**Save the Children submission to the UN Working Group on Business and Human Rights call for inputs for its report on “ESG, Investors and Human Rights" to be presented at the 56th session of the Human Rights Council**

**September 2023**

***Responses to questionnaire :***

**General questions**:

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?**

Environmental, Social and Governance (ESG) in finance relates to the integration of ESG factors into the measurement and management of company performance. ESG frameworks demand responsible and sustainable conduct with respect to ESG factors, including engagement with organizational stakeholders, including but not limited to employees, suppliers, customers, and communities, in addition to shareholders. ESG is used both by companies to identify, assess and manage their performance and by responsible investors to inform, measure and manage holistic sustainable investment.[[1]](#footnote-1)

Human rights are a key dimension of the path to a genuinely sustainable world.[[2]](#footnote-2) The UN Guiding Principles on Business and Human Rights (UNGPs)[[3]](#footnote-3) have grown in influence since their launch in 2011, providing the authoritative framework and a key tool for governments and businesses to prioritize respect for people and the environment. Human rights due diligence is a core feature of the UNGPs, with due diligence being increasingly incorporated into legislation at national and regional levels. The UNGPs are complemented by the OECD Guidelines for Multinational Enterprises and its Due Diligence Guidance for Responsible Business Conduct.[[4]](#footnote-4)

Furthermore, the **Children´s Rights and Business Principles (CRBPs)** jointly developed by UNICEF, UN Global Compact, and Save the Children in 2012, in collaboration with children, businesses and other stakeholders, build on the UNGPs. They are a practical guide for businesses, investors, and governments to help them further understand the impacts of business activities on child rights in the workplace, the marketplace, the community, and the environment.[[5]](#footnote-5) In addition, the CRC General Comments 16[[6]](#footnote-6) and 26[[7]](#footnote-7) provide guidance for State parties to the [UN Convention on the Rights of the Child](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child) in framing business responsibilities, including on children’s rights, the environment and climate change.

The increasing use of ESG frameworks by investors and the use of stewardship activities to improve the environmental and human rights performance of investee companies are reflecting and supporting the trend towards responsible business conduct. This also supports investment strategies that recognize the interests of communities, workers, suppliers, customers, and environmental concerns, alongside shareholders.

Still, there is significant scope for expansion of ESG strategies by investors, notably by putting into place policies, due diligence and grievance mechanisms aligned with the UNGPs and incorporating better visibility of children and their rights, both in their own operations and demanding them in the conduct of investees.

**Recommendations:**

**There is a need to better define the social ´S´ elements of ESG and develop outcome-oriented ESG for children:**

* Children’s rights should be articulated as an explicit lens on human rights and ESG in sustainability reporting standards.
* Core indicators on children should be included in sustainability reporting and ESG assessment initiatives to define minimum common ESG standards on children’s rights.
* All social “S” reporting standards should be disaggregated by age and gender. Standards providers should develop and provide guidance on disaggregation.[[8]](#footnote-8)

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 can be seen as key business influencers. They have extraordinary potential to be leading agents of change by fulfilling the responsibility to respect human rights, including the rights of children, in their investment activities.[[9]](#footnote-9)

When it comes to decisions relating to child rights, an important part of influencing the conditions of doing business is action by responsible investors and financial institutions to include child rights in ESG assessments that inform investment decision-making – and to undertake stewardship activities to improve the child rights performance of their investee companies.

A crucial precondition for effective investor action regarding children is that they develop a **comprehensive view and understanding of children’s rights** – including and beyond child labour – and that this guides their stewardship and other actions. Alignment of standards within sustainability reporting, removing lack of coherence and ensuring data on company practices are available to drive child rights analysis by investors would be another significant contribution to the integration of children’s rights into ESG assessments.

An explicit focus on children’s rights should be incorporated into government and business efforts to improve ESG standards and reporting in the private sector, with the financial sector making systematic use of these in decision-making.[[10]](#footnote-10)

**Recommendations:**

**Investors should step up their leverage to advance child rights**:

* Investors and other financial sector actors should respect human rights, including the rights of children, by knowing the risks to people connected to their investment activities and showing how they take action to manage those risks.
* Respect for child rights should become a key part of engagement with stakeholders, including through stewardship activities. Children should be recognized as key stakeholders in investment through its influence on their rights and well-being.
* Investors should enhance collaboration for collective stewardship on children’s rights.[[11]](#footnote-11)

1. **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 approach of the Guiding Principles on Business and Human Rights (UNGPs)?**

Efforts should accelerate to improve coherence of the plethora of standards and taxonomies for ESG investing, to ensure common standards and reduce risks of ‘greenwashing’ with closure of loopholes that allow for continued support of fossil fuels. Attention should be placed on clarifying standards for the “S” in ESG, including a focus on children’s rights.[[12]](#footnote-12)

Additionally, ESG benchmarking initiatives and rating agencies should be more explicit on using indicators that show company impact and performance to address harmful impact on children. It is essential that this be based on measuring outcomes for rights holders rather than the presence or absence of policies made by businesses. All this needs to be underpinned by disclosure of information on children’s rights by the companies themselves, and sustainability reporting standards have an important role in ensuring that becomes commonplace.[[13]](#footnote-13)

**Recommendation:**

* Investors should actively collaborate with companies, governments, standards bodies, regulators, and child rights bodies in the conversation on defining investment useful, relevant, and impactful child rights indicators for engagement.[[14]](#footnote-14)

## State duty to protect human rights:

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?**

In many jurisdictions sustainability reporting measures are becoming more common. There is a steady trend towards mandatory measures [[15]](#footnote-15) and the move towards due diligence legislation is welcomed. In this regard, the EU proposal for a Directive on Corporate Sustainability Due Diligence (CSDDD)[[16]](#footnote-16) is an important contemporary opportunity to significantly improve responsible business conduct regionally and globally. Furthermore, policy and legislation addressing corporate human rights conduct with transnational reach is in development or has been adopted including in the UK, Australia, France, Norway, Germany, Switzerland, Japan, and the Netherlands.[[17]](#footnote-17)

Overall, there is a tendency for human rights to be conceptualized as one isolated component in a list of issues rather than an overarching framework for addressing business´ social and environmental impact. **From a child right’s perspective, due diligence and other relevant regulations, need to be framed by a comprehensive understanding of child rights and of the potential and actual adverse impacts of business on children**.

**Recommendation:**

* Governments should ensure that corporate regulatory frameworks on due diligence, non-financial disclosures, transparency, remediation, and legal responsibility effectively integrate children’s rights, and are implemented in an accessible and child-friendly manner.[[18]](#footnote-18)

**Corporate responsibility to respect human rights**

1. **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?**

Investors must understand that implementation mechanisms that are designed to leave no one behind by placing those most impacted by inequality and discrimination – including children – front and centre are mechanisms that work for all.

An intersectional-responsive approach does not treat power differentials such as gender or disability as exceptions requiring special provisions but understands that mechanisms designed to include those most at risk of inequality and discrimination are a standard operating model requirement. Such a model would then include children, women, persons with disabilities, indigenous peoples, national and ethnic minorities, religious and linguistic minorities, migrant workers and their families, and informal workers.[[19]](#footnote-19)

Universal design measures should be informed by intersectional, child-centred, gender and power analysis and include explicit reference to relevant international human rights frameworks, such as the UN [Convention on the Rights of the Child](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child), UN [Convention on the Rights of Persons with Disabilities](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities), the UNGPs, ILO Conventions, and voluntary initiatives such as the CRBPs.[[20]](#footnote-20)

**Recommendation:**

* Governments and businesses should ensure that the universal design standard of human rights and environmental due diligence and other mechanisms and processes for the integration of human rights into responsible business conduct capture the human rights of those most risk of inequality and discrimination.

## Access to remedy: Non-State based mechanisms

1. **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.**

Building and strengthening legal and regulatory frameworks on business conduct – including through mandatory human rights and environmental due diligence laws – must go hand in hand with the development and implementation of mechanisms that are accessible to children and provide effective remedies for abuses of their rights by businesses.

Furthermore,early involvement, and participation of stakeholders, including children or their representatives, would lend legitimacy to company complaints mechanisms and contribute to mutual trust.[[21]](#footnote-21)

**Recommendation:**

**Remove barriers to children accessing remedy:**

* Ensuring access to justice and legal remedies are fully accessible to children and are child-sensitive, in compliance with international standards.[[22]](#footnote-22)

**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.**

* The **Dutch Association of Investors for Sustainable Development (VBDO)** has collaborated with the Work: No Child’s Business Alliance to analyse child labour and the approach of Dutch institutional investors. Significantly, they found that while engagement with companies on remedy and prevention of child labour is regarded as the most effective strategy, exclusion from investment was the most widely used approach. [[23]](#footnote-23)

1. **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 act compatibly with the UNGPs?**

In addition to the recommendations listed in the responses above, further considerations include:

* **National governments and regional institutions** around the world should work towards introducing mandatory human rights and environmental due diligence, based on the standards defined by the UNGPs, the OECD and the design standards for those at risk of inequality and discrimination, including children.
* **Governments, businesses, investors and other relevant actors** should be building-in systems to support the empowerment of children to participate in meaningful dialogue on issues that concern them.
* **Businesses** have a lot to gain from pursuing socially responsible and sustainable business models, including in competitiveness, quality employee and loyal customer retention and longer-term business sustainability.Also,businesses have an important role to play, through paying living wages, respecting workers’ rights and addressing impacts on human and children’s rights and the environment across their value chains.
* More transparent, outcome-oriented, and consistent ESG reporting helps **consumers and investors** to make better informed decisions and creates incentives for more responsible business.[[24]](#footnote-24)

1. UNICEF, UN Global Compact, Save the Children [Charting the Course: Embedding Children's Rights in Responsible Business](https://www.unicef.org/reports/charting-course) (2022), p. 94 [↑](#footnote-ref-1)
2. UN Working Group on Business and Human Rights, [‘Taking stock of the first decade’](https://www.ohchr.org/en/documents/thematic-reports/ahrc4739-guiding-principles-business-and-human-rights-10-taking-stock), A/HRC/47/39, United Nations, 22 April 2021, paras. 5–6. [↑](#footnote-ref-2)
3. Office of the United Nations High Commissioner for Human Rights, [‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’](https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf), OHCHR, New York and Geneva (2011) [↑](#footnote-ref-3)
4. Organisation for Economic Co-operation and Development, ‘[Guidelines for Multinational Enterprises](http://mneguidelines.oecd.org/MNEguidelines/)’ (2011) and ‘[Due Diligence Guidance for Responsible Business Conduct](http://mneguidelines.oecd.org/due-diligence-guidance-for-responsible-business-conduct.htm)’ (2018) [↑](#footnote-ref-4)
5. Note 1 above, p. 13. [↑](#footnote-ref-5)
6. UN Committee on the Rights of the Child (CRC), General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, 17 April 2013, CRC/C/GC/16, available [here](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/428/21/PDF/G1342821.pdf?OpenElement) [↑](#footnote-ref-6)
7. UN Committee on the Rights of the Child (CRC), General comment No.26 (2023) on Children´s rights and the environment with a special focus on climate change, 22 August 2023, CRC/C/GC/26, available [here](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F26&Lang=en) [↑](#footnote-ref-7)
8. Note 1 above, p. 90. [↑](#footnote-ref-8)
9. See, Goal 1.1: UN Working Group on Business and Human Rights, ‘[Raising the Ambition, Increasing the Pace: UNGPs 10+ – A roadmap for the next decade of business and human rights’](https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf), United Nations, Geneva, November 2021, p. II [↑](#footnote-ref-9)
10. Save the Children International, ´[Generation Hope: 2.4 billion reasons to end the global climate and inequality crisis](https://resourcecentre.savethechildren.net/document/generation-hope-2-4-billion-reasons-to-end-the-global-climate-and-inequality-crisis/)´ (2022) [↑](#footnote-ref-10)
11. Note 1 above, p. 90. [↑](#footnote-ref-11)
12. Note 10 above. [↑](#footnote-ref-12)
13. Ibid. [↑](#footnote-ref-13)
14. See Note 1 above, p. 90. [↑](#footnote-ref-14)
15. The Global Reporting Initiative, for example, found 180 standards and laws recommending sustainability disclosure in its most recent review of 45 countries, in 2013. Of these measures, 72% were mandatory – compared to 56% in the 2006 review of 19 countries. More information available [here](https://www.carrotsandsticks.net/about-carrots-sticks) [↑](#footnote-ref-15)
16. European Commission, Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains, available at: <https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145> [↑](#footnote-ref-16)
17. Overview available in UNICEF, UN Global Compact, Save the Children [Charting the Course: Embedding Children's Rights in Responsible Business](https://www.unicef.org/reports/charting-course) (2022), pages 22, 26 and 75. [↑](#footnote-ref-17)
18. Note 1 above, p. 89. [↑](#footnote-ref-18)
19. Further insights available in Save the Children ´[Gender & Power (GAP) Analysis Guidance](https://resourcecentre.savethechildren.net/pdf/GAP-Guidance_FINAL.pdf/)´ (2021) [↑](#footnote-ref-19)
20. ILO Conventions [No. 138](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ilo_code:C138) (minimum age for admission to any type of employment or work) and [No. 182](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182) (eliminating the worst forms of child labour) [↑](#footnote-ref-20)
21. ICJ, Save the Children, Joint Position Paper [Advancing Child Rights in the Proposed EU Corporate Sustainability Due Diligence Directive](https://resourcecentre.savethechildren.net/pdf/EU-Corporate-Sustainability-Due-Diligence-Directive-Position-paper.pdf/), (2022) [↑](#footnote-ref-21)
22. Ibid, p. 9. [↑](#footnote-ref-22)
23. Note 1 above, p.56. [↑](#footnote-ref-23)
24. Recommendations below are drawn from UNICEF, UN Global Compact, Save the Children [Charting the Course: Embedding Children's Rights in Responsible Business](https://www.unicef.org/reports/charting-course) (2022) which reviews progress on embedding children's rights in responsible and sustainable business conduct and Save the Children International, ´[Generation Hope: 2.4 billion reasons to end the global climate and inequality crisis](https://resourcecentre.savethechildren.net/document/generation-hope-2-4-billion-reasons-to-end-the-global-climate-and-inequality-crisis/)´ (2022) which sets out why climate emergency is deeply connected to inequality and the dual threat of poverty and climate emergency faced by children. [↑](#footnote-ref-24)