Corporate responsibility to respect human rights

1. ***To what extent are investors aware of their responsibility to respect human rights? Are some types of investors more likely than others to align their practices with the UNGPs? Does it depend on the type of investor?***

Large institutional investors show a relatively high level of awareness of their responsibility to respect human rights and align their practices to the UNGPs. However, there are two caveats to this:

- The actual knowledge within the organization varies widely. In most cases, it is limited to a few key individuals in the Sustainability or Responsible Investment function and departments, who are very vocal and very visible, including through participation in sector initiatives and peer learning platforms (from UNPRI Advance to the Platform for Living Wage to the specific Dutch instrument of International Responsible Business Conduct Agreements for banking, insurance and pensions). While those few individuals tend to be ambitious and 'run ahead of the pack', the departments that should be implementing the UNGPs as part of their daily jobs (e.g. investment professionals) are far less aware of and familiar with human rights standards of conduct. The two sides do not speak the same language and understand concepts such as 'diligence', 'risk', 'engagement' very differently. There is a need to translate the UNGPs into a language that can easily be digested by regular investment professionals across all asset classes- from listed equities to alternatives. Most of my time and effort as advisor in this field is dedicated to engaging internal stakeholders. It comes down to choosing the tone of voice and wording that would land best. Every organization is different and has its own nuances and sensitive spots. Without this translation effort, it is virtually impossible to win the trust of the organization and launch any human rights work.

- The distance between the 'few' with knowledge of the standards and the 'many' who have to implement but don't know where to begin is evident in the fact that large institutional investors make big commitments through policies and pledges, and spend significant time and effort in producing UNGP-aligned reporting, but have a thin(ner) track record on all the other human rights due diligence steps, notably in the *cease, prevent and mitigate adverse impacts* and in *tracking effectiveness of diligence measures*.

Other investors, such as family offices, private equity firms, venture capital firms and impact/ boutique firms are part of a much more fragmented landscape. Here, awareness of and alignment to the UNGPs vary widely.

Many of these investors struggle with going beyond boiler plate policies and pledges regarding child and forced labor (or 'modern slavery' if exposed to the UK market, due to the 2016 Modern Slavery Act). The ones who do go further than policies only include a high level checklist to be deployed as part of the ESG due diligence. The yes/no nature of the questions, the lack of familiarity with (international) human rights law in deals teams and the perception that ESG -and specifically human rights- cannot easily be tied to investment decisions and valuation often results in limited impact on dealmaking. Some notable exceptions and best practices do exist, especially with family offices and impact arms of private investment firms. An increasing number of those is working on the identification of actual and potential adverse impacts in their portfolios and exploring options for human rights engagement with investees.

Finally, development finance institutions (DFI) need to be considered as a separate category. Here, an interesting trend in the space of Just Transition and Just Resilience is emerging, perhaps due to the commercial and impact thesis of this specific type of investor. DFI vehicles have long upheld ESG and human and labor rights standards in their policies and have a tradition of conducting on-site and extensive due diligence for both direct investments and investments through fund-of-funds, private equity, venture capital and (small-scale) lending. The culture fit between the UNGPs and the goals and business model of a DFI vehicle is quite strong. This results in an 'easier' route from policy to practice to reporting to grievance, and in the ability to get buy-in from leadership when it comes to marrying ESG, impact and financial returns. Unfortunately, such commercial and culture conditions are very different for institutional investors and private market players.

2. **How effective are international instruments, institutions and guidance that promotes HRDD, such as by the UN Global Compact, Equator Principles, Principles of Responsible Investment, Investor Alliance for Human Rights, Business for Social Responsibility and other entities, effective in increasing awareness of human rights impacts among investors and other businesses? Please provide examples of participation, integration, or adherence of investors in these instruments and bodies.**

I believe those listed are all effective to some extent, and have been able to foster a certain degree of awareness and integration of human rights issues in investment practices. I also see a stark difference between broad commitments such as the UN Global Compact and very targeted efforts and tooling such as the Equator Principles. Overall, looking at the list compiled in this question, I would put UNPRI as the number one initiative to follow, and the main source of specific guidance (e.g. on processes like stewardship but also for asset-class-specific resources). This is even more prominent after the launch of Advance, and after the release of human rights case studies for private equity (2022) and of technical guidance for investors in private markets (2023).

However, I also want to point out that the real game-changer for EU investors has been the EU regulatory agenda. All major regulations adopted after the EU Sustainable Finance Action Plan have clauses and requirements covering human rights. In particular:

- the EU Taxonomy Art 18 (minimum social safeguards),
- the Corporate Sustainability Due Diligence Directive ESRS for 'S' on own workforce, workers in the value chain, communities and consumers
- the Sustainable Finance Disclosure Regulation (SFDR) so-called PAIs, specifically relating to uptake of the OECD Guidelines and the existence of a human rights policy;
- the upcoming Corporate Sustainability Due Diligence Directive (CSDDD) is a piece of regulation I expect to radically change and improve the current understanding and implementation of HRDD. Obviously, it is still unclear whether the financial sector will be in scope of the regulation and whether investments specifically will be in scope.

3. How should investors integrate human rights considerations throughout the investment process, including when constructing, underwriting, and/or investing in an ESG product or service? How do these steps vary for different asset classes?

4. **To what extent do investors assess human rights risks and adverse impacts using a risk to right-holders lens as being separate from ESG materiality considerations or as part of a double materiality assessment? [11] Are these integrated into an ESG approach and, if so, how? Please provide examples of practices.**

Navigating the similarities and differences between double materiality, impact materiality and salience (as per UNGP Reporting Framework) proves challenging for many investors. This for several reasons:

- the people involved in driving (sustainability) reporting processes take a wide and broad approach to ESG, not always using the right-holder lens. This leads to human rights being included in the S box of ESG without having a clear view on how its various facets overlap and intersect with other S matters (such as human capital, specific labor relations matters etc) or even further, with E matters (such as climate when thinking of Just Transition or biodiversity when thinking of the impact of investing activities on land rights, conservation and the cultural rights of indigenous people). This leads to missed opportunities for exploring the full potential of the (impact) materiality exercise and enabling a full integration of the findings into processes and systems.

- convergence between materiality and salience is often a chaotic process. Again, as BSR and others point out, the first is perceived as the basis for reporting, and the second as the basis for human rights due diligence –

resulting in different stakeholders being involved in the two processes and scattered results and action points on Social (and human rights) topics. On this premise, the chance that the two would be integrated in one ESG approach remains fairly low.

Reflecting on my experience as advisor, the ‘right-holder lens’ is what is most difficult to bring to life in both exercises- salience and materiality. Intuitively, everyone understands why this lens needs to be used, but few are aware of the implications of doing so beyond the actual assessments. Once you move on from the ‘classroom exercise’ and go into implementation of human rights due diligence, it becomes evident that putting right holders first will impact the bottom line. This is obviously a sensitive point at senior management level.

5. **What does appropriate investor action entail in the event that a client or portfolio company causes or contributes to a potential or actual adverse human rights impact?**

The market shows rising interest in human rights engagement activities, especially if those are co-organized and led by various investors. Public letters putting pressure on underperforming companies, human rights issues on the ballot at AGMs, peer platforms to collect and use human rights data in engagements are just some of the examples I saw in the last 12-18 months. Divesting is often perceived as ‘walking away without solving the problem’.

6. **What leverage do investors have to address human rights and climate change issues, and how does it differ based on asset classes and investment types? How does investor leverage differ based on asset classes, stocks and bonds, and lending?**

Leverage differs widely based on the type and size of investor, the asset classes and the way the investor operates (i.e. an asset owner with an external asset manager, an investor that fully outsources ESG engagement efforts, or a fund-of-funds using numerous external managers will have less visibility and less direct leverage than more ‘integrated’ investors who operate through in-house managers). The most interesting reflection is perhaps related to asset classes. Private equity seems the ideal construction for active ownership and direct engagement on human rights, yet the sector is lagging behind when it comes to ESG integration and UNGPs implementation. The fact that they ‘sit close to the investees’ and know their portfolio companies inside and out is not enough. There is a key hindering factor which is in the time horizon and investment/ exit objectives most private equity firms set for themselves. I would argue that being invested for the long haul is almost always a better starting point to table climate or human rights discussions – sometimes professionals in fixed income/ sovereigns are far more sensitive and aware of human rights risks than active PE firms. Ironically, the first don’t have much leverage, while the second group does. It is the complexity of dynamics like these that make it hard to get to conclusive statements on leverage, who and when can use it and the outcomes of exercising it.

7. What provisions can be included in contracts or investment agreements to encourage respect for human rights? Can technological devices like Blockchain assist in this regard?

8. **In what circumstances should investors refrain from making ESG-related investments in view of potential risks of adverse human rights impacts?**

As advisor, I always recommend to consider investment decisions on a case-by-case basis if possible. It is of paramount importance that investors always consider the way they could cause, contribute or be linked to a negative *impact* – without necessarily dwelling on the fact that they might be linked to a negative *context*. In other words, an impact-driven investor that operates in the space of access to healthcare in an authoritarian State is not necessarily close to the regime and the human rights violations the State is responsible for. A different example would be if that same investor got involved in more strategic sectors (e.g. access to energy) or more sensitive sectors (e.g. media and access to information) in the same authoritarian State. There are many of these examples in our everyday practice as advisors, showing that investors ask the question on whether or not to enter a new market or proceed with a new opportunity. It is worth noting that this does not often come across as a 'pure' human rights matter, but it is often linked to reputational risk or broad geopolitical considerations.

9. **How can investors best provide transparency in their disclosures about their practices which are, or are not, in alignment with the UNGPs?**

Those who would need to report under the CSRD seem best placed to use this new regulation to provide transparency on their human rights practices. If something is important enough, it should make the cut to be included in the sustainability statements. Additionally, PAI disclosures under SFDR have tremendous potential to bring the topic more in focus for financial marker participants and advisors. My view, based on trends observed in the market, is that separate human rights reporting e.g. under the UNGP Reporting Framework, might become less and less relevant and impactful once the CSRD is fully understood and properly implemented. In the near future, it is also worth watching what ISSB will develop with regards to human rights and human capital- hopefully as one single agenda point and not two separate issues.

10. Explain the differences and similarities of ESG approaches, including their approaches to human rights risks, with the human rights-based approach set out by the UNGPs?

11. Is the role of consultation with stakeholders, such as the local communities, women and Indigenous peoples, the same for an ESG approach and an approach set out by the UNGPs and, if not, in what way do they differ? What expectations and/or challenges do investors face in undertaking meaningful stakeholder consultation?

There are stark differences between a general ESG approach and a UNGP-led approach. The latter is built on the right-holders views and experience, and is grounded in international human rights law. The language used by the (few) investors that choose to go this way mirrors the ICCPR, ICESCR and other instruments, including non-binding instruments such as the Declaration on the Rights of Indigenous Peoples. In contrast, ESG approaches do not necessarily find their roots in international law, let alone international human rights treaties and conventions, and the focus is more often a broad 'risk to business' (legal, reputational, operational) and 'stakeholder management' instead of 'stakeholder engagement'

12. How should investors take gender-responsive, disability-responsive, and intersectional-responsive approaches? How should investors take a heightened human rights due diligence approach in conflict affected areas?

13. Are there any roles which stock exchanges could play in ensuring investors, and the businesses in which they invest, respect human rights?

Perhaps yes, but if efforts are limited to Euronext and do not span across North America and APAC, impacts will be limited and the message for listed entities will be confusing. Piecemeal efforts risk undermining rather than empowering the (few) frontrunners.