BDS Movement

(27 November 2024)

Ethical Investment Policy

BDS

I. Introduction

International standards on the legal responsibilities and liabilities of a company operating internationally have evolved in recent years, and courts are taking a "more expansive view of legal liability." Exposure is particularly clear in situations of armed conflict, where there is a heightened risk of gross human rights violations and international crimes.

Legal liabilities of companies are not limited to the domestic laws where these companies are domiciled or where they operate. Laws in Third States may also apply. Not only can companies be held accountable for illegal operations, their "board members, executives or employees," can also all be held accountable for corporate and individual wrongdoing.[1] The same standards may apply to institutional investment bodies that invest in such companies.

The Ethical Investment Policy (EIP) of a council, firm, investment fund, university, or other institution (henceforth, entity), which must be in harmony with the entity's values and principles, aims to ensure that its investments are managed in a productive but socially, ethically, and legally responsible manner.

By adopting this EIP, the entity affirms that it does not profit from, or provide capital to, corporations that do not conform to international standards of socially, ethically, and legally responsible business operations, or from activities that are materially inconsistent with its values, including its ethical investment principles.

The entity does not and will not knowingly profit from, provide capital to, or invest in companies implicated in:

a. The production of weapons, weapon parts or military equipment;
b. Fossil fuel extraction, processing, or trade;
c. Grave violations of human rights as defined in international law (including war crimes, crimes against humanity, and genocide).

The main principles of the entity's EIP are as follows:

- The EIP is based on the premise that the entity's choice of where to invest should be in line with its strategic aims, legal obligations, as well as environmental, social and ethical values.
- The entity's investment/asset managers will actively monitor its investments to ensure their *continued* adherence to its EIP criteria below. In particular, they are required to provide their professional advice against investment in areas which are considered ethically or legally unacceptable according to the criteria.

[1] "Corporations and their managers, directors and other leaders could also be held directly liable for the commission of acts of genocide, as well as war crimes and crimes against humanity. Article VI of the Genocide Convention specifies that 'persons' may be held liable for genocidal acts – which include individual businessmen or corporate managers as natural persons and may include corporations as legal persons. While the International Criminal Court (ICC) does not have jurisdiction over legal entities, company personnel as natural persons of States Parties to the Rome Statute may fall under its jurisdiction. Under Article 25(3)(c) of the Rome Statute, the ICC can prosecute those who facilitate the commission of crimes, including through the provision of means. […] In situations of armed conflict, additional international humanitarian and international criminal law standards apply to corporations and individual business leaders, who must consider whether their operations contribute to gross human rights violations or international crimes."
Obligations of Third States and Corporations to Prevent and Punish Genocide in Gaza, 5 June 2024, p.2

II. Investment Principles

To accord with the entity's values when investing its funds, regard must be made to Environmental, Social and Governance (ESG) issues, including human rights, as per the United Nations Principles for Responsible Investment (PRI). The entity will not knowingly invest in businesses whose activities and practices pose a risk of serious harm to individuals, groups, or the environment.

The entity's investment principles are based on the UN's PRI, the UN Global Compact, and the UN Guiding Principles on Business and Human Rights (UNGPs).

The UNGPs are grounded in recognition of three pillars: the State obligation to protect against human rights abuses, the business responsibility to respect human rights, and access to remedy for victims of human rights abuse. "These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure."

According to the UN's Working Group on Business and Human Rights, "Under the UNGPs, all business enterprises have a responsibility to respect human rights, and the process of continuously conducting human rights due diligence (HRDD) is a core requirement for businesses in fulfilling that responsibility." Businesses should conduct enhanced human rights due diligence in situations of conflict, and prevent and mitigate adverse human rights impacts that were identified in all HRDD processes. This includes impacts related to a business's own activities "or as a result of their business relationships with other parties."[2]

Based on the above, the UN has developed responsible investment principles to guide corporations and investment firms.

(1) The United Nations Principles for Responsible Investment

Institutional investors have a duty to act in the best long-term interests of their beneficiaries. In this fiduciary role, they recognize that environmental, social, and corporate governance (ESG) issues can affect the performance of investment portfolios (to varying degrees across companies, sectors, regions, asset classes and through time).

They also recognize that applying these Principles may better align investors with broader objectives of society. Therefore, in order to reconcile their fiduciary responsibilities with their legal and ethical obligations, they commit to the following:

[2] Commentary to UNGP 13.

- **Principle 1:** Incorporate ESG issues into investment analysis and decision-making processes.
- **Principle 2**: Prevent involvement in human rights violations, war crimes and crimes against humanity by incorporating *investment risk assessment processes* for situations of armed conflict.
- **Principle 3**: Be active owners and incorporate ESG issues into ownership policies and practices.
- **Principle 4**: Seek appropriate disclosure on ESG issues by the entities in which they invest.
- **Principle 5:** Promote acceptance and implementation of the Principles within the investment industry.
- **Principle 6**: Work together to enhance their effectiveness in implementing the Principles.
- **Principle 7:** Report on their activities and progress towards implementing the Principles.

PRI: Human Rights Dimension

The responsibility of companies and investment institutions to respect human rights is based on internationally recognized human rights standards. According to the UN Principles for Responsible Investment, there are many reasons that compel asset owners to respect and protect human rights. The UN focuses on four key themes:

a. *Legal responsibility*
All legal entities, as well as natural persons, have a legal responsibility to not be involved in the commission of war crimes, crimes against humanity or genocide. Institutional investors are required to respect human rights through a set of policy and process requirements, as set out in the UNGPs.[3]

b. *Financial materiality*
Human rights factors are relevant for investors to consider as they can impact financial returns. For example, companies can face higher operational and legal costs due to armed conflict (including a heightened risk of human rights abuse), civil disturbances, and abuses linked to environmental degradation and other potential liabilities, including those related to reputational risks, as noted below.

c. *Beneficiaries' sustainability and ethical preferences*

[3] "Third States engaged in commercial activities with companies potentially implicated in acts of genocide in Gaza, for example through public procurement, as shareholders, or through public pension fund and other investments should terminate such contracts and exclude such companies.
Pension funds should also withdraw their investments from Israeli banks, Israel Bonds, and other financial institutions, considering the connection with illegal settlements and other violation of international law." From the expert opinion, Obligations of Third States and Corporations to Prevent and Punish Genocide in Gaza, 5 June 2024, p. 35.

An increasing number of asset owners' beneficiaries are interested in ensuring their money is invested in a manner that aligns with their values, including respect for human rights.

d. Reputational risk

Media organizations, human rights organizations, and grassroots campaigning groups track the activities and operations of businesses, and those that invest in them. If a company is detected to be implicated in human rights violations, this may generate significant attention or even spark impactful boycott and divestment campaigns against the business and/or against its institutional investors. Reputational risks apply to both. Respecting human rights therefore also helps to safeguard against potential reputational damage and the financial damages that accrue accordingly.

(2) The United Nations Guiding Principles on Business and Human Rights (UNGPs)

According to the UNGPs, businesses should:

a. **Support and respect human rights**; and
b. **Make sure that they do not cause or contribute to human rights abuses,** and address the adverse impacts they are involved in or linked to. In certain cases, it may be necessary to end the business's operations or relationship. This may also come at the direction of States.[4] The UNGPs further note that "in situations of armed conflict enterprises should respect the standards of international humanitarian law."[5]

PRI underscore that "The UNGPs require institutional investors to exercise a three-part responsibility to respect human rights:

1. A policy commitment: Investors should establish a policy commitment to respect human rights, approved at the most senior level and embedded throughout the organization to inform investment decisions, stewardship and policy dialogues.

2. Due diligence processes[6]: Investors should manage actual and potential negative human rights outcomes; such considerations should be reflected in investors' investment decision-making processes, including in portfolio construction, security selection and allocation, and/or in selecting, appointing and monitoring external managers/funds and other service providers.

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[4] The ICJ Advisory Opinion of July 2024, for example, calls on States to "take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory." para. 278
[5] UNGPs commentary to Principle 12.
[6] In situations of armed conflict, the risk of human rights violations is heightened, and so must be the due diligence requirement of companies involved in such situations. According to legal experts, "For companies and the institutions that invest in them, understanding and upholding conflict-sensitive practices that embed IHL will give them a greater chance of managing investment risks, encouraging best practices, and respecting the lives and dignity of those affected by armed conflict."

3. Access to remedy: Investors should enable or provide access to remedy for people affected by their investment decisions. For outcomes that investors are directly linked to through an investee, investors should ensure that investees provide access to remedy for people affected.”

III. Monitoring

To give effect to its commitment to this Ethical Investment Policy, the entity will:

- Publish the EIP on its website following its approval.
- Assign the responsibility to monitor the operation and the effectiveness of the Policy to a specific manager/department that is required to provide the entity with a quarterly update and advise on investments that conflict with the EIP.
- Publish on its website a list of the commercial assets owned by the entity, with full transparency on these assets’ operations and major business relationships.