

## Human Rights

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).<sup>1</sup>

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 human rights abuses through its investments.

### International standards

It is impossible to list all potential international legal sources that KLP may rely upon in evaluating human rights cases. At a minimum, these include the International Bill of Rights. To give a few examples, KLP has cited to the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and the ILO Worst Forms of Child Labor Convention (No. 182) in its exclusion decisions. The UN Guiding Principles on Business and Human Rights also inform KLP's approach, but they are not dispositive. For human rights conventions that are not subject to near universal ratification, KLP places emphasis on whether the state in which the conduct occurred has ratified the convention, as well as whether Norway has ratified the convention.

### Key considerations

KLP's guidelines apply to companies that contribute to human rights abuses. It is unnecessary to consider whether a state has violated human rights in order to conclude that a company faces an unacceptable risk of contributing to a human rights violation, so long as the conduct in question falls below the minimum standards outlined in international human rights instruments.<sup>2</sup> In considering whether a company contributes to human rights abuses, KLP looks to the following factors:

- 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.<sup>3</sup>

KLP's exclusion criteria apply to human rights abuses that are serious and systematic. Serious human rights violations include, but are not limited to, murder, torture, deprivation of liberty, forced labor, and the worst forms of child labor. Systematic, by contrast, describes violations that may not amount to a serious violation individually, but that by virtue of their scale or scope may be considered systematic in nature. As the Graver Commission stated: "a determination of whether human rights violations qualify as serious or systematic needs to be related to the specific case at hand. However, it seems clear that a limited number of violations could suffice if they are very serious, while the character of a violation need not be equally serious if it is perpetrated in a systematic manner."<sup>4</sup>

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

<sup>2</sup> See, e.g. <https://www.regjeringen.no/en/dokumenter/Recommendation-of-15-November-2005/id450120/>

<sup>3</sup> [http://english.klp.no/polopoly\\_fs/1.29229.1417436492!menu/standard/file/POSCO%20Daewoo%20and%20Olam%20decision%20to%20exclude%2001122014%20ENGLISH.pdf](http://english.klp.no/polopoly_fs/1.29229.1417436492!menu/standard/file/POSCO%20Daewoo%20and%20Olam%20decision%20to%20exclude%2001122014%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.

<sup>4</sup> <https://www.regjeringen.no/no/dokumenter/Recommendation-of-15-November-2005/id450120/#note6>

## **Examples:**

### Unacceptable risk of contributing to violations of indigenous rights

KLP excluded Energy Transfer Partners, Phillips 66, Enbridge, and Marathon Petroleum in 2017 for contributing to violations of indigenous rights in connection with construction of the Dakota Access Pipeline. Energy Transfer Partners is the operator of the joint venture involved in the construction of the Dakota Access Pipeline in the United States. The pipeline route crosses underneath Lake Oahe, the drinking water source for the Standing Rock Sioux Tribe and less than a kilometer from the Tribe's reservation. In February 2017, the US Army Corps of Engineers granted the final easement to complete construction of the pipeline, cancelling a planned environmental impact statement. In March, the UN Special Representative on the Rights of Indigenous Peoples announced that the pipeline licenses were granted without sufficient consultation with affected tribes.

### Unacceptable risk of contributing to forced labor in the Uzbek cotton industry

KLP excluded POSCO DAEWOO in 2014. The company is one of the largest buyers of cotton from Uzbekistan. The Uzbek state maintains a monopoly on the sale of cotton abroad and the use of child labor during the cotton harvest has long been confirmed by international sources. The use of child labor has steadily declined, replaced with a corresponding increase in the use of adult forced labor. POSCO DAEWOO is aware of the risk, but has no plans to change their sourcing practices and have not implemented measures designed to ensure that forced labor and child labor are not used in its supply chain in the future.

### Unacceptable risk of contributing to child labor

KLP excluded Zuari Agro Chemicals Ltd. (Zuari) in 2013 due to an unacceptable risk that the company, through its production of hybrid seeds, is complicit in the worst forms of child labor. The Council on Ethics for the Government Pension Fund – Global researched the scale of child labor in the company's hybrid seed production in 2011 and 2012. On average, 20 to 30 percent of the workforce involved in the production of seeds for the company consisted of children. In its evaluation, the Council placed emphasis on the systematic use of children in the company's production. The children's young age and the health risk to which they are exposed through this work, including the use of pesticides, indicates that this can be considered among the worst forms of child labor. The Council on Ethics furthermore emphasized that the risk of child labor is well known within the industry, that the company is in close cooperation with the farmers that employ child labor, and that the company does not have any concrete measures to reduce the incidence of child labor.