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## Investors, ESG and Human Rights

ISSUED BY **UN Working Group on Business and Human Rights**

DEADLINE **30 September 2023**

**Purpose:** Report to be presented to the 56th session of the Human Rights Council in June 2024

### Background

In its stocktaking exercise of the implementation of the Guiding Principles on Business and Human Rights (UNGPs) over the first decade since their adoption, the Working Group recognized that “financial actors have an unparalleled ability to influence companies and scale up on the implementation of the Guiding Principles”. [**1**](https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights#_ftn1)The Working Group also highlighted that this issue was to be a central part of the agenda of implementation of the UNGPs for the next decade, and provided a follow-up report. [**2**](https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights#_ftn2)

An issue of particular relevance to the UNGPs is that financial institutions are increasingly including an Environmental, Social, and Governance **(ESG**) approach (albeit with diverse indicators) in determining their decision-making on investments. For example, in 2016, ESG investing amounted to US$ 22.8 trillion of global assets, and it is expected to more than double to reach US$53 trillion by 2025. [**3**](https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights#_ftn3)

There is also an increasing use of data, indexes, ratings, benchmarking and funds labelled as being ESG. Despite this growth, the Working Group has noted that “a key challenge is that most financial actors fail to connect human rights standards and processes with ESG criteria and investment practices because of a prevailing lack of understanding on how human rights issues should be reflected in social criteria, environmental and governance indicators”. [**4**](https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights#_ftn4) There are also indications that, if human rights are considered to any significant extent at all, they are limited to the “S” part of ESG. For the purposes of this report, “**ESG approaches**” include those as part of sustainable finance, environment and social risk management (ESRM), know your customer due diligence (KYC) and sustainability more generally.

The financial sector, as investors in and funders of businesses across industries, has a very significant role in supporting the implementation of the UNGPs. They can do this, for example:

1. Through placing relevant human rights due diligence (HRDD) and access to remedy requirements on businesses in which they are considering as clients and those which are already clients;
2. Through undertaking their own HRDD in every instance;
3. Through acting as shareholders calling on portfolio businesses to act in accordance with their responsibility to respect human rights;
4. By establishing board oversight of human rights risk management as directors in private businesses; and
5. By advocating for consistent and coherent regulation of businesses generally, and the financial sector specifically, in regard to the implementation of the UNGPs.

However, by investing in and supporting businesses which are not acting in conformity with the UNGPs, the financial sector can enable those businesses – across all sectors - to operate in ways that have actual and potential adverse human rights impacts. These impacts are connected to a wide range of financial instruments, across many stages of investment and in all sectors, for example:

1. Early-stage venture investments in surveillance technology and artificial intelligence;
2. Approving additional project financing for a client despite reasonably knowable ongoing or potential adverse human rights impacts;
3. Providing general corporate loans without human rights and environmental due diligence requirements, despite an awareness that such financing might lead to adverse human rights impacts due to the nature of the client’s business model;
4. Investing in green bonds despite an awareness that such financing might lead to adverse human rights impacts due to the nature of the client’s business model;
5. Investing in projects without ensuring meaningful consultation with all affected communities including free, prior and informed consent by Indigenous peoples;
6. Sovereign wealth fund investments that may result in environmental, social and governance concerns and human rights abuses in host States; and
7. Providing transactional or underwriting support that enables clients’ harmful business activities.

A number of judicial and non-judicial mechanisms have shown increasing interest in holding a range of financial institutions to account for the adverse human rights impacts of their actions. For example, National Contact Points (NCPs) operating under the OECD Guidelines for Multinational Enterprises (OECD Guidelines) – of which its human rights elements are expressly based on the UNGPs - have found that investors have acted contrary to the OECD Guidelines. [**5**](https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights#_ftn5) Communications (complaints) to the Working Group have increasingly been directed to investors. [**6**](https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights#_ftn6)

This report is undertaken in the context of the previous work of the Working Group and the OHCHR, as well as the other relevant international documents, which clarify that the responsibility to respect human rights applies to all financial institutions, irrespective of their type of financial activity. [**7**](https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights#_ftn7) This responsibility is not limited to areas of financial investment that adopt an ESG approach or offer ESG-related products and services.

### Scope

The report aims to provide practical guidance to States, businesses, especially financial institutions of all types, civil society and other stakeholders on how to align better ESG approaches with the UNGPs in the context of financial products and services. This will be done in relation to the provisions of the UNGPs and related documents. It will build on the work previously undertaken by the Working Group, the Office of the High Commissioner for Human Rights, OECD and other organisations, [**8**](https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights#_ftn8) including the project on Responsible Business Conduct in the Latin American and Caribbean region. [**9**](https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights#_ftn9)

The report will also make connections with the Working Group’s previous and upcoming reports and knowledge products addressing issues such as just transition in the extractive sector, climate change, HRDD, policy coherence, gender dimensions, human rights defenders, state-owned enterprises, access to remedy, and the financial sector in the Latin American and Caribbean region. [**10**](https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights#_ftn10)

Against this background, the report will focus on an analysis of ESG financial products and services (e.g., ESG funds, green bonds, sustainability-linked loans), and the associated standards, frameworks, policies, and practices from a human rights perspective, highlighting emerging practices and opportunities for improvement.

In terms of the financial actors covered, the report will include commercial and investment banks, institutional investors, including asset owners, such as pension funds, and asset managers; and funds, including mutual funds, private equity, social investment and venture capital funds. For the purposes of this questionnaire, the term “**investors**” will be used to include all these financial institutions. The report does not cover multilateral or national development finance institutions, insurance companies or fintech.

The recommendations offered in this report will be targeted to States, financial actors and other relevant stakeholders, and will address the strengths, weaknesses and opportunities that financial regulations, policies and practices offer to move towards a sustainable finance framework centred on a human rights approach. They will build on existing regional and global developments in the field.

The Working Group seeks the written input of all stakeholders, including States, international organisations, national human rights institutions, civil society organisations, research centres, policy makers, academia, lawyers, law firms, arbitrators, trade unions, human rights defenders, and Indigenous Peoples and other rights holders, and industry associations, as well as businesses of all kinds, including public and private financial institutions, institutional investors (asset owners and managers) as shareholders, and all types of investors.
**Please feel free to respond to all or selected questions as per expertise, relevance or focus of work.**

**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?
2. 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?
3. To what extent do ESG approaches present constraints or opportunities for investors and businesses overall?
	1. Opportunities: to collect and use metrics of sustainability; to streamline efficiencies and mitigate risks; to identify new market opportunities; to reduce negative impacts on society and the environment, and in return reduce possible negative impacts on the company.
	2. Constraints: use of time and resources (but ultimately worthwhile); possibility for evolution of approach or evolution of context; variety of interpretations as to what constitutes an ESG approach, making it difficult to implement, benchmark, and compare performance.
4. 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?
	1. As stipulated by the UNGPs, ESG index and data providers have a responsibility to respect human rights in their own operations, as well as to conduct human rights due diligence with both suppliers and clients.
	2. Indices and research products could be improved by instituting an international standard of red-flag indicators such that any data recognised to demonstrate a possible abuse or violation would automatically raise a ticket for investigation with appropriate authorities.
	3. Indices and research products could also be standardised to reflect indicators of UNGPs implementation (in alignment with e.g. WBA Benchmark or UNWG-produced materials), in anticipation of global social standards from ISSB.
	4. That said, in service of broader alignment and standardisation, higher-level (external) guidance *for* index and data providers on methodologies employed would be important to address the considerable divergence between providers.

**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?
2. To what extent do current regulations ensure adequate information and disclosure for investors adopting an ESG approach to understand human rights impacts of businesses?
	1. Current disclosure regulations are not adequate. With a few notable exceptions, jurisdictions do not require mandatory human rights reporting from businesses. Amongst those companies that choose voluntarily to provide such reporting, there are multiple reporting frameworks and formats used, such that investors can struggle to compare companies directly, and access consistent, robust and comparable information. There has been some movement toward mandatory reporting in recent years, and the International Sustainability Standards Board has been established with an explicit remit to establish global baseline sustainability reporting standards that can be applied consistently across jurisdictions. The ISSB recently indicated an intention to begin work on a global baseline human rights disclosure standard, which is to be encouraged. In the context of a push for international standards, global support should be aligned behind a singular mechanism to ensure a stable international foundation - in this case the ISSB. Regional and national projects currently under development should ensure alignment with such global standards to prevent future confusion or conflict.
	2. These [key messages](https://shiftproject.org/issb-social-disclosures/) on the need for a social disclosure standard were transmitted to the ISSB via various responses to a recent consultation on its future work plan, setting out the opportunity and the rationale for the ISSB to start with a general thematic standard on ‘social-related’ disclosures, much as they did for climate. The ISSB is expected to announce further information about future work and planning in early 2024.
3. How can States encourage and regulate accurate communication of ESG practices by businesses and investors to prevent misleading or unsubstantiated claims regarding respect for human rights?
	1. Support ISSB for international baseline standards of disclosure, and mandate detailed technical reporting accordingly. It is particularly important that jurisdictions adopt emerging ISSB baseline standards in full, and without adulteration, to ensure the realisation of their full potential utility, and to avoid further confusion in the market, amongst investors.
	2. Both qualitative and quantitative reporting measures, in accordance with UNGP guidance and forthcoming ISSB standards, should be mandated at national level.
	3. States should avoid lumping together E, S, and G practices - rather, requiring accurate communication of practices in each category, and should recommend further communication around practices in the overlapping realms of the reality of each.
4. 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?
	1. Particularly relevant for international investors, including investors in multinational enterprises, to apply a global-best-practice-standard policy to all operations and clients worldwide, regardless of the floor of respective domestic legislations.
	2. Similarly, due diligence should be conducted according to a global-best-practice-standard worldwide, regardless of the floor of respective domestic legislations.
	3. Domestic legislation in one State that affects an investor operating in multiple jurisdictions can have actual positive impact outside of the territory (i.e. UK modern slavery statement laws), for example by mandating and enforcing investor and corporate human rights due diligence and remediation practices.
5. 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?
	1. Mandate affected stakeholder engagement.
	2. Provide guidance for governance processes with standard mechanisms for onboarding stakeholder consultation results into corporate decision-making.
	3. Support and align with forthcoming ISSB disclosure standards.
	4. Mandate ISSB-aligned disclosures.

**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?
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.
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**](https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights#_ftn11) Are these integrated into an ESG approach and, if so, how? Please provide examples of practices.
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?
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?
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?
	1. Provisions such as red-flag indicators for investigation, remediation, and termination.
	2. Provisions stipulating due diligence and regular mandated reporting/disclosures on HRIAs, due diligence, and stakeholder engagement.
	3. Provisions mandating robust, publicly available whistleblowing channels and remediatory response procedures.
8. In what circumstances should investors refrain from making ESG-related investments in view of potential risks of adverse human rights impacts?
9. How can investors best provide transparency in their disclosures about their practices which are, or are not, in alignment with the UNGPs?
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?
	1. [Note to WG: this question would require further clarification as to the nature of an “ESG” approach” - despite the loose definition laid out in Background, further precision would be needed to answer the first half of this question in a comparative manner. Per the question of red flags posed during the live Working Group consultation meeting, we would consider it to be a red flag if answers/recommendations to this question are set out in the report without clearer precision.]
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?
	1. Yes - adopt and align with forthcoming ISSB standards.

**Access to remedy**

***State-based judicial and non-judicial mechanisms***

1. What steps have States taken to investigate, punish, and redress business-related human rights abuses connected to investors, and how effective are they? What challenges and opportunities for participation by affected stakeholders and/or redress have you observed?
2. Please provide examples of cases submitted to State-based judicial and/or non-judicial mechanisms regarding investors in the context of business-related human rights and environmental abuses. How effective are these in providing remedies to the victims and how can they be improved?

***Non-State based mechanisms***

1. What remediation responsibilities should investors have? Should these responsibilities vary depending on the nature of the responsibility e.g. cause, contribute to, or be directly linked to the adverse human rights impact? Should it vary depending on the sector invested or the type of investment activity?
2. What measures and mechanisms, including grievance mechanisms, should be provided at the investment-level that enable individuals or communities affected by the business in which the investor has invested (e.g. the portfolio company) to report adverse human rights impacts to the investor and seek effective remedy for human rights and environmental abuses? How effective are these in providing remedies to the victims? Please provide examples of business or industry association actions in this area.

**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.
2. Are there any specific recommendations to States, businesses (including investors), civil society, UN bodies and National Human Rights Institutions that would assist in ensuring that investors act compatibly with the UNGPs?

Any other comments or suggestions about the forthcoming report are also welcome.