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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.

Investors, environmental, social and governance approaches and human rights

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Summary

In the present report, submitted to the Human Rights Council pursuant to Council resolutions 17/4 and 53/3, the Working Group on the issue of human rights and transnational corporations and other business enterprises clarifies the responsibilities of investors with regard to respecting human rights under the Guiding Principles on Business and Human Rights. It also outlines how investors can align the environmental, social and governance, and sustainability, approaches they take with their responsibilities under the Guiding Principles.



I. Introduction

A. Background

1. In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises clarifies the responsibilities of investors¹ in relation to human rights and examines the use of investment approaches focused on sustainability or environmental, social and governance (ESG)² criteria. The Working Group recognizes the significant growth of investment products and activities based on ESG, and sustainability, approaches,³ which indicates that there is increasing recognition of the importance and interest in such criteria by investors and other stakeholders.

2. The Working Group highlights the vital roles of investors, as part of the financial sector, in the implementation of the Guiding Principles on Business and Human Rights. In its stocktaking exercise regarding the implementation of the Guiding Principles, the Working Group acknowledged that financial actors had an unparalleled ability to influence companies and scale up progress on the implementation of the Guiding Principles.⁴ The Working Group has also noted that a key challenge is that most financial actors fail to connect human rights standards and processes with ESG criteria and investment practices because of a prevailing lack of understanding in the sector that social criteria, and many environmental and governance indicators, reflect human rights issues.⁵

3. Some existing regulations do emphasize human rights considerations in investment practices, and some investors show interest in improving human rights practices within their ESG and sustainability approaches. Yet the Working Group's consultations and the submissions made to it, and existing benchmarks, reflect a significant need for improvement in the implementation by most investors of their responsibility to respect human rights in alignment with the Guiding Principles. This is despite the expectation that ESG, and sustainability, investment approaches, because of their references to people and the planet, should inherently include human rights considerations.⁶

4. The Working Group recognizes the interconnected nature of the environmental, social and governance criteria. Alignment with the Guiding Principles entails the integration of human rights considerations across each of those criteria. For example, pollution, climate change (particularly within the concept of just transition) and corruption are intricately linked to human rights impacts.⁷ A human rights-based approach requires investors to move beyond a siloed process, and encourages a more integrated and interconnected assessment of how human rights intersect with ESG criteria.

5. Despite challenges, if ESG and sustainability approaches can properly account for human rights considerations, they can present an opportunity for investors to align their investments with the Guiding Principles. They can also support efforts by both investors and investees to respect human rights.

¹ Throughout the present report, the term "investors" refers to institutional investors.

² In the understanding of the Working Group, the terms sustainability and ESG are often used interchangeably in practice.

³ See, e.g., <https://www.gsi-alliance.org/members-resources/gsir2022/>.

⁴ See [A/HRC/47/39](#).

⁵ Ibid. See also [A/HRC/47/39/Add.1](#), para. 46, and [A/HRC/47/39/Add.2](#).

⁶ See

https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Session18/InfoNoteWGBHR_SDGRecommendations.pdf.

⁷ See, e.g., [A/78/155](#), [A/HRC/44/43](#),

<https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMBusiness.pdf>, and https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_432859.pdf.

B. Objectives

6. The Working Group seeks to achieve three key objectives through the present report. First, it aims to raise awareness of the responsibility of investors to respect human rights, particularly among those not acting in accordance with the Guiding Principles in their ESG approaches. Second, it clarifies the baseline responsibilities of investors under the Guiding Principles and, in so doing, considers how investment approaches based on ESG criteria can be aligned with the Guiding Principles. Third, it provides recommendations, based on the evidence collected, as to how the Guiding Principles can be applied in ESG approaches.

C. Methodology, definitions and scope

7. For the report, the Working Group has drawn from written submissions from over 70 States, businesses (including investors), civil society organizations, international organizations, industry associations and others.⁸ In addition, it has been informed by open multi-stakeholder consultations in Addis Ababa, Geneva and Santiago, as well as targeted consultations in London, Melbourne and Sydney, New York, Paris and Singapore with investors and professional advisers. It incorporates insights and examples derived from a comprehensive review of relevant literature, regulations, policies, practices and legal disputes. It also builds on previous work by the Working Group,⁹ and relevant work by the Office of the United Nations High Commissioner for Human Rights (OHCHR),¹⁰ the United Nations Development Programme,¹¹ the United Nations Environment Programme Finance Initiative,¹² the Organisation for Economic Co-operation and Development (OECD)¹³ and the International Labour Organization (ILO).¹⁴

8. The present report is focused on institutional investors as comprising two key categories of actors: asset owners and asset managers. Asset owners collect and have ownership of the funds, which include public and private pension funds, sovereign wealth funds and endowment funds. Asset managers manage funds on behalf of asset owners, and include organizations managing large, diversified portfolios or specific asset classes, mutual funds, private equity general partners, social entrepreneurship funds and venture capital funds, among others. Commercial and investment banks are included in relation to their asset management functions, and to their corporate lending activities when part of an investment in businesses. Multilateral and national development finance institutions,¹⁵ insurance companies, financial technology (fintech) and retail investors are excluded from the scope.

9. The report reflects terminology used by investors and experts in relation to ESG, and sustainability, approaches to investing. Thus, for the purposes of the report, these approaches include in their scope all financial products and services designated as, for example, ESG funds, green bonds, sustainability-linked loans and thematic funds focused on specific or general social, environmental or governance criteria. Investors are also able to use an increasing number of relevant indexes, ratings and benchmarking tools.

10. The present report is not a comprehensive empirical report. In addition, reflecting the responses received from stakeholders to the consultations, more emphasis is placed on

⁸ Available at <https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights>.

⁹ See [A/HRC/47/39/Add.1](https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights); <https://empresasyderechoshumanos.org/wp-content/uploads/2023/12/COMO-INTEGRAR-LOS-DERECOS-HUMANOS-EN-LAS-FINANZAS-EN-AMERICA-LATINA-Y-EL-CARIBE.pdf> (in Spanish), and <https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf>.

¹⁰ See <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/B-Tech/B-Tech-Briefing-Investment.pdf>.

¹¹ See <https://sdginvestorplatform.undp.org/>.

¹² See <https://www.unepfi.org/investment/investment/>.

¹³ See <https://mneguidelines.oecd.org/rbc-financial-sector.htm>.

¹⁴ See https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_432859.pdf.

¹⁵ See [A/HRC/53/24/Add.4](https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights).

investment in listed equities. The findings and recommendations from the report can, nevertheless, serve to inform all types of investors and apply to all asset classes.

II. Context

11. ESG approaches vary widely across different investors, investment strategies and asset classes. These approaches lack uniform definitions and are not linked to any specific global standards, leading to risks of greenwashing and human rights-washing,¹⁶ as highlighted by, among others, the International Organization of Securities Commissions.¹⁷ Investors can use ESG approaches (however termed) for different reasons, including to improve their risk-adjusted returns and to increase positive, and decrease negative, impacts on people and the planet. Overall, such approaches (excluding impact investing) generally have the primary objective of generating risk-adjusted returns and are not primarily aimed at ensuring that investments avoid adverse human rights impacts. These approaches could help improve certain human rights impacts at the investee level when those impacts are considered financially material by investors.

12. In recent joint efforts, stakeholders have tried to harmonize definitions of such approaches;¹⁸ the Working Group has relied on those definitions in the present report. These approaches include, primarily, the integration of ESG approaches, screening, thematic investing, stewardship and impact investing.¹⁹ The deployment of those approaches, described below, relies on investors for implementation, and on the contributions of a number of actors, for instance to collect the data necessary to assess possible and existing investments in the light of any given strategy.

13. The integration of ESG approaches is the “ongoing consideration of ESG factors within an investment analysis and decision-making process with the aim to improve risk-adjusted returns”.²⁰ In contrast, screening involves the process of determining which investments are or are not permitted in a portfolio.²¹ This encompasses different types of screening with sometimes overlapping characteristics, such as positive, negative, exclusionary, best-in-class or norm-based screening. For instance, some investors conduct exclusionary or negative screening of certain sectors, businesses or States, or issues such as fossil fuels, mining, weapons manufacturing, chemicals and tobacco. Screening in relation to human rights issues is usually based on regulatory risks or controversies rather than on the Guiding Principles. Thematic investment, meanwhile, includes selecting assets to access specified trends, such as those related to climate change and the shift to a more circular economy.²²

14. Stewardship consists of the use of investor rights and influence to protect and enhance overall long-term value.²³ While some investors may choose to screen out certain sectors, others may choose to engage with those sectors through stewardship. Impact investing, in contrast, is a specific approach with the intention to generate positive, measurable social and/or environmental impact alongside a financial return.²⁴ Impact investing can generate positive human rights impacts, including by supporting financing for the achievement of the Sustainable Development Goals.

15. The potential positive contribution to social and environmental objectives should not overshadow the responsibility of investors to respect human rights and thus to account for

¹⁶ The Working Group understands greenwashing as deceptive marketing that overstates what a business is doing to protect the environment, and bluewashing or human rights-washing as deceptive marketing that overstates a business’s commitment to responsible social practices or human rights. There is also a risk of “impact washing”, as discussed in the report.

¹⁷ See <https://www.iosco.org/library/pubdocs/pdf/IOSCPD688.pdf>.

¹⁸ See <https://www.unpri.org/download?ac=19468>.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid. See also <https://thegiin.org/impact-investing/need-to-know/>.

the potential or actual adverse human rights that can occur as a result of an investment. The Working Group is concerned about the potential for impact washing, where investments are marketed as impact-related without substantial evidence or significant positive outcomes, including in the area of human rights, thus misleading investors and beneficiaries.²⁵

16. OECD guidance on the financial sector,²⁶ the toolkit from the Investor Alliance for Human Rights,²⁷ and the Principles for Responsible Investment,²⁸ contextualize the responsibility to respect human rights in investments by taking into account ESG approaches and show how investors can fulfil their responsibility to respect human rights. Aspects covered include: investment decisions and capital allocation (pre- and post-investment and with regard to divestment); stewardship of investees, including engagement with investees and the use of voting rights, at both the individual and collective levels; and engagement with rights holders, policymakers and other stakeholders. In the Working Group's view, the key elements of human rights due diligence and remediation can be pursued across these three aspects. In addition, the above-mentioned resources emphasize the need for investors to have policies embedded at the organizational level that enable them to deliver on their responsibility to respect human rights, and to do so through a human rights lens.

III. General issues

A. Environmental, social and governance data and human rights

17. Evidence shows that investors rely primarily on three sources of information to identify adverse human rights impacts: corporate disclosure, media reports and commercial data providers' scores or benchmarks.²⁹ Other key sources include reports and information from civil society organizations and human rights institutions, input from other investors, human rights violation alerts, country reports issued by international organizations and information provided by stakeholders or their representatives.³⁰

18. Specifically, the Working Group has observed the use by some investors of World Benchmarking Alliance benchmarks – including on the financial sector³¹ – to engage with companies on human rights. For instance, Aviva Investors tracks investee progress using the subset of indicators from the Corporate Human Rights Benchmark and core social data.³² Investors also told the Working Group that they found the Workforce Disclosure Initiative, Ranking Digital Rights and KnowTheChain particularly valuable. Resources such as the Business & Human Rights Resource Centre, and initiatives such as the Myanmar ESG Files Database, promote transparency, empowering investors to align their decisions with human rights considerations, especially in situations where investees are not required to disclose information on human rights.

19. However, many investors noted the need for more decision-useful information in relation to human rights. Investors need better data from investees – provided either directly or through commercial data providers and proxy voting agencies – in order to assess alignment with the Guiding Principles, and also need up-to-date data on human rights impacts.³³

²⁵ See <https://www.iso.org/news/ref2752.html>.

²⁶ See, e.g., <https://mneguidelines.oecd.org/rbc-financial-sector.htm>.

²⁷ See <https://investorsforhumanrights.org/sites/default/files/attachments/2020-05/Full%20Report-%20Investor%20Toolkit%20on%20Human%20Rights%20May%202020c.pdf>

²⁸ See <https://www.unpri.org/download?ac=11953>.

²⁹ Information provided by the Principles for Responsible Investment.

³⁰ Ibid.

³¹ See <https://www.worldbenchmarkingalliance.org/financial-system-benchmark/>.

³² See <https://www.worldbenchmarkingalliance.org/impact/how-do-investors-use-the-corporate-human-rights-benchmark/>, and https://assets.worldbenchmarkingalliance.org/app/uploads/2023/11/WBA_Case_Study_Investors_V2.pdf.

³³ See <https://www.unpri.org/download?ac=17543> and <https://cdn2.assets-servd.host/shareaction-api/production/resources/reports/Point-of-No>Returns-2023-Part-III.pdf>.

20. The scope of, and sources used in, existing data-collection practices of commercial data providers and proxy voting agencies are very limited in relation to actual or potential human rights impacts. Such practices are primarily focused on, among other factors, the existence of human rights policies, or current or prior public controversies, which is a backward-looking approach and tends not to take into account stakeholder engagement. Moreover, the Working Group notes that there is an issue with regard to scale, which means that the data rarely provide a full picture of an underlying asset's alignment with the Guiding Principles or a coherent assessment of the relevant business. In addition, evidence from the Working Group's consultations suggests that, where they are accounted for at all, human rights tend to be approached by data providers in terms of the impact they can have for investors, not the impact they can have on people and the planet.³⁴ Furthermore, the standards, methodologies and metrics used by commercial data providers and proxy voting agencies to account for human rights are not always transparent, often owing to proprietary methodologies, which limits investors' and other stakeholders' understanding of how issues are defined for inclusion.

21. The Working Group has also observed that the prevailing rating methodologies amalgamate environmental, social and governance criteria into one overall score, although it is often unclear how these data are aggregated. Given the different methodologies, the ratings from providers can significantly diverge, including in relation to human rights. In addition, where human rights are included only in the social criterion (and where the methodology does not weight adverse human rights impacts sufficiently), they can be overshadowed if the other criteria are scored highly. The Working Group's consultations have also signalled potential conflicts of interest connected to the business model of commercial data providers, including in relation to payments for the ratings and to associated consultancy services.³⁵

22. Increasingly, regulators and financial market authorities are enacting, or considering enacting, codes of conduct and regulations to improve the transparency of rating providers' methodologies and to avoid conflicts of interest.³⁶ One investor noted that "without changes to the data environment, the ability to drive improvements in company behaviour will be limited".³⁷ Some commercial data providers are now actively looking at improving their methodologies to account for human rights, including with regard to data granularity and impact materiality assessments.

23. Several stakeholder groups and investors are taking further steps to address some of these issues by developing standards on human rights, with a view to aligning the standards with the Guiding Principles. Other bodies, such as the International Sustainability Standards Board and the Task Force on Inequality and Social-related Financial Disclosures, are approaching the development of standards through the lenses of social issues, human capital and inequality.

24. Improvements to data provision would require qualitative and, when relevant, quantitative, assessments of investees' human rights performance and the engagement of affected stakeholders, as well as standardized ESG data and reporting frameworks. For instance, it is not enough for data providers to assess whether businesses have a human rights policy; they should analyse the quality of the policy, and assess whether the board monitors human rights impacts broadly (that is, not just with regard to impacts to the business), whether there are workers with appropriate human rights expertise, and whether the business model itself has inherent human rights risks. In addition, more qualitative and forward-looking data on human rights due diligence processes, reflecting investees' efforts to identify,

³⁴ See <https://www.bloomberg.com/graphics/2021-what-is-esg-investing-msci-ratings-focus-on-corporate-bottom-line/>.

³⁵ See <https://www.iosco.org/library/pubdocs/pdf/IOSCPD690.pdf>.

³⁶ See, e.g., <https://www.consilium.europa.eu/en/press/press-releases/2024/02/05/environmental-social-and-governance-esg-ratings-council-and-parliament-reach-agreement/>; https://www.gov.uk/government/consultations/future-regulatory-regime-for-environmental-social-and-governance-esg-ratings-providers?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=6b7763fc-af48-47fb-b8b1-45bc97991bc8&utm_content=immedia; and <https://www.fsa.go.jp/en/news/2023/20230727.html>.

³⁷ See <https://www.churchofengland.org/sites/default/files/2024-01/church-commissioners-report-human-rights-integration-and-approach.pdf>.

prevent, mitigate and, when applicable, account for human rights impacts, are needed to assess effective alignment with the Guiding Principles.

B. Materiality and human rights

25. Some submissions and consultations for the present report centred around what constitutes “material” or “decision-useful” sustainability information. That is, what information about ESG matters is considered significant to investors’ decisions to invest, and thus should be reported by investees.

26. Two main concepts of materiality – financial materiality and impact materiality – can be applied to ESG, and sustainability, criteria, including human rights aspects.³⁸ Financial materiality (or single materiality) considers how these criteria (both positive and negative) can present risks and opportunities for an investor and, ultimately, affect the ability of the investor to create value or generate improved risk-adjusted returns. It is characterized by an “outside-in” view of ESG criteria (that is, how these criteria affect an investee). Impact materiality considers how an investee or investor can impact sustainability criteria (for example, impact on people and the planet). It is characterized by an “inside-out” view of these criteria (that is, how a business affects ESG criteria). Engagement with affected groups, such as Indigenous Peoples, local communities, trade unions and workers, and other relevant stakeholders, is central to the impact materiality approach. These two types of materiality can be considered either separately or in combination. When considered in combination, they can be referred to as “double materiality”. These concepts of materiality usually determine how investors and investees approach human rights impacts.

27. Both the Global Reporting Initiative and the European Sustainability Reporting Standards provide frameworks for obtaining data relevant to investors, including for assessing impact materiality, in alignment with the Guiding Principles. In both frameworks, a key focus is on evaluating the impacts of businesses on rights holders alongside other sustainability criteria.

28. The General Requirements for Disclosure of Sustainability-related Financial Information, issued by the International Sustainability Standards Board, is focused primarily on financial materiality. Nevertheless, in the General Requirements, the Board recognizes the connection between impacts, risks and opportunities, suggesting that an entity’s cash flow generation “is inextricably linked to the interactions between the entity and its stakeholders, society, the economy and the natural environment throughout the entity’s value chain”. However, the Working Group shares concerns raised about the Board’s proposed separation of human rights from human capital, as human capital, embodied in workers, is an asset to businesses, and workers are also rights holders to whom businesses have responsibilities.³⁹

29. The Working Group is also aware that human rights considerations can be seen as secondary to or inconsistent with investors’ fiduciary duties. There are still barriers stemming from the potential misinterpretation of fiduciary duties as limiting the ability of investors to devote assets and efforts to anything that does not increase the financial standing of pension plan beneficiaries or customers in the short-term.⁴⁰ The Working Group notes that financial risks and human rights impacts are often connected, including over various time horizons. An investor’s connection to positive or adverse impacts on people and the planet may also generate financial opportunities or risks,⁴¹ which should be considered. As one group of investors noted, human rights “due diligence is a material disclosure. As such, if a business is not disclosing how it identifies and manages the risks to and impacts on the people in its value chain ... then the materiality process is flawed, which will undermine subsequent

³⁸ For a definition of materiality, see https://read.oecd-ilibrary.org/finance-and-investment/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_81f92357-en#page1.

³⁹ See <https://www.unpri.org/download?ac=19189>, <https://shiftproject.org/issb-social-disclosures/>.

⁴⁰ See A/HRC/47/39/Add.1.

⁴¹ See <https://fmlc.org/wp-content/uploads/2024/02/Paper-Pension-Fund-Trustees-and-Fiduciary-Duties-Decision-making-in-the-context-of-Sustainability-and-the-subject-of-Climate-Change-6-February-2024.pdf>.

sustainability disclosures.”⁴² Such lack of disclosure affects investors’ decision-making and gives rise to possible financial risks to the investor. Indeed, a body appointed by the Government of the United Kingdom of Great Britain and Northern Ireland has stated that human rights issues, such as modern slavery, in the supply chain could pose a financially material risk for pension schemes.⁴³

30. Several jurisdictions have adopted a double materiality approach,⁴⁴ and OECD has noted that while ESG criteria are often used for the purpose of identifying financial risk, these processes could be built upon to take into account responsible business conduct risks,⁴⁵ which would include those relating to human rights. The Working Group considers that the double materiality approach could ensure that adverse human rights impacts on people are identified, prevented, mitigated and accounted for, in alignment with the Guiding Principles.

IV. Environmental, social and governance under a Guiding Principles lens

A. State duty to protect human rights

31. The Working Group underlines that State legislation and regulation is part of the “smart mix” referred to in the Guiding Principles, which includes national, international, mandatory and voluntary measures to foster investor respect for human rights, including in relation to ESG, or sustainability, criteria. As part of such measures, States could ensure that investors and other actors across the financial sector ecosystem are explicitly included in national action plans and other policies on business and human rights.⁴⁶ Through regulations, States can seek to create consistent and robust standards while allowing for flexibility to accommodate different types of investors, investment strategies and asset classes, as well as the jurisdiction in which investors are based and invest, and the sectors in which they invest.

32. In the consultations and submissions to the Working Group, investors expressed a desire for regulatory guidance. This could include, for example, guidance for investors on implementation of the Guiding Principles at the level of specific assets and investment strategies and with regard to engagement with investees, with affected stakeholders, such as Indigenous Peoples, and with other investors.⁴⁷ Guidance could also include double materiality in reporting requirements, which could further incentivize stakeholder

⁴² See <https://www.responsible-investor.com/comment-data-providers-and-proxy-advisers-must-step-up-on-human-rights/>.

⁴³ See <https://assets.publishing.service.gov.uk/media/62d14534d3bf7f28661f0937/government-response-to-dwp-social-call-for-evidence.pdf>, and <https://www.taskforceonsocialfactors.co.uk/report/>.

⁴⁴ See, e.g., <https://www.esgtoday.com/china-stock-exchanges-announce-mandatory-sustainability-reporting-requirements-for-listed-companies/> and <https://ec.europa.eu/newsroom/fisma/items/754701/en>.

⁴⁵ See <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>.

⁴⁶ See, e.g., https://www.ohchr.org/sites/default/files/Documents/Issues/Business/NationalPlans/Beilage01PrincipesdirecteursdeONUrelatifsauxentreprisesdroitshomme_Suisse.pdf (Switzerland), <https://www.state.gov/wp-content/uploads/2024/03/2024-United-States-Government-National-Action-Plan-on-Responsible-Business-Conduct.pdf> (United States of America), https://www.ohchr.org/sites/default/files/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf (Denmark), <https://tem.fi/documents/1410877/3084000/National%20action%20plan%20for%20the%20implementation%20of%20the%20UN%20guiding%20principles%20on%20business%20and%20human%20rights/1bc35feb-d35a-438f-af56-aec16adfcbae> (Finland), and https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/mr/business_hr_b.pdf (Norway).

⁴⁷ For example, listed businesses in Zimbabwe are required to disclose their sustainability policies and performance in their annual reports in accordance with Part XXI of the securities and exchange rules (Statutory Instrument 134 of 2019). It is recommended that they disclose both positive and negative impacts on the environment and society, and indicate how their performance relates to stakeholders and contributes to sustainable development.

engagement. Supervisory mechanisms provided for in legislation could assist in providing examples of best practices and identifying areas for improvement.

33. It is important for States to avoid isolating any of the environmental, social or government criteria, in order to ensure that human rights considerations are applied across all of them. The Working Group heard concerns during consultations that regulation can restrict ESG approaches, or can be focused on a limited range of human rights impacts, for example, on modern slavery alone. When designing legislation, States could avoid fostering a tick-box attitude among businesses by moving away from regulations based on a “comply or explain” to a regulatory regime based on a “comply and explain” approach.

34. Another key matter is addressing the low levels of financial literacy among the general public, in order to increase awareness about, transparency of and accountability for investors’ responsibility regarding human rights.⁴⁸ The Working Group notes efforts by Mauritius, through the Financial Services Fund, to educate consumers and create a platform for service providers to interact with stakeholders,⁴⁹ including the creation of a Financial Services Institute to upskill and reskill workers in the financial services sector.⁵⁰ Civil society organizations, academics and others can also play a pivotal role, particularly in educating the public and investors and in building their capacity to consider human rights in investment choices, complementing State efforts to provide resources, training and information on evaluating a business’ human rights impacts.

1. The State as an economic actor

35. In line with the Guiding Principles, States should promote respect for human rights through their role as economic actors, for example through public procurement policies.⁵¹ In that regard, OECD has recommended that States support the implementation of standards “through the integration of ESG criteria in the provision and management of equity, debt, grants, loans, guarantees, or insurance, including by promoting awareness of RBC [responsible business conduct] among appropriate parties involved in applications for officially supported export credits”.⁵² At the European Union level, the corporate sustainability due diligence directive accordingly establishes that compliance with the Directive may be a criterion for public procurement.

36. As noted previously by the Working Group, States can fulfil their international human rights obligations by ensuring that State-owned financial institutions (such as State-owned banks, pension funds and export credit agencies) comply with the Guiding Principles.⁵³ If States make human rights protection a national policy priority, this should flow down to State-owned financial institutions’ investment strategies.

37. In Colombia, following the adoption of the country’s first national action plan on business and human rights, several public sector financial actors, including public commercial banks, were subject to a directive issued by the Ministry of Finance and Public Credit requiring all State-owned enterprises to establish, at the highest management level, a commitment to respect human rights. Although there was no specific requirement to conduct human rights due diligence, several institutions implemented processes as a preliminary step towards developing a human rights policy.⁵⁴ In Costa Rica, the executive branch issued a note outlining expectations for each of the 13 State-owned enterprises, which stipulated that they

⁴⁸ See <https://www.oecd-ilibrary.org/docserver/56003a32en.pdf?expires=1703008984&id=id&accname=guest&checksum=022564E62D3715369141C2F56F17029D>.

⁴⁹ See <https://harmony.mu/>.

⁵⁰ See <https://mauritiusifc.mu/government-agencies-regulators/financial-services-institute>.

⁵¹ See, e.g., A/HRC/32/45.

⁵² See <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0486>.

⁵³ See A/HRC/32/45, and <https://empresasyderechoshumanos.org/wp-content/uploads/2023/05/EMPRESAS-PUBLICAS-final.pdf> (in Spanish).

⁵⁴ See <https://empresasyderechoshumanos.org/wp-content/uploads/2023/12/COMO-INTEGRAR-LOS-DERECHOS-HUMANOS-EN-LAS-FINANZAS-EN-AMERICA-LATINA-Y-EL-CARIBE.pdf> (in Spanish).

must undertake human rights due diligence to identify, mitigate, prevent and account for their impacts.⁵⁵

2. Examples of State initiatives on environmental, social and governance investments

38. State initiatives around ESG, and sustainable, investments have grown substantially in recent years and progress is accelerating.⁵⁶ However, they seem to be tackling different components of these criteria (for example, commercial data providers, greenwashing, human rights due diligence, or disclosures), which is not conducive to a comprehensive and interoperable, human rights-based approach.

39. The Working Group welcomes emerging initiatives that aim to standardize methodologies and increase the transparency of commercial data providers, an area that had been largely unregulated. India and Japan have been among the first jurisdictions to address commercial providers of ESG data.⁵⁷ Other legislation or standards are under discussion in Singapore and the European Union and by some business groups, such as the International Capital Market Association and the International Regulatory Strategy Group.⁵⁸ Most of these initiatives seem not to include explicit mention of human rights and the Guiding Principles, and are not legally binding. While it does not have legislative status, the All Party Parliamentary Group on Environmental, Social, and Governance in the United Kingdom, however, included reference to human rights when it issued a series of recommendations on standardizing and regulating ESG performance and assessment and defining impact.⁵⁹

40. Other examples include the Business Responsibility and Sustainability Reporting initiative in India, a mandatory disclosure framework for large, listed businesses that includes principles on respecting and promoting human rights and protecting the environment. The Central Bank of Nigeria issued the Nigeria Sustainable Banking Principles to guide banks on integrating environmental and social considerations into their business activities and operations; the Principles include provisions on respect for human rights.

⁵⁵ Ibid.

⁵⁶ See <https://www.unpri.org/policy/regulation-database>, <https://www.unepfi.org/industries/investment/a-legal-framework-for-impact-sustainability-impact-in-investor-decision-making/#:~:text=A%20Legal%20Framework%20for%20Impact%3A%20sustainability%20impact%20in%20investor%20decision%20making,-Open%20the%20report&text=It%20is%20crucial%20that%20assessing,A%20Legal%20Framework%20for%20Impact.%E2%80%9D>, <https://www.nortonrosefulbright.com/en/knowledge/publications/8c48a4f6/financial-services-regulation-and-esg-regulation-around-the-world>, and https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3578447.

⁵⁷ See https://compfie.aparajitha.com/wp-content/uploads/2023/07/13072023_FCC_02.pdf; and <https://www.fsa.go.jp/en/news/2023/20230727.html>.

⁵⁸ See <https://www.mas.gov.sg/news/media-releases/2023/mas-publishes-code-of-conduct-for-providers-of-esg-rating-and-data-products>, <https://www.consilium.europa.eu/en/press/press-releases/2023/12/20/sustainable-finance-council-agrees-negotiating-mandate-on-esg-ratings/> and <https://www.icmagroup.org/sustainable-finance/icma-and-other-sustainable-finance-initiatives/code-of-conduct-for-esg-ratings-and-data-products-providers-2/>.

⁵⁹ See <https://appgesg.org/wp-content/uploads/2022/09/APPG-on-ESG-report-Recommendations-on-standardising-and-regulating-ESG-performance-and-assessment-and-defining-impact-in-the-UK-RGB-web-resolution.pdf>.

41. In Latin America, several States, such as Brazil,⁶⁰ Chile,⁶¹ Colombia,⁶² Mexico⁶³ and Peru,⁶⁴ require pension and insurance fund managers to ensure that their investment policies integrate ESG criteria for the identification and management of financial risks in their investment decision-making and management. Brazil and Peru have also integrated explicit references to human rights in regulations governing the social and environmental risk assessments required in the banking sector for project financing.⁶⁵ Chile has adopted regulations on disclosure of ESG information that include explicit reference to human rights⁶⁶ and in Mexico, the Sustainable Taxonomy, which provides for the consideration of social objectives, was the first tool of its kind.⁶⁷

42. The Association of Southeast Asian Nations, in the ASEAN Taxonomy for Sustainable Finance, defines environmental objectives for economic activities and essential criteria to be met, including “social aspects” that cover the promotion and protection of human rights.⁶⁸ In Canada, the climate investment taxonomy includes the principle of “do no significant harm” and social criteria related to Indigenous Peoples, workers and community rights.⁶⁹

43. At the European Union level, the sustainable finance strategy includes legislation with provisions on human rights. For instance, the sustainable finance disclosures regulation requires that financial market participants disclose a certain amount of human rights-related information at the level of their businesses and their financial products, including in relation to their sustainability risks and their principal adverse impacts.⁷⁰ The European Union taxonomy regulation mandates that, to qualify as “environmentally sustainable economic activities”, the activities should be compliant with minimum social safeguards, and includes reference to alignment with the Guiding Principles, the OECD Guidelines for Multinational Enterprises, the ILO Declaration on Fundamental Principles and Rights at Work and the International Bill of Human Rights. The European Union corporate sustainability reporting directive requires large businesses and listed businesses to disclose information on social and environmental criteria, and on the impact of their activities on people and the environment. This helps stakeholders, including investors, to evaluate the sustainability performance of businesses. The disclosure requirements in the corporate sustainability reporting directive are detailed in the European Sustainability Reporting Standards, which include reference to alignment with international frameworks such as the Guiding Principles. Notably, the Reporting Standards provide that double materiality is the basis for sustainability disclosures.

⁶⁰ See <https://www.gov.br/economia/pt-br/orgaos/entidades-vinculadas/autarquias/previc/regulacao/normas/resolucoes/resolucoes-cmn/resolucao-cmn-ndeg-4-994-de-24-de-marco-de-2022.pdf/view> (in Portuguese).

⁶¹ See <https://www.spensiones.cl/apps/GetFile.php?id=003&namefile=NCG-SP/NP0000276.pdf> (in Spanish).

⁶² See <https://www.cerlatam.com/normatividad/superfinanciera-circular-externa-007-de-2021/> (in Spanish).

⁶³ See https://www.gob.mx/cms/uploads/attachment/file/64273/DISPOSICIONES_de_caracter_general_en_materia_de_operaciones_del_SAR.pdf (in Spanish).

⁶⁴ See https://www.sbs.gob.pe/Portals/0/jer/AVISO_CONVO/2021/abril/3-RESOLUCION-SBS-0657-2021-COOPAC-Bella-Esmeralda.pdf (in Spanish).

⁶⁵ See <https://empresasyderechoshumanos.org/wp-content/uploads/2023/12/COMO-INTEGRAR-LOS-DERECHOS-HUMANOS-EN-LAS-FINANZAS-EN-AMERICA-LATINA-Y-EL-CARIBE.pdf> (in Spanish).

⁶⁶ Ibid.

⁶⁷ See https://macf.com.mx/administrador/assets/uploads/files/seasons/7cc6f-nota-taxonomia-sostenible-macf_ing.pdf.

⁶⁸ See <https://asean.org/wp-content/uploads/2023/03/ASEAN-Taxonomy-Version-2-Effective-19Feb2024.pdf>.

⁶⁹ See <https://www.canada.ca/en/department-finance/programs/financial-sector-policy/sustainable-finance/sustainable-finance-action-council/taxonomy-roadmap-report.html>.

⁷⁰ The Working Group notes that there are issues regarding the framing of some principal adverse impacts. See e.g. https://www.humanrights.dk/files/media/document/Documenting%20Respect%20for%20Human%20Rights%20in%20the%20Financial%20Sector%20%E2%80%93%20A%202023%20Snapshot%20of%20Danish%20Financial%20Institutions_accessible.pdf.

However, the Working Group notes that the Reporting Standards do not mandate specific human rights due diligence actions. Such regulations and standards generally include provisions covering non-European Union businesses with activities in the European Union, to encourage a consistent approach.

44. The Working Group reiterates that legislation on mandatory human rights due diligence is pivotal in ensuring that investors do not enable human rights abuses worldwide. It is concerned that financial institutions' downstream activities have been excluded from the application of the corporate sustainability due diligence directive of the European Union. The Working Group also notes the ongoing negotiations for an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.⁷¹

45. In contrast, movements against the application of ESG criteria are leading to a fragmented regulatory landscape in at least one State. In the United States of America, 14 states have enacted regulations or policies in support of the application of such criteria, while 24 states have adopted regulations or policies against it, as of April 2024.⁷² This means that in one part of the United States an investor may be required to consider certain ESG criteria, while in another, that same investor would be prohibited from considering such criteria in investment decisions and required to solely consider certain financial aspects, which may lead to adverse human rights impacts being overlooked.

3. Enforcement of State legislation

46. Enforcement can be a powerful tool to help States with the implementation of legislation, by accelerating changes in the policies and conduct of the targeted businesses. However, a significant challenge arises from the unintended consequence of businesses (including investees) becoming hesitant to disclose crucial information. Enforcement requires a nuanced approach and a smart mix of measures, combining sanctions with incentives. Offering incentives for voluntary disclosure, implementing non-punitive mechanisms for reporting, promoting industry-wide human rights standards and providing targeted guidance can help mitigate the adverse effects of sanctions on information disclosure and foster transparency and accountability.

47. The Working Group notes concerns over how the rise of ESG investing and sustainability-related products can lead to the risk of greenwashing and human rights-washing.⁷³ Some existing supervisory bodies have the power to deal with ESG concerns, which could apply to enforcement action. For example, the Financial Conduct Authority in the United Kingdom takes action regarding breaches of several principles that apply to regulated businesses, including many investors, which include poor quality disclosures, failure to create suitable ESG risk management frameworks, and greenwashing. Similarly, the United States Securities and Exchange Commission has been taking action in relation to misleading ESG labelling of financial products and services.⁷⁴ Furthermore, the Securities and Exchange Commission has approved climate-related disclosure rules, requiring issuers to provide information on Scope 1 and Scope 2 emissions, severe weather-related financial statement disclosures and climate-related governance, risks and targets disclosures.⁷⁵

B. Investors' responsibility to respect human rights

48. In line with guiding principle 14, the Guiding Principles apply to all investors as business enterprises, irrespective of their size (including in terms of volume of assets under management), location, ownership (public, private or both) and structure, and the asset classes in which they invest. The responsibility to respect human rights refers to internationally recognized human rights, which include civil, cultural, economic, political

⁷¹ See <https://www.ohchr.org/en/business-and-human-rights/bhr-treaty-process>.

⁷² See https://www.stblaw.com/docs/default-source/publications/esg_overview.pdf.

⁷³ See <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD750.pdf>.

⁷⁴ See <https://www.sec.gov/securities-topics/enforcement-task-force-focused-climate-esg-issues>.

⁷⁵ See <https://www.sec.gov/news/press-release/2024-31>.

and social rights, as well as collective rights. Rights holders are all those who have these rights, including groups such as Indigenous Peoples.⁷⁶ The responsibility of investors to address actual and potential adverse human rights impacts does not replace or override that of investees themselves, and vice versa.

49. The responsibility to respect human rights means that investors should not cause or contribute to adverse human rights impacts, and should seek to prevent or mitigate such impacts that are directly linked to their operations, products or services by their business relationships,⁷⁷ including in their value chain. The Working Group has reinforced this in its communications to investors,⁷⁸ its annual reports and its country visit reports.⁷⁹ OECD has explicitly included investors within the scope of the Guidelines for Multinational Enterprises,⁸⁰ ILO has guidance on sustainable investing⁸¹ and OHCHR has explained how an investor can determine, on the basis of its action (or inaction), whether the investor is considered directly linked to an adverse human rights impact or a contributor to that impact.⁸² Other initiatives, such as the United Nations Environment Programme Finance Initiative, the Principles for Responsible Investment, the Equator Principles and the Investor Alliance for Human Rights, have applied the Guiding Principles to investors, by setting out expectations for signatories regarding respect for human rights in alignment with the Guiding Principles, and/or by connecting investors with the tools and strategies to facilitate respect for human rights.

50. Investors' involvement in adverse human rights impacts and their response to such impacts may vary, depending on factors such as type of investor, investment strategy and asset class. Industry-led organizations and networks of investors focused on specific assets, markets, regions and subjects can play a key role in supporting investors' implementation of their responsibility to respect human rights.

51. Regarding fixed income and sovereign debt, the Working Group notes that investors rarely consider States' human rights policies and practices.⁸³ While there may be specific challenges related to accounting for human rights in these investments, there are steps that investors can take, from adopting a human rights policy targeted to this asset class to conducting pre- and post-investment human rights due diligence. Investors can set, when possible, specific conditions, such as the achievement of targets on respect for human rights or the requirement that capital be directed to specific sectors. Such negotiation can happen at the time of debt issuance or debt restructuring and refinancing.⁸⁴

1. Policies

52. As a first step in aligning practices with the Guiding Principles, investors are expected to adopt and publish policy commitments to respect human rights. Those commitments should be approved at the most senior level and integrated in the operations, including as part of their ESG approaches.⁸⁵ The Working Group notes that over 1,900 signatories in the Principles for Responsible Investment initiative reported having specific guidelines on human rights and senior oversight of those guidelines, although just under 1,200 signatories reported having included commitments to respect human rights as defined in the OECD Guidelines for Multinational Enterprises and the Guiding Principles.⁸⁶ Some organizations

⁷⁶ Guiding principle 12.

⁷⁷ Guiding principle 13.

⁷⁸ See, e.g., SAU 3/2023, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28085>, and other communications concerning investments in Saudi Aramco.

⁷⁹ See, e.g., A/HRC/53/24/Add.2.

⁸⁰ See <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>.

⁸¹ See https://www.ilo.org/empent/areas/social-finance/WCMS_856595/lang--en/index.htm.

⁸² See <https://www.ohchr.org/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf>.

⁸³ See A/HRC/47/39/Add.1, and <https://www.unpri.org/fixed-income/a-practical-guide-to-esg-integration-in-sovereigndebt/4781.article>.

⁸⁴ See <https://www.unpri.org/download?ac=15518>.

⁸⁵ See https://www.unpri.org/introductory-guides-to-responsible-investment/an-introduction-to-responsible-investment-human-rights/12026.article#A_Policy_Governance_and_strategy.

⁸⁶ Information provided by the Principles for Responsible Investment.

have also been developing guidance on how investors can fulfil their responsibility to respect human rights.⁸⁷

2. Human rights due diligence

Identification and assessment of human rights impacts

53. The Working Group and OHCHR have clarified that investors, as part of their responsibility to respect human rights, are expected to undertake human rights due diligence for their actual and potential human rights impacts, which include human rights impacts connected to environmental and climate change harm.⁸⁸ Human rights due diligence encompasses the impacts and risks that investor activities entail for people and the planet and is different from the normal business due diligence which focuses on business risks. Human rights due diligence includes impact assessments, stakeholder engagement, integration, leverage, tracking and communication, each of which is focused on impacts on people and the planet. In conducting human rights due diligence, specific attention should be paid to gender-based impacts and impacts on vulnerable groups.⁸⁹

54. An initial stage of human rights due diligence, which all investors should undertake in alignment with the Guiding Principles, is the identification and assessment of human rights impacts, without predetermination of the relevant human rights. Human rights assessments undertaken by investees, both at the time of the investment decision and on an ongoing basis during the investment life cycle, could provide information to investors, set clear expectations regarding alignment by investees with the Guiding Principles, help investors to include appropriate financing conditions and enable investors to engage with investees on specific issues.

55. In practice, the initial process for identifying potential or actual adverse human rights impacts of an investment under consideration will vary according to the investor type and asset class. For example, when investing in private equity or real assets, the initial process would be more thorough than the one required when investing in large passive fund tracking indexes.⁹⁰ Similarly, investors' engagement with investees is likely to be more effective when they hold a significant share of that business. In all instances, investors should ensure that they investigate and seek detailed information on the actions by investees to implement the Guiding Principles.

56. Conducting ongoing human rights due diligence can help investors to avoid or reduce legal, reputational, financial and operational risks, and to fulfil their responsibility to respect human rights within their own operations. For example, LBP AM, a French asset manager, conducts risk mapping to identify salient human rights impacts across sectors in alignment with the Guiding Principles, drawing from civil society reports and benchmarks.⁹¹

⁸⁷ Examples include guidance for institutional investors (<https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>); investor guidance on human rights (<https://investorsforhumanrights.org/sites/default/files/attachments/2020-05/Full%20Report-%20Investor%20Toolkit%20on%20Human%20Rights%20May%202020c.pdf>; <https://www.unpri.org/download?ac=15518> and <https://www.unpri.org/download?ac=18682>); investor guidance on responsible contracting (<https://www.responsiblecontracting.org/investor-guidance>); and investor guidance for engagement with technology companies (https://www.ohchr.org/sites/default/files/documents/issues/business/b-tech/20230329-B-Tech_Investor_Engagement_Tool.pdf).

⁸⁸ See <https://www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/Information-Note-Climate-Change-and-UNGPs.pdf>.

⁸⁹ See A/HRC/41/43.

⁹⁰ For an overview of the challenge on passive investing, see <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-investor-implementation.pdf>.

⁹¹ See https://www.humanrights.dk/files/media/document/Downstream_Policy-Output-Paper_EN.pdf.

Stakeholder consultation

57. The Guiding Principles make clear that meaningful consultation with potentially affected groups, including vulnerable groups such as Indigenous Peoples, local communities, workers, women, children, persons with disabilities and human rights defenders, and with other relevant stakeholders, such as trade unions, is a crucial part of the identification of actual and potential human rights impacts. While this work should be done by investees, it would be unwise for investors to depend solely on investees reporting on their own stakeholder consultations, as such self-reporting has been shown to be unreliable in many cases,⁹² or to rely on other sources, such as ESG data, which, as noted above, can be problematic. In particular, where an investor itself causes or contributes to adverse human rights impacts, it should conduct its own stakeholder consultation as part of its human rights due diligence.

58. The Working Group notes other methods investors can apply to ensure that stakeholder consultation occurs. These include joining multistakeholder platforms, such as the CSO-Investor Dialogue Table or the Investors & Indigenous Peoples Working Group; finding other sources of data, such as benchmarking entities, international organizations, civil society organizations, trade unions and academics; and taking all opportunities to consult with rights holders, as has been done in some private equity investments.⁹³ In one example of meaningful consultation by investors, the Local Authority Pension Fund Forum in the United Kingdom, in response to tailing-dam collapses in Brazil, initiated engagement with the affected communities to understand whether the investee was engaging in meaningful consultations. The Forum concluded that investors must advocate for, and undertake themselves, more effective stakeholder engagement.⁹⁴ Similar actions have been taken by other pension funds.⁹⁵

Prioritization of actions

59. Acting in alignment with the human rights-impact approach set out in the Guiding Principles (based on risk identification through human rights due diligence) allows investors to prioritize their actions on the basis of the severity and likelihood of the identified actual and potential impacts on human rights after a human rights impact assessment has been undertaken. This approach is useful both throughout the human rights risk identification process and for prioritizing impact mitigation and prevention actions.

60. Given the varying human and financial resources available to investors to undertake this prioritization, it is important that investors analyse whether the investee has a human rights policy aligned with the Guiding Principles, and the degree to which the policy is implemented.⁹⁶ In addition, knowledgeable examination of specific locations of increased human rights risks, such as conflict-affected areas and high-risk States or sectors, should be undertaken by investors as relevant to their type of investment and asset classes. Requirements of legislation, such as on modern slavery, will also raise necessary issues for many investors to assess, although investors have a responsibility under the Guiding Principles to comply with international human rights standards irrespective of State legislation.

⁹² See, e.g., <https://lapfforum.org/wp-content/uploads/2022/04/LAPFF-Mining-and-Human-Rights-Report.pdf>, which notes that businesses are often selective in their choice of which communities, if any, they consult. See also <https://www.italaw.com/sites/default/files/case-documents/italaw9381.pdf>.

⁹³ See, e.g. <https://responsibleinvestment.org/wp-content/uploads/2023/05/Investor-Toolkit-on-Human-Rights-and-Armed-Conflict.pdf>.

⁹⁴ See https://lapfforum.org/wp-content/uploads/2023/05/LAPFF_MINING_INVESTMENT-RISK-REPORT_FINAL.5thjune-1.pdf.

⁹⁵ See, e.g., <https://www.unpri.org/showcasing-leadership/investor-mining-and-tailings-safety-initiative/8943.article>.

⁹⁶ See, e.g., <https://www.unpri.org/human-rights/investor-human-rights-policy-commitments-an-overview/10501.article>.

Integrating and acting

61. Investors can act upon the identification and assessments of adverse human rights impacts and integrate the findings into their investment decisions, stewardship of investments and engagement with others to ensure alignment with the Guiding Principles. Investor approaches in relation to conflict-affected areas, such as collaborative engagement with investees, filing shareholder resolutions and considering divestment, can serve as useful templates for action by investors in other situations with potential or actual adverse human rights impacts.⁹⁷

62. Some market infrastructure can have a role in supporting investors' actions on human rights. For example, the Sustainable Stock Exchanges initiative is a platform for exploring how exchanges can enhance listed investees' performance on ESG criteria and encourage sustainable investment. The Stock Exchange of Thailand partnered with Walk Free and Finance Against Slavery and Trafficking to launch guidance to help Thai-listed businesses to identify, address and report on modern slavery risks throughout their value chain.⁹⁸ Investors can use this guidance to understand key modern slavery risks for Thai businesses, identify good practices for addressing and reporting on these risks, and ensure they are using disclosures relating to modern slavery in order to inform investment decisions and conduct more effective stewardship.

63. Civil society organizations can work with investors in the shareholder resolution process, providing research and support for, or even championing, resolutions that address human rights issues that align with the Guiding Principles, including issues relating to the environment and climate change.

Leverage

64. Investors can use their leverage in different ways, depending on the type of investment and asset class, through their investment decisions, stewardship of investees and engagement with stakeholders, including policymakers, and other actors of the financial ecosystem, such as commercial data providers and proxy voting agencies.

65. Consistent with the Guiding Principles, stewardship of investees, both individual and collaborative, is one of the main ways for investors to exercise leverage on investees, especially if the stewardship approach is well resourced. There has been a recent trend of using stewardship of investees with a view to improving outcomes for people and the planet.⁹⁹ A significant portion of the human rights due diligence process overlaps with investor stewardship activities, especially in the area of engaging investees to identify, prevent, mitigate and account for human rights impacts. The Working Group highlights that civil society organizations can also facilitate collective stewardship, as illustrated by ShareAction, by fostering transparency and accountability in the actions of asset managers through resolutions addressing human rights, environmental and climate change criteria.

66. Investors can use their leverage by raising investee awareness about the risks of adverse human rights impacts. If the investor leverage is insufficient to ensure that the investee identifies, prevents, mitigates or accounts for an adverse human rights impact with which the investor is involved, the investor can seek to increase leverage to mitigate the risk of ongoing or recurring impacts. Failing to deploy leverage could, in some instances of ongoing harm, cause an investor to move from being directly linked to the harm to contributing to the harm.

67. In addition, asset owners may have the ability to influence the selection and monitoring process of asset managers by, for example, asking specific human-rights related questions in requests for proposals from asset managers and human rights due diligence questionnaires, and putting contractual clauses in investment management agreements and

⁹⁷ See <https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/abs/missing-in-action-investor-responses-to-the-war-in-ukraine/D5F510FEE872F09CAEE13FE5D4C2B8C5>.

⁹⁸ See <https://sseinitiative.org/all-news/exchange-in-focus-set-launches-guidance-on-modern-slavery-risks/#:~:text=10%20January%202022,risks%20throughout%20their%20value%20chain>.

⁹⁹ See <https://www.unpri.org/download?ac=9721>.

other legal documentation, such as reporting requirements.¹⁰⁰ While the degree of leverage of an asset owner will vary, collective leverage of asset owners can be useful.

68. For example, private equity investors could use their board positions to push for the development of action plans to address actual and potential adverse human rights impacts at the level of investees. The action plan could be included in the shareholder agreement at the time of acquisition and road maps for corrective actions could be agreed with the investee over a specified time frame. Investors using active strategies can communicate clear expectations regarding human rights due diligence and remedies, and could use their leverage through individual and collective dialogue with investees, prepare shareholder proposals and engage in proxy voting.¹⁰¹ Bond investors could integrate specific human rights targets as financial incentives at the bond structuring phase, while investors in passively managed indexed funds could use their leverage to engage with index providers so that the responsibility to respect human rights is better reflected in the construction of indexes or investee engagement. For instance, large asset managers, which can vote in shareholder meetings and can request meetings with senior management on issues of concern can, by virtue of their large size, have significant influence.

69. The Working Group notes that many investors are involved with all these investment types at once, and thus should tailor their Guiding Principles-aligned actions to the different investment instruments and across asset classes rather than focus on integration in just one area of their portfolios. Industry sector initiatives, including the previously identified collaborative stewardship initiatives, can also support collective leverage, consistent with competition legislation.¹⁰² The Working Group considers that it would be a best practice for all investors to make public the outcome of their leverage efforts, if possible, including where such efforts have not yielded sufficient results.

70. Investors have the ability to incentivize investees to reduce adverse human rights impacts. This ability stems from the investment relationship, by which investors can include references to human rights in their contractual agreements with investees. In addition, investors can support investees in integrating human rights clauses into their agreements with business partners.¹⁰³ Moreover, investors can make use of financing mechanisms with specific design features, such as sustainability-linked loans, that link financial outcomes to positive action taken by investees, or thematic bonds, specifying the use of proceeds in predetermined areas (for example, social bonds).¹⁰⁴ Investors can also be part of larger structures (typically blended finance vehicles) that have technical assistance windows through which investees can access financial and technical resources to improve their sustainability practices, including those related to human rights issues.

71. If such efforts prove unsuccessful, divestment may be considered.¹⁰⁵ The Working Group notes that, when investors consider whether to divest, it is crucial that they assess whether ending the relationship with the investee would result in adverse human rights impacts, as divestment may not be appropriate in all cases.¹⁰⁶

¹⁰⁰ For guidance on due diligence questionnaires, see <https://www.unpri.org/download?ac=19292>.

¹⁰¹ See <https://www.nbim.no/en/responsible-investment/>.

¹⁰² For example, Advance, led by Principles for Responsible Investment, is an initiative in which institutional investors seek to advance human rights and positive outcomes for people through stewardship; the Investors Against Slavery and Trafficking Asia Pacific initiative focuses on collective investor stewardship with regard to modern slavery risk in the Asia-Pacific region; and Find It, Fix It, Prevent It brings together investors, academics and non-governmental organizations to develop better data points on modern slavery.

¹⁰³ See <https://www.responsiblecontracting.org/investor-guidance>.

¹⁰⁴ See <https://www.oecd.org/investment/due-diligence-for-responsible-corporate-lending-and-securities-underwriting.htm>.

¹⁰⁵ See https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf.

¹⁰⁶ See <https://www.ohchr.org/sites/default/files/documents/issues/business/bhr-in-challenging-contexts.pdf>.

Tracking responses

72. Human rights due diligence is an ongoing activity, and circumstances, such as the location of investee operations, may require further action. Where relevant, such as in conflict-affected areas, it is crucial for investors to request that investees provide evidence that they have undertaken heightened human rights due diligence in their value chain and provide information on the actions they have taken to identify, prevent, mitigate and account for adverse human rights impacts with which they are involved, including in relation to all relevant stakeholders.¹⁰⁷

Communication

73. Investors can release public information on their approaches. Reporting on human rights commitments and progress against these commitments is generally more necessary for asset owners than asset managers. However, data provided by the Principles for Responsible Investment showed that reporting on both commitments and progress varied quite significantly across regions, with signatories in Oceania, Europe, and Africa and the Middle East¹⁰⁸ reporting at higher rates than those based in Asia, Latin America and North America. World Benchmarking Alliance data from 2022 indicated that, outside of the minimum legal requirements, few of the 400 institutions assessed disclosed the process they had in place to identify human rights risks and impacts within their own operations (less than 7 per cent) or within their financing activities (less than 3 per cent).¹⁰⁹

C. Access to remedy

74. As recognized in the Guiding Principles, States have the duty, and businesses have the responsibility, to take appropriate steps to ensure that those impacted by business-related human rights abuses have access to effective remedy.¹¹⁰ While there may be different forms of access to remedy, and different types of remedies provided, the Working Group has made clear that rights holders should be central to the entire remedy process.

75. Where an investor has caused or contributed to an adverse human rights impact, it is expected to provide for an effective remedy or cooperate in its remediation. As part of this responsibility, it is expected, under guiding principle 29, to establish or participate in effective operational-level grievance mechanisms. The responsibility of investors to have such mechanisms in these instances is distinct from the responsibility of investees to have them. To fulfil their responsibility under the Guiding Principles, the type of operational-level grievance mechanism and the remedies to be provided must be based on engagement and dialogue with the stakeholder groups for whose use they are intended. For example, a bank in Australia is aiming to provide a direct operational-level grievance mechanism for Indigenous Peoples in relation to actions by the bank.¹¹¹

76. Where investors are directly linked to adverse human rights impacts, they should exercise their leverage for the investees to provide effective remedies, which will vary depending on the type of investor, asset class and other factors.¹¹² However, data from 2023 provided by the Principles for Responsible Investment suggests that only 3 per cent of 3,774 respondents had directly enabled remedy and 8 per cent had influenced investees to provide access to remedy. This indicates that the focus of investors on access to remedies is limited.

¹⁰⁷ See [A/75/212](#).

¹⁰⁸ Africa and the Middle East were combined due to their smaller sample size. More than 78 per cent of the reporters were based in the European Union or North America; only 3 per cent were based in Africa or the Middle East.

¹⁰⁹ See <https://www.worldbenchmarkingalliance.org/publication/financial-system/>.

¹¹⁰ OHCHR has provided guidance on this; see <https://www.ohchr.org/en/business/ohchr-accountability-and-remedy-project> and <https://www.ohchr.org/sites/default/files/documents/issues/business/access-to-remedy-bhr-interpretive-guide-advance-version.pdf>.

¹¹¹ See <https://www.commbank.com.au/content/dam/commbank/about-us/download-printed-forms/environment-and-social-framework.pdf>.

¹¹² See https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf.

77. Investors using ESG, or sustainability, approaches to support disclosure by investees about their operational-level grievance mechanisms and access to remedies procedures and outcomes is a good practice. In one example, under the Dutch Banking Sector Agreement and the Dutch Pension Funds Agreement on Responsible Investment, banks and pension funds, respectively, were expected to use their leverage to have their clients or investees provide access to remedies and to contribute to remedies themselves.

78. Developments in case law in some jurisdictions, if applied to investors, could increase the risks of civil liability for failure by investors to undertake effective human rights due diligence and to respect human rights more generally. There are also instances of administrative action being taken against investors for failing to act consistently with their ESG, or sustainability, approaches.¹¹³

79. State-based non-judicial mechanisms, such as the national contact points for Responsible Business Conduct provided for in the OECD Guidelines for Multinational Enterprises,¹¹⁴ have also been used in relation to investors. One complaint concerned families who had been forcibly displaced and dispossessed of their land and houses to make way for a sugar plantation and refinery operated by a Cambodian business.¹¹⁵ The refinery was partly financed by the Australia and New Zealand Bank, a bank domiciled in Australia. The Australian National Contact Point concluded that the Bank should have ensured that its practices met OECD standards and that it should strengthen its human rights due diligence and institutional grievance mechanisms. Subsequently, the Bank paid the affected rights holders damages equal to its profit from the loan and created operational-level grievance mechanisms. In another instance, the French National Contact Point heard a complaint against a French bank and one of its asset management businesses regarding the activities of their United States asset management subsidiary. The subsidiary had a United States state pension fund as a client and was managing assets for that client, including a hotel partly owned by the client, at which there were allegations of “violations of freedom of association, collective bargaining and working hours” and questions as to “whether due diligence was conducted by the French Group toward its subsidiary”.¹¹⁶ The national contact point process, which also shed light on the various actors involved at the investment level, led to the unionization of the workers, and the application of the OECD guidance on institutional investors to the hotel’s management contract.¹¹⁷

80. Complaints under the national contact point process have recently been made against commercial data providers for allegedly including in their ESG indexes businesses that are directly linked to the Myanmar military regime. The claims allege that the providers failed to uphold their human rights due diligence responsibilities and failed to use the considerable leverage they have over companies listed on their ESG indexes to address serious human rights risks and impacts stemming from those companies’ ties to the Myanmar military.¹¹⁸

81. There are, however, only a few examples of investors themselves providing effective remedies for those affected by their investments. A range of suggestions were raised in the Working Group’s consultations and the submissions it received; such as the suggestion that signatories to the Equator Principles should create a remedy mechanism to deal with adverse human rights impacts arising from their investments, in situations where investees lack such a mechanism and are unable or unwilling to provide it. Other suggestions included a broader

¹¹³ See, e.g., <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-043mr-asic-launches-first-court-proceedings-alleging-greenwashing/#:~:text=ASIC%20has%20launched%20its%20first%20court%20action%20against,characteristics%20of%20some%20of%20its%20superannuation%20investment%20options>.

¹¹⁴ As of 2023, 143 instances involving the financial sector had been brought to national contact points – making it the third most commonly cited sector in such grievances. Of those, 38 were related to issues in the due diligence process, 34 to human rights and 20 to employment and industrial relations.

¹¹⁵ See <https://www.oecdwatch.org/complaint/ec-and-idi-vs-australia-and-new-zealand-banking-group/>.

¹¹⁶ See <https://mneguidelines.oecd.org/database/instances/fr0023.htm>.

¹¹⁷ Ibid.

¹¹⁸ See <https://www.inclusivedevelopment.net/esg/esg-investing-giants-under-scrutiny-for-fueling-rights-abuses-in-myanmar/>.

use of arbitration and mediation¹¹⁹ to ensure quicker procedures with increased stakeholder engagement. In each instance, the remedies must be meaningful and appropriate for the rights holders affected.

V. Conclusions and recommendations

82. Investors have the responsibility to respect human rights by placing risks for people and the planet at the centre of their decision-making. This includes embedding human rights into their policies and strategies, undertaking ongoing human rights due diligence, and remediating adverse human rights impacts they cause or to which they contribute. The means through which this responsibility is met will vary with the type of investor and asset class and according to the context, among other factors. Generally, the conduct of ongoing human rights due diligence should identify, prevent, mitigate and account for adverse human rights impacts, including at the investee level, and investors should use their individual and collective leverage. This process requires meaningful stakeholder engagement and mapping to ensure that the best possible data can inform the human rights due diligence process. Fulfilling this responsibility can also help investors to avoid or reduce legal, reputational, financial and operational risks.

83. To fulfil their responsibility to respect human rights, investors require decision-useful data from investees on human rights and alignment with the Guiding Principles across each of the environmental, social and governance criteria. This will allow investors to reflect this information in their decision-making in regard to their ESG, and sustainability, approaches and can better direct the actions of investors and investees. There is a need for more granular data so that investors of different sizes, and across jurisdictions and specific asset classes and strategies, can account for human rights in their investments.

84. States can play a key role by drafting legislation and regulations that enable investors, in their ESG, and sustainability, approaches, to increase alignment with the Guiding Principles, to provide transparent information to stakeholders, to include double materiality requirements, to include effective enforcement provisions, and to ensure effective access to remedies for rights holders for potential or actual adverse human rights impacts as a result of investment decisions. These actions could help to ensure a movement away from a voluntary, piecemeal approach by investors to human rights impacts.

85. The Working Group notes the need for a collaborative effort between investors, investees, States and rights holders to achieve meaningful access to remedies, and to contribute to more just and accountable frameworks that ensure the protection of and respect for human rights in relation to ESG, and sustainability, investment activities.

86. While the focus of the present report is on ESG, and sustainability, approaches, the Working Group underscores that the responsibility to respect human rights applies to all investment types and financial sector products and services.

87. The Working Group reiterates its previous recommendations on business and human rights in relation to the financial sector and investors,¹²⁰ and concerning the State as an economic actor.¹²¹ The Working Group restates some of these recommendations and offers further recommendations below.

88. The Working Group recommends that States:

- (a) Strengthen and develop regulation and legislation by:

¹¹⁹ See, for example, the Organization for the Harmonization of Business Law in the Caribbean arbitration rules and The Hague Rules on Business and Human Rights Arbitration, and environmental, social and governance mediation guidelines issued by CEDR.

¹²⁰ See [A/HRC/47/39/Add.1](#).

¹²¹ See [A/HRC/32/45](#).

- (i) Including investors and human rights in ESG, and sustainability, criteria in national legislative and regulatory frameworks, for example, in national action plans and mandatory human rights due diligence legislation;
- (ii) Moving to a comply and explain approach to address the risk of tick-box approaches by all businesses (including investors);
- (b) Achieve policy coherence by:
 - (i) Ensuring that legislation and regulation on ESG, and sustainability, criteria are aligned with international human rights law and the Guiding Principles, and include mechanisms for their implementation;
 - (ii) Collaborating with other States and standard-setting agencies to clarify definitions of ESG, and sustainability, criteria that are aligned with the Guiding Principles;
- (c) Develop and support the implementation of ESG, and sustainability, investment approaches that account for human rights, including by:
 - (i) Integrating human rights considerations when States or State-owned enterprises are raising capital and undertaking procurement and when State-owned, or partly State-owned investors (such as sovereign funds or some pension funds) are making investment decisions and engaging in stewardship activities with investees or stakeholders;
 - (ii) Requiring investors to embed human rights into policies and strategies, to undertake the identification and assessment of human rights impacts through ongoing human rights due diligence, to remediate adverse impacts they cause or contribute to, and to disclose these actions;
 - (iii) Regulating commercial data providers, proxy voting agencies and other data actors to increase the transparency of their methodologies, align the methodologies with the Guiding Principles and avoid conflicts of interest;
 - (iv) Establishing public awareness and capacity-building tools and guidance on human rights in ESG, and sustainability, approaches to investment, including by supporting the creation of practical guidance for investors, targeted to specific asset classes, and a collection of positive practices aligned with the Guiding Principles, including how respecting human rights is consistent with fiduciary duties and materiality;
- (d) Establish robust enforcement mechanisms by:
 - (i) Mandating human rights due diligence for all investees, relevant to their size, scale and sector, as well as to asset class and type of investment, and requiring them to report annually to investors on their actions to identify, prevent, mitigate and account for potential and actual adverse human rights impacts, including on environmental and climate change damage, and in conflict-affected and high-risk areas;
 - (ii) Requiring investors to investigate and report on the actions taken by investees to implement the Guiding Principles. This includes, where relevant to the asset class, obtaining evidence about, and assessing, investees' efforts in undertaking human rights due diligence and remediation. It also includes incorporating consequences for lack of investigation and reporting;
 - (e) Ensure access to effective remedies for rights holders for potential or actual adverse human rights impacts that result from investment decisions, including environmental and climate change damage.

89. The Working Group recommends that investors:

- (a) Adopt the core recommendations from the Working Group's stocktaking report regarding investor policy commitments, identification and assessment of risks, stakeholder engagement, prioritization of action, leverage, tracking responses and

communication, divestment and remediation,¹²² and incorporate these recommendations in their ESG, and sustainability, approaches;

(b) Embed human rights in their ESG, and sustainability, policies and strategies, with senior-level oversight;

(c) Identify and assess actual and potential human rights impacts prior to investing and on an ongoing basis once invested, including by:

(i) Considering how their investment strategies and business models ensure that they can take effective account of the human rights impacts of their investment decisions across asset classes;

(ii) Integrating human rights considerations into portfolio management, including through asset owners asking human rights-related questions in requests for proposals from asset managers and in due diligence questionnaires, introducing contractual clauses related to the responsibility to respect human rights, and emphasizing the need to undertake human rights due diligence, both in contracts between asset owners and asset managers and between investors and investees, specifying the consequences for non-compliance;

(d) Prioritize meaningful stakeholder engagement, including by:

(i) Collaborating with civil society organizations, affected rights holders and others to obtain better data on potential and actual adverse human rights impacts;

(ii) Undertaking meaningful stakeholder consultation with potentially affected groups and other relevant stakeholders, as relevant, individually or collectively, including with Indigenous Peoples;

(e) Ensure that heightened human rights due diligence has been undertaken for investments in conflict-affected areas and high-risk sectors;

(f) Use leverage through investment decisions, stewardship of investees, and engagement with policymakers to ensure respect for human rights, including by encouraging, and where possible requiring, investees:

(i) To standardize human rights reporting;

(ii) To appoint board directors or members with human rights expertise as part of their board diversity commitments;

(iii) To conduct appropriate stakeholder mapping and meaningful consultation, as relevant, especially in respect of affected rights holders, to identify, prevent, mitigate and account for adverse human rights impacts;

(g) Divest responsibly, using human rights due diligence, when leverage cannot change investee practices;

(h) Track the effectiveness of human rights due diligence efforts, for example by encouraging, and where possible requiring, investees to provide clear evidence of: human rights due diligence; meaningful stakeholder consultation, including free, prior and informed consent, as relevant; and the provision of access to remedy, including through operational-level grievance mechanisms;

(i) Take steps to promote and enable access to remedy for affected rights holders by:

(i) Remediating adverse human rights impacts that investors cause or contribute to, and have in place effective operational-level grievance mechanisms to facilitate the provision of remedies in alignment with the Guiding Principles;

(ii) Using and building their leverage to facilitate remedy for victims where the investor is directly linked to the human rights harm through its investees;

¹²² See [A/HRC/47/39/Add.1](#).

(j) Ensure better articulation of the interconnected nature of the environmental, social and governance criteria so that human rights considerations are integrated across those criteria in investment strategies;

(k) As part of a sustainability management system, invest in capacity-building and human rights education, and undertake research and peer-learning to share good practices to ensure that boards, management and workers have training in human rights and the capacity to integrate human rights into investment decisions and to ensure wider alignment of investor actions with the Guiding Principles;

(l) Press strongly, both individually and collectively, for improved, coherent and standardized data on human rights, and the use of research methodologies aligned with the Guiding Principles by commercial data providers and proxy voting agencies.

90. In addition, the Working Group recommends that:

(a) All businesses disclose the implementation of their responsibilities under the Guiding Principles, including with regard to actual and potential human rights impacts and performance across all ESG, and sustainability, criteria, to provide reliable data;

(b) ESG and sustainability data providers, proxy voting agencies and other data actors provide clear and transparent methodologies for gathering data on human rights performance, and improve the quality of their human rights data, including by collaborating with human rights experts, civil society organizations, victims and rights holders;

(c) Compilers of ESG and sustainability indexes develop methodologies and criteria to ensure alignment with the Guiding Principles, thus reinforcing the possibility for investors in index-tracking funds to deliver on their responsibility to respect human rights;

(d) Professional advisors provide advice to investors on the need for alignment of investor ESG, and sustainability, approaches with the Guiding Principles;

(e) Civil society organizations, trade unions and affected rights holders continue to provide human rights impact data relating to ESG, and sustainability, criteria to assist investors, offer information for meaningful stakeholder consultations and provide increased benchmarking information about investors;

(f) Civil society organizations, trade unions, international organizations and academics continue to play a pivotal role in educating investors and the wider public about the importance of considering human rights in ESG, and sustainability, investment decisions;

(g) The United Nations system provide practical guidance on the Guiding Principles for the financial sector in the context of ESG, and sustainability, approaches.
