**Inputs for Investors, ESG and Human Rights Report to be presented to the 56th session of the Human Rights Council in June 2024**

##### **Responses to selected questions**

**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?**

Data providers should look into claims of human rights abuses and environmental impacts made by rights holders and should also look into human rights civil society experts and NGOs, and NGOs that represent victims to develop trustworthy reports.

For ESG index-related response, see Q. 10.

**State duty to protect human rights**

**Q3.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?**

There are efforts through sustainable taxonomies that are looking into addressing greenwashing by developing methodologies to define which activities are sustainable and which are not to provide investors with information. Not all efforts of sustainable taxonomies have developed regulations accordingly; they are still voluntary efforts. One issue is that, even though policies and taxonomies are built by multiple actors, there is a lack of participation of rightsholders and rightsholders affected by business activities, as well as Civil Society Organizations that are known due to their work defending human rights and have expertise on the international business and human rights agenda.

This issue brings with it other elements that can be observed, such as mentioning that policies are made based on the UNGPs, but who is the expert on the UNGPs in that process, who is developing, who is monitoring and evaluating or else, developing these mechanisms and methodologies.

The same happens in the multilateral or bilateral trade agreements where the UNGPs are mentioned as an issue of sustainability, but there is no real mechanism to implement them, respect human rights or grievance mechanism when harm happens. EU Global Agreement with México and other countries in Latin America.

ESG tends to differ from human rights in its conceptualization.

* We can see the S focusing more on diversity, inclusion, labor rights and issues that happen inside the corporate offices, or worker related matters, but the S should also look at the value chains and their risks, and the impact on the environment which, at the same time, has an impact on people.
* We can see issues of Governance where actors in the investment ecosystem have a real hard time communicating with the top leaders of a company to talk about allegations related to human rights violations and environmental harm.

**Q5.** **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?**At the minimum, States should include human rights respect provisions in contracts, adjudications, tender competitions, investment agreements, and free trade agreements that they celebrate with another State, company, bank or investor. The provisions should include developing human rights and environmental due diligence processess, as well as grievance and remedy mechanisms in place.
All of the above shouldn't be a voluntary decision of the investor, but a regulation by the State.

**Corporate responsibility to respect human rights**

**Q7.** **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?**

Provisions should be in line with clauses of the primacy of human rights over capital gain.

They should include human rights and environmental due diligence processess for business activities, grievance mechanisms, but also remedy mechanisms. All of them, especially the last one, with meaningful participation of rightsholders and victims.

**Q8. In what circumstances should investors refrain from making ESG-related investments in view of potential risks of adverse human rights impacts?**

In any circumstance where there is a potential risk of causing a human rights abuse or violation that can't be addressed, modified to avoid and prevent such risks.

**Q.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?**

There needs to be a clarification on the need for these consultations to be undertaken. Consultations to develop projects that investors are interested in should take place, taking into account consent by indigenous peoples (ILO C. 169) and similar processes for rural and peasant communities, and other rightsholders.

Legitimate consultation and agreement should go hand in hand with a full participation process that includes monitoring, evaluating, updating, and improving business activities.
Consultation shouldn't break the social fabric and should be done extensively and with a human rights approach.

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

Stock exchanges should have a human rights and environmental perspective in their activities and operations.
While listing sustainability, gender, ESG and other related indexes there should be participation of rightsholders and human rights civil society experts that can monitor and evaluate meeting human rights requirements while rating the performance of the listed companies. State Regulatory bodies should make sure these roles are fulfilled.

**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?**
* Affected rightsholders have challenges to identify abuses connected to investors. These challenges are related to several different issues:
Access to information on the investees in the companies that committed the abuse.
* Transparency on the investors of the projects or business activity.
* Costs to access this information.
* Technology to access this information.
* Language that the information could be in which could be different from the language of the affected rightsholders (i.e. In Spanish in Latin America, or in indigenous languages).

Without the above, it's difficult to file a complaint or use existing legal/judicial mechanisms for the investigation of responsibilities to start or be completed.

Similar challenges affected rightsholders face when seeking access to remedy when a company committed human rights abuses are faced when investors are involved.

When seeking remedy, affected rightsholders are frequently left out of the decision-making process. Their participation in the remedy process is crucial for legitimacy and holistic remedy.

Regional instruments adopted by States, such as the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazu Agreement) should be linked to investors' responsibility to respect human rights and access to justice and remedy.

States sure ensure clarification of investors' responsibilities and obligations to respect human rights, identify links to the harms and abuses, clarify their obligations to the portfolio companies and redress and remedy the abuses to the extent of the harm.

**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?**

The baseline should be that investors and business enterprises, as any other entity or legal person, have an obligation to respect human rights and fundamental freedoms and not create obstacles for their full enjoyment. States should make it clear in all government branches, for investigation, process, and remedy.

This obligation and responsibilities shouldn't vary on sector or type of investment.

**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.**

There should be accessible non-state grievance mechanisms for affected rightsholders, with a gender and intersectional perspective integrated into the whole process.

These mechanisms should aim at holistic remedy and cause an extra burden for the victims.