**To**:

UN Working Group on Business and Human Rights

Thematic Engagement, Special Procedures, and Right to Development Division Special Procedures Branch

UNOG-OHCHR

CH-1211 Geneva 10, Switzerland

**From:**

Antonio Grillo Neto

Âme Consultoria em Direitos Humanos

R. Américo Brasiliense nº1490 – Cj. 53

Chácara Santo Antonio

São Paulo (SP)

Cep: 04715-002

Dear Srs.,

The following responses reflect two distinctive points: the Brazilian reality regarding ESG investments and the professional experience gained in this emerging market through the work of my company, Âme Consultoria em Direitos Humanos, over the last five years in the Brazilian financial market.

As a lawyer and legal consultant, the focus of the responses presented here partly represents my experience in the regulatory and legal aspects, based on the framework regulating ESG investments in Brazil.

As a starting point, it's essential to understand that three major autonomous entities regulate the Financial System in Brazil: I) the Central Bank, responsible for the banking market; II) CVM - Comissão de Valores Mobiliários (Securities and Exchange Commission), responsible for the market of securities investments; and IV) SUSEP, responsible for the insurance and pension market.

Although ESG themes are common to all the mentioned entities and markets, CVM is the entity responsible for regulating ESG investments in Brazil.

Our experience has shown that within the ESG approach, the topic of human rights is often related to or implied within the "S" (Social) criteria in the analysis of risks and metrics in this type of investment in the Brazilian financial and credit markets.

The issues evaluated and measured encompass critical topics such as labor practices, gender equality, diversity, workplace safety, and workers' rights. Analysts immediately include human rights within the "S" theme, which is an incomplete notion.

This is because human rights also encompass environmental issues (such as the right to a healthy and sustainable environment) and governance issues (such as respect for the rule of law and transparency).

The financial market needs to incorporate the theme of human rights. It's necessary to go beyond what is currently understood as "S" practice and conduct studies to implement policies and investment analyses that can more accurately map the potential risks of human rights violations in each financial operation offered as ESG in the market.

The importance of due diligence in human rights and monitoring of operations is fundamental for the market to be certain that it is dealing with a legitimate ESG operation. As a direct benefit, it is possible to present investors with a legitimate operation while simultaneously mitigating or eliminating the potential risk of greenwashing.

The incorporation of fundamental instruments such as the UN Guiding Principles on Business and Human Rights, ILO conventions, and other instruments will allow financial institutions, investment banks, banks, and other actors in the financial and credit market to bring more transparency to ESG operations. This not only enables them to make appropriate demands but also assures investors that their products fulfill their purposes.

At the same time, investors can be confident that they are contributing to improving the planet. Ultimately, society benefits from the immense advantages that this type of investment brings to the world.

In summary, everyone benefits from including human rights in the analysis of these investments and ESG financial products.

I remain available for any necessary clarifications.

Sincerely,

Antonio Grillo Neto –

Âme Consultoria em Direitos Humanos

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?**

ESG investment incorporates environmental, social, and governance issues as criteria in the analysis, going beyond traditional economic and financial metrics and thus allowing for a more comprehensive, complex, and holistic evaluation of companies.

This type of investment represents much more than its acronym suggests: it is synonymous with socio-environmental responsibility, reputation, and credibility for companies.

They draw inspiration from and are based on the SDGs (Sustainable Development Goals), whose 17 macro-themes represent the vulnerabilities and challenges that we all need to address by 2030 to attempt to combat global warming and reverse the unprecedented situation where, for the first time in history, we are heading towards mass extinction, not due to natural or external factors, but solely and exclusively due to human action.

Human rights standards and frameworks, such as the United Nations Guiding Principles on Business and Human Rights, can serve as reference points for investors when assessing how companies address human rights in their operations and tackle "greenwashing."

Within the ESG approach, we understand that the "S" (Social) criteria should not be seen as a limitation but rather as one of the dimensions that investors assess when considering the impact of companies and projects on human rights. The "S" criteria can include issues related to labor practices, gender equality, diversity, workplace safety, and workers' rights, among others.

However, it is important to remember that human rights are not limited to these social issues alone. They also include environmental issues (such as the right to a healthy and sustainable environment) and governance issues (such as respect for the rule of law and transparency). Therefore, a comprehensive responsible investment approach should consider all these human rights dimensions, not just social issues.

Investors who wish to promote human rights in their investments should adopt a holistic view and consider the impact of companies and projects in all human rights dimensions. This will ensure that their investment decisions align not only with social issues but also with environmental, governance, and the fundamental principles of human rights in their entirety.

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?**

In Brazil, the National Financial System is regulated by three autonomous entities: I) the Central Bank of Brazil, which regulates the banking sector; II) CVM - Comissão de Valores Mobiliários (Securities and Exchange Commission), which oversees the securities and credit market; and III) SUSEP, which regulates the insurance and pension market.

When it comes to ESG investments, the entity responsible for regulating the topic in Brazil is CVM, the Brazilian equivalent of the U.S. SEC.

CVM has the responsibility to protect investors to ensure market credibility. For this reason, significant attention has been given to "greenwashing," a topic addressed by the Sustainable Finance Division. In October 2023, they published their first report called "Sustainable Finance Plan,"[[1]](#footnote-1) which includes two essential pillars: the creation of a Sustainable Finance Policy and an Action Plan for implementing this policy.

The Sustainable Finance Policy will contribute to a more proactive role by the regulatory body in promoting, regulating, and supervising ESG in the capital markets. This involves developing specific rules and regulations for sustainable finance, monitoring compliance with these rules, and providing consistent information to investors.

The Action Plan, designed for the 2023-2024 biennium, outlines commitments, goals, and deadlines based on the Sustainable Finance Policy's directives. The scope of the Action Plan includes the following aspects to foster sustainable finance:

1. Enhancement and creation of specific regulations.
2. Supervision and combating greenwashing.
3. Guidance to market participants.
4. Investor education.
5. Training of the regulatory body's employees.
6. Institutional integrity.
7. Active transparency regarding sustainable initiatives promoted by the capital market regulator.

The Action Plan is inspired by the UN Global Compact and is structured within the framework of the 17 Sustainable Development Goals (SDGs), with a focus on initiatives related to goals 4, 5, 7, 9, and 10.

**(4)** - Structuring and regulating Blended Finance in Brazil: To achieve the United Nations SDGs by 2030, it is estimated that developing countries face an annual investment gap of approximately $4 trillion (UNCTAD, 2023). To increase the capital available for the SDGs, there is a need for a cultural shift in investment logic and to make sustainable and impact projects more attractive to private capital, by reducing risk and increasing project profitability.

Brazil has a significant need and potential for investments of this nature, to attract private commercial capital for operations and investments that generate positive social and environmental impact.

**(5)** - Regulation of the Carbon Market in Brazil: The carbon credit market in Brazil is currently divided into the REDD+ and Premium markets. Recently, CVM was empowered by the National Monetary Council to regulate this market and establish clear rules for credit classification, classification methodology, and transparency to assist investors in making decisions.

**(7)** - Transparency in ESG Operations and Investments: Fund administrators and venture capitalists have significant responsibilities regarding the credibility of ESG assets they introduce to the market. Therefore, there must be full disclosure about the practices adopted by the capital market concerning how portfolio administrators incorporate ESG factors into their procedures, routines, controls, investment evaluation processes, and governance. They must also inform the public whether the risk-return relationship considers ESG factors.

**(9)** - Financial Education on Sustainable Finance: This topic aims to provide tools for investors to identify whether the offered investment is genuinely ESG, including assisting CVM in combating greenwashing.

**(10)** - Financial Education and Protection for Women Investors: Recognizing gender-based wage disparities and opportunities in the market that place women in financially vulnerable positions in Brazil and worldwide, this initiative aims to promote financial education tailored to young and adult women. It seeks to empower financially vulnerable women to evaluate information, take risks, invest their resources for various time horizons, and handle market fluctuations effectively.

The São Paulo Stock Exchange, also known as B3, has adopted the S&P – ESG Index to inform investors and the market the kind of ESG practices its companies have been engaged in.

The S&P/B3 Brazil ESG Index is a broad benchmark that seeks to measure the performance of securities that meet sustainability criteria and is weighted based on S&P DJI's ESG scores. The index excludes stocks based on their involvement in certain business activities, their performance compared to the United Nations Global Compact (UNGC), and companies without S&P DJI ESG scores.

In the S&P index on which the B3 index is based, there are references to the UNGP and the Global Compact.

CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

**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?**

Including provisions or clauses in an impact and/or ESG investment contract and/or agreement that ensure a commitment to respect human rights is an important practice, but one that still needs to be more widely adopted to ensure that companies or projects commit to and take responsibility for human rights issues in investments presented as ESG and/or impact to investors.

There are several advantages to this, but the key is that it should be done in a way that prevents the practice of greenwashing. This can only be achieved by observing two fundamental factors: I) prior and continuous monitoring of the investments and operations offered to investors and the market, as well as beneficiaries, and II) transparency throughout the entire operation to assess whether the investment has effectively fulfilled its purpose.

Technologies such as blockchain can be highly efficient and secure in this regard and are welcome.

My professional experience underscores the importance of monitoring the various stages of these investments up to the final payment to investors.

It is crucial to visit the companies receiving these investments and monitor all activities not only at the outset when the investment opportunity is presented to potential investors but throughout the entire operation. This includes after the capital infusion into the company receiving these investments, the application of the received capital to the project, monitoring actions, measuring the positive impact of this investment, and payment to investors.

This monitoring involves establishing communication channels between investors and the company receiving these investments, interdisciplinary teams curating these investments, understanding the working methods of the companies and entities receiving investments, and documented interviews with their employees and stakeholders throughout the entire investment.

Suggested clauses that may be considered:

1. Human Rights Commitment Declaration: A clause that explicitly states the company's or project's commitment to respecting and protecting human rights, as defined in international human rights treaties and conventions.
2. Compliance with International Standards: A provision that requires the company or project to comply with international human rights standards and principles, such as the United Nations Guiding Principles on Business and Human Rights.
3. Human Rights Impact Assessment: A clause that requires the company or project to conduct a human rights impact assessment, identifying and assessing the positive and negative impacts its operations may have on human rights.
4. Human Rights Policy: Requiring the company or project to adopt and maintain a formal human rights policy that outlines its commitments, principles, and procedures regarding human rights.
5. Human Rights Reporting: A provision that mandates regular disclosure of human rights reports detailing actions and measures taken to protect and promote human rights. This includes disclosing any adverse human rights incidents and corrective actions.
6. Complaint and Remedy Mechanisms: Include a clause that establishes mechanisms for affected parties or third parties to file human rights-related complaints and seek remedies if necessary.
7. Independent Auditing: Require regular independent audits to verify compliance with human rights policies and practices established by the company or project.
8. Contract Termination: Establish conditions under which the contract can be terminated if the company or project fails to adequately fulfill its commitments regarding human rights.
9. Training and Capacity Building: Mandate that the company or project provides appropriate training and capacity building for its staff on human rights issues.
10. Public Disclosure of Information: Ensure that information related to human rights commitments and performance is publicly disclosed and accessible to investors and the community.

It's important to adapt these clauses according to the specific nature of the investment, industry, and jurisdiction in question. Additionally, it is highly recommended to seek specialized legal guidance when drafting clauses related to human rights in investment contracts to ensure their effectiveness and applicability according to local and international law.

1. [plano\_de\_acao\_financas\_sustentaveis\_cvm\_bienio\_2023\_2024.pdf (www.gov.br)](https://www.gov.br/cvm/pt-br/acesso-a-informacao-cvm/acoes-e-programas/plano-de-acao-de-financas-sustentaveis/plano_de_acao_financas_sustentaveis_cvm_bienio_2023_2024.pdf) [↑](#footnote-ref-1)