**UNWG Call for Input on Investors, ESG and Human Rights**

**Submission by Anti-Slavery International, October 2023**

**General**

1. **What do you understand Environmental, Social, and Governance (ESG) in finance to mean? How are human rights standards and frameworks considered by investors, if at all, in ESG?**

Throughout 2023, Anti-Slavery International has consulted with twenty investors from over eight countries, affiliated with a broad range of investors, from pension funds to global fund managers, on the issue of forced labour of Uyghurs and other Turkic and Muslim-majority peoples in the electric vehicle-battery and solar panel supply chains. These consultations have been undertaken for a collaborative project with the Investor Alliance for Human Rights and Sheffield Hallam University, described in further detail below.

Based on the findings of this work, in Anti-Slavery International’s view, there is an imbalance of focus between the 'E' and the 'S' in ESG approaches by investors investing into the renewable energy sector. Said investments are approached from the perspective of meeting climate commitments relating to investing into renewables/the transition from fossil fuels, and the social impacts of these 'green' investments are not thoroughly considered. Where social impacts are considered, there is a strong reliance on data provided by ESG data providers (see below), the UN Global Compact as a framework, and Corporate Human Rights Benchmark assessments, and there is less detailed consideration of key human rights frameworks such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines on Responsible Business Conduct for Multinational Enterprises. Investors noted that the absence of a ‘social’ lens to environmental/ESG/investment regulation partially creates lack of integration between the 'E' and the 'S', for example when commenting on the EU Taxonomy. This is discussed in further detail below.

1. **To what extent do ESG approaches present constraints or opportunities for investors and businesses overall?**

The reliance on ESG data providers by investors presents significant constraints to the achievement of human rights respect, this is discussed in detail below.

1. **What responsibilities and capacity do ESG index and data providers have regarding the assessment of adverse human rights and environmental impacts, and how can ESG indexes and research products be improved to align with the UNGPs approach?**

Investors’ current ESG approaches and human rights due diligence appear to be largely over-reliant on data provided by ESG data providers. Anti-Slavery International’s work has found that investors frequently note frustration with the lack of robust human rights data being provided and assessed by ESG data providers, for example said data’s failure to flag the numerous solar and EV-auto manufacturers with proven exposure to Uyghur forced labour. This is because investors are using so-called 'controversy exposure' data to assess whether a company is linked to human rights harm, and this data is used to make decisions on divestment. For example, the MSCI ESG report in 2022 on Volkswagen highlighted allegations of human rights violations in the Uyghur Region, and this resulted in the removal of VW stocks from the Article 9 ESG fund index, as well direct divestment from VW by institutional investors from their sustainable investment portfolios. However, this is a rare and exceptional example, and investors are not making comparable divestment decisions, where divestment should be called for, in line with the UNGPs and OECD Guidelines due to an absence of relevant data by ESG data providers. This is because controversy data is compiled through analysis of media reports, and thus fails to incorporate information from other reporting (such as academic reports) and, critically, information and perspectives directly from affected stakeholders and their representatives.

**State duty to protect human rights**

1. **What State, regional, and international mechanisms and regulations exist to promote or restrict investment/financing using an ESG approach that takes human rights into account and how do they align with the UNGPs? How do these mechanisms and regulations promote or inhibit business respect for human rights consistent with the UNGPs?**

As noted above, Anti-Slavery International perceives a significant silo between investors’ approaches on the 'E' and the 'S' in ESG approaches. This silo has been driven/exacerbated by regulation and mechanisms intended to regulate greenwashing/sustainability. For example, the EU Taxonomy incentivises investment into ‘green’ portfolios, without requiring consideration of adverse human rights impacts. The forthcoming UK Taxonomy and UK Sustainable Disclosure Requirements similarly use definitions of 'green’ economic activities/sustainability which fail to consider human rights impacts. Currently, there is no equivalent human rights regulation which specifically targets investors. Emerging legislative pieces are exempting financial organisations from several obligations, meaning that the financial sector would be under limited to no legal obligation to make investment decisions based on human rights. You can read more about these exemptions in our answers below.

1. **To what extent do current regulations ensure adequate information and disclosure for investors adopting an ESG approach to understand human rights impacts of businesses?**

See our answer below on the EU’s Corporate Sustainability Reporting Directive (CSRD) which requires companies to report on the impact of corporate activities on the environment and society and requires the audit of reported information.

1. **How can policies, programs, plans and activities in one State concerning regulation of investors in relation to human rights have potential or actual adverse or positive human rights impacts outside of their territory or jurisdiction?**

The financial sector plays a pivotal role in channelling flows of capital towards more sustainable economic activities and in exerting leverage over a broad range of other industries and business activities worldwide. States’ policy and regulation have the power to lead financial industry towards playing a critical role in facilitating the respect of human rights in global value chains.

Mandatory human right and environmental due diligence (mHREDD) legislation is pivotal in ensuring that financial institutions do not enable the violation of human rights worldwide, as it requires them to identify, assess, mitigate and remedy human and environmental rights violations along their entire value chains. This sort of legislative action will push financial institutions to adapt their business models towards greater respect for human and environmental rights. As the reach of financial institutions is often extraterritorial, if States enact legislation which prompts changes in financial institutions investment models, it will affect countries outside their territory and jurisdiction. Currently, we are seeing financial institutions being omitted from HREDD laws (e.g. see below the EU case). We need to make sure that mHREDD includes financial institutions within the personal scope of the laws.

1. **How can States better advance human rights-compatible regulation and policies concerning investors and financial institutions generally in a manner that fulfils their international legal obligation to protect human rights?**

In the EU context, both states and supranational authorities, such as the EU, need to proceed by promoting mandatory human rights and environmental due diligence legislation, in line with international standards outlined by UNGPs and the OECD Guidelines. The EU is in the final stages of its legislative process aiming to publish a directive on Corporate Sustainability Due Diligence (CSDDD), which will likely result in unjustified exemptions for financial institutions (see below the nature of these exemptions). While in the EU the financial sector is being targeted by other regulations on sustainability, such as the Sustainable Finance Disclosure Regulation, or the Sustainable finance package, human rights and social issues are very marginal.

The World Benchmarking Alliance (WBA) has [assessed](https://www.worldbenchmarkingalliance.org/news/financial-system-benchmark-press-release-2022/) 400 banks, asset owners, asset managers and insurers on their contribution towards a just and sustainable economy. The benchmark reveals a fragmented sector that is insufficiently aligned to drive impact at scale. This does not only have repercussions on HREDD but also the competitiveness of the sector. The CSDDD, if meaningfully designed and implemented, would compensate the existing loopholes in existing EU legislation such as the Corporate Sustainability Reporting Directive (CSRD) and the Deforestation Regulation (DR), which do not require financial institutions to perform or undertake actual HREDD, and thus risk enhancing the fragmentation of this sector.

With regards to the CSRD in particular, the Directive does not entail due diligence obligations. Moreover, it creates an uneven playing field that penalises leading companies. CSRD requires large companies to publish their climate targets and transitions plans. However, its ‘comply or explain’ clause allows companies which haven’t developed target or transition plans to merely explain why they do not have such a plan. This way, companies that have transition plans are burdened with additional mandatory disclosure and laggards are omitted.  The DR does not oblige the financial sector to stop investing in deforestation. Both individual member states and the EU ought to tackle the legislative gap that allows financial institutions to continue funding activities that are harmful for human rights. It should do so by requiring the financial sector to conduct mandatory human rights and environmental due diligence along their value chains.

More generally, all jurisdictions which have, or are developing, regulation and mechanisms relating to ESG, green economic activities, sustainability and greenwashing must ensure that human rights impacts are included in concepts of “do no significant harm” and sustainability.

**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?**

In our engagement with private sector organisations, Anti-Slavery International has been working with the insurance sector, which are also considered investors. There is currently a lack of regulation which addresses the insurance sector’s responsibility to respect human rights. We note that the insurance industry has also been explicitly excluded from this call for input.

Insurance companies carry a fair amount of leverage over business clients outside of their investment activities and therefore should be brought into the scope of consultations for the purpose of policy development, in light of their insurance role. For one, insurance companies (specifically organisations who underwrite as opposed to brokers) use ESG frameworks to guide risk-relevant questions they ask companies and determine any red flags. This would be an opportunity to encourage better business practice for those insured and be sure that products and services made with forced labour aren’t protected by their insurance policies. The ESG frameworks by and large, however, focus on net zero targets and overlook 'S’ considerations. Second, in terms of employer’s liability insurance, there is no clause that would prevent a company convicted of human rights offences from receiving a payout for costs incurred as a result of the legal case. Having such a clause would theoretically disadvantage the insurer, making them less competitive on the market, highlighting the need for a concerted industry shift.

An example of good practice by insurance companies is the case of Fidelis, Aon and Marsh which in 2020 developed a marine cargo clause for the London Market that is designed to keep the products of modern slavery out of the export supply chain. The clause makes it a condition of marine cargo policies that the insured complies with applicable legal and regulatory obligations in respect of forced and child labour.

1. **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.**

The voluntary nature of the international instruments, institutions and guidance mentioned above is problematic as it creates an unlevelled playing field between those businesses allocating resources and implementing actions to respect the human rights and those which do not. Through our engagement with the private sector, we have seen cases of companies claiming alignment with the different principles of international instruments, while approaching them as a tick box exercise and without meaningful implementation. We believe that further research should be done to assess the effectiveness and adherence of these international tools.

As an example, in the course of Anti-Slavery International’s work on Uyghur forced labour with investors, we have noted that the UN Global Compact is heavily referenced to as the key framework driving investment decisions and due diligence. However, the top-line nature of the UN Global Compact means that it fails to give enough direction to investors as to their human rights responsibilities. This is particularly the case in terms of complex decisions relating to where divestment is necessary, when considered against the more robust UNGPs and OECD Guidelines.

We recognise the effectiveness of driving responsible investment through collective action, such as the work undertaken by the Investor Alliance for Human Rights (IAHR). The organisation works collaboratively to drive heightened standards in the sector, including around Uyghur forced labour. Crucially, IAHR has specific knowledge of investor-relevant issues through direct consultation. Such consultation is then used this to inform tools and best practice guidance, and to engage portfolio companies on specific issues that are high risk.

1. **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?**

HREDD is an ongoing process, which needs to be undertaken throughout the full investment process, starting at a pre-investment stage and continuously assessing risks throughout the different investment stages.

In the EU, for example, legislators are currently discussing the application of the CSDDD to financial institutions. The Commission proposed that the CSDDD apply to the financial sector, whereas the Council agreed to exempt investors from most of the rules, allowing the member states to decide independently whether or not to include the financial sector when implementing the directive. The draft Directive by the European Commission includes a limited obligation on ‘very large’ financial institutions, for example, investors, insurance, (‘large’ or smaller financial institutions are excluded altogether) to undertake only pre-investment due diligence on the activities of large clients, excluding risks arising in clients’ value chains (Article 3). Financial institutions are not required to terminate credit, loan or other contracts when this can be reasonably expected to cause substantial prejudice to the client (Articles 7(6), 8(7). This could make it harder to terminate credits under any pretext, including human rights and environmental grounds, due to the need to prove that there is no substantial prejudice attached to the contract termination decision. The Parliament agreed with the proposal to apply the CSDDD to financial organisations but proposed to limit the scope of the obligations.

Rather than a partial and one-off process, financial institutions must be compelled to conduct ongoing client due diligence, exerting leverage to engage with clients on the ongoing identification, prevention, mitigation and remedy of forced labour and other harms. Forced labour is not a static situation, and an investment that may initially be low or medium risk for forced labour can become high risk during the course of the investment, due to, for example, conflict (for e.g. see Myanmar), climate change impacts, health emergencies, such as the Covid-19 pandemic, a change in political power etc. – as well as changes to business models and strategies. The financial sector must also be required to suspend or stop providing services to a company under the same responsibilities as outlined for other companies by the draft Directive.

1. **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?**

As Anti-Slavery International, we wish to underscore the importance of investors making the decision to divest in cases of clients or portfolio companies causing or contributing to state-imposed forced labour. Our work has found that whilst investors understand that the crisis in the Uyghur Region requires an expedited response, many are still hesitant when the notion of divestment is broached. Such an approach fails to understand the egregious nature of the abuses in the Uyghur Region, and the inability for any company or investor to exert or increase leverage to prevent, mitigate or remedy state-imposed forced labour. As per the UNGPs, (see commentary to Guiding Principle 19), new guidance from the UN Office of the High Commissioner for Human Rights and the OECD Guidelines on Responsible Business Conduct for Multinational Enterprises, corporations should consider divestment/disengagement where there is insufficient leverage to change a situation, in particular when there are gross human rights abuses. Given the egregious level of harm in the Uyghur Region, which experts have concluded may constitute crimes against humanity and genocide, the severity of the adverse impacts in question are inarguable.

In the case of Uyghur forced labour specifically, the decision to divest will depend on the client/portfolio company’s direct involvement in Uyghur forced labour. Where a company is directly operating in the Uyghur Region/using Uyghur forced labour in the Uyghur Region, immediate divestment will be necessary. Where a company is a) operating in mainland China but receiving state-imposed labour transfers from the Region or b) directly or indirectly sourcing Uyghur forced labour inputs, an investor should engage with said company to change such practices, including through escalation and attempts to increase leverage. If companies fail to comply with said requirements within a designated *urgent* timeframe, investors should divest. By early 2024, Anti-Slavery International, together with partners, will publish guidance to investors on this.

We underscore that the above is Anti-Slavery International’s position on *state-imposed* forced labour, such as that in the Uyghur Region, or in cotton harvesting in Turkmenistan, as opposed to *privately-imposed* forced labour, which constitutes the majority of forced labour in corporate value chains. In the latter, investors should consider divestment a so-called ‘last resort’, and otherwise engage with companies to change the business model and strategies which cause and enable forced labour grounded in the input of affected stakeholders, and to remediate affected workers. Where disengagement is necessary, responsible disengagement principles should be followed, including with consideration of the responsibility for remediation across all entities which have caused or contributed to the harm.

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

See above on commentary re. Uyghur forced labour in renewable energy sectors.

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

Companies that list on global stock exchanges have strict criteria they have to abide by and in effect go through a due diligence process. Therefore, there is leverage that stock exchanges can exert over companies to consider their risks related to human rights and environmental harm. There have been initiatives, such as with the Thai Stock Exchange that employ a voluntary guidance approach to education and inform companies who list on their Exchange of these risk. This is an area that warrants further investigation and consideration.

**Access to remedy. Good practices**

1. **Please provide examples of any good practices, tools, guidance, policies, etc., regarding the integration of the responsibility to respect human rights by investors, including examples of investors actively preventing or mitigating (including by using leverage or undertaking a responsible exit) any adverse human rights and environment impacts of the businesses in which they invest.**

In late 2023/early 2024, Anti-Slavery International, together with the Investor Alliance for Human Rights and Sheffield Hallam University, will publish guidance to investors on addressing the risk of Uyghur forced labour in the solar and EV-battery sectors. This guidance will include case studies of good practice.