

Decision to exclude Caterpillar Inc.

June 2024

1. Introduction

KLP and the KLP Funds (KLP) have decided to exclude Caterpillar Inc. from their investment portfolios with effect from June 2024. KLP considers that investing in Caterpillar constitutes an unacceptable risk of contributing to the violation of the rights of individuals in situations of war or conflict due to the company's links with the Israeli settlements in the West Bank. The situation in the West Bank affects children to a high extent, which increases the severity. KLP's decision to exclude Caterpillar relates to norm violations that may have been enabled by the use of Caterpillar's products and services. KLP has also previously excluded companies associated with the Barrier and the Israeli settlements in the West Bank.

In light of the ongoing warfare, the Norwegian government has issued a clear recommendation that Norwegian companies must behave responsibly and perform due diligence assessments pursuant to the Norwegian Transparency Act. This is because companies risk contributing to the violation of international law by conducting financial or business activities in Israeli settlements in the West Bank, which have been declared illegal under international law. KLP wishes to comply with the Norwegian government's recommendation.

Due diligence assessments in the area of human rights must be tailored to the situation. There is broad international consensus that the Israeli settlements in the West Bank violate international law. The war in Gaza is extremely serious, while conditions in the West Bank are worsening. Enhanced due diligence assessments are expected in exceptional contexts such as these. It is also expected that companies like Caterpillar must take account of international law in situations of war and conflict.

Caterpillar's equipment, such as the D9 series of bulldozers, is used to demolish Palestinian houses and infrastructure to make way for Israeli settlements. It has also been alleged that Caterpillar's equipment is being used in connection with the war being waged in Gaza. It has recently been released a press release from the UN High Commissioner for Human Rights on arms transfers to Israel where several companies are mentioned among Caterpillar. "These companies, by sending weapons, parts, components, and ammunition to Israeli forces, risk being complicit in serious violations of international human rights and international humanitarian laws," the experts said.¹

KLP considers that such use of bulldozers both paves the way for and worsens the human rights abuses taking place, since such use may be both effective and injurious to people. Even though Caterpillar does not sell equipment directly to the Israeli Defence Forces (IDF), the company has been made aware of how its equipment is being used. This has also gone

¹ <https://www.ohchr.org/en/press-releases/2024/06/states-and-companies-must-end-arms-transfers-israel-immediately-or-risk>

on for a long time and in a steadily worsening situation, without the company being able to demonstrate that it has performed enhanced due diligence assessments or made any real changes. The time aspect also indicates that the company is unwilling to take any substantive steps. On the basis of the information available, it is therefore impossible to assert that the company has implemented adequate measures to avoid becoming involved in future norm violations.

2. Background

2.1 The situation in the Occupied Palestinian Territory (OPT)

The Palestinians living in the West Bank, East Jerusalem and Gaza have remained under Israeli occupation since the Six-Day War in 1967. The West Bank denotes the area of land east of the 1948 Demarcation Line and west of the River Jordan. Together, the West Bank and Gaza are often called Palestine. Since the start of the occupation 54 years ago, and in contravention of international law, the State of Israel has engaged in the construction of Israeli settlements in the West Bank. The UN estimates that around 700,000 people now live in illegal settlements in the West Bank.²

According to the UN, the Israeli settlements have had a negative impact on the Palestinian population's living conditions, since they result in the loss of land and livelihoods, restrict access to services and threaten the physical safety of Palestinian people, in part through Israeli violence against Palestinians.³ The Palestinians in the Occupied Palestinian Territory (OPT) are also subjected to a complex system of controls, comprising physical barriers (checkpoints and road blocks) and bureaucratic barriers (permits, closure of border crossings), which restrict their freedom of movement.⁴

The situation in the West Bank has worsened since the assault and massacre of Israelis perpetrated by Hamas on 7 October 2023. In June 2024, it was estimated that 513 Palestinians had been killed in the West Bank, and 5201 had been injured since 7 October.⁵ Some 27 km² of occupied land in the West Bank has been seized by Israel since October, such that 42 per cent of the area is now apparently under direct Israeli control.⁶ In 2023, the Israeli government made several changes that have facilitated increased construction and settlement activities in the West Bank. Last year was the deadliest for Palestinians living in the West Bank since UN records began. The high death toll reflects a constantly escalating level of conflict, particularly since the start of the Israel–Hamas war.

In Gaza, the war between Israel and Hamas has resulted in a dire humanitarian situation, with at least 35,800 Palestinians killed between 7 October 2023 and 23 May 2024. A further 80,200 people have been injured.⁷ The population is suffering from an acute lack of

² <https://www.ohchr.org/en/statements-and-speeches/2024/03/occupied-palestinian-territory-reporting-settlements-and-occupied>

³ <https://www.ochaopt.org/>

⁴ <https://www.ochaopt.org/content/west-bank-movement-and-access-west-bank>

⁵ <https://peoplesdispatch.org/2024/04/08/44-of-all-palestinians-killed-by-israel-since-october-7-are-children/>
<https://www.ochaopt.org/data/casualties>

⁶ <https://www.newarab.com/news/israel-seized-27000-decares-west-bank-land-7-oct>

⁷ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-170>

fundamental health services, widespread famine and malnutrition, and is under constant attack and bombardment by the IDF. The IDF's objective of destroying Hamas and freeing the Israelis taken hostage during Hamas's attack on 7 October 2023 means that combat operations are taking place in extremely densely populated areas. The risk of human rights violations is high and the IDF has been accused of repeatedly violating the Fourth Geneva Convention's provisions concerning the protection of civilians in time of war. The accusations include violation of Article 14, which requires the establishment of safety zones for wounded and sick civilians, and Article 18, which states that civilian hospitals may in no circumstances be the object of attack but shall at all times be respected and protected by the parties to the conflict.⁸

2.2 Legality of Israeli settlements in the West Bank

Israel has announced its intention to annex all those parts of the West Bank on which the illegal settlements have been built.⁹ This would violate the UN Charter's prohibition on the use of force to acquire territory.

The West Bank settlements have been declared a violation of international law, including Article 49 of the Fourth Geneva Convention, which constitutes a war crime.¹⁰ Article 49 states that "*The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.*"¹¹ The purpose of this provision is to prevent an occupying power from incorporating occupied areas into its own territory and to protect the local population from any worsening of their economic situation. Such an act is deemed to be a war crime under the Rome Statute of the International Criminal Court, see Article 8(2)(b)(viii).¹²

Following the Six-Day War, Israel took the position that it was not obliged to observe all the provisions of the Fourth Geneva Convention on the grounds that the West Bank had already been occupied by Jordan prior to its occupation by Israel. This position was rejected by other states and the UN. In 2004, Israel's Supreme Court ruled that the Convention applied in full to the occupied territories and that construction of settlements in these areas is illegal. However, it also stated that this ruling applied only to the establishment of new settlements and not the expansion of ones already in existence.

The International Court of Justice (ICJ) has recently ruled that it is entitled to deliberate on cases pertaining to areas occupied by Israel in 1967. It also stated: "*The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.*"¹³

There is broad international consensus that the Israeli settlements in the West Bank are a violation of international law. Norway is one of the countries that has always maintained that the occupation is illegal under international law. Support for international law and the international rule of law is a fundamental tenet of Norwegian public policy.¹⁴

⁸https://www.redcross.org/content/dam/redcross/atg/PDF_s/International_Services/International_Humanitarian_Law/IHL_SummaryGenevaConv.pdf

⁹<https://www.amnesty.org/en/latest/news/2020/07/israelopt-10-things-you-need-to-know-about-annexation/>

¹⁰<https://news.un.org/en/story/2019/11/1051781>

¹¹https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf

¹²<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

¹³<https://www.icj-cij.org/node/203806>

¹⁴https://www.regjeringen.no/no/aktuelt/svar_annektering/id2701667/

The Israeli position is that the settlements are not illegal and that any such claims are politically motivated. Among other things, Israel points to the fact that the relocation of Israelis to the settlements is voluntary and that the settlements do not displace other populations in the area. Israel also points out that several of the settlements have been established in places where Jewish communities lived in olden times.¹⁵

2.3 Norwegian government's recommendation

In March 2024, Norway's foreign minister Espen Barth Eide underlined that the Norwegian business community should be aware that companies risk contributing to violations of international humanitarian law and human rights if they engage in economic or financial activities in the illegal Israeli settlements.¹⁶ The government's clarification covers business activity and trade in goods produced in Israeli settlements.

The Norwegian government expects Norwegian companies to behave responsibly and comply with Norway's Transparency Act, the UN Guiding Principles on Business and Human Rights and the OECD's Guidelines for Multinational Enterprises.¹⁷

Although international human rights conventions bind states not commercial entities, companies may be said to contribute to human rights violations. KLP takes no position on whether states are responsible for alleged human rights violations. It is sufficient to establish that the company concerned acts in a way that would contribute to the serious or systematic abuse of internationally recognised human rights. The context in a country or region in which the company operates may nevertheless have a material impact on KLP's assessment of the company's potential contribution to such abuses.

2.4 Caterpillar's links to the violation of international law

According to the UN's Guiding Principles on Business and Human Rights, which was adopted by the UN Human Rights Council in 2011,¹⁸ companies have a duty to respect and protect human rights in every country in which they operate, irrespective of whether the government of that country complies with these rights. This expectation is also included in the OECD's Guidelines for Multinational Enterprises of 2011. Following its most recent update, this document is now called the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (the OECD Guidelines).¹⁹ According to the OECD Guidelines' chapter IV (Human Rights):

Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

¹⁵<https://www.gov.il/en/pages/israeli-settlement-and-international-law?>

¹⁶ <https://www.regjeringen.no/no/aktuelt/regjeringen-frarader-handel-og-naringsvirksomhet-med-israelske-bosettinger/id3028680/>

¹⁷ *ibid*

¹⁸ Human Rights Council, Resolution 17/4 Human rights and transnational corporations and other business enterprises, 16 July 2011: <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/RES/17/4&Lang=E>

¹⁹ <https://mneguidelines.oecd.org/mneguidelines/>

1. *Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*
2. *Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.*
3. *Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.*
4. *Have a publicly available policy commitment to respect human rights.*
5. *Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.*
6. *Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.*

Conflict and political unrest may entail a particularly high risk of human rights violations. Companies operating in conflict areas must therefore exercise particular care and due diligence to avoid becoming involved in any violation of human rights. This is established, for example, in the OECD Guidelines, pursuant to which due diligence assessments in the human rights area must be tailored to the situation concerned. The comments to chapter IV (Human Rights) clarify that enhanced due diligence is expected in particular contexts and that companies must take account of international law in situations of war and conflict:

45. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law. In the context of armed conflict or heightened risk of gross abuses, enterprises should conduct enhanced due diligence in relation to adverse impacts, including violations of international humanitarian law.

The OECD Due Diligence Guidance for Responsible Business Conduct (2018) also emphasises that: “*When the likelihood and severity of an adverse impact is high, then due diligence should be more extensive.*”²⁰ The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, which is of general interest in this case, establishes that: “*Given the complex operating environments of conflict-affected and high-risk areas, where conditions can evolve and degenerate rapidly, due diligence is understood as an on-going proactive and reactive process.*”²¹ The OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector provides advice of general interest. According to the guidance, enterprises should take a risk-based approach and “*prioritise the most vulnerable and most severely impacted groups*”.²²

For over 20 years, Caterpillar has been accused of contributing to the violation of international law in the OPT because the company’s bulldozers and other equipment have been used by the IDF. In 2017, the UN High Commissioner for Human Rights wrote to

²⁰ OECD Due Diligence Guidance for Responsible Business Conduct (2018), p. 17:

www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm

²¹ OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2016), p. 64. KLP’s highlighting: <https://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf>

²² OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, p. 44: <https://read.oecd.org/10.1787/9789264252462-en?format=pdf>

Caterpillar about the company's involvement in the demolition of Palestinian homes and infrastructure in the OPT.²³

In addition to Caterpillar's equipment being used to demolish Palestinian homes and infrastructure in order to facilitate the construction of Israeli settlements, the company has also been accused of furnishing equipment used in connection with Israel's military campaign in Gaza since 7 October 2023.²⁴

The company's D9 series of bulldozers stand at the centre of the allegations relating to both the West Bank and Gaza. These bulldozers are imported to Israel by Israeli Tractors and Equipment (ITE), part of Zoko Enterprises. In partnership with the IDF's Technology and Maintenance Corps, Zoko Enterprises has rebuilt these machines for use in the OPT. Modifications include the installation of vehicle-mounted weapons and armoured drivers' cabins.²⁵

The following list details some of the incidents in which Caterpillar-manufactured equipment is alleged to have been used in ways that contribute to ongoing violations of international law since 2020. The examples presented are a selection of the many incidents described by the organisations Don't Buy into Occupation (DBIC) and Who Profits:

- June 2022: Caterpillar's bulldozers were used to demolish a temporary encampment of makeshift Palestinian shacks and tents in the villages of Al Fakheet and Al-Markez in the West Bank.²⁶
- August 2022: Caterpillar's bulldozers were used to carry out demolition work in the Wadi al-Ahmar community in the southern part of the Jordan Valley in the West Bank.²⁷
- January 2023: A Caterpillar excavator was used to demolish the homes of four families in the village of She'b al-Battem in South Hebron in the West Bank.²⁸
- July 2023: Caterpillar's D9 bulldozers were used by the IDF in connection with attacks on the Nur Shams refugee camp near Tulkarm in the West Bank.²⁹
- December 2023: NGOs and independent journalists accused the Israeli army of using bulldozers to bury wounded Palestinian civilians alive outside the Kamal Adwan hospital in Beit Lahia in Gaza following a nine-day siege. The NGO Euro-Med Human Rights Monitor has demanded an investigation into the allegations.³⁰

3. Dialogue with the company

²³ <https://www.timesofisrael.com/150-companies-said-to-get-letters-from-un-threatening-to-add-them-to-blacklist/>

²⁴ <https://www.whoprofits.org/companies/company/3772>

²⁵ <https://dontbuyintooccupation.org/reports/dont-buy-into-occupation-report/>

²⁶ *ibid*

²⁷ <https://www.whoprofits.org/companies/company/3772?caterpillar>

²⁸ *ibid*

²⁹ *ibid*

³⁰ <https://www.business-humanrights.org/en/latest-news/israel-palestine-israeli-army-bulldozers-allegedly-run-over-wounded-civilians-in-northern-gaza-co-did-not-respond/>

Through 2023 and 2024, KLP has engaged in an exchange of emails with Caterpillar on the risk of the company contributing to the violation of international law in the OPT. In this correspondence, KLP asked Caterpillar about its opinion of the allegations levelled at it and about the company's procedures and processes to identify and reduce the risk of contributing to the violation of international law and the rights of individuals in situations of war or conflict. In its reply, Caterpillar referred to the company's human rights guidelines, Supplier Code of Conduct, whistleblowing systems and its commitment to safeguarding human rights in its operations.

KLP followed up this reply with further questions on how the company's guidelines and commitments are practised in areas of conflict. The company responded by providing further details about the systems themselves but did not directly address the risk associated with conflict areas, the OPT in particular, or how the company's guidelines are actually applied in conflict areas. Although Caterpillar has shown itself willing to engage in a dialogue with KLP, the company's responses failed to credibly substantiate its ability to actually reduce the risk of violating the rights of individuals in situations of war or conflict, or of violating international law.

At the company's annual general meetings in 2022 and 2023, KLP voted in favour of requiring the reporting of risks linked to operations in areas of conflict, as well as a third-party evaluation of whether the company's due diligence assessments are sufficient pursuant to its human rights policy. Despite this, the company has failed to demonstrate any improvement in this respect.

4. KLP's assessment

In KLP's assessment of the risk that Caterpillar may contribute to the violation of international law in the Occupied Palestinian Territory, it has accorded weight to the link that may be said to exist between the company's operations and the norm violations in question, and that the company has either contributed actively or known about the violations without doing enough to prevent them. The norm violations must be ongoing, or there must be an unacceptable risk that violations may occur in the future. KLP has attached importance to what the company is doing to prevent norm violations, including the company's human rights policy and how this is implemented in practice through proactive due diligence assessments. The following questions have played a key role in KLP's assessment:

- Do the purposes for which Caterpillar's equipment is used in the OPT constitute a violation of international law and the rights of individuals in situations of war or conflict?
- Is there a direct connection between Caterpillar's equipment and the violations taking place?
- Will use of Caterpillar's equipment "enable", "facilitate" or "worsen" the violations in question?
- Did Caterpillar know, or should it have known, about the violations?

The International Court of Justice (ICJ) has ruled that the Israeli settlements in the OPT are illegal. This position is supported by a broad consensus in the international community, including Norway. It is well documented by multiple credible sources that Caterpillar's equipment is used to demolish Palestinian homes and infrastructure in order to clear the way for Israeli settlements.

In KLP's view, the use of bulldozers in this way both facilitates and worsens the violations concerned, since such use may be both effective and injurious to people. Although Caterpillar does not sell equipment directly to the IDF, the UN, NGOs and investors have drawn the company's attention to how its equipment is being used. Zoko Enterprises is the sole importer of Caterpillar equipment in Israel, which would indicate that Caterpillar has considerable influence over and direct channels of communication with this business entity. Although the situation has been ongoing for a long period, and in a steadily worsening situation, Caterpillar is unable to provide assurances that it has made real changes. The time aspect also indicates that the company is unwilling to take any substantive steps.

KLP rests its assessment on the premise that neither the UN's Guiding Principles nor the OECD Guidelines' recommendations relating to due diligence imply that responsibility is transferred from governments to companies. Relevant guidelines and associate guidance recommend enhanced and proactive due diligence assessments in high-risk areas and areas of conflict. In a context such as the OPT, enhanced due diligence assessments require that the risk of contributing to the violation of human rights in situations of war and conflict be identified and that such risk is managed actively. This includes implementing such measures as are necessary to prevent the company from contributing to norm violations.

KLP considers that the information provided by Caterpillar does not adequately answer the serious allegations that have been levelled at the company. KLP has been particularly interested in understanding which measures the company has initiated to avoid being involved in future norm violations. It has, however, received only superficial answers from the company. On the basis of the information available, it is thus not possible to establish that the company has put in place adequate measures to prevent future involvement in norm violations. On this basis, KLP concludes that there is an unacceptable risk that Caterpillar may contribute to the violation of international law and the rights of the individual in situations of war and conflict in the OPT.

5. Conclusion

On the basis of the factors described above, Caterpillar Inc. is excluded from investment by KLP and the KLP Funds with effect from June 2024.