**Business and Human Rights Resource Centre Response to UN Working Group on Business and Human Rights**

Call for input: investors, ESG, and human rights

13 October 2023

The Business and Human Rights Resource Centre (BHRRC) welcomes the Working Group’s intention to provide information to the 56th session of the Human Rights Council in June 2024 on the important topic of **investors, ESG, and human rights**. Recognition of the significant role of the financial sector, as providers of capital to business across industries, plays in the broader business and human rights project is critical, given its ability to significantly support implementation of the UNGPs or negatively impact the human rights of communities, workers, human rights defenders, and other rightsholders. The Working Group’s report on these issues is timely, given the extensive increase in ESG investment globally, the need for better definition and application of the term, and the backlash against the notion of ESG across a number of jurisdictions.

**About BHRRC**

BHRRC is a global non-profit organization that monitors human rights impacts of over 10,000 companies, amplifies the voices of frontline communities and workers in the context of corporate accountability, and produces evidence-based research and analysis concerning corporate practice and policy in the areas of Labour Rights, Just Transition and Natural Resources, Accountable Technologies, Civic Freedoms and Human Rights Defenders, and Corporate Legal Accountability. BHRRC seeks to promote responsible investment in rights-centred business practice.

**Detailed Responses to Selected Questions**

**General**

**Q1. 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 integration is an evolving practice, and investors, governments and regulators are at different stages of that evolution. ESG factors are not separate from fundamental investment analysis: they represent a natural evolution in the data that is available to and considered by investors in their decision-making. ESG is about protecting and enhancing value by factoring in risks/opportunities that may have been, historically, ignored or underestimated. And managing ESG can't be done via a checklist, as the likelihood and potential impact/benefit of any risk/opportunity is specific to each individual business.

As such ESG factor integration is part of the fiduciary duty of investors to act in the interests of beneficiaries. Case law as well as fiduciary frameworks recognize the need to preserve assets to satisfy future, as well as present, claims and requires that trustees take impartial account of the interests of all beneficiaries. A long-term investment horizon requires the consideration of factors that might influence investment performance and strategies over time.

Incorporating ESG factors into investment decisions entails increasing the level and quality of information that is material for investors and wider stakeholders to understand how a company interacts with and operates within its social and planetary boundaries/ community and the environment. It includes externalities of a business model that are not captured in traditional financial analysis. To push companies to ignore ESG information, through rhetoric or policy, would mean neglecting data that can impact the risk and return profile of an investment. As such, attempts to “ban” ESG make little sense for beneficiaries and would represent dereliction of fiduciary duty. But definitions and application of ESG investment principles do need to become more rigorous and transparently differentiated between financial value maximising and social impact strategies, rather than considering these to always be one and the same.

Regarding ESG and human rights, it is clear that while the growth of ESG in general is a positive development, ESG as an investment framework has not to date sufficiently captured harms by business to people (and the resulting risk to business of those actions) or guide decisions that take human rights into account. ESG can easily fail to identify and address notable human rights harms.

Misalignment between ESG practices—whether grounded in financial risk management, values alignment, or ambitions of positive impact—and respect for human rights is increasingly evident. In 2021, companies implicated in serious human rights abuses in Asia and Africa were included in key [ESG indices and funds](https://news.trust.org/item/20211216162549-rz27f/). Institutions with strong rhetoric on human rights also [lent](https://www.ft.com/content/a249775c-79ac-441b-9798-40361d4d8015) money to regimes responsible for severe human rights violations, such as Saudi Arabia, Egypt, Russia, and Belarus. This phenomenon extends to climate change, which has profound impacts on human rights: 72 out of 130 [climate-themed funds](https://www.ft.com/content/ae78c05a-0481-4774-8f9b-d3f02e4f2c6f) were not aligned with the Paris Agreement in 2021.

Additionally, it is apparent that investors lack knowledge of what human rights are and how they relate to ESG. In June 2021, the [UN Working Group on Business and Human Rights](https://www.ohchr.org/en/issues/business/pages/wghrandtransnationalcorporationsandotherbusiness.aspx) (UNWG) [found](https://www.ohchr.org/Documents/Issues/Business/UNGPs10/Stocktaking-investor-implementation.pdf) that while investors increasingly recognize their human rights responsibilities and engage companies on rights issues, knowledge of what human rights are, how they relate to [ESG factors](https://www.bsr.org/en/our-insights/blog-view/human-rights-are-not-just-an-esg-factor), and what respecting them means for doing business remains limited. The UNWG cited [data](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3783454) indicating that members of the Principles for Responsible Investment (PRI), who commit to incorporating ESG issues in their investment activities, mostly vote against social and environmental shareholder proposals, including human rights proposals.

**Q2. Which are the main types of investors using ESG approaches, for example, in decision-making or engagements? On what basis are they making decisions on human rights, climate change and other related matters?**

Investors traditionally rely on ESG index and data providers as a key source of information about human rights and environmental risks to inform their due diligence, decision-making, and engagements. Some also use media sources and research from civil society, including BHRRC, in their due diligence processes.

Accurately assessing human rights and environmental risk is particularly challenging in contexts where civic space is highly restricted, meaning that people are unable to organise, participate and communicate freely in their societies. Civic space restrictions create ‘information black boxes,’ leaving investors with lack of visibility about potential or actual negative impacts on human rights connected to their investments. When civic space is restricted, effective and meaningful engagement with affected and potentially affected stakeholders, including human rights defenders, becomes even more essential to help identify and mitigate risks to people and the environment. Civic space restrictions also generally signal a risky human rights context. Contexts with poor human rights records tend to be riskier for investment and economic activity, while contexts where fundamental freedoms and rule of law are respected tend to further the innovation and productivity that is critical to build long-term value for business.

[In a 2021 survey](https://www.business-humanrights.org/en/from-us/briefings/safeguarding-human-rights-defenders-practical-guidance-for-investors/) conducted by BHRR, BHRRC, Investor Alliance for Human Rights, Zero Tolerance Initiative, International Service for Human Rights, and Global Witness with investors to better understand the information investors rely on to identify human rights risks and to what extent investors assess specific risks to human rights and environmental defenders as part of their human rights’ due diligence processes. The survey showed that some investors are including human rights in their risk assessment processes and 67% of respondents said they have a human rights policy. The most common sources respondents use are NGO reports (85%), investor networks (76%), ESG data providers (70%), media coverage (67%), and company self-reporting (59%). Only 15 respondents noted they engage directly with communities to seek information about human rights abuses. In addition, more than half of respondents (55%) said they don’t specifically assess risks to defenders.

The biggest challenges respondents shared were insufficient data and information about risks to defenders, inability to connect directly with defenders harmed by companies they invest in, scale of investments (investors have hundreds of companies they invest in with long and complicated supply chains), and lack of knowledge about defenders and risks to defenders in their value chains.

BHRRC has also focused on investors in technology, observing how investor engagement strategies present unique and persistent challenges for ensuring accountability of both public and privately held companies. Without adequate regulation requiring human rights due diligence, meaningful public reporting, effective grievance mechanisms, ongoing stakeholder engagement with impacted groups, and functioning enforcement mechanisms, human rights will continue to be sidelined by investors in decision-making spaces. Several illustrative examples are worth noting in this context.

Publicly listed tech companies: “Big tech” shareholders are becoming more actively responsive to human rights-related queries and demands, as evidenced by [an increase](https://www.reuters.com/business/sustainable-business/amazon-shareholders-introduce-record-number-proposals-second-consecutive-year-2023-04-13/) in the number of shareholder proposals calling for action on issues such as “know your customer” due diligence surrounding the end-use of certain technologies, reporting on freedom of association, lobbying disclosures, addressing any gender/racial pay gaps, amongst others. However, companies such as Meta and Amazon are governed via “dual-class” share models. This refers to a share structure in which founders, along with other members of senior management, own a majority of voting shares, making it [impossible for shareholder proposals](https://www.fool.com/investing/2022/11/02/meta-investors-learn-a-hard-lesson-super-voting/) to be approved without the approval of a select few. It is worth noting [that recently:](https://www.business-humanrights.org/en/latest-news/big-tech-executives-continue-to-dismiss-shareholders-human-rights-concerns/)

* The [13 proposals filed by Meta shareholders](https://d18rn0p25nwr6d.cloudfront.net/CIK-0001326801/77945fb3-4081-4b3a-9fc6-ccf9b4ea37c9.pdf), most of which requested additional human rights-related reports and transparency around high-risk contexts (including the upcoming elections in India), all failed to pass.
* The [18 proposals filed by Amazon shareholders](https://www.accessnow.org/amazonshareholders/), including requests to increase transparency about content removal and require that the company get an external assessment of its customer due diligence, all failed to pass.
* The [13 proposals filed by Alphabet shareholders](https://abc.xyz/investor/other/annual-meeting/)—including information requests pertaining to lobbying, climate action, reproductive rights and data privacy, human rights impact assessments, algorithm disclosures, and content governance—all failed to pass.

Privately held tech companies: Private capital actors have extremely limited disclosure requirements, which means that publicly available information on their actions remains scarce. This opacity has mostly kept them shielded from public scrutiny, and they have, largely, been reluctant to respond to information or engagement requests with civil society, including BHRRC. However, private capital actors investing in tech are especially lagging on considering human rights related risks in decision making. To assess the practices of the largest venture capital (VC) firms significantly invested in generative artificial intelligence (AI), Amnesty International USA and BHRRC conducted a survey in May 2023 of the of the 10 largest VC funds and the two largest accelerators that have made at least one generative AI investment to assess whether VC funds and those providing their capital conduct human rights due diligence. This analysis, which will be published before the end of 2023, shows that leading VC firms and accelerators are falling short in their responsibility to conduct human rights due diligence when investing in generative AI start-ups.

These findings also suggest limited progress in this respect by these companies over time. In 2021 Amnesty International released the report [*Risky Business: How leading venture capital firms ignore human rights when investing in technology*](https://www.amnesty.org/en/documents/doc10/4449/2021/en/).3 This report surveyed 53 of the world’s largest venture capital firms and startup accelerators, and found that only one firm potentially had human rights due diligence processes in place that met the standards set forth by the UN Guiding Principles on Business and Human Rights. Given the high stakes, it is critical that leading venture capital firms and accelerators begin to fulfill their responsibilities under the UN Guiding Principles, and ensure that their investments support – and do not undermine – human rights.

**Q3. To what extent do ESG approaches present constraints or opportunities for investors and businesses overall?**

ESG investment approaches offer the possibility of protecting and enhancing value by factoring in risks/opportunities that may have been historically ignored or underestimated. As set out above, incorporating ESG factors into investment decisions entails increasing the level and quality of information that is material for investors and wider stakeholders to understand how a company interacts with and operates within its social and planetary boundaries/ community and the environment. It includes externalities of a business model that are not typically captured in financial analysis.

Fiduciary duties require ESG incorporation, however capital markets would often suggest otherwise. As currently defined, the legal and regulatory frameworks within which investors operate require consideration of how ESG issues affect the investment decision, but not how the investment decision affects ESG issues.

Meaningful stakeholder engagement with civil society, particularly historically marginalised groups or activists from the Global South, is an important opportunity to help investors make better, more informed decisions about how their money already is, or can be reasonably foreseen to, impact human rights and the environment – and what this can mean for business risk in the longer term.

Consideration of human rights defenders (HRDs) in the context of investment decisions is instructive in this regard. The [UNWG’s guidance](https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidance-EN_0.pdf) on ensuring respect for HRDs states that “defenders need to be seen as key partners, who can assist businesses in identifying key human rights impacts, and should be part of a business enterprise’s stakeholder engagement, and due diligence processes, instead of being seen as annoyances, troublemakers, obstacles or threats to be disposed of.” The UNWG also highlighted that genuine consultation with HRDs is one of the best ways to identify human rights risks and prevent harm.

Direct engagement with defenders impacted by portfolio companies, given the size of investors’ portfolios and global holdings, can be challenging, however. Instead, responsible investors report wanting to see that companies are conducting those direct engagements with HRDs and communities. Involvement in multi-stakeholder initiatives and collaborative action platforms can help address this challenge.

Consideration of tech sector investors in this context is also instructive. In order to better understand the current state of engagement between tech investors and digital rights activists, BHRRC collected information from 33 civil society organisations that work on digital rights issues (including groups from Albania, Bolivia, Myanmar, Peru, India, Nigeria, Mexico, Palestine and Zimbabwe), and less than half reported having been consulted by investors for the purpose of human rights due diligence.  Further, preliminary findings of this research include:

* When it occurs, investor engagement with civil society is often not designed to produce effective outcomes (interviewees reported concerns with duration and number of engagements; relevance of the staff in attendance; and selection of which digital rights groups participate in such sessions).
* There are often not clear communication channels for how civil society can voice concerns to investors (especially for digital rights groups in the Global South reaching out to investors in the Global North)
* There is a lack of transparency around private capital investment in general.

**Q4. 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?**

Financial institutions traditionally rely on ESG index and data providers as a key source of information about risk, however these entities often fall short of accurately capturing human rights risks and harm to rightsholders[. In one survey](https://www.business-humanrights.org/en/from-us/briefings/safeguarding-human-rights-defenders-practical-guidance-for-investors/), 84% of the 34 respondents said that ESG data providers don’t adequately cover human rights risks and mostly don’t provide information on specific to risks to defenders. Poor quality data and lack of in-depth engagement with impacted communities can together create challenges for investors in identifying potential human rights violations within their portfolio companies, particularly as ESG data providers to date do not appear to fill this gap. This is a systemic issue given the number of investors relying on these sources in their due diligence.

Further challenges include:

* **lack of transparency about ESG index and data provider methodologies**. As one example, they have specific methodological needs for the types of sources they integrate into their risk assessments (such as timestamps for sources used) of which civil society organisations, who could be valuable contributors to the ESG provider data set, are unaware. It is also unclear how ESG index and data providers select and consider various sources, separating mis- and disinformation from peer reviewed research or fact-checked material, reputable news sources in different languages, and reports from human rights organisations.
* **lack of algorithmic transparency**. It is often unclear how artificial-intelligence-powered scoring systems maintain consistency and accuracy across a multitude of sectors and languages, especially when algorithmic systems are found to be [less accurate](https://www.business-humanrights.org/en/latest-news/new-report-highlights-the-shortcomings-of-large-language-models-in-analysing-non-english-content/) for non-English languages. Civil society lacks the opportunity to audit these algorithms to better understand how they are scraping the internet for data, what data gaps or biases exist, how non-English data is considered/translated and how data points or indicators are automatically weighted.
* **indicators in most ESG methodologies remain at the level of inputs, activities, and outputs**, with little or no insight into the effectiveness of company actions in terms of the resulting outcomes for people (or the business). These various human rights elements are in turn classified, evaluated and weighted differently in each model.
* **ESG ratings can appear to weigh environmental concerns more heavily** than other factors, even without meaningful data around a company’s environmental impact. For example, technology companies tend to score higher amongst ESG ratings and rankings agencies due to misconceptions surrounding perceived lower carbon footprints in comparison to other sectors. Yet, many tech companies have fallen short not only when it comes to environmental protections, but also [privacy rights](https://www.business-humanrights.org/en/latest-news/x-corps-biometric-data-sharing-with-israeli-firm-raises-privacy-concerns/), [labour rights](https://www.business-humanrights.org/en/latest-news/kenya-content-moderators-call-for-investigations-into-big-tech-companies-that-outsource-services/) , [women’s rights](https://www.business-humanrights.org/en/latest-news/discrepancies-persist-in-social-media-content-moderation-policies-for-mens-and-womens-health-discussions/) and [non-discrimination](https://www.business-humanrights.org/en/latest-news/dataworks-plus-did-not-respond-to-concerns-about-detroit-pds-use-of-its-facial-recognition-technology-to-violate-individuals-rights/).

Regarding improvements, [recommendations for better ESG data provider practice](https://assets.ctfassets.net/1u811bvgvthc/22Y4ddIgfMSp8anXgfYkiH/adefff21ab9e78594d9166529a215d0b/No_news_is_bad_news.pdf) include committing to methodological transparency, including sharing sources they consult and criteria for being able to use a source with civil society; and engaging with civil society organisations to identify how to include more information from rightsholders and groups working closely with rightsholders (this could include modifying the criteria they use for sources).

**Corporate responsibility to respect human rights**

**Q12. 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?**

BHRRC’s [Investor Guide “Investing in renewable energy to power a just transition”](https://media.business-humanrights.org/media/documents/2022_RE_investor_guide_vEYihQv.pdf) (2023) provides insight for investors on how to integrate human rights considerations into energy transition investments. Recognising the risk climate change poses to their investments, a number of investor coalitions have already adopted pledges towards net-zero emissions investment portfolios by 2050 – such as the Net-Zero Asset Owner Alliance, Climate Action 100+, the Net Zero Asset Managers Initiative. Integrating climate change into risk management approaches is being mainstreamed through the work of the Taskforce on Climate-Related Financial Disclosures (TCFD), set up by the G20 Financial Stability Board. However, more consideration of the potential impact of climate change and related mitigation efforts on human rights is required. Human rights risks and impacts have been largely perceived as harder to capture through quantitative data and indicators, and thus incorrectly viewed as having limited material impact on companies’ long-term value. This approach, however, fails to reflect the magnitude of socio-economic change required to achieve a decarbonised economy by 2050 – and the fact that leaving out human rights risks may result in multiple consequences for business actors, not least stranded projects and assets.

Climate performance assessment must be holistic. Recent developments show positive evolution towards a more all-encompassing vision of companies’ climate performance, including formation of just transition indicators by the World Benchmarking Alliance and Climate Action 100+ integrating just transition indicators into its benchmark disclosure framework. These should serve as the basis for investors’ coalitions working towards net-zero emissions investment portfolios to integrate clear commitments to respecting fundamental human and labour rights in the energy transition in their pledges. The need for greater connection between net-zero and just transition pledges has been further exemplified by the launch of the [Statement of Investor Expectations for Job Standards and Community Impacts in the Just Transition](https://www.iccr.org/global-investors-representing-over-us38t-issue-statement-principles-job-standards-and-community/#:~:text=Investors%20say%20the%20goal%20of%20the%20statement%20is,high-quality%20jobs%2C%20and%20generating%20positive%20impacts%20to%20communities.) coordinated by the Interfaith Center on Corporate Responsibility and supported by investors representing US$4.3 trillion.

Using influence to support the emergence of a responsible and rights-respecting renewable energy sector can also have positive results for investors as it helps anticipate future adverse human rights impacts which can result in operational delays, reputational and regulatory risks and additional costs. Adopting a proactive approach towards human rights can also equip renewable energy investors with a better understanding of the connection between their investments and real development outcomes across geographies – where the geopolitics and socio-economic realities of climate change may have profound repercussions on project planning and final delivery. By exercising their influence on regulators, policymakers and standard-setters, investors can not only improve their social and environmental outcomes, but it can also help them stay ahead of the curve and anticipate future regulatory risks and investment opportunities.

All investor coalitions, but more particularly those which have committed to work towards a net-zero economy and a just transition, should consider using their leverage with governments to publicly support binding legislation on human rights and environmental due diligence across jurisdictions. Investors can also play a pivotal role in building a responsible RE sector by publicly supporting emerging frameworks on co-equity/ownership models, as well as giving equal importance to legal guarantees on the protection of human rights and to traditional investment incentives.

**Q15. 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?**

Investors’ common responsibility to respect human rights must be enacted through a clear policy in their investing activities, as well as through active stewardship of their investments. Universal owners in particular (i.e. investors with large and diversified ownership portfolios combined with a range of assets under management) have an interest in adopting an active stewardship approach as they are exposed both to risks associated with individual investments, and to global systemic risks. Active stewardship is also increasingly seen as an effective way to “reinvigorate investors’ fiduciary duty” – especially that of institutional investors such as pension funds – whose assets belong to different generations and who represent individual beneficiaries who may themselves be affected by climate change and related increased geopolitical instability. Further recognition of the need for investors to actively engage with companies and governments on the just transition is growing, as the recently-launched [PRI Advance stewardship initiative](https://www.unpri.org/investment-tools/stewardship/advance) for human rights and social issues exemplifies.

**Good practices**

**Q27. 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.**

BHRRC produces and publishes analysis and tools for investors across a range of topics each year. Most recently, these include:

* A [Guide](https://www.business-humanrights.org/en/from-us/briefings/investing-in-renewable-energy-to-power-a-just-transition-a-practical-guide-for-investors/) to help investors make better decisions for a fast and fair transition and integrate their human rights responsibilities in their decision-making ([Investor Guide “Investing in renewable energy to power a just transition”](https://media.business-humanrights.org/media/documents/2022_RE_investor_guide_vEYihQv.pdf), 2023);
* P[ractical guidance](https://urldefense.com/v3/__https:/investorsforhumanrights.org/publications/safeguarding-human-rights-defenders-practical-guidance-investors__;!!P1FkmjZfzDq-BA!s5CK7w58fGxhYI2LUne2XVpFU90o3d0g0F3SUR7XubqA6NLyjfPBaCsGCIXo13kesJkoGEAxNqcZeNICS4UHzKyUiW9H6A$) on safeguarding HRDs (with Investor Alliance for Human Rights and International Service for Human Rights);
* Investor briefing about the state of attacks on defenders raising concerns about business harm in 2021: <https://media.business-humanrights.org/media/documents/2022_HRDs_Investor_Briefing_EN_iP93EZA.pdf>
* Investor statement speaking out against [judicial harassment](https://urldefense.com/v3/__https:/investorsforhumanrights.org/investor-statement-strategic-lawsuits-against-public-participation__;!!P1FkmjZfzDq-BA!s5CK7w58fGxhYI2LUne2XVpFU90o3d0g0F3SUR7XubqA6NLyjfPBaCsGCIXo13kesJkoGEAxNqcZeNICS4UHzKys6cya0g$) of HRDs