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**United Nations and UN Human Rights Office of the High Commissioner - Working Group on Business and Human Rights**

**Call for inputs. Investors, ESG and Human Rights**



**Written evidence submitted to** **the Working Group on Business and Human Rights - Investors, ESG and Human Rights.**

The Institution of Occupational Safety and Health (IOSH), the Chartered body for occupational safety and health professionals, with approximately 49,000 members in more than 130 countries, has a vision of ‘*A safe and healthy world of work*’. As an international non-governmental organisation (NGO), in special consultative status with the Economic and Social Council since 2023, and on the Special List of the International Labour Organisation since 2006, IOSH ethically influences important decisions that affect the safety, health and wellbeing of people at work worldwide. We responsibly collaborate with governments, advise policymakers, commission research, set standards, engage with global, regional and local organisations and run high-profile campaigns to promote awareness of occupational safety and health (OSH) issues. The IOSH Policy and Regulatory Engagement function provides a strong foundation for key policy responses and public policy initiatives that focus on the crucial role of OSH.

As the largest professional body for OSH professionals, we support them in their work to advise businesses on the measurement of, and impact of, OSH performance on human capital management and sustainability. We champion and advocate policy to ‘put people back into sustainability’, with OSH integral to sustainable business performance. On corporate transparency we advocate for, promote and influence principles of good OSH globally which includes OSH metric frameworks from international standards (for example, ISO 45001: 2018 Occupational Safety and Health Management systems – Requirements with guidance for use and GRI 403: Occupational Health and Safety 2018). IOSH advocates a transparent, human-centred approach that properly recognises and values the role of OSH in the development and protection of human and relationship capital where workers are recognised as material to organisational success and sustainability. Where ‘people’ are positioned at the heart of the agenda and is reflected in national and corporate governance transparency, reporting and disclosure. We joined the UN Global Compact as a ‘non-business participant’, committed to support more than 17,000 business participants in over 160 countries, both developed and developing, representing nearly every sector and size, all of whom are committing to align their operations with universal principles on human rights, labour, the environment, and anti-corruption — and to take actions that advance societal goals.

IOSH’s recently launched our ‘Catch the Wave’ campaign[[1]](#footnote-1) which promote the contribution of OSH to social sustainability and seeks to stimulate commitment from capital markets, businesses and employers to ensure that the operations they support are socially sustainable, and to give profile to the social pillar of sustainability and the role of OSH within it. Sound social management is critical to our vision for a safer, healthier and sustainable future of work, more equitable markets and inclusive societies.

**Written evidence submitted by the Institution of Occupational Safety and Health.**

**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?

In response to growing concerns among their employees, customers, investors, and impacted communities, many firms are making themselves accountable for their Environmental, Social, and Governance (ESG) practices, with social issues such as human rights, occupational safety and health (OSH), labour rights and human capital management increasingly recognised as key to sustainable business. While the promotion of ESG factors in making investment decisions has recently faced negative scrutiny and criticism[[2]](#footnote-2), incorporating ESG analysis alongside traditional financial factors provides a more holistic understanding of risk and opportunities and long-term value creation[[3]](#footnote-3)[[4]](#footnote-4) in today’s business ecosystem.

Existing ESG frameworks aren’t yet effectively underpinned by robust diligence on the social elements such as human rights (including labour and OSH risks). As such, a harmonised and robust governance system is needed, despite the availability of standards that oblige companies and investors to respect human rights throughout their workforce, operations and broader value chains.

1. 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?

Institutional investors, namely pension funds, mutual funds, hedge funds, banks, insurance companies, and endowment funds play a significant role in promoting corporate ESG. If we consider the type of investors based on their strategic aims, we see that long-term investors tend to perceive environmental and climate risks as important. On the contrary, the focus on human rights and workforce issues is less apparent, with social and human capital risks often missing from the financial data. Some investors have however moved to an impact investment approach which looks at positive effects to planet and people. Consideration needs to be given to ‘social washing’ that involves organisations engaging in allegedly allyship towards socially-related challenges, rather than actively helping them.

Improved levels of transparency in reporting practices are crucial for investors to have access to more meaningful and comparable social data from businesses to help inform investment decisions. The last decade has seen a renewed impetus (including from global investors) calling for enhanced due diligence to address environmental, social and governance risks, including human rights risks, throughout the investment lifecycle – and this is an agenda we would like to be further pursued by the investment community.

In terms of the most commonly adopted practices to embed ESG factors into investment portfolios, some institutional investors may include ESG factors in their overall risk assessment and management (e.g., ESG or climate strategy), while others will consider ESG factors as an integral part of the traditional analysis performed when examining the risks for specific investments[[5]](#footnote-5). A similar formula to bring the attention to emerging human rights abuses is through shareholder proposals and discussions at their annual meetings. Other institutional investors follow the lead of boards, CEOs, CIOs, investment committees, or lower levels to decide whether or not to invest in responsible portfolios.

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

We see human rights abuses as one of the most concerning sustainability risks in the context of net-zero energy transition, due to poor levels of public disclosure and corporate reporting on how high-risk industries manage human rights risks[[6]](#footnote-6), or struggle to inform accurately about the nature-related disclosure and risks associated with their activity[[7]](#footnote-7). It is for this reason that robust corporate social due diligence systems and practices that address human rights impacts need to be better integrated into companies and supply chains, while simultaneously considering fundamental principles and rights at work and thus minimising potential forced labour, child labour, modern slavery and occupational safety and health impacts. To this extent, we see a trend[[8]](#footnote-8) in how more countries are enacting or reviewing modern slavery standards (e.g., Canada or Australia).

Social sustainability approaches can also result in major barriers for investors and businesses to achieve their long-term goals. For example, human capital practices[[9]](#footnote-9) may lead to worker protests, stakeholder activism, or a breach in international standards, which ultimately could result in potential declines in production, regulatory action, and/or damage to a company’s reputation.

Other constraints are complex to identify. This is the case when mapping human rights risks in a company’s value chain with suppliers operating in different regions where impacts may vary according to local and regional realities, and with global supply chains growing in complexity.

Corporate performance on human rights is a central component of the social aspect of ESG, though one often overlooked by both those in favour and those opposed to ESG investing. While the diversity, equity, and inclusion (DEI) component of the social indicator has been the focus of much of the debate on ESG, other human rights issues, including worker health and safety, forced and child labour, and attacks on human rights activists are all areas where investor influence has been critical in changing corporate behaviour.

1. IOSH believes that human capital topics should be a key driver for the portfolio needs of an investor. We strongly promote this position through our seat on the Human Capital Committee of the International Corporate Governance Network (ICGN). Good human capital management is fundamental to the people element of the ‘people, planet, profit’ triad in sustainability management and to the ‘social’ pillar of ESG and the United Nations Global Compact. It emphasises the benefit of realising the value and potential of people at work (which includes the occupational safety and health needs and rights of workers), and how this impact and influence organisational performance and social licence to operate.
2. 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?

ESG index and data providers are slowly starting to acknowledge and embrace human rights principles, but there is still a strong misalignment between ESG indexes, and the principles derived from UNGPs on the issue of human rights. On many occasions it is still the case that companies implicated in human rights abuses are included in key ESG indices and funds. A clear example of this can be seen on the disconnection between companies’ ESG risk ratings and the actual risks they generate for workers, communities, and societies.

**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?

IOSH expects legislative developments on this matter to embed the social elements of ESG due diligence (i.e., modern slavery, corporate social responsibility, occupational safety and health, decent working conditions, and supply chain sustainability) to be at the very top of the policy agenda. We see this as a logical step forward considering that the financial materiality associated to these risks is becoming increasingly clear.

Human rights issues remain an issue to be properly covered in trade-related public policy agendas[[10]](#footnote-10). For that reason, a possible route for global policy on world trade would entail the formal review of fundamental principles and rights at work framework on free trade agreements, and the integration of a legally binding instrument for transnational corporations and other business enterprises with respect to human rights and decent work. Similarly, human rights and fundamental principles and rights at work clauses can be firmly embedded into national implementation plans for net-zero emission and energy transition programs, climate regulations, mitigation policies, adaptation policies and compensation policies that target the groups most affected by the transition.

Another route entails integrating human rights requirements into broader sustainability and ESG investing clauses present in national action plans on business and human rights or national action plans on responsible business conduct.

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?

States have an active key role to play in advancing corporate respect for human rights, including by taking all appropriate steps to prevent, investigate, punish, and redress abuses connected to corporate and investment value chains through effective policies, legislation, regulations, and adjudication. It is for that reason that IOSH welcomes recent developments towards a harmonised agreement on business and human rights that would set a strong emphasis on mandatory corporate human rights due diligence laws, corporate accountability, and the need for increased efforts on corporate transparency around ESG and human rights. This is a trend being followed by 15 countries including the UK, France, Germany, Norway and Switzerland, all of which have recently introduced mandatory human rights due diligence (MHRDD) and reporting obligations on companies. A more balanced and overarching framework will be enacted by the European Union, requiring thousands of large companies to actively look for and reduce human rights abuses and environmental damage in their supply chains. (This will also cover non-EU businesses operating in the region). Despite these upcoming regulations, economic, social, cultural, civil, political, labour, health and safety or environmental rights risks remain widely neglected or underestimated among business and financial actors in many countries, even among those who consider ESG in investment decisions and stewardship.

Climate-related issues can impact business operations, supply chains, workers, communities, and wider society. Strengthening regulatory scrutiny to tackle climate-related risks can be a pivotal element in achieving socially and environmentally responsible business. Because climate change is a global problem with a local impact, emerging occupational safety and health threats bring an imperative to strengthen national climate adaptation and mitigation policies and programs. Yet occupational safety and health rulemaking can be rather slow and most national climate, employment and OSH policies do not address the impact of climate change on human health.

Aside from environmental threats, another area in need of greater consideration is technology and the advancement in artificial intelligence, automation, machine learning, and biometrics. These have brought about new and emerging risks to non-discrimination, working practices, and more generally to the rule and application of law. Amnesty International previously found the majority of the world’s most important venture capital firms did not consider the human rights harms of their investment decisions when investing in technology[[11]](#footnote-11). To that extent, regulators need to oversee the risks that artificial intelligence and machine learning systems can entail at both the development and deployment stage.

1. 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?

The human rights regulatory landscape is expanding, evolving from soft to hard law, and with momentum towards mandatory due diligence[[12]](#footnote-12). These changes are driven by jurisdictions responding to human rights challenges with the introduction and strengthening of mandatory disclosure legislation. Companies and investors are subject to regulation that is expanding in its scope and enforcement, and which requires identification, mitigation, remediation, and disclosure of adverse human rights impacts. Regulation can be a powerful lever in addressing complex human rights challenges, driving transparency on ESG risks and contributing to a level playing field in which businesses pursues responsible business practices.

The requirement for human rights provisions can also be firmly integrated into general trade, development, foreign investment strategies and national action plans on business and human rights (only 30 countries have so far followed this route). Here human rights requirements need to be elevated to achieve socially responsible trade as part of worker-centred trade policy and agreements.

More accurate communication of businesses’ social practices needs to consider the adoption of quality, comparable, and usefulness of disclosure around human rights, this is those which are able to fairly and comparably demonstrate an ongoing commitment to realising human rights.

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?

States need to strengthen mechanisms to ensure that all companies, including venture capital firms, stock exchanges and market regulators, act responsibly and are held accountable for their negative human rights impacts by incentivising due diligence requirements in respect of businesses’ global operations and investments.

**Human rights topics may look slightly different in terms of their meaning and scope in different jurisdictions – in practice this means that the materiality, the cultural or regional context of human rights topics might differ from case to case. This is of particular concern in the current context of work, where an increasing number of companies operate across many sectors and different regions.**

**States can better advance MHRDD regulations by enacting and ratifying international treaties (despite the existing political resistance**[[13]](#footnote-13)**) that cover internationally recognised human rights. According to the UN Guiding Principles that companies should respect, this is the ILO Declaration on Fundamental Principles and Rights at Work (FPRW). This is particularly relevant in the context of a safe and healthy working environment as one of the five fundamental principles and rights at work.**

**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?

More investors are promoting human rights and practicing responsible business conduct in their own operations and are required to better understand and disclose human rights risks within their portfolios due to voluntary and mandated frameworks. Despite this, we still see poor accountability from investors when it comes to respecting human rights[[14]](#footnote-14). The lack of consistent data – particularly robust quantitative metrics - remains a barrier for investors to effectively manage human rights risks across portfolios. The incomparability of ESG metrics, ratings, and investing approaches also constitutes an issue for investors to address, especially on social topics.

Corporate and investor led demands are reaffirming that disclosures on human rights related impacts are central to the way companies demonstrate their accountability. IOSH recognises that attention to fundamental rights are increasingly important policy priorities around the world, particularly following the recognition of a safe and healthy working environment as a fundamental principle and right at work. This is an important reverse in a trend that used to facilitate companies being at an early stage of measuring and reporting on human rights-related matters.

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.

Voluntary initiatives for corporate self-regulation, such as the ones cited above, continue to struggle to address the accountability gap as they don’t amount to legally binding obligations. Companies voluntarily committing themselves to respect human rights, may on the one hand be those companies who are already being proactive (and thus the ones who need to take action do not engage) or on the other hand can be highly selective and neglect other indirect risks. On the contrary, they have proven to be valid instruments for educating and raising awareness to businesses and capital markets on how to improve due diligence on corporate human rights accountability. An example of this is the UN Global Compact Business and Human Rights Accelerator programme which, over the course of six-month, aims to help businesses swiftly move from commitment to action on human rights and labour rights through establishing an ongoing human rights due diligence process. They have also encouraged the development of national systems for the regulation of corporate human rights conduct through instruments such as NAP on business and human rights.

Evidence suggests that there are still low levels of voluntary implementation of HRDD by companies in the absence of regulation[[15]](#footnote-15).Voluntary mechanisms provide guidance in the absence of legislation, but there is a need for stronger alignment with the development of legal frameworks that provide clarity to the obligations inherent in HRDD. This hard and soft law combination try to bring more policy coherence into the human rights policy debate. It also strengthens the case for the benefit of a joint framework that combines voluntary business policies and practices, mandatory legislation, and sound advocacy from the civil society All three are necessary to prevent and address global business-related human rights abuses.

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?

Considering human-rights risks and opportunities needs to be considered as an integral part of the investment process. Like investee companies, investors are expected to track the efficacy of their efforts on an ongoing basis. Investors should continue with their efforts, not only at the pre-investment stage, but throughout each stage of the investment lifecycle and across their full investment portfolios. Human rights provisions need to cover the full investment lifecycle (i.e., the design, approval, financing, and implementation of an investment). A good example of responsible practices can be seen in the integration of different elements of social regulatory frameworks as part of the negotiation of licensing standards (e.g., labour and OSH impact assessment). To this extent, more investors should incorporate legal duties to produce detailed human rights impact assessments as part of an investment approval process. Another avenue is for human rights clauses to be firmly embedded into implementation plans for net-zero emission and energy transition programs.

Some institutional investors could consider applying market capitalisation and value losses/gains strategies for ESG factors to be included in financial operations. Other mechanisms relate to incentivising venture capital firms to better manage human rights risks by mitigating risks earlier in the investment process. Investors can also link pay to human rights performance to provide CEOs with incentives to improve social sustainability. Investment-related decision-making can be driven by international agreements and initiatives, such as the UN Principles for Responsible Investment (PRI) or the requirement to engage with UN PRI signatories, OECD Guidelines or the Paris Agreement on Climate Action (Paris Agreement).

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?

Divestment is used to improve a company’s overall value by shedding inefficient assets due to financial, legal, political or sustainability pressures. This practice can be carried out surgically by reducing the investment from stocks and shares, or by focusing on subsidiaries, business departments, real estate, or commercial properties. Socially responsible divestment can facilitate blanket exclusion for those sectors that have the highest ESG risk (i.e., mining and energy intensive sectors such as electricity, heat, gas) or that can cause negative impacts on the environment, workforce and so on. In practice, divestment approaches can negatively impact on a company capital or impede its scale-up plans. This provides no incentives for such companies to implement corrective actions[[16]](#footnote-16) [[17]](#footnote-17).

1. What provisions can be included in contracts or investment agreements to encourage respect for human rights?

We recommend that contractual, trade and investment agreements need to include the impairment of people’s occupational safety and health due to poor working environments or working conditions, discrimination and sexual harassment at the workplace, modern slavery, bonded labour, and child labour.

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

We believe that standard-setting organisations need to assume ownership by leading on the integration of disclosure of human rights issues in the context of the energy transition and net zero programmes, given its multi-faceted impacts. The transition to a more resilient, prosperous, greener and sustainable economy is increasingly becoming central to a company’s reputation and financial performance. As a result, we can see a trend towards directing investments away from fossil fuels and towards sustainable industries. This requires a firm commitment to divest investment opportunities and financial assets from fossil fuel companies and operations to help promote decent jobs and a just and green economy. If effectively articulated, in the longer term it would contribute to reducing the financial desirability of fossil assets.

Investors could also consider updating their policies on prohibited investment activities to make sure they include:

* production or activities involving harmful or exploitative forms of forced labour or child labour or other forms of modern slavery
* production of, or trade in, or use of asbestos or other known carcinogens which can cause occupational cancer
* Any product or trade in of pesticides subjected to international phase out or bans
* investment operations resulting in limiting peoples’ individual rights and freedom in violation of human rights discriminatory labour practices
* Lobbying practices that do not consider respect for human rights (e.g. companies incurring in bad practices by persuading lawmakers to pass industry-friendly legislation that could erode workers’ rights and protections[[18]](#footnote-18))
* Labour practices that prevent employees from freely exercising their right to association and collective bargaining
* Activities where workers are working in hazardous conditions – in what is often known as the “3D”, dirty, difficult and dangerous, jobs
* Non-compliance with the fundamental right to a safe and healthy working environment
* Non-compliance with workers’ fundamental principles and rights at work
* Production or activities that have potentially significant adverse impacts that carry a high degree of risk to the safety and health of vulnerable working populations (e.g. artisanal workers in the extractive industry[[19]](#footnote-19) or migrant workers)
* Investment that could drive people into the informal economy or precarious forms of employment as seen in some forms of digital labour platform
* Significant or commercial scale volume of hazardous chemicals
* Any product or activity deemed illegal under international conventions and agreements

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

IOSH believes that human rights performance information and labour and OSH indicators need to be easy to access, meaningful, and provide quality, comparability and reliability. They should enable cross-country or sector-based comparisons on respect for human rights issues. We appreciate the inclusion of human and labour rights and OSH in standards such as ISO 26000:2010 (social responsibility), which includes respect for human rights as one of its key principles and core subjects; and ISO 20400:2017 (sustainable procurement), which references the UN Guiding Principles (UNGPs) in its definition in ‘sphere of influence’ and lists ‘respect for human rights’ as one of its principles for sustainable procurement, core subjects and drivers.

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

**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.

Examples that strengthen the responsibility to respect occupational safety and health and human capital provisions by investors:

* ICGN Viewpoint on Occupational Safety and Health: The Pandemic, the Changing World of Work and How Investment Stewards Can Engage to Enhance Corporate Performance, 18 October 2022: [3. Occupational Health and Safety HCC Viewpoint oct 22\_1.pdf (icgn.org)](https://www.icgn.org/sites/default/files/2022-10/3.%20Occupantional%20Health%20and%20Safety%20HCC%20Viewpoint%20oct%2022_1.pdf)
* Capitals Coalition. Valuing Human Capital in Occupational Health & Safety. White paper. November, 2022.
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6. The Organisation for Economic Co-operation and Development. Interconnected supply chains: a comprehensive look at due diligence challenges and opportunities sourcing cobalt and copper from the Democratic Republic of the Congo. Paris, 2019. [↑](#footnote-ref-6)
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8. ERM. The ongoing evolution of sustainable business. 2023 Trends Report. [↑](#footnote-ref-8)
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