



PERMANENT MISSION OF NORWAY

Verbal note no. 59/2024

The Permanent Mission of Norway to the United Nations Office and other International Organizations in Geneva presents its compliments to the secretariat of the Special Procedures Branch, OHCHR and Ms Frederica Donati, Officer-in-charge, and with reference to the joint communication from Special Procedures ref.: AL NOR 3/2024, dated 17 May 2024, we have the honour to hereby transmit the response from the Minister of Foreign Affairs Mr. Espen Barth Eide, Norway.

The Permanent Mission of Norway to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the secretariat of the Special Procedures Branch, OHCHR the assurances of its highest consideration.

A handwritten signature in blue ink, appearing to be 'L. Eide', written over the end of the second paragraph.



Geneva, 10 July 2024

to the secretariat of the Special Procedures Branch, OHCHR  
Geneva



ROYAL NORWEGIAN  
MINISTRY OF FOREIGN AFFAIRS

*Minister of Foreign Affairs*

Oslo, 09 July 2024

**Response to joint communication from UN Special Procedures**

First of all, let me assure you that Norway takes our obligations under international law seriously and we take great efforts in ensuring that we comply with our international obligations.

The war in Gaza has caused immense suffering. Norway has condemned the 7 October terrorist attacks in the strongest possible terms. At the same time Norway has repeatedly called for a sustained and enduring ceasefire. We are deeply concerned by reports of violations of international law, including massive human rights violations in Gaza and the West Bank. International humanitarian law and international human rights must be respected by all.

Also, Norway has made it clear on a number of occasions, including in our oral intervention before the International Court of Justice 23 February 2024 in connection with the coming advisory opinion on the legal consequences arising from the Israeli occupation of Palestinian territory, that Israel's recent actions in Gaza include indiscriminate and disproportionate use of force and other measures that are in violation of international humanitarian law. We also emphasized the need to find a clear path towards a two-state solution based on internationally recognized borders and international law, including the right to self-determination.

Norway has welcomed the adoption of Security Council Resolution 2735, with a roadmap leading to an enduring ceasefire, release of hostages and a surge of humanitarian assistance to Gaza. We have urged both parties to fully implement it without delay.

**General comments**

The letter refers to “[..] the alleged transfer of arms to Israel authorized by your Excellency’s Government [..]”. We would initially like to clarify that the Norwegian Government has not authorized any transfer of arms to Israel. Norway has a long-standing policy of no exports of defence material or multi-use goods for military end-use to Israel. Norwegian export controls are comprehensive and strict.

Thyssenkrupp AG is registered in Germany. The Norwegian Government is not familiar with the alleged transfer of arms which is referred to in the letter. Any potential transfer of arms by Thyssenkrupp would be subject to German legislation on transfer of arms.

Although it must be clear that Thyssenkrupp's arms exports cannot impose any liability on Norway under international law, either directly or indirectly, the Government takes the request from the UN special procedures very seriously.

The allegations brought against the Norwegian Government in the letter are related to the investments by the Government Pension Fund Global in the company Thyssenkrupp AG. The Fund owned 2.5 percent of Thyssenkrupp AG at year end 2023.

The operational management of the Pension Fund Global (the Fund) is carried out by Norges Bank, which invests the Fund's capital in equities and bonds outside of Norway in accordance a mandate issued by the Ministry of Finance. The Fund also invests in unlisted real estate and renewable infrastructure within the limited scope the mandate allows for. The Fund's investment strategy is expressed in terms of global indices for equities and bonds, with weights of 70 pct. And 30 pct. Respectively. The indices are produced by leading international index providers (FTSE Russell for equities and Bloomberg for bonds) which contains thousands of companies and bonds. The index providers decide on the criteria for inclusion of companies and bonds in these indices.

The Government Pension Fund Global is one of the world's largest single-owned funds, owning almost 1.5 percent of the shares in the world's listed companies. The Fund has holdings in close to 9,000 companies worldwide. All holdings are available on Norges Bank's web page<sup>1</sup>.

Responsible investment is an integral part of the framework for, and the management of, the Fund. Recognized principles, standards and guidelines from the UN and OECD form the basis of Norges Bank's work with responsible investment. It follows from these standards and guidelines that companies are expected to exercise a high degree of due diligence in areas with an increased risk of human rights violations and violations of international law, such as in the West Bank.

In addition to requirements regarding the responsible investment work in Norges Bank, the Ministry of Finance has established ethical guidelines for the observation and exclusion of companies from the Fund. The guidelines include criteria for gross or systematic violations of human rights in general and in war or conflict situations. Companies can also be excluded for the sale of weapons to states in armed conflicts that use the weapons in ways that constitute serious and systematic violations of international law.

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<sup>1</sup> [All investments | Norges Bank Investment Management \(nbim.no\)](https://www.nbim.no)

The Ministry of Finance has forwarded the letter from the UN experts to the independent Council on Ethics, which is responsible for assessing companies in the fund against the ethical guidelines. Norges Bank's Executive Board makes decisions in such cases on the advice of the Council on Ethics. All recommendations by the Council of Ethics to Norges Bank are based on thorough investigations and are published<sup>2</sup>. In the event of a decision to exclude, any divestments must be made before publication. The process can therefore take some time.

The Council on Ethics monitors the situation carefully and on an ongoing basis and assesses whether there are grounds for recommending the exclusion of companies. Regarding companies that sell weapons to Israel that are used in the war in Gaza, the Council on Ethics must make a concrete assessment of each individual company, including whether the weapons are used in Gaza, and when the deliveries were made.

### **Due Diligence and Safeguards**

The Government attaches importance to fulfilling Norway's international obligations including human rights obligations. Norway is party to a large number of human rights instruments within the framework of the UN and the Council of Europe and frequently cooperates with international monitoring mechanisms.

Consistent with these obligations, there are several measures in place in order to ensure compliance by both public and private actors within Norway.

Please find more detailed information on our policies as response to the questions posed in your letter in the enclosed file.

Your Sincerely

Espen Barth Eide

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<sup>2</sup> [Recommendations – Council on Ethics \(etikkradet.no\)](https://etikkradet.no)

Attachment:

### **Policy on business and human rights**

The Norwegian Government actively promotes responsible business conduct and express clear expectations of how Norwegian companies operate abroad. We expect Norwegian companies to act responsibly and to recognise and comply with the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises. Further Norway is an active contributor to promote and protect human rights, establish global guidelines and international standards for businesses and private sector.

In addition to legal framework, we have institutional structures and tools assisting us in these efforts.

The Norwegian Transparency Act<sup>3</sup>, which came into force on 1 July 2022, places high demands on Norwegian companies to exercise due diligence in their supply chains. Norway was one of the first countries in Europe moving from soft law to hard law in making responsible business a legal requirement for companies. The Act shall promote enterprises' respect for fundamental human rights and decent working conditions in the production of goods and the provision of services and shall ensure the general public access to information regarding how enterprises address adverse impacts on fundamental human rights and decent working conditions.

The Transparency Act requires large companies to carry out due diligence to reduce and prevent negative impacts on human rights and decent work in their own operations and supply chain. Three main duties are placed on companies through the Transparency Act: to carry out due diligence, to publish an account of due diligence, and to provide information upon request. Due diligence is to be carried out in accordance with the OECD Guidelines for Multinational Enterprises.

The Norwegian Government's most important instrument for innovation and development of Norwegian enterprises and industry is Innovation Norway. Innovation Norway requires its customers, suppliers, and partners to conduct their business in line with international guidelines and principles. This includes conducting due diligence to avoid harm to people, society, and the environment, and managing potential risks through appropriate internal control systems and guidelines.

The Norwegian Foreign Service possesses Important Insight and knowledge about different countries and markets, also in terms of risks for Norwegian companies. The foreign service assists with information and guidance so that companies can make the necessary due diligence assessments in different markets.

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<sup>3</sup> [The Transparency Act - Forbrukertilsynet](#)

The National Contact Point (NCP) for Responsible Business Conduct Norway raises awareness about the OECD Guidelines for Multinational Enterprises and gives advice and guidance in specific instances of alleged non-compliance of the Guidelines. All OECD countries, and other countries adhering to the Guidelines, are obliged to establish an NCP, which constitutes a non-judicial grievance mechanism. NCP Norway is established as an independent expert advisory body and comprises four independent experts. The NCP is assisted by the NCP Secretariat which consists of three full-time staff members.

### **State-owned companies**

In the white paper<sup>4</sup> on state-owned companies, the Norwegian government states that it expects companies that operate, trade with, or have business relationships associated with conflict areas to show respect for international humanitarian law. Companies should also avoid contributing to, or supporting, violations of these rules.

Considering the ongoing conflict between Israel and Hamas, it is therefore prudent for the government as an owner to engage in dialogue with relevant companies in the state's company portfolio on, among other things, due diligence related to respect for humanitarian law. As an owner, the Ministry of Trade, Industry and Fisheries has such dialogue with relevant companies. In this dialogue, the state as an owner ensures that the companies are aware of the state's expectations and carry out the due diligence we expect of them.

The government will continue to be a responsible owner, which entails a clear expectation that all companies where the state directly owns shares, not only comply with applicable laws and regulations, but also carry out sound due diligence, including with regards to humanitarian law.

### **Investments**

The Government Pension Fund Act<sup>5</sup> states that the objective of the Fund is to generate the highest possible financial return within an acceptable level of risk. The Fund shall be managed responsibly. The Ministry of Finance holds the overall responsibility for the management of the Fund. The Ministry has delegated the responsibility for the operational management of the Fund to Norges Bank (the central bank of Norway). Key decisions of crucial importance to fund risk and return, as well as the responsible investment framework, are deliberated by the Norwegian Parliament and endorsed prior to implementation of any changes.

Responsible investment management is an integral part of the framework and management of the Fund. Internationally recognised principles and standards from the

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<sup>4</sup> <https://www.regjeringen.no/contentassets/b45b4a63e301435293bd1b10d1ede45b/en-gb/pdfs/stm202220230006000engpdfs.pdf>

<sup>5</sup> [Government Pension Fund Act 20200101.docx \(regjeringen.no\)](#)

UN and OECD form the basis for this work. Norges Bank engage with regulators, international organisations and standard setters to contribute to the further development of international standards. Norges Bank has set expectations of companies the Fund is invested in on governance and sustainability matters. The expectations are directed at the board of directors of the investee companies and are used, inter alia, as a basis for the bank's ownership dialogue with companies. Companies with operations or other business relationships in conflict-affected areas characterised by an increased risk of human rights violations are expected to conduct enhanced due diligence and risk assessments proportionate to the level of risk. In 2023, Norges Bank was in dialogue with 29 companies due to such elevated risk.

The Ministry of Finance has adopted ethically motivated guidelines for observation and exclusion of companies from the Fund<sup>6</sup>. These guidelines contain criteria for the exclusion of companies based on their products or on their conduct. The Ministry has appointed an independent Council on Ethics to perform ethical assessments of companies and make recommendations to Norges Bank's Executive Board, which makes the decision on whether companies should be excluded from the Fund, placed under observation, or followed up through active ownership. Norges Bank's Executive Board may, inter alia, consider factors such as the probability of future violations of norms, the severity and extent of the violations, and the connection between the violations and the company in which the Fund is invested. The Bank may also consider the breadth of the company's operations, including whether the company is doing what can be expected to reduce the risk of violations of norms within a reasonable time frame. Relevant factors in these assessments include the company's corporate governance, guidelines and efforts on environmental and social conditions, and whether the company is contributing to remedying measures with respect to those who are or have previously been affected by the company's conduct.

The ethical guidelines contain several criteria that may be relevant in war and conflict situations. The criteria are directed towards companies, not countries. There are conduct-based criteria directed at companies that contribute to or are responsible for serious or systematic human rights violations or serious violations of the rights of individuals in situations of war and conflict. Companies may also be excluded for the sale of weapons to states engaged in armed conflict that use the weapons in ways that constitute serious and systematic violations of the international rules on the conduct of hostilities. Further, the ethical guidelines contain a product-based weapon criterion stating that Fund shall not be invested in companies which themselves, or through entities they control, develop, or produce weapons or key components of weapons that violate fundamental humanitarian principles through their normal use. Such weapons include biological weapons, chemical weapons, nuclear weapons, non-detectable fragments, incendiary weapons, blinding laser weapons, antipersonnel mines, and cluster munitions.

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<sup>6</sup> [2022.09.05\\_gpfg\\_guidelines\\_observation\\_exclusion\\_\(regjeringen.no\)](#)

For the period 2002-2023, 13 companies have been excluded under the product-based weapon criteria, 12 companies have been excluded under the conduct-based criteria on serious violations of the rights of individuals in situations of war and conflict and 2 companies have been excluded for the sale of weapons to a state that uses the weapons in ways that constitute serious and systematic breaches of the international rules on the conduct of hostilities.

### **Business advice**

In March 2024, the Government reiterated its position on Israel's settlement policy on occupied land by advising Norwegian companies not to engage in business cooperation or trade that serves to perpetuate the illegal Israeli settlements. The recommendation to Norwegian companies was a response to the intensification of Israel's settlement policy during the past year as well as new settlement expansions and increased settler violence against Palestinians. The recommendation makes it clear that Norwegian companies should be alert to the fact that engaging in any economic or financial activity in the illegal Israeli settlements could put them at risk of contributing to violations of international humanitarian law and human rights. The advice to Norway's business sector concerns business activity and trade in goods produced in Israeli settlements.

The Government further reiterated that it expects Norwegian companies to operate in a responsible manner and to comply with the Norwegian Transparency Act, the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

### **Remedies and redress**

In terms of remedies and redress, there are many ways in which a question of human rights may be brought before a Norwegian court or administrative authority, for example in connection with civil or penal proceedings such as a claim for compensation, as a ground for declaring an administrative or a court decision null and void, or as a question of procedure (for example a fair trial) in civil or penal proceedings. Furthermore, an individual who considers that his human rights have been violated may, subject to the ordinary limitations in the Civil Procedure Act, demand that the courts pass a judgment on the case.

The National Contact Point for Responsible Business Conduct Norway (NCP) offers dialogue and mediation when it receives a complaint concerning alleged violation of the OECD Guidelines. If the parties do not reach an agreement, the NCP will assess whether the Guidelines are violated.

The NCP deals with cases on request. When the NCP receives a complaint, it considers whether the complaint concerns topics covered by the Guidelines, and if the Norwegian NCP is the appropriate authority. The Guidelines specify how the NCPs are to deal with specific instances. The NCP procedure shall be impartial, predictable, equitable and

compatible with the Guidelines. The Norwegian NCP also strives to comply with the UN effectiveness criteria for non-judicial grievance mechanisms and has more detailed procedural routines.

In addition to the transparency requirements of the Guidelines, the Norwegian NCP complies with the Norwegian Freedom of Information Act and practices enhanced access to information.