

# Input for the UN Working Group on Business and Human Rights report on Investors, ESG and Human Rights

## Introduction

Ranking Digital Rights (RDR)<sup>1</sup> welcomes this opportunity to provide input ahead of OHCHR's forthcoming thematic report on investors, ESG, and human rights, to be presented to the 56th session of the Human Rights Council in June 2024.

RDR is a non-profit research and advocacy program that works to promote freedom of expression and privacy on the internet by researching and analyzing how global information and communication companies' business activities meet, or fail to meet, international human rights standards. We focus on these two rights because they enable and facilitate the enjoyment of the full range of human rights comprising the Universal Declaration of Human Rights (UDHR), especially in the context of the internet. Our work also evaluates good corporate governance of human rights risks at the structural level, highlighting the extent to which respect for human rights is embedded in companies' operations and overarching business models.

Since its inception, RDR's methodology and standards were designed to respond to the needs of shareholders seeking insight on tech companies' and telcos' performance on human rights issues.<sup>2</sup> We use our detailed research findings to advise investors, we collaborate with coalitions—such as the Investor Alliance for Human Rights<sup>3</sup>—, we work to develop shareholder proposals (resolutions) targeting companies we rank and their peers, and we also inform independent research initiatives and ESG data to incorporate insights from our scorecards.<sup>4</sup>

In this submission we will share the key insights that we have learned from engaging with this ecosystem, laying out our concerns about the ESG industry, the structural challenges that limit investor advocacy, and our expectations for moving the conversation forward. In the sections below we provide a summary of various publications, we invite you to read the full version of our articles and papers that are referenced in the footnotes throughout this document.

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<sup>1</sup> <https://rankingdigitalrights.org/>

<sup>2</sup> For more information, see: <https://rankingdigitalrights.org/methods-and-standards/>

<sup>3</sup> <https://investorsforhumanrights.org/>

<sup>4</sup> For more information, please consult: <https://rankingdigitalrights.org/investor-guidance/>



## Addressing investors' needs to make better informed decisions about human rights

When we talk about “investors” we generally mean shareholders—people who own stock in companies that are listed in a stock market somewhere. However, when we speak about the investor community that RDR works with, we refer to a broader community that includes asset management firms, mutual funds, faith-based organizations, ESG data providers, and other benchmarks that investors use to inform their engagement with (and expectations of) ICT companies. RDR works together with this network.

Before engaging with our research, investors had no comparable datasets or framework for evaluating and comparing the human rights risks stemming from the activities of companies in the ICT sector, especially freedom of expression/information and privacy risks.

The investor community is an important part of RDR’s theory of change. The purpose of RDR’s scorecards is to get the companies we rank (and ideally their competitors as well) to improve their policies and disclosures in line with our methodology. Using the findings and indicators to engage with the companies they invest in, and to make decisions about portfolio construction, investors create powerful incentives for companies to improve. The number of ESG-focused investment managers, mutual funds, foundations, endowments, and pension funds that have used RDR data and indicators when engaging with companies continues to grow each year.

However, in this ecosystem, large asset managers cannot be sure of every issue that comes to their attention. This is reflected in the voting of proxy ballots, where they often rely on in-house ESG teams or external proxy advisors who could be better informed by civil society organizations on key human rights issues.

Generally speaking, investors are not specialized experts on every thematic area. Especially those that manage diverse portfolios need to seek out insights that can help them understand the nuances of legal and technical issues to make the right decisions.

Companies take advantage of this by pushing back when investors press them on human rights issues. For example, if they see that they are not equipped to fact-check the company's claims in real time during meetings. This is especially relevant in the context of ICT companies, as the connection between human rights harms and the company's products and services may not be as evident, requiring a greater understanding of the underlying technology. That's why the support from experts in civil society is needed more than ever.

**Human rights defenders and investors need to work together to make the business case for human rights.** In 2023, RDR provided direct support to craft three proposals at three of the most important Big Tech companies: Amazon, Meta, and Alphabet (Google). These proposals were aimed at promoting the use of two of the most important tools companies can use to foster



accountability for human rights in the digital age: human rights impact assessments and robust and comprehensive transparency reporting.<sup>5</sup>

Many independent investors lack the resources or knowledge to independently verify and analyze each proposal on which they are voting. In some cases, confusingly worded proposals put forward by “anti-ESG” groups may have created confusion by employing similar language to those that call for comprehensive and politically agnostic disclosures on human rights issues. While the number of overall proposals has increased, the number of specifically anti-ESG proposals has skyrocketed over the past several years. Where they were almost nonexistent before 2020, over 50 were filed in 2023<sup>6</sup>.

This year we have seen greater success with shareholder resolutions that address material risks, such as regulatory fines, such as the proposal filed by Boston Common Asset Management<sup>7</sup> to Alphabet, which received the second highest result this year. Another proposal filed by SHARE<sup>8</sup> calling on Google to publish a human rights impact assessment of its targeted advertising business model received the third best result this year. However, as we argue in the last section of this submission, dual-class share structures are still one of the main factors that limit the success of resolutions focusing on human rights issues.

## The disconnect between ESG ratings and human rights

ESG investing, or “responsible investing,” uses environmental, social, and governance criteria to build a portfolio of “responsible” companies. If an investment fund deems a company’s performance on these issues “good enough,” its decision to invest or seek alternatives becomes a signal for others to follow suit. This continuous feedback loop has driven a steady torrent of capital toward companies and funds with an ESG label, often awarded by established financial agencies. In our recent report *“ESG Data Needs a Human Rights Upgrade”*<sup>9</sup> we examine the shortcomings of the ESG rating industry and how the work of RDR and other benchmarks can fill that gap and support investors to make better decisions.

**ESG ratings still measure the risk that the world poses to the company and its shareholders, rather than a company’s real impact on the world.** They are fundamentally still designed to protect profits, not people. For years, as interest in ESG spread, many tech companies continued to receive high scores from rating agencies, often due to their naturally

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<sup>5</sup> For more information, please see: “Is Momentum on Tech Shareholder Activism Stalling? How to Reinvent it in 2024”, available at: <https://rankingdigitalrights.org/2023/07/05/is-momentum-on-tech-shareholder-activism-stalling-how-to-rein-vigorate-it-in-2024/>

<sup>6</sup> “Anti-ESG Shareholder Proposals in 2023” <https://corpgov.law.harvard.edu/2023/06/01/anti-esg-shareholder-proposals-in-2023/>

<sup>7</sup> <https://bostoncommonasset.com/>

<sup>8</sup> <https://share.ca/about/>

<sup>9</sup> The report “ESG Data Needs a Human Rights Upgrade” is available at: <https://rankingdigitalrights.org/mini-report/esg-data-needs-a-human-rights-upgrade/>



low carbon footprint. This translated into limited concern from many of the world's most powerful investors.

ESG agencies do not inherently view the obligation to respect and protect human rights as “financially relevant,” unless a human rights issue exposes the company to enough financial and reputational damage through investigations, fines, and other setbacks. Nevertheless, ESG scores from the heavyweights in the field hold enormous power to steer the conversation about what counts as “sustainable” or “ethical” in the investing world.

Yet, the data generated by the ESG industry is awash with problems:

- **ESG scores are not based on any one consistent set of standards:** This allows providers to freely adjust scores with no pre-existing framework to guide such decisions or account for them publicly.
- **Different ratings providers produce different results:** even when they use a human rights lens, rating agencies risk turning complex human rights issues into an oversimplified check-the-box exercise.
- **The logic behind the factors that culminate in an overall ESG rating is almost never clear to the public:** low public-facing transparency is commonplace in the industry, where key information like scores and methodologies are published behind paywalls.
- **ESG scores ignore human rights issues that are vital to holding tech companies accountable:** Rating providers tend to emphasize how tech companies address climate change, advance diversity and safety in the workplace, and strive for ethical supply chains. While critically important, these issues do not reflect the full spectrum of human rights problems that tech companies can generate.
- **Conflicts of interest abound:** some rating firms provide paid consulting services for the very companies they rate, while they may also face strong pressure from lobbying groups.

In our report we also expand on **the gap that non-profit benchmarks fill**. The impact that benchmarks like RDR have achieved can provide important lessons for ESG rating agencies that want to **measure the risk companies pose to individuals and society**, not just the bottom line:

- Apply established frameworks to assessments of corporate responsibility, with a special emphasis on human rights frameworks.
- Be transparent about results and how scores are calculated.
- Ask companies for explicit answers to detailed questions.
- Understand how companies' operations affect the majority world.

Benchmarks like RDR are able to offer what ESG ratings do not because of a clear and direct focus on societal impacts. This allows us to focus on the risks that tech companies and their technologies pose to the user and those around them rather than on how the world affects companies' valuation.



There is broad agreement that ESG has entered an era of reckoning that represents the next stage of its maturity. The question is not whether investors should consider ESG factors, but rather what those factors should look like, and what established laws and norms they seek to advance.

## **The barriers blocking shareholders on human rights**

When a company goes public, anyone can opt to buy shares of that company. This enables the investor to reap dividends from the company's profits, but it also gives them a stake in key decisions about how the company is managed, from appointing directors to selling off its assets. Shareholders can propose resolutions on anything from the right to repair your device to the human rights impacts of working with repressive regimes, and then vote on them at a company's annual general meeting. Such resolutions are a key pillar of shareholder activism—the ensemble of strategies shareholders use to exert pressure on management.

From individual “retail” investors to retirement funds, the number of people and organizations investing in Big Tech companies is increasingly growing. Of course, some investors are mainly focused on profits, but we know that there are groups and individuals that care deeply about the effects of these companies on the public interest, and they actively challenge companies to behave more responsibly.

Sustained pressure from investors continues to elicit major commitments<sup>10</sup> and disclosures from companies, and it is gaining more traction than ever. As of February 2022, members of an influential coalition of shareholders had filed 436 shareholder resolutions (proposals) targeting companies—a stratospheric leap over the 244 filed at the same time in 2021.<sup>11</sup>

In the U.S., however, a combination of unfair and lax regulations at the Securities and Exchange Commission (SEC), which was established to “maintain fair, orderly, and efficient markets,” and oversees the public sale of company stock shares, has tipped the balance of power against ordinary shareholders in recent years. The SEC has overseen a proliferation of companies that have deliberately diluted (or eliminated, in some cases) shareholders' voting rights.

Rather than adhering to the standard of issuing one vote per share, they have created systems known as dual- or multi-class share structures, in which a special type of share—that only company insiders can own—is worth 10, 20, or even 50 votes. Multi-class share structures can entrench irresponsible management, kill leadership's incentives to talk to (and answer) the public, and crush investor votes for change.

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<https://www.openmic.org/news/2021/facing-investor-pressure-microsoft-agrees-to-publish-independent-human-rights-impact-assessment-including-review-of-surveillance-and-law-enforcement-contracts>

<sup>11</sup> [https://www.iccr.org/sites/default/files/iccrs\\_2022\\_proxy\\_resolutions\\_and\\_voting\\_guide.pdf](https://www.iccr.org/sites/default/files/iccrs_2022_proxy_resolutions_and_voting_guide.pdf)



In our report *"It's time to bring down the barriers blocking shareholders on human rights"*<sup>12</sup> we expand on why **it's more pressing than ever to end multi-class share structures and repeal the rules that hinder shareholder action on human rights.**

In May 2022, we sent a letter to the SEC, alongside more than 20 human and civil rights organizations, urging the agency to end multi-class share structures entirely, require companies to disclose how their stock structures impact corporate governance, and rescind the rules that restrict participation according to stock ownership.<sup>13</sup>

At RDR, we believe that in close collaboration of the OHCHR, and the Working Group on Business and Human Rights, we can push forward the changes and reforms that strongly support the implementation of the UNGPs by companies, particularly in the ICT sector, while understanding the importance of the current trends in ESG and the risks they bring to maintain the status quo.

We thank the Working Group on Business and Human Rights and the OHCHR for the opportunity to participate on this call for input. We are committed to collaborate on these important topics as they are further developed.

Respectfully,  
Ranking Digital Rights

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<sup>12</sup> The report "It's time to bring down the barriers blocking shareholders on human rights" is available at: <https://rankingdigitalrights.org/mini-report/its-time-to-bring-down-the-barriers-blocking-shareholders-on-human-rights/>

<sup>13</sup> More information about our campaign and requests to the SEC available at: <https://rankingdigitalrights.org/2022/05/23/the-sec-must-break-down-barriers-to-shareholder-advocacy-on-human-rights-joint-letter/>