

PRI RESPONSE

INVESTORS, ESG AND HUMAN RIGHTS

13 October 2023

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United Nations
Global Compact

ABOUT THE PRI

The Principles for Responsible Investment (PRI) works with its international network of signatories to put the six Principles for Responsible Investment into practice. Its goals are to understand the investment implications of environmental, social and governance (ESG) issues and to support signatories in integrating these issues into investment and ownership decisions. The PRI acts in the long-term interests of its signatories, of the financial markets and economies in which they operate and ultimately of the environment and society as a whole.

The six Principles for Responsible Investment are a voluntary and aspirational set of investment principles that offer a range of possible actions for incorporating ESG issues into investment practice. The Principles were developed by investors, for investors. In implementing them, signatories contribute to developing a more sustainable global financial system.

The PRI develops policy analysis and recommendations based on signatory views and evidence-based policy research. The PRI welcomes the opportunity to respond to the UN Working Group on Business and Human Rights' call for input on Investors, ESG and Human Rights.

ABOUT THIS CONSULTATION

The United Nations Working Group on Business and Human Rights is seeking [input](#) for a report to be presented to the 56th session of the Human Rights Council in June 2024. The report aims to provide practical guidance to States, businesses, especially financial institutions of all types, civil society and other stakeholders on how to align better ESG approaches with the UNGPs in the context of financial products and services.

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KEY RECOMMENDATIONS

The PRI welcomes the intention from the UN Working Group to provide practical guidance to States, businesses, financial institutions, civil society, and other stakeholders on how to align better ESG approaches with the UNGPs in the context of financial products and services.

The PRI has produced several resources for investors and, increasingly, policymakers, on how to integrate human rights and social issues into investments and financial regulation. We stand ready to support the Working Group and will be available to share the results of our updated Reporting Framework when these are available later in the year.

The PRI recommends that the final report of the Working Group references:

- **The necessity to fully integrate social issues into the economic transition, including through sustainable finance and real economy policy regulation.** This should start from an acknowledgment of the fact that human rights span across the full spectrum of ESG issues and are not limited to the “S”.
- **The need for policy reform to enable the improvement of the sustainability outcomes of investments,** in line with the recommendations in the Legal Framework for Impact report published by PRI, UNEP FI and the Generation Foundation. States committed to achieving the goals of the UN Guiding Principles on Business and Human Rights and the Sustainable Development Goals, and private finance has a strong role to play in this. However, currently investors face a range of impediments to accelerating action on sustainability goals. Policy reforms are essential to facilitate investing for sustainability impact and to overcome barriers to action, while ensuring a level playing field for market participants.
- **The systemic relevance of human rights and social issues, including growing inequalities,** and the need for further policy reform towards full incorporation of relevant human rights and social factors into investment processes.

DETAILED RESPONSE

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?**

The PRI defines responsible investment as a strategy and practice to incorporate environmental, social and governance (ESG) factors in investment decisions and active ownership. There are many terms - such as sustainable investing, ethical investing, and impact investing - associated with the plethora of investment approaches that consider ESG issues. Most lack formal definitions, and they are often used interchangeably.¹ A key to understanding how responsible investment is broader than these concepts is that where many make moral or ethical goals a primary purpose, responsible investment can and should be pursued by the investor whose sole focus is financial performance, as well as those looking to build a bridge between financial risk/opportunities and outcomes in the real world.

PRI signatories commit to implementing 6 principles in their investment decisions. These are:

- Principle 1: We will incorporate ESG issues into investment analysis and decision-making processes.
- Principle 2: We will be active owners and incorporate ESG issues into our ownership policies and practices.
- Principle 3: We will seek appropriate disclosure on ESG issues by the entities in which we invest.
- Principle 4: We will promote acceptance and implementation of the Principles within the investment industry.
- Principle 5: We will work together to enhance our effectiveness in implementing the Principles.
- Principle 6: We will each report on our activities and progress towards implementing the Principles.

For further information, please refer to the PRI's [Introductory guides to responsible investment](#).

With regards to human rights more specifically, just as for all businesses, institutional investors have a responsibility to respect human rights, which includes three main elements:

- 1) Adopt a policy commitment to respect internationally recognised human rights;
- 2) Implement due diligence processes;

¹ PRI (2021) [A blueprint for responsible investment](#).

- 3) Enable or provide access to remedy.

This responsibility encompasses both their own operational activities – for example in relation to employees, clients, communities, and contractors – and the outcomes they are connected to through their investments.

International human rights frameworks are also translated through investor guidance, for example, the PRI's paper [How investors can advance decent work](#) aligns its four pillars of decent work with frameworks such as the ILO Conventions

For a more in-depth view on the PRI's approach to investors' human rights responsibilities, please refer to the PRI's paper [Why and how investors should act on human rights](#). It is the PRI's view that human rights span across the spectrum not only of social issues, but also of the whole of ESG issues. The connection between climate change and human rights, for example, cannot be ignored. By the same token, investors are paying attention and taking action on issues that would normally be included under the "G", such as taxation and director remuneration. These issues have the potential to exacerbate inequalities within and across countries, and therefore have a strict connection to 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?**

The fiduciary duties of investors require them to:

- Incorporate environmental, social and governance (ESG) issues into investment analysis and decision-making processes, consistent with their investment time horizons.
- Encourage high standards of ESG performance in the companies or other entities in which they invest.
- Understand and incorporate beneficiaries' and savers' sustainability-related preferences, regardless of whether these preferences are financially material.
- Support the stability and resilience of the financial system.
- Report on how they have implemented these commitments.

There are three main reasons why the fiduciary duties of loyalty and prudence require the incorporation of ESG issues:

1. ESG incorporation is an investment norm.
2. ESG issues are financially material.
3. Policy and regulatory frameworks are changing to require ESG incorporation.

Beyond ESG integration, investors should also consider the outcomes of their investment decisions. This concept is further explored in the answer to question 3.

Both asset owners (pension funds, insurance companies, Development Finance Institutions, and sovereign wealth funds in some regions) and investment managers of different sizes and strategies (listed equity, private equity, infrastructure, both corporate and sovereign fixed income) use international human rights frameworks. Until this point, this has been more common in listed equity, where investors have voting rights and therefore more opportunities to access information on corporate human rights performance, and to directly influence the behaviour of invested companies.

Based on PRI 2020 data, 33% of reporting asset owners, and 24% of reporting investment managers, among PRI's membership in 2021, used the UNGPs and / or OECD Guidelines for Multinational Enterprises to set policies for or identify sustainability outcomes related to investment activities – these numbers varied considerably by markets as illustrated below:

- Nordics (49%), Benelux (39%), France and Switzerland (33%) were the three highest performing markets,
- LatAm (8%), Canada (9%), and the Middle East (10%) were the lowest performing markets.²

In 2023 the PRI reporting framework was updated to include several further questions related to investor approaches to human rights.³ The results of the 2023 exercise will be published before the end of the year.

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

Investors increasingly recognise that financial returns depend on the stability of social and environmental systems, especially in the long term. This is driving investors to increasingly focus on what they can do to improve sustainability outcomes and contribute to global and national sustainability goals. While ESG incorporation focuses on how investors manage the effect of ESG risks and opportunities on their portfolios, investing for sustainability impact goes beyond this to deliberately target sustainability outcomes in the real world.

The [Legal Framework for Impact](#) report highlights that, while financial return is generally regarded as the primary purpose and goal of investors, investors are likely to have a legal obligation to consider pursuing sustainability impact goals where doing so can contribute to achieving their investment objectives, such as by mitigating system-level risks and delivering on sustainability goals committed to by governments.

These factors are relevant for investors at the micro/idiosyncratic level, too. Companies can [reduce their operational and legal costs by avoiding community conflicts](#) and [appropriately managing private data](#). They can improve [company performance through diversity and inclusion measures](#) and

² It is worth noting that with only 10 signatories in the Middle East this specific percentage is calculated on a small sample size.

³ For further information about the human rights-related content in the PRI reporting framework, please see https://dwtyzx6upklss.cloudfront.net/Uploads/z/f/v/pri_reporting_guidance_on_human_rights_may_2023_920336.pdf.

promote [satisfaction in the workplace](#), the latter of which is associated with higher long-term stock returns.

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?

Generally, these products and services are driven by market demand. Due to changes in financial regulation in Europe (SFDR and minimum safeguards in Taxonomy Regulation), many providers are now offering products that screen portfolios - based on different methodologies - to meet these regulatory requirements.

In the interviews leading to the publication of PRI's paper on [What data do investors need to manage human rights risks](#), the following gaps of information were highlighted:

- Companies' inherent human rights risks;
- How the board and leadership help embed commitments in company culture and practice;
- The quality of companies' human rights due diligence (HRDD);
- Quantitative information about positive human rights outcomes to which companies have contributed.

Several interviewees also cited the need to regulate ESG data providers to improve methodological transparency on social and human rights assessments. This should increase market clarity on the foundations for different assessments and address potential conflicts of interest in the cases where ESG ratings are being rendered for existing clients of the ratings firm.

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?

On this issue, the State duty to protect human rights extends to the adoption of laws and policies aimed at two main goals:

- Ensure the respect of human rights from business actors, both in the financial sector and the real economy, through rules imposing obligations on economic actors (such as disclosure requirements and due diligence regulations);
- Direct capital and investment towards socially-responsible activities, product and services. For example, this can be achieved through the development of social taxonomies.

The main tools at regulators' disposal on this issue are:⁴

- Corporate ESG disclosure regulations (including Modern Slavery disclosure regulations);
- Corporate and investor due diligence regulations;
- Investor ESG regulations (including for ESG service providers);
- Stewardship frameworks and regulations;
- Sustainable taxonomies;
- National sustainable finance strategies;
- National Action Plans on Business and Human Rights.

These interventions should not be enacted in a piecemeal way, but rather as part of a whole-of-government approach to policymaking. National Action Plans on Business and Human Rights can be a useful tool to ensure this consistency and should include sections dedicated to the role of the financial sector in respecting human rights, and the State's interventions on this topic.

As an example, the European Commission has proposed a [directive on corporate sustainability due diligence \(CSDDD\)](#) which intends to introduce a human rights and environmental due diligence requirement on financial and non-financial companies operating in the EU market, above a certain size. If [drafted in a practicable manner](#), in alignment with the UNGPs, this will lead to better financial risk management, sustainability assessment, and investee-engagement and support investors to align their activities with the evolving demands of beneficiaries and clients.

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?

While there is increasing convergence between international standards and regulations around corporate disclosure on human rights impacts, gaps remain in terms of available information and reliable sources – and where this information is available, it can be difficult to access and process at scale. PRI has determined the [key categories of data investors need](#) to manage human rights risks. Recent developments such as the move from ISSB to develop standards on Human rights and Human Capital Management, and the European Sustainability Reporting Standards (ESRS) are a step forward to help investors access this data. However, future improvements are needed in the coverage of social issues under ISSB, as highlighted by the PRI's response to the [ISSB consultation on agenda priorities](#) and the accompanying [blog post](#), where we articulate how the ISSB framework can be used to drive the required social data for an investment community with diverse information needs, and the voluntary nature of ESRS disclosures.

⁴ Please note that the list below largely reflects that included in the PRI and World Bank's 2020 [Toolkit for sustainable investment policy and regulation](#).

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?

The main tools at regulators' disposal to deal with cases of greenwashing include:

- Mandatory disclosure and due diligence frameworks;
- Guidelines on appropriate ESG communication for investors and companies (see for example the Australian Financial Services Council [Guidance Note No. 44](#));
- Monitoring, supervision and enforcement by regulators over greenwashing or misleading claims, including regulatory regimes for financial products and labelling (e.g. EU Sustainable Finance Disclosure Regulation and the US Investment Company Act "Names Rule");
- Taxonomies and sustainability performance benchmarks.

When enforcing measures to tackle greenwashing (particularly sanctions), regulatory action should focus on instances where greenwashing is deliberate and intentional.

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?

Please refer to the response to Section 2, Q1.

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?

Please refer to the answer to question 2.

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?

It is the PRI's view that responsibility with regards to respect of human rights extends to all investment strategies, and for all there are related risks to be managed. The leverage points and risk management techniques differ. Please find a list of resources on the topic developed by the PRI:

- [Investor human rights policy commitments](#)
- [Practical guide in due diligence](#)
- [Technical guide on human rights in private markets](#)

- [Human rights in sovereign debt](#)
- [Case study data base](#)

Investors can also employ [human rights benchmarks](#) to assess human rights performance of current and / or potential investee companies, thereby improving the quality of investment decisions and stewardship.

Stewardship is one of the main tools at investors' disposal to influence change in portfolio companies. Regarding human rights, the PRI's Advance initiative sets a number of expectations for companies:

- Fully implement the United Nations Guiding Principles on Business and Human Rights (UNGPs) – the guardrail of corporate conduct on human rights
- Align their political engagement with their responsibility to respect human rights
- Deepen progress on the most severe human rights issues in their operations and across their value chains

4. 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? Are these integrated into an ESG approach and, if so, how? Please provide examples of practices.

For examples of investors undertaking due diligence and stewardship on the basis of risk to right-holders, please refer to the sources highlighted in Q2 of this section.

It is important to note that most of these investors are mainstream investment firms, subject to investor duties to serve the best interest of clients and deliver good risk-adjusted returns. For this reason, most of them consider human rights due diligence as part of their financial risk management. They may either consider those risk to be idiosyncratic risk that may harm the performance of a holding company directly, or, particularly for those investors that have more economy-wide exposure, may consider the systemic risk emanating from the sum of poor human rights performance by their portfolio companies.

Our report, [ESG Integration: How are Social Issues Influencing Investment Decisions](#), highlights how investors were able to decrease beta risks by addressing issues such as labour relations and governance and support company supply chain stability. The emphasis on risk to rights-holders or a more narrow financial assessment may vary by region and type of investors.

Predominantly investors with more impact-oriented mandates (financial performance requirements being defined less stringently) may manage human rights issues with a more direct focus only on impacts on people.

In addition, the work of the Legal Framework for Impact project highlighted in Q3 of Section 1 aims at ensuring that investing for sustainability impacts is recognised as a possible avenue even for mainstream investors.

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?

There are three ways in which an institutional investor can be connected to a human rights outcome, either causing it, contributing to it, or being directly linked. While it is possible that an investor may cause or contribute to a human rights impact, in most of the cases the situation will be one of being “directly linked to”. In this last case, the guidance for investors in the OECD Guidelines suggest that companies should exercise their leverage on the invested company, and if necessary work to increase this leverage (including through collective engagement initiatives such as the PRI’s Advance). This extends to influencing the existing or potential investee company, to enable access to remedy.

If an investor lacks leverage, they should seek ways to increase it, including through collaboration with other investors. While stewardship is just one way that investors can exercise and build leverage, investors that are used to engaging – individually or collectively – with companies on ESG issues will be familiar with the mechanisms.

If the investor is unable to establish enough leverage to alter the behaviour of the investee sufficiently to prevent or mitigate a negative outcome, and there is no prospect for improvements, they could consider whether they can justify staying invested. The severity of negative human rights outcomes and the human rights consequence of divesting should, however, always be considered first.

It is important to note that investors’ responsibility to manage actual and potential negative human rights outcomes in their portfolio does not replace the responsibility of the companies themselves, and vice versa. Companies will primarily be the ones causing or contributing to negative outcomes.

While the PRI has not done work on client relationship, this work may help the Working Group: [Principals with Principles – Helping Asset Managers Make the Right Choices](#).

6. 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?

Investors have can use four main tools:

- **Investment decision-making and asset allocation;**
- **Engagement.** In particular:

- a. For companies: listed equity investors have voting rights, while private equity investors may have board and management roles depending on ownership stake. Investors in fixed income markets can predominantly influence companies pre-investment by expressing ESG expectations as part of issuance of new bonds;
- b. Sovereign engagement for sovereign fixed income investors - reference sovereign debt discussion paper
- **Policy engagement:** investors can support the development of appropriate policy and regulation on business and human rights. The PRI's has been working on the topic [responsible political engagement](#) (RPE), and this will be expanded to the area of human rights.

Our paper, [Climate change and the just transition: A guide for investors](#) articulates how these levers can be used to address a transition to a resilient low-carbon economy that will boost prosperity and be a net driver of decent job creation.

7. 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?

Investors can employ contractual clauses that encourage aligning interests and practices on human rights along the value chain. Examples of such clauses include those developed by the [American Bar Association](#), and implementing supplier codes of conduct. Some investors also encourage the principle of 'contract mirroring' to help build alignment through the value chain – investee companies are encouraged to use the same codes of conduct or contractual clauses in their business relationships with their suppliers as they have with the investor.

The PRI's reporting framework includes questions related to the inclusion of human-rights related clauses within contractual agreements with external investment managers for segregated mandates.

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

With the update to the PRI's reporting framework, Asset Owners and Investment Managers can now use this tool to document their approach.

In the EU, the Sustainable Finance Disclosure Regulation creates more detailed disclosure obligations on human rights for investors, both at firm level – mostly in terms of policies adopted – and at product level – with the Principal Adverse Indicators (PAI) including sets of mandatory and optional indicators related to social and human rights issues. For more information on this, please refer to the [PRI's response](#) to the recent consultation on the review of the PAI.

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?

Investors have a very important role in advancing DEI efforts for all groups in society, including indigenous communities, women, people of colour, religious minorities, and others. The PRI's [work](#) on DEI highlighted three main areas for investors to enact change through their investment decisions and their stewardship activities:

- Inclusive corporate culture
- Inclusive business models
- Inclusive societies

These activities should be underpinned by engagement with policymakers, standard setters and affected stakeholders.

Understanding how investment managers and investment consultants approach diversity, equity and inclusion (DEI) within their own organisations, through their investment activities or the manager research process is particularly important for institutional investors. The PRI has published a [due diligence questionnaire](#) (DDQ) designed to be used as part of an Request for Proposal process, during manager reviews and monitoring, or incorporated into ongoing dialogue.

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 could update their listing rules to require disclosure of sustainability issues, including human rights. In the future, this should be aligned with the work of the International Sustainability Standard Board's upcoming human rights standard, and should come with guidance for companies and investors.

ACCESS TO REMEDY

State-based judicial and non-judicial mechanisms

No response

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?**

Investors are responsible for providing access to remedy for people affected by their investment decisions when the investor is either contributing to or causing the negative outcomes. For outcomes the investor is directly linked to through an investee, the investor should use and build influence to ensure that investees provide access to remedy for people affected.

Finally, it is important to note that investors' responsibility to manage actual and potential negative human rights outcomes in their portfolio does not replace the responsibility of the companies themselves, and vice versa. Companies will primarily be the ones causing or contributing to negative outcomes.

- 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.**

As a response to these questions we refer the authors to our [response](#) to the previous UN Working Group's call for input on Extractive Sector, Just Transition and Human Rights. In particular, questions 15 and 17.

The PRI's recently updated reporting framework contains questions related to access to remedy.

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 PRI has collected several case studies of good practice on human rights spanning different asset classes (listed equity, infrastructure, fixed income incl. sovereign, and private equity), various types of action (stewardship, policy engagement, and investor due diligence) as well as social / human rights themes (modern slavery, living wage, workers' rights to collective bargaining, country-level human rights issues, indigenous people's rights, and diversity, equity and inclusion) – see examples of good practice in the PRI [case study database](#).

In December 2022 the PRI launched Advance, a new collaborative stewardship initiative on human rights, with around 220 institutional investors representing US\$30 trillion in AUM. The first phase of the project focuses on metal & mining and renewables (further details on the [Advance landing page](#)):

1. Participants in the initiative – i.e. the 121 investors lead or support direct engagement with companies – all commit to put in place human rights policy commitments and due diligence processes for their full investment portfolios.

2. Investors in the initiative use their collective influence as shareholders or bondholders to push companies to improve and drive positive outcomes for workers, communities and society (this builds on the UNGPs approach).

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?

As part of the necessary economic transition to a net-zero, sustainable economy that works for people and the planet, policymakers need to ensure that human rights and social issues are front and centre of regulation and multilateral agreements.

For investors, this means creating a regulatory environment that enables to drive capital towards social sustainability outcomes. This can be achieved by aligning policy tools like ESG disclosure, due diligence, and investor ESG regulation with the UN Guiding Principles.

The PRI has experience of contributing to public policy on sustainable finance and responsible investment across multiple markets and stands ready to support the work of the Working Group further to ensure that human rights are considered in investment decisions.

Please send any questions or comments to policy@unpri.org.

More information on www.unpri.org