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##### 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?

I understand it to mean investors considering the impact of business on ESG factors as an integral part of their investment decision-making. Even among investors investing in this way, there is a highly uneven consideration of human rights standards and frameworks. Like enterprises in other industries, investors using an ESG approach often refer to international human rights law standards and UN guidance in their public materials; a relevant question, however, is the degree to which (if at all) investors follow through and ensure the *implementation* of these standards in their operations and practice. As an aside, I have been working in the fields of responsible investment and BHR for over 20 years, and one challenge I see right now is that the term “ESG” is in danger of becoming the “new CSR”: that is, it means everything and therefore nothing.

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?

The use of ESG approaches has spread from an original core (decades ago) of self-declared “socially responsible investors” (primarily faith-based asset owners, university endowment funds, etc.) to the mainstream, but this rapid spread has raised concerns over the years about so-called “ESG lite”. The original core, very generally speaking, made the argument that the basis for their ESG decisions was to align their investment with their values. That position is under extreme pressure from many stakeholders (including other investors, primarily mainstream or traditional) to make ESG investment decisions purely on the basis of financial materiality. A purely financial motive, or “business case” for upholding human rights, however, is highly problematic: what about situations where there is a “business case” for *violating* rights? (see [here](https://www.duurzaam-beleggen.nl/2006/12/21/titel-1298/) and [here](http://www.reports-and-materials.org/Chandler-keynote-address-Justice-12-Jun-2006.doc)). This tension merits examination and debate. At the very least, it will be difficult if not impossible for investors to align their ESG approaches with the UNGPs if the only (or even the dominant) lens through which they view human rights issues is one of financial materiality. A crucial breakthrough and contribution of the UNGPs was precisely to move the private sector away from an exclusive focus on risk to the firm and towards considering (and then addressing) risk to rights-holders. This sits in direct tension with the “shareholder primacy” theory that has prevailed for decades in business, and although that theory is being debunked in some circles, even investors who *want* to invest with a “values” approach are under constant pressure to make a financial materiality argument for their decisions. The jury is very much out – see the ongoing back and forth between the double materiality and financial materiality positions.

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

Opportunities: I see investors as crucial potential allies in the movement to hold corporations accountable for their impact on human rights (this is in fact what a good deal of my current work is predicated on). To the extent that those who want to practice ESG approaches are open to candid and difficult discussion about holding corporations to account, they can be a very important lever on the private sector.

Constraints: see my responses to other questions, above and below, on the pressures that exist on ESG investing approaches.

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 UNGPs approach?

Due to industry consolidation, a small number of ESG index and data providers hold a lot of influence in that they provide services to many very large asset managers. They have a responsibility to assess human rights and environmental impacts in line with emerging international standards, including the UNGPs. These entities must be included in laws on mandatory HRDD and should be part of investor engagement wherever undertaken. In my experience as a senior advisor to [IndustriALL Global Union](https://www.industriall-union.org/) on capital stewardship (investor engagement), ESG index and data providers – with exceptions - have traditionally shown more interest in, and more of a capacity for, environmental and governance than social factors, and some lack a capacity to deeply understand, analyze and incorporate labor rights, in particular, into their work.

**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?
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?
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?
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?
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?

**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?

Most institutional investors should be aware of this responsibility but only a relatively small subset acts on it. As the concept of ESG has gone mainstream, large asset managers are more likely than before to have ESG policies and some do engage companies directly on human rights issues. As above, this is quite uneven (the global unions find, for example, “cherry picking” by some asset managers, whereby, to the extent they focus on labor rights, they sometimes prioritize child labor and perhaps forced labor or OSH, but they avoid focusing on freedom of association and collective bargaining rights. This is beginning to change, but only slowly and again, very unevenly). Further, some asset managers unfortunately use ESG as a means of bringing in business as opposed to actually changing the way they or their clients invest. Awareness of the UNGPs within the investment community is, in my experience, also uneven, and true alignment seems rare.

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.

International instruments and guidance are essential because investors call on these to show they take a standardized approach. The UN Global Compact suffers from a credibility problem in that delisting is a technicality and not based on poor human rights performance. It has taken the UN PRI a long time to focus attention on human rights, and labor rights in particular; its new Advance initiative on human rights is encouraging (the PRI has solicited the involvement, for example, of the global union federations in this work). The Investor Alliance for Human Rights is well known, carries moral weight within ESG investing and has many adherents. To the extent these institutions and sets of guidance can promote the same message (i.e. alignment with the UNGPs), that is very useful. One challenge with these initiatives and instruments is to be inclusive of the global south: it is encouraging to see global south investors integrating ESG into their approaches and there is a need ensure they are not shut out of relevant global and regional initiatives.

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?

Speaking only of public equities: a company’s human rights impacts must be an integral part of what an investor considers when constructing a portfolio and deciding on corporate engagement; this should be reflected in an investor’s written policies. Human rights should not be a “lens” or a “filter”, which implies putting on and then, just as easily, taking off. Rather, human rights due diligence as a requirement for investment better expresses the need for integration at every step.

1. To what extent do investors assess human rights risks and adverse impacts using a risk to right-holders lens as being separate from ESG materiality considerations or as part of a double materiality assessment? **[11](https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights" \l "_ftn11)** Are these integrated into an ESG approach and, if so, how? Please provide examples of practices.

As above, it is questionable how many large investors even use a double materiality assessment. In a related way, the financial industry’s lobbying to exempt itself from the CSDDD is indicative of (some) investors’ resistance to being held to account on human rights impacts. I do not think the concept of risks to rights-holders is necessarily well understood or accepted across the investor community.

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?

The investor should engage the company or client directly but should also seek direct information, to the extent possible, from the affected stakeholder. In its work on investor engagement, IndustriALL Global Union seeks to raise investor awareness of company impacts on workers, and enlist investors’ leverage in improving companies’ human rights practices. We have been surprised at how infrequently investors speak directly to those other than companies, and yet investors increasingly tell us they want to hear worker testimony. We have held round tables, webinars and smaller meetings (as well as providing supporting materials) to respond to this request and to increase the effectiveness of our work. Although this kind of engagement is generally not possible for investors to practice with every high-risk company in their portfolio, it is one way for investors to do their own due diligence.

1. 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?

Leverage does differ by asset class. I will comment only on public equities: investors have multiple tools. Here are several: stock picking; direct dialogue with companies; engagement of affected stakeholders (or their representatives); speaking out or filing resolutions at AGMs; voting their shares; collaborating with other investors; public policy advocacy; and as last resorts divestment or litigation (shareholder derivative suits). The reason I include engagement of affected stakeholders under leverage is because in my work, I have heard from investors who say they need knowledge, understanding and data with which to *push back* on companies that resist meaningful engagement about human rights abuses with which they’re associated. Engaging with affected stakeholders, and not just companies, can bring this understanding, which gives investors more leverage.

1. 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?

A good practice example: a number of large investors (for example, certain US state pension funds) have responsible contractor agreements for their real estate investments in which they include protections for workers’ fundamental rights.

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

If it is clear that their investment will enable a company to cause or contribute to serious human rights violations, investors should not proceed (this might be more relevant for private equity or venture capital than for other investors). In order to exert maximum leverage in such a case, the investor should voice the reason for refraining from investing.

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

In their annual reporting, in public statements and on their websites. At present, investors tend to provide much more disclosure on environmental than on human rights issues.

1. 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?

To the extent investors carry out genuine ESG due diligence, their approach is (or could be) similar to the UNGPs’ approach in the sense that some of them assess their portfolios for human rights risks, they integrate their findings, monitor the companies, communicate publicly and enable remediation if the investor itself has caused/contributed. It’s helpful to make clear, therefore, that investor HRDD per the GPs does not have to differ at base from what they are already doing. The challenge is that most do not do this in any consistent manner.

1. 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?

The UNGPs concept of “meaningful engagement” is helpful in an investor setting. As above, global union federations have been working to bring together investors and workers for just such engagement. The OECD’s [Responsible Business Conduct for Institutional Investors](https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf) (e.g. sections 2.2 and 2.3) provides some general guidance on investor engagement of stakeholders. Challenges include the sheer number of companies in a large investor’s portfolio and, in some cases, the risks to which certain affected stakeholders might be exposed if companies knew they were speaking to investors.

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 should use their leverage to ensure companies take a contextual, due diligence approach (not a “tick-box” one) to gender issues in their operations. This means gaining an understanding of, e.g. power imbalances in gender relations in a company’s supply chain; the ways in which a company’s practices can affect women, girls and non-binary people differently than they do men and boys; identification of root causes of persistent gender-related human rights abuses as well as intersectional discrimination, negative norms and stereotypes that company behavior can either create or exacerbate. An interesting recent example of investors – and not just companies – being held accountable for sexual and gender-based violence is the [case](https://mneguidelines.oecd.org/database/instances/nl0042.htm) brought to the Dutch NCP by several trade unions against McDonald’s and two large asset managers.

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

**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?

This area seems even less developed than States’ efforts to investigate, punish and redress abuses connected to companies in other industries. With investors generally being at a level removed from company operations themselves, affected stakeholders have an even harder time in proving a connection to the abuse. If States allow the financial industry (as above) its demanded exemption from mandatory human rights due diligence regulations, this will significantly exacerbate the situation.

1. 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?

It’s encouraging that some NCPs have taken up cases against investors (see above), but these are unusual. If OECD member States were to strengthen NCPs’ mandate, this could make them a more attractive avenue for remedy and could in principle increase the effectiveness of case outcomes. States should also place penalties on business, including investors, for refusing to participate in NCP processes or to implement NCP recommendations.

***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?
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.

I am not aware of formal grievance mechanisms that allow affected stakeholders to report adverse impacts to the investor, though in effect this is the work that (see above) IndustriALL and others are carrying out informally. A mechanism that would enable affected stakeholders to report impacts to investors themselves, as you suggest, is worth considering. For an interesting recent example of investors trying to help workers recoup outstanding wages from Nike after they were dismissed and not paid their due by a supplier in Asia, see [here](https://collaborate.unpri.org/group/20151/about).

**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.

Labor unions and civil society organizations are working with investors to encourage companies to sign the International Accord for Health and Safety in the Textile and Garment Industry (The Accord). The Accord has been shown to be effective in mitigating and preventing labor rights abuses in garment factories in Bangladesh, and the initiative has now been extended to Pakistan. This work should be supported not just by a relatively small circle of dedicated investors: other, larger investors should recognize this kind of opportunity to reduce risk to rights-holders in their portfolio companies’ supply chains (e.g. garment workers) and to fulfill their own due diligence responsibilities as investors.

Also, the [Committee on Workers’ Capital](https://www.workerscapital.org/about/), a global network of labor activists and asset owner board members (trustees) advocates for responsible stewardship of workers’ capital (retirement savings of workers), an important segment of global capital. The network works to guide investors on incorporating labor rights into their decision-making and practices and could be a good resource for the Working Group’s initiative on investors, ESG and human rights.

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 investors act compatibly with the UNGPs?