

To Norges Bank

Date: 25 August 2017

**Recommendation to exclude Atal SA from the Government Pension Fund
Global**

UNOFFICIAL ENGLISH TRANSLATION

Summary

The Council on Ethics recommends that Atal SA (Atal) be excluded from the Government Pension Fund Global due to an unacceptable risk that the company contributes to serious human rights violations. Atal is a Polish property development company. The company employs a subcontractor which has used North Korean workers at Atal's construction sites.

The Council bases its decision on several separate reports that show the situation for North Korean workers abroad to be of such a nature as to be deemed forced labour. Two elements must exist for a working situation to constitute forced labour – that a person is put to work involuntarily, and that the work is performed under the menace of a penalty. The involuntary aspect consists of the workers being sent abroad by the regime to a work situation of which they know nothing. Nor can they choose to cease working, since they have had their passports and mobile phones confiscated, are under constant surveillance and must remain at their place of work or domicile. The work is performed under the menace of a penalty. They must continue to work under the threat that their families at home may otherwise be punished.

Atal has confirmed that there have been North Korean workers at its construction sites. The Council on Ethics considers that Atal has a responsibility for all the workers at its building sites, even though it is a subcontractor that is the direct contracting party with the North Korean staffing company which is the North Koreans' employer. The Council considers that, by accepting the use of North Korean workers, Atal is contributing to serious human rights violations, including forced labour.

The fact that this appears to be an accepted part of Atal's business practice makes the future risk of serious human rights violations unacceptable.

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1 Introduction

The Council on Ethics has considered the GPFG's investments in Atal SA¹ (Atal) against the guidelines for observation and exclusion from the GPFG (ethical guidelines).² Atal employs a subcontractor which has used North Korean workers at its construction projects in Poland.

Atal is a property development company that specialises in buying up properties and building housing complexes in Poland's largest cities. The company has built more than 8,900 apartments with a combined floor area of 520,000 m², which makes it one of the leading enterprises in this business sector in Poland. Headquartered in Warsaw, the company was floated on the Warsaw Stock Exchange in June 2015. Atal acts as both property owner and builder, and hires in companies to build the residential units.³

At the close of 2016, the GPFG owned 1.25 per cent of the company's shares, with a market value of USD 3.3 million.

1.1 Matters considered by the Council

The Council on Ethics has considered whether there is an unacceptable risk that Atal "contributes to or is responsible for serious or systematic human rights violations", pursuant to the GPFG's ethical guidelines. The assessment encompasses Atal's use of subcontractors which hire in labour from North Korea.

The Council has considered whether this practice may be characterised as forced labour and whether Atal thereby contributes to serious human rights violations.

The Council on Ethics considers that the following factors may form the basis for an assessment of whether there exists an unacceptable risk that a company is contributing to human rights violations: There must be a specific connection between the company's operations and the violations in question, the company must have either actively contributed to the violations or had knowledge thereof, but did not seek to prevent them. The violations must, moreover, be ongoing or there must be an unacceptable risk that they will reoccur in the future. The extent to which particularly vulnerable groups have been affected, and what the company has done to improve the situation, also play a key role in the Council's assessment.

The guidelines state that a company may be excluded on the grounds of human rights violations that are either serious or systematic. The Council rests its assessment of what constitutes serious or systematic violations on internationally recognised conventions and authoritative interpretations thereof, including the International Covenant on Civil and Political Rights (article 8.3) and ILO Convention 29, the Forced Labour Convention, (article 2.1). The Council has previously taken the position that a company may qualify for exclusion from the fund in connection with human rights violations that are serious though few in number, or that are systematic though individually not as serious. Whether human rights violations are serious or systematic must be determined on a case-by-case basis.

Although international human rights conventions impose obligations on states and not companies, companies can be said to contribute to human rights violations. This applies

¹ Issuer ID: 23208497

² <https://lovdata.no/dokument/INS/forskrift/2014-12-18-1793?q=retningslinjer+++pensjonsfond+++utland>

³ <http://www.atal.pl/>

irrespective of whether the state in which the violations take place has ratified the conventions against which the actions are assessed.⁴

When assessing the risk of new human rights abuses taking place, earlier norm violations can give an indication of future patterns of behaviour. The Council attaches importance to how the company has responded when norm violations have been uncovered, and what it has done to prevent their reoccurrence.

1.2 Sources

In connection with this case, the Council on Ethics rests its assessment on publicly available sources, as stated in the footnotes, as well as the company's replies. The most important sources stem from the ILO and UN, and the report *North Korean Forced Labour in the EU, the Polish Case* from the University of Leiden.⁵

2 Background

2.1 Forced labour

Article 2.1 of ILO Convention 29, the Forced Labour Convention, defines forced labour as:

*“work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”*⁶

The definition thus contains two elements; that a person involuntarily has been put to work and is being held in work under the menace of a penalty. The ILO has drawn up a set of indicators for when a situation may constitute forced labour. Labour is not voluntary when, for example, the worker is held under lock and key, has been deceived about working conditions, is not paid or has their identity documents confiscated. Labour is performed under the menace of penalty when, for example, threats of physical harm are made against members of the worker's family, the worker is threatened with the loss of social status or being made to work under even worse conditions or with imprisonment.⁷

2.2 North Korean workers overseas

The imposition of wide-ranging sanctions against the regime in North Korea has led to a need for foreign currency to enable it to finance its weapons industry, among other things.⁸ An important source of income is the hiring out of labour in foreign countries. It is estimated that

⁴ See section 3.2 of the Council on Ethics' recommendation to exclude Wal-Mart Stores Inc., 15 November 2005, and section 5.1 of its recommendation to exclude Monsanto Co, 20 November 2006. Even though North Korea is not a member of the ILO, the convention and its interpretations reflect an international consensus on what may be deemed to constitute forced labour.

⁵ *North Korean Forced Labour in the EU, the Polish Case: How the Supply of a Captive DPRK Workforce Fits Our Demand for Cheap Labour*, University of Leiden, Asia Centre, July 2016.

⁶ ILO Forced Labour Convention (No. 29), article 2.1.

⁷ International Labour Office, *A Global Alliance Against Forced Labour: Global Report under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work*, 2005, page 6 and para. 14.

⁸ See in particular http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1718%20%282006%29 and <file:///G:/2.%20ATFERDSBASERT%20UTELUKKELSE/2.1%20SELSKAPER/Atal%20SA/Rapporter/sikker%20hetr%C3%A4dsresolusjon%20para%2034.pdf>.

50,000 workers are exploited in this way, and that this practice generates upwards of EUR 2 billion for the regime.⁹

The UN Special Rapporteur on the Democratic People's Republic of Korea has described the conditions under which these workers live and work. In his 2017 report, the Special Rapporteur writes:

“[...] Most of the stakeholders whom the Special Rapporteur met during his visit to North East Asia raised the issue of overseas workers. These workers reportedly constitute a significant source of foreign currency for the Government of the Democratic People's Republic of Korea as a substantial portion (60-90 per cent) of their salaries is reportedly deducted by the State in the form of “loyalty funds” and operating costs of the North Korean companies deploying the workers. At one point, at least 45 countries were reported as hosting workers from the Democratic People's Republic of Korea [...].”¹⁰

The workers who are sent out of North Korea have shown a high degree of loyalty to the regime. Many of them wish to travel abroad, since this is perceived as an opportunity to earn a little money and experience better living conditions than those available in North Korea.¹¹ However, the workers are not told where they will be going, what work they will be doing or what they will earn. The workers are employed by North Korean companies with strong links to the regime. These companies ensure that the workers are placed in groups so that they can exercise mutual control over each other and prevent anyone from defecting. Only individuals with families are sent out. Their children and spouses are subjected to reprisals if the workers do not do their job properly or they defect. Workers also have their passports and mobile phones confiscated.¹² Citizens of North Korea are used to living under surveillance, in a society where no one can trust anyone and where informing is commonplace. It is this system that makes it possible to send workers overseas. These conditions are corroborated in several reports.^{13, 14}

3 Scope and nature of the Council's investigations

In July 2016, the University of Leiden published the report *North Korean Forced Labour in the EU, the Polish Case: How the Supply of a Captive DPRK Workforce Fits Our Demand for Cheap Labour*.¹⁵ The report presented the results of research into the extent and manner in which North Korean workers are used in Poland. The report is comprehensive and builds on

⁹ Statement by the UN Special Rapporteur on the Democratic People's Republic of Korea when he presented his report to the UN Human Rights Council in 2015 <https://www.usnews.com/news/world/articles/2015/10/28/un-investigator-north-koreans-doing-forced-labor-abroad>

¹⁰ UN doc. A/HRC/34/66, paragraph 26, 22 February 2017.

¹¹ See footnote 9.

¹² *North Korean Forced Labour in the EU, the Polish Case: How the Supply of a Captive DPRK Workforce Fits Our Demand for Cheap Labour*, page 44, University of Leiden, Asia Centre, July 2016.

¹³ The Asan Institute for Policy Studies' report from 2014 “*Beyond the UN COI Report on Human Rights in the Democratic People's Republic of Korea*”. The report was a reply to the UN's report on the human rights situation in North Korea, since the latter did not address the plight of North Korean workers abroad, only those on North Korean territory.

¹⁴ The same conditions are described in the US State Department's annual “*Trafficking in Persons Report*”, which presents the situation in individual countries and their governments' capacity to combat such activity, US State Department, June 2016, page 228.

¹⁵ *North Korean Forced Labour in the EU, the Polish Case: How the Supply of a Captive DPRK Workforce Fits Our Demand for Cheap Labour*, University of Leiden, Asia Centre, July 2016.

interviews with workers who have defected and organisations in several countries, in addition to a review of open European sources, such as statistics and work permits, visas, inspection reports and contracts between companies. The report refers directly to some companies that use North Korean workers.

Rungrado Trading Co (Rungrado) is a North Korean company which, according to the report, is directly controlled by the regime in North Korea. The company operates in Poland, but has no offices there. Rungrado hires out workers to several companies in the shipping and construction industries, and is the formal employer of the North Korean workers.

In this case, Rungrado hires out workers to the company JP Construct, which is one of the subcontractors that Atal uses on its building projects in Warsaw. The University of Leiden's report describes its findings thus:

“Rungrado’s role came to light after a series of inspections on construction sites and shipyards in Poland. In 2013, the Polish National Labour Inspectorate found that Rungrado, without a branch office, provided workers to carry out exports services, i.e. temporary and occasional work, for various local entities. Documents show that Rungrado delegated 59 workers to a local entity called JP Construct, that then allocated them to one of the construction sites in Warsaw.

*Our research has found that North Korean workers are building a block of luxury apartments for Atal Construction based in Warsaw”.*¹⁶

4 Information from the company

In April 2017, the Council on Ethics sent a letter to Atal asking for clarification of whether Atal uses North Korean workers in its operations. Atal confirmed this in a brief letter dated May 2017, but contested that the workers suffered from poor working and living standards:

“The Company uses several hundred subcontractors to execute the investment. These companies also employ their subcontractors. Korean workers are employed by a subcontractor of one of Atal’s many subcontractors. The companies contracted to supply labour to Atal, supply workers of many nationalities not just Korean.[...]”

*“Our subcontractor, working with the company employing Koreans, provides additional support to Korean workers. They provide transport for the workers to and from residences. They, also, support Koreans in housing issues – search for suitable homes and mediate rent. They are always large and comfortable residential homes with access to all media. Good conditions of accommodation are also confirmed by the Border Guard. They assist with the completion of required documents”.*¹⁷

The company also replied that it complies with Polish law, that the North Korean workers have employment contracts with their respective employers, and that they have the necessary permits and entry visas.

The Council also asked whether the company has a policy on the use of North Korean workers, and whether it has a policy on human rights and labour rights. The company replied that: *“We again inform you that ATAL S.A. does not employ North Korean workers and is*

¹⁶ *North Korean Forced Labour in the EU, the Polish Case: How the Supply of a Captive DPRK Workforce Fits Our Demand for Cheap Labour*, page 30, University of Leiden, Asia Centre, July 2016, page 29.

¹⁷ Letter from the company, 4 May 2017, held in the Council on Ethics' archive.

thus not in violation of human rights” and that “Atal respects employees’ rights as well as the principles of business ethics”.

5 The Council on Ethics’ assessment

On the basis of the information available, the Council on Ethics has assessed whether there is an unacceptable risk that Atal contributes to serious human rights violations. The Council rests its assessment on international conventions and interpretations.

The Council bases its assessment on reports which show that the situation for North Korean workers abroad must be deemed to constitute forced labour according to ILO indicators. The two elements constituting forced labour – that a person is put to work involuntarily, and that the work is performed under the menace of a penalty – have been shown to exist. The involuntary aspect consists of the workers being sent abroad by the regime to a work situation of which they know nothing. Nor can they choose to cease working, since they have had their passports and mobile phones confiscated, are under constant surveillance and must remain at their place of work or domicile. The work takes place under the menace of a penalty. They must continue to work under the threat that their families at home may otherwise be punished. There exists detailed material on living conditions in North Korea and the destitution and oppression to which the population is subjected. Given the conditions under which North Koreans live in their homeland, the Council considers that these workers belong to an extremely vulnerable group. The Council also considers that forced labour, as here described, constitutes a serious violation of their human rights, see section 3 a) of the GPF’s ethical guidelines.

The Council on Ethics considers that Atal has a responsibility for all the workers at its buildings sites. It is the company’s subcontractor that makes use of North Korean workers as labourers, but the practice is well known and accepted by the company. The company has confirmed this in a letter to the Council on Ethics. There is therefore a specific connection between the company and the human rights violations.

The Council takes the view that Atal also has a separate responsibility for these violations. It would not have been possible for the North Korean regime to engage workers in forced labour abroad if there were not companies outside of North Korea willing to use them. These companies’ activities are therefore a necessary precondition for the regime’s use of forced labour in other countries. The Council attaches little weight to the fact that some North Korean workers actually wish to undertake this kind of foreign assignment. The context in which the work is organised makes the workers a vulnerable group, who end up in a de facto forced labour situation.

The Council on Ethics also considers that there is an unacceptable risk that Atal will once again contribute to serious human rights violations, because use of North Korean labour appears to be an accepted practice. The company has confirmed that there are North Korean workers at its construction projects, and seems to have no plans to prohibit this in the future. For this reason, there exists an unacceptable risk that Atal is contributing to serious human rights violations.

6 Recommendation

The Council on Ethics recommends that Atal SA be excluded from the GPFG due to the unacceptable risk that the company contributes to serious human rights violations.

Johan H.
Andresen
Chair

(sign.)

Hans Chr. Bugge

(sign.)

Cecilie
Hellestveit

(sign.)

Trude
Myklebust

(sign.)

Britt Rugland

(sign.)