**PRI consultation on a human rights framework: CWC Response/Template Response**

*Deadline to respond: September 18th, 2020*

*Where to respond:* [**https://collaborate.unpri.org/group/5026/stream**](https://collaborate.unpri.org/group/5026/stream)

**Is the *How investors can respect human rights section*, including the six-step framework, a) clear and b) useful?**

There could be more clarity around how the following types of investors can respect human rights: (a) passive/index public equity managers, (b) active public equity managers and (c) alternative asset (including real estate and infrastructure) managers.

There is little mention of the various types of “rights holders”. It would be useful to clarify which stakeholder groups tend to be impacted by human rights violations – namely, workers (employees and other workers delivering services on behalf of a company), indigenous groups, communities, etc.

The core conventions set out by the International Labour Organization (ILO) are underemphasized in the report’s description of the internationally recognized standards that define labour rights. They are, for instance, not mentioned on page 6, alongside the description of International Bill of Human Rights. It may not be clear to an investor reading this brief (a) what these core conventions entail; and (b) that the core conventions are applicable in all ILO member states, irrespective of whether or not they have ratified the relevant Conventions.

More explicit reference could be made to the OECD Guidelines for Multinational Enterprises (“OECD GLs for MNEs”), which are applicable to investors. The OECD GLs for MNEs are government recommendations for how investors should approach human rights standards. The OECD Centre for Responsible Business Conduct is currently preparing a similar guide for financial transactions.

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**Are there aspects of respecting human rights in investment activities that you think are important that the paper did not cover (at all, or sufficiently)?**

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It would be good to narrow in on the responsibilities of investors under each of the four ILO Fundamental Rights and Principles – particularly freedom of association and the right to collective bargaining. The UN Guiding Principles for Business and Human Rights, the OECD GLs for MNEs and other United Nations (UN) resolutions on business and human rights incorporate these conventions. Freedom of association entails that workers should enjoy protection against anti-union discrimination and “acts of interference” that undermine workers’ participation in trade union activities. The corporate responsibility to respect this right implies not taking any action or making any statement that will directly or indirectly state or imply any support for or opposition to the selection by employees of a collective bargaining agent. Investors should use their leverage to influence portfolio companies to ensure that they practice neutrality when workers seek union representation.

Investors are exposed to companies that violate freedom of association and the right to collective bargaining across asset classes. Workers are harassed, discriminated against, and fired for their efforts to exercise their rights to have trade union representation and bargain collectively. As the COVID-19 crisis continues to unfold, many investors have turned their attention to workforce risks in their portfolios. Investors are seeking guidance on due diligence expectations with respect to workers’ human rights – an area that has received less attention in PRI guidance notes than some of the other human rights (e.g.: child labour, forced labour). It would be helpful for the PRI report to provide more detailed information in this report about investor expectations in this regard.

Investors are understood to be multinational enterprises, and the human rights section should reference the investor responsibilities under the OECD Guidelines for MNEs, specifically Chapters IV and V (Human Rights, Employment & Industrial Relations). Considering these are existing and accepted government recommendations, they would provide a strong implementation framework, connecting obligations, practice and remediation.

There could also be further guidance on the responsibilities of investors to encourage meaningful engagement when one of their portfolio companies are involved in a specific instance (complaint) before OECD National Contact Points (NCPs). We encourage coordination with the OECD Centre for Responsible Business to avoid duplication and conflicts with existing work on human rights due diligence in financial transactions.

**What are the most significant challenges for institutional investors in meeting the responsibilities set out in the paper? (e.g. limited human rights expertise in the financial industry; lack of quality data; lack of practical guidance; regulatory barriers; lack of implementation by companies/investment managers/service providers)**

There is a power imbalance in the investment chain that tends to favour companies and asset managers at the expense of asset owners (who contract asset managers) and workers on the ground who suffer human rights violations. Some asset owners are connected to adverse labour rights impacts through their business relationship with an asset manager who is the legal shareholder in a company (where labour rights violations occur) and can hence engage and exercise voting rights. Asset owners are increasingly willing to demand accountability from their asset managers around human rights.

Nonetheless, there is often a tendency for asset managers to take information provided by company managers at face value and report this back to asset owners without asking for changes that would cease the human rights violations at the company. Furthermore, some asset managers are averse and unwilling to seek or consider information and communication from those that suffer human rights violations – such as workers.

In our analysis of asset managers, we also find that US-headquartered managers tend to be more reluctant to employ a human rights based framework in their approach to stewardship. They tend to focus narrowly on financial materiality and do not explicitly recognise their responsibilities under the OECD GLs for MNEs and the UNGPs. We believe the PRI has an important role to play in lifting those asset managers’ practices.

Finally, companies tend to pick and choose which human rights KPIs they wish to report on and simply avoid reporting on those that would raise questions. This complicates “proactive” investor due diligence on human rights based on company disclosures.

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**What additional guidance and/or case studies from the PRI would you find most useful in helping you to implement the UN Guiding Principles on Business and Human Rights and/or the OECD Guidelines for Multinational Enterprises?**

It would be useful to clarify how investors can (should) provide effective remedy when they are significant shareholders – and hence, have more leverage - in a publicly-listed company or in a private market asset (e.g.: infrastructure asset such as a toll road or commercial real estate).

It would also be valuable to provide case studies on how investors should be using their leverage to mitigate violations to freedom of association and collective bargaining, one of the ILO Fundamental Rights and Principles at Work. Whilst issues related to child labour and forced labour receive a fair amount of attention, investors continue to struggle to engage on with freedom of association and collective bargaining. Such a brief should assess how investors engage and use their leverage with companies that hire union-busting consultants and dismiss employees involved in forming unions.

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**What are your thoughts on the PRI’s plans outlined in the Next Steps section, thinking about the ambition level, the specific activities suggested, the most appropriate way to approach them, or any other factor?**

We believe that integrating human rights questions into the reporting framework is an important step in aligning signatory expectations with their human rights obligations. As a long-term objective, we would like to see human rights reporting given as much emphasis as climate. With an increasing number of jurisdictions mandating human rights due diligence, responsible investors should be building their internal capacity to carry out that due diligence and be able to report on it.

Questions related to human rights should ask signatories to provide clear examples of how investors have used their leverage to mitigate human rights violations along with the outcome of those engagements. At least one of these examples should touch on fundamental labour rights. There should also be a question on the process employed by investors to incorporate data provided by trade unions when specific cases of workers’ rights are brought to their attention.

We would like to see the PRI’s 5-year plan include a clarification on the threshold for delisting signatories based on poor human rights due diligence. At present, we understand that delisting may occur if investors do not follow the process-based responsibilities they have as PRI signatories. We believe that the PRI should be able to review a signatory’s substantive response to egregious human rights violations at portfolio companies where the signatory has leverage – this should weigh into the decision on a signatory’s standing when a complaint is brought to the PRI.

**Do you have any other comments?**

The Global Unions’ Committee on Workers’ Capital would be pleased to (a) collaborate on a document that outlines investor expectations with regards to the ILO Fundamental Rights and Principles at Work (particularly freedom of association and collective bargaining) and (b) organize a meeting with CWC network participants to provide more feedback and context on this submission.