



Questions

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 requirements are to be implemented in finance at the same level as profitability. There is still a way ahead, but without finance implications on this matter, ESG are not going to be a real scenario in finance. Currently, steps have been taken but not enough as there is still a lot of work to do as it can be evidence in many financed transactions that do not comply with ESG standards and do harm Human Rights.

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?

We can find some specific Funds and Bank Entities that are focused on ESG approach, but in terms of quality and quantity, they are not enough as there are many Funds and Banks that currently do not care about ESG approach or considerer ESG as a formality.

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

The answer should be opportunities but unfortunately ESG approaches are unfairly considered as constraints. Consequently, the perspective must be changed.

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?

The answer should be standardization in terms of ESG index so the information could be comparable and more assertive.

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?

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EU proposal on Due Diligence COM(2022) 71 final 2022/0051(COD) is a clear example of this kind of regulation. Even though this proposal has been criticized and considered an interference on business, this is the right path for regulation.

Creating obligations for corporates is the right path to evidence and the impact of investment/financing on ESG.

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?

We need to unify regulations, that is why the EU proposal of Directive is to be effective. Besides the pending matter is always access to remedy.

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?

Obligations in terms of reporting and standardizations of ESG criteria are the two lines to follow in this matter.

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?

If we create a framework of legal obligations to companies, they are to be obliged even though their activity is extraterritorial.

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?

According to UNPs States have the obligation to protect human rights considering the existing human rights covenants scope. In this sense, States have to fully comply with the Human Rights obligations, implementing the accurate domestic law and remedy proceedings. Besides, international treaties have legal preference, so no domestic law can interfere with or diminish International Law regulations.

Considering this basis, the current framework should be enough to assure that human rights are respected by any corporate, fund and financial institutions subject to domestic jurisdiction. Notwithstanding, facts are that this is not the case, so a deeper compromise and prioritization is to be made by States and OOII. In this sense, UE initiative is to be considered a good step, but not the only step. Other way to reinforce this path is to thoroughly supervise financing entities and funds and request ESG results in order to keep license activity. In this sense, human rights obligations should be placed at the same level as non corruption obligations, so deeply implemented on financing entities and funds.

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?

Unfortunately, and in my opinion, the awareness of this matter is not so highly spread on corporates, financial entities or funds as it should be, considering their direct impact on its increase or removal. A weak knowledge may exist but not enough to raise concerns.

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.

In my opinion, the main problem concerning the question is the vast number of different alternatives and the lack of standardization. Besides, we should go deeper to understand these associations' proceeding to seek and evaluate their partners' performance, so membership does not become just paying a yearly fee.

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?

As far as I know, it has to be within the scope of the decision-making, so this should be a matter to review through DD process and evaluate, at the same rate as EBITDA or other figures to be considered.

4. To what extent do investors assess human rights risks and adverse impacts using a risk to rightholders lens as being separate from ESG materiality considerations or as part of a double materiality assessment? ¹¹ Are these integrated into an ESG approach and, if so, how? Please provide examples of practices.

I have no specific knowledge on how investors are internally working

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?

Due Diligence mechanisms at the investing moment and through all the investment life should be needed and clear and standardized KPIs in terms of ESG requirements should be the language of this Due Diligence process.

- . 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?

Money circle is the most important leverage, so investors should put into practice this leverage if they are really committed to or obliged to behave with that perspective.

6. 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?

Human Rights obligations in terms of covenants as it is so commonly implemented in terms of financing covenants. I consider that anticorruption covenants could be the most accurate example of this need requirements in terms of human rights.

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

I think it should be in any kind of circumstances, until the cause of risk is controlled or removed. Financing could be approved based on these obligations, as this is also a common practice in financing.

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

Reporting obligations and reporting standards are the keys to seek for transparency. In this sense, new EU CSRD is a good example as well as EFRAG performance in terms of standardization.

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?

In every ESG approach UNGPs should be the basis for the analysis, but not the only reference. Specific mandatory law or even other soft law is to be considered relevant in terms of ESG risk management. The important task is to accurately prepare a materiality matrix, so the risk analysis and its management could be properly performed.

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?

I think there is fear and a lack of understanding and skills in dealing with stakeholders. Directors and CEOs are not, in many occasions, prepared enough as this is not a subject to study and approve in traditional Business Schools. In this sense, widening Board of Directors' composition and establishing in a mandatory way the need to count with skilled directors in this field could be a good practice.

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?

I refer to my previous answer, as I think that widening Board of Directors' perspective by integrating different expertise in Directors is the clue.

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

The focus should be regulation by stock exchanges, following the same track as anticorruption and confidentiality or conflict of interest framework regulation. Regulations with clear obligations, authorities to supervise and consequences in case of non-compliance.

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?

Access to remedy is the pending subject. There are some national initiatives on this matter, mainly in Europe, but they are not enough as this issue has to be globally or at least regionally addressed.

Specialized jurisdictions and specifically trained judges should also be a request.

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?

We can see some examples on the specialized news or we can be informed by ONGs on these proceedings, but they are still highly expensive and difficult to consider them the right path.

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?

A concrete and specific typification of non-compliance and its consequences is required in order to provide an answer to this question. The major problem is the nature of soft law of the current regulation, as well as the difficulties in implementing mandatory regulations on the regional or national level, being this matter duly criticized by private sector to avoid States' or Multistate entities' interference.

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.

A correct response in terms of remedy and indemnity should be required. Internal mechanisms should be mandatory as well as efficient for corporates, so they can provide the victim with an alternative to judicial remedy taking into considerations length of the process and cost involved.

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.

I am a believer in EU path, even though there is much to keep on doing and some pending or unsolved matters.

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?

We must keep on working to create an accurate, specific and reliable legal framework as, it is a fact that without mandatory regulation there is no way to achieve the goal from a voluntary corporate action.

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