

Rights of Individuals in War or Conflict Situations

KLP seeks to apply a consistent and principled approach to all of its exclusion decisions. To ensure that we handle similar cases consistently, we rely on KLP's previous divestment decisions, as well as recommendations on exclusion from the Council on Ethics for the Government Pension Fund – Global (GPFG).¹

KLP makes exclusion decisions based on whether there is an unacceptable risk for ongoing or future violations, not on past violations alone. This approach highlights that KLP's goal is not to "punish" companies, but to ensure that KLP does not contribute to violations through its investments.

Distinct from human rights

International humanitarian law, or the laws of war, proscribes the rights of individuals in war or conflict situations. This is distinct from international human rights law. International humanitarian law applies in the context of an armed conflict. It is a set of rules for the conduct of hostilities.

One example of a distinction between international humanitarian law and human rights law concerns the right to life. During an armed conflict, a soldier can kill an enemy combatant without violating international humanitarian law. If there were no armed conflict, that would be an act of murder, deprivation of the right to life under human rights law. Context matters. In brief, although international humanitarian law and human rights law interact in a complex fashion, this example highlights that they are not identical.

International standards

The main standards for the rights of individuals in war and conflict situations include the 1949 Geneva Conventions and their Additional Protocols.² KLP uses the commentaries to these treaties for additional guidance on their interpretation, and looks to the Norwegian Military Manual.³ Decisions of international courts and tribunals on questions of international humanitarian law also inform KLP's approach.

Key considerations

In KLP's experience, the greatest challenge for cases involving violations of the rights of individuals in war and conflict situations is determining whether the company is complicit in the violation. As with cases involving human rights violations, KLP looks to the following factors in making this determination:

- Whether there is a clear connection between the company's activities and the violation
- Whether the violations were undertaken to benefit the company's interests or to "facilitate conditions" for the company
- Whether the company took an active role in the violations, or was aware of the violations but failed to act to prevent them.⁴

For example, KLP often receives questions about its approach to portfolio companies involved in business dealings connected to settlements on occupied territory. Using the above factors and based on the recommendations of the Council on Ethics for the Government Pension Fund – Global (GPFG), KLP has excluded companies involved in the *physical construction* of settlements that international bodies have determined violate the Fourth Geneva Convention.⁵ KLP has not expanded this criterion to apply to *all business activities* connected to the settlements. As stated in the Council on Ethics for the GPFG's recommendation on the exclusion of AFI Group and Danya Cebus:

¹ <https://www.regjeringen.no/no/dokumenter/nou-2003-22/id118914/>

² <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>

³ <https://forsvaret.no/hogskolene/forsvarets-hogskole/Forskning/Publikasjoner/Norsk-manual-i-krigens-folkerett>

⁴ http://english.klp.no/polopoly_fs/1.29229.1417436492!menu/standard/file/POSCO%20Daewoo%20and%20Olam%20decision%20to%20exclude%201122014%20ENGLISH.pdf, p. 11. These are the same factors that the Council on Ethics considers in its evaluations. <https://nettsteder.regjeringen.no/etikkradet-2017/files/2017/02/Total-ENG.pdf>, p. 12.

⁵ See, e.g. https://nettsteder.regjeringen.no/etikkradet-2017/files/2017/02/Tilr_Shikun_Binui_publ_eng.pdf

Several companies in the Fund's portfolio can probably be said to support the settlements in different ways and to various degrees. In addition to the actual construction of the settlements and their infrastructure, companies may be involved in e.g. the supply of electricity and telecommunications, the sale of goods and fuel, industrial activity or the sale of real estate in settlements. In addition, there may be companies in the Fund, which supply construction materials and other resources used for building the settlements and their associated infrastructure. However, the Council does not consider that all forms of economic activity associated with the settlements necessarily constitute unacceptable contributions to breaches of the Fund's Ethical Guidelines and that an assessment of the degree to which each company contributes must form the basis for the Council's decisions. Construction activities related to the building of real estate in the settlements, i.e. the physical building of houses in the settlements, is, in the view of the Council, the most significant contribution to the further expansion of West Bank settlements.⁶

KLP has adopted this approach as well, requiring a case-by-case assessment of each company's individual contribution rather than a blanket exclusion policy for companies operating in occupied territory.

Examples:

Unacceptable risk of contributing to violations of the rights of civilians in time of war in the Occupied Palestinian Territories (OPT)

KLP excluded AFI Group in 2010. The company is involved in the construction of Israeli settlements in the OPT. In 2009, subsidiary Danya Cebus constructed housing in three settlements in the region. According to international law, especially the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, the Israeli settlements are illegal. Several UN Security Council Resolutions and an International Court of Justice Advisory Opinion have concluded that the establishment of Israeli settlements on occupied Palestinian territory is illegal according to this convention.

Unacceptable risk of contributing to violations of the rights of civilians in time of war in East Jerusalem

KLP excluded Shikun & Binui Ltd. in 2012. The company is involved in the construction of Israeli settlements in East Jerusalem and has previously been involved in the building of settlements on occupied territory in the West Bank and in East Jerusalem. The International Court of Justice, the UN Security Council and the International Committee of the Red Cross (ICRC) have all determined that the construction of Israeli settlements in the West Bank and in East Jerusalem violates the Fourth Geneva Convention. The purpose of this convention is to protect civilians in time of war and occupation.

⁶ https://nettsteder.regjeringen.no/etikkradet-2017/files/2017/02/Recommendation_Africa_Israel.pdf, p. 8.