects in Israeli settlements and mortgages to homebuyers in Israeli settlements | FDC (2014) PGGM (2014) United Methodist Church (2016) |
| Ford Motor (USA) | Publicly traded | Ford vehicles are imported and distributed through Delek Motors. Vehicles are modified and used by Israel Military and police special unit. | None |
| Formula Systems (Israel) | Asseco Group | Subsidiaries involved in providing IT systems to the Israeli Army. | None |
| General Mills (USA) | Publicly traded | On of its brand products is Shalgal, a Pillsbury bakery that is located in the Atarot industrial zone in the occupied West Bank. | None |
| Gilat Satellite Networks (Israel) | Publicly traded | Antennas of the company are installed in checkpoints across OPT and it has provided the Israel Army with satellite communications systems. | None |

¹ The companies in grey are those present in the SPU's portfolio. Parent companies indicated in the second column are not in the portfolio (unless otherwise specified).

² Investors: Le Fonds de compensation commun au régime général de pension (FDC) – Luxembourg; Kommunal Landspensjonskasse Gjensidig Forsikringsselskap (KLP) – Norway; Nordea Bank Abp (Nordea) – Finland; Stichting Pensioenfonds Zorg en Welzijn (PGGM) – The Netherlands; Storebrand – Norway; United Methodist Church – USA; Sampensjon – Denmark.

| Company | Parent Company | Involvement in OPT | Divestments |
|--|---|---|---|
| HeidelbergCement (Germany) | Publicly traded | Owens plants that operate and extract materials in OPT, and supplies construction materials to construction projects in the settlements. | KLP (2015) Storebrand (2015) Sampensjon (2017) |
| Hewlett-Packard Enterprise Co (USA) | Publicly traded | Provides the Israeli Ministry of Defence and the Ministry of the Interior a system of surveillance and identification used in settlements and checkpoints. | The Quaker Friends Fiduciary Corporation (2012) Presbyterian Church of the USA (2014) Storebrand (2014 - Q3 2017) |
| Hyundai Heavy Industries (South Korea) | Hyundai Heavy Industries Group | Hyundai excavators, imported and distributed in Israel through Efcø Equipment, have been used for house demolitions and construction works in settlements. | None |
| Israel Discount Bank (Israel) | Publicly traded | Provides financial accompaniment for construction projects in the occupied Palestinian territory. | FDC (2014) PGGM (2014) United Methodist Church (2016) |
| Jerusalem Economy (Israel) | Publicly traded | Subsidiary Mivne Taasiyah holds land in OPT for industrial and storage purposes. | None |
| MAN Group (UK) | MAN SE (owned by Volkswagen AG) | Supplies the chassis for the car that carries the the "Skunk" – a crowd control weapon. | None |
| Manitou (France) | Publicly traded | Its cranes have been used in the construction and maintenance of the separation wall in the occupied West Bank. | None |
| Matrix IT Ltd | Publicly traded | One of its projects work out in two offices in the occupied West Bank. Provides Israeli Army and Ministry of Defense with training on cyber security. | None |
| Mitsubishi Motors Corporation (Japan) | Publicly traded - Majority shareholder Nissan (34%) | The Mitsubishi Pajero Model has been used by the Israeli Civil Administration for the distribution of demolition and confiscation orders in Area C in the occupied West Bank. | None |
| Mizrahi Tefahot Bank (Israel) | Publicly traded | Provides financial accompaniment for construction projects in the occupied Palestinian territory. | FDC (2014) PGGM (2014) Storebrand (2015) United Methodist Church (2016) |
| Motorola Solutions (USA) | Publicly traded | Provides surveillance systems and radar detectors to Israeli settlements and checkpoints on the wall. | Presbyterian Church of the USA (2014) Storebrand (2015) Sampensjon (2018) |
| One Software | Publicly traded | Subsidiaries have offices in the West Bank and provides computers and servers maintenance to the Israeli Army | None |
| Partner Communications (Israel) | Publicly traded - Majority shareholder Israel Telecom (30%) | provides cellular, ISP, ILD and landline services to Israeli settlements in Area C, and has active antennas and telecommunication infrastructure facilities on occupied land in the West Bank. | None |
| Paz Oil (Israel) | Publicly traded | 17 filling stations in the occupied Palestinian territory and Syrian Golan, in the occupied West Bank, and in occupied East Jerusalem. | None |
| Rami Levy Chain Stores Hashikma Marketing 2006 Ltd | Publicly traded | Operates five supermarkets across the West Bank | None |
| Shapir Engineering and Industry Ltd | Publicly traded | Build housing projects and infrastructure in the West Bank | None |
| Shufersal (Israel) | Discount Investment Corporation | Operates branches in occupied settlements. | None |
| Siemens (Germany) | Publicly traded | Participating in the electrification of the Israeli Railways network. | None |
| Terex (USA) | Publicly traded | Track excavators were used during demolitions in the Palestinian neighborhoods of At-Tur and Beit Hanina in East Jerusalem. | None |
| Teva Pharmaceutical Industries Ltd (Israel) | Publicly traded | Enjoys the advantages generated by the Israeli occupation of Palestinian lands allowing the company to exploit the Palestinian market, creating the so-called 'Captive Market'. | None |
| Toyota Motor Corporation (Japan) | Publicly traded | Hilux model is being used by the Israeli army and border police to protect illegal settlements and military bases along the West Bank. | None |
| Volvo (Sweden) | Zhejiang Geely Holding Group | Heavy machinery has been used for the demolition of Palestinian houses in the occupied West Bank and East Jerusalem, construction of Israeli settlements and construction of the Separation Wall. | None |

About the Authors

Dr Chiara Macchi, an EBHR project associate since 2012, currently researches and lectures at the Sant'Anna School of Advanced Studies (Pisa, Italy). She has published on business and human rights-related issues, including States' extraterritorial human rights obligations, the parent company's duty of care in transnational supply chains, the OECD National Contact Points, and the impact of business on the Right to Water. Chiara obtained her PhD *cum laude* in 2015 from Sant'Anna School of Advanced Studies with the thesis "Human Rights and Transnational Corporations – Legal and policy avenues for the protection of human rights in global supply chains". In 2019, she has been awarded the Marie Skłodowska-Curie Individual Fellowship by the European Commission to carry out a two-year research project on business and human rights focusing on EU policies.

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Luis Felipe Yanes is a core member of the EBHR, focusing on issues of business and human rights and of economic, social and cultural rights. Before joining Essex, he was a Human Rights Specialist of the Inter-American Commission on Human Rights, having been the senior lawyer of the Protection Group, in charge of the Commission's precautionary measures mechanism. Between 2017 and 2018, Luis was a Research Fellow of the Global Business Initiative on Human Rights, providing specialized research on the regulatory framework and the enjoyment of human rights in regional contexts. For the last ten years, he has worked in the field of economic, social and cultural rights, business and human rights, as well as with issues of indigenous and tribal peoples, both in practice with several NGOs in Latin-America and in his academic research. Luis is currently a PhD candidate at the Human Rights Centre of the University of Essex, where he researches on international investment law and social rights.

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The **Essex Business and Human Rights Project** ("EBHR") is a research group based in the University of Essex School of Law and Human Rights Centre that focuses on the complex interplay between transnational business activities and human rights protection. EBHR's mission consists of both advancing academic research in the field of business and human rights, and supporting the work of public- and private-sector practitioners through consultancy projects. EBHR prides itself on the independence, visibility and prestige that derive from being hosted at a renowned academic institution, with one of the oldest and most respected human rights centres in the world. Each project is managed by a sub-team whose members are selected on their specific expertise. You can contact EBHR at ebhr—at—essex.ac.uk.