



Dear Members of the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises:

The undersigned members of the Investor Alliance for Human Rights'¹ Steering Committee welcome the invitation extended by the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises (UN Working Group) to provide input and recommendations on the practice of corporate human rights due diligence to inform its 2018 report to the UN General Assembly.

From the perspective of institutional investors, the effective uptake of human rights due diligence by corporations is important and necessary to help not only companies but also investors ensure they meet their own human rights and fiduciary responsibilities. We therefore ask the UN Working Group to recognize, engage and support investors as key stakeholders for ensuring corporate respect for human rights in line with the UN Guiding Principles on Business and Human Rights (UNGPs).

Responsible Investors

Like companies, investors have a responsibility to respect human rights in their own businesses. Investors should identify, prevent or mitigate adverse impacts and account for these when they occur. A distinctive characteristic of institutional investors is that they may hold investments in a wide range of companies, across many sectors and different regions, increasing the risk that they may be [directly linked](#) to a wide range of adverse human rights impacts. While investors are not responsible for addressing those adverse impacts themselves, they should consider risks throughout their investment processes, and use their [leverage](#) to influence investee companies to prevent or mitigate adverse impacts and provide remedy when they have caused or contributed to abuses.

Investor leverage can be exercised in a number of ways, including through investment decision-making that factors in environmental, social, and governance (ESG) performance; shareholder resolutions, positive and negative screens and proxy voting with portfolio companies; engaging in company dialogues and multi-stakeholder platforms; and engaging state institutions and standard-setting bodies on policies and standards that advance human rights, prevent adverse impacts, and hold companies accountable.

¹ The Investor Alliance provides investors with a platform to increase investor leverage and capacity to identify, assess and address human rights and business issues through targeted action, education and multi-stakeholder engagement: <https://investorsforhumanrights.org/>

As fiduciaries, assessing and integrating ESG considerations in investment decision-making processes is necessary and prudent. Beyond the investor responsibility to respect human rights, addressing human rights risks may also be financially material to investment portfolios. Adverse human rights impacts can create significant business risks for investee companies, including operational, reputational and legal risks. Broadly diversified investors are also aware that endemic human rights violations and corruption are forms of systemic risk that cannot be addressed through traditional portfolio management techniques.

Fiduciaries carry a legal obligation to continuously monitor the performance of investee companies and, because their long-term interests are often aligned with the best interests of the company, they are often able to gain access and establish trust with corporate management teams. This places institutional investors in a unique position to influence corporate human rights performance.

Best Practice for Investor Due Diligence

A growing number of investors are taking meaningful action to use their leverage to encourage companies and governments to respect and protect human rights in line with the UNGPs. For example:

- Corporate engagement: Investors have used their right to engage companies in dialogue with the goal of encouraging them to adopt and implement comprehensive, transparent, verifiable human rights policies based on the UNGPs to mitigate risks and encourage responsible business conduct among suppliers. Individually and through coordinated platforms such as the Interfaith Center on Corporate Responsibility (ICCR), investors have engaged in hundreds of dialogues with companies since the early 1970s. In some instances, sustained investor engagement over a period of many years has supported and encouraged companies to become leaders in human rights, including embedding the UNGPs in their business operations and those of their business partners. Investors accomplish this task by identifying companies in investment portfolios that may be exposed to risk, engaging in dialogue with relevant business executives to understand their processes and management practices for addressing these risks, and if necessary, encouraging the adoption of more robust policies or effective systems. In the United States in particular, if the process of dialogue does not prompt companies to take necessary actions, shareholders may place proposals on corporate proxy statements, bringing a wide range of human rights concerns to a vote at corporate annual meetings. These proposals – in conjunction with investor dialogues – have played a key role in encouraging companies to adopt and implement policies consistent with international human rights norms, and to improve transparency on their performance.² It is our experience that the process of dialogue and

² See, generally, Adam M. Kanzer, *The Use of Shareholder Proposals to Address Corporate Human Rights Performance* (Chapter 5 from *Finance for a Better World: The Shift Toward Sustainability* (Palgrave Macmillan, April 2009)) at https://www.domini.com/uploads/legacy/Finance_for_a_Better_World_Kanzer.pdf. For a case study of how investors convinced a steel company to adopt policies to address slavery in Brazil, see Adam Kanzer, *Fighting Slavery in Brazil: Strengthening Local Solutions*, from the *Social Sustainability Resource Guide*, published by the Interfaith Center on Corporate Responsibility (June 2011): https://www.domini.com/uploads/legacy/fighting_slavery_v1.pdf

resolution filing helps a company recognize its risks and understand that the issue is a priority to its investors, which is often a precondition for companies to take action. For specific examples, [the ICCR annual Proxy Resolutions and Voting Guide, which](#) presents the specific resolutions filed each year, and ICCR's press releases, available at www.iccr.org, indicate noteworthy outcomes of shareholder engagements with corporate leadership. In one instance, this process included the adoption of a human rights statement, followed several years later by a comprehensive human rights policy and incorporating human rights due diligence into the company's operations and supply chain. In the last year, as a result of shareholder pressure, among other factors, this company revised its human rights policy to focus on its most salient risks, based on its experience and a clearer understanding of its human rights responsibilities. In the best case, a company will engage not only with its investors, but with NGOs, civil society groups, trade unions, and key experts around the globe to ensure its policy and practices meet the expectations, concerns and demands of stakeholders and where issues are found, take action to remediate them. In many cases, investors have been able to establish long-term trusting relationships with corporate management that has enabled a "safe space" for difficult conversations to take place. Because corporations traditionally place their shareholders above other stakeholder groups, and fiduciaries have legal obligations that generally preclude public actions that would be detrimental to the financial interests of their clients, investors are uniquely able to establish these trusting relationships. No other stakeholder group stands in this privileged relationship with corporate management and boards of directors.

- Government engagement: Investors recognize the need for public policy that establishes clear and consistent expectations of portfolio companies and creates clarity and incentives for companies to develop effective systems to mitigate human rights risks. For those companies that do undertake the necessary work to meet their obligations under the UNGPs, such policies can help to establish a level playing field to ensure that peer companies cannot obtain competitive advantages by ignoring their obligations. We therefore attempt to highlight the importance of regulation and policy to encourage human rights due diligence in the policy arena. For example, in December 2017, 80 investors (with over \$2 trillion in assets under management) signed a letter which was delivered to the leadership of the House of Representatives and Senate of the United States Congress urging the leadership to strongly oppose any language that would limit the ability of the Securities and Exchange Commission (SEC) to implement the conflict minerals reporting requirements of Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Six Senators wrote the SEC with the same message. This investor letter followed substantial engagement by investors to ensure the inclusion of Sections 1502 and 1504 into the Dodd-Frank Act.
- Multi-stakeholder engagement: We recognize that multi-stakeholder collaboration is an important component for addressing human rights and business risks. Following the Rana Plaza building collapse, for example, the Bangladesh Investor Initiative, made up of 250 global institutional investors representing over \$4.5 trillion in assets under management, was mobilized. This group engaged companies sourcing in the Bangladesh garment sector to encourage them to fulfill their corporate responsibility to respect human rights by joining the Accord for Fire and Building Safety ("Accord"). An unprecedented 220 brands and retailers joined the Accord, signed

in 2013, and collaborated to ensure rigorous fire, electrical and building inspections were conducted at supplier factories. To date, these inspections have resulted in remediation plans that have made the 2.5 million workers in Accord factories meaningfully safer. Another notable initiative is the Global Network Initiative—a multi-stakeholder organization involving corporations, investors, human rights organizations and academics in an effort to protect freedom of expression and privacy rights from governmental intrusion in the digital sphere. The organization’s multi-stakeholder governance structure helps to ensure the credibility of member company commitments and of the organization’s public policy pronouncements.³

- UNGPs Reporting Framework: Since 2015 an initiative of 85 investors with \$5.3 trillion assets under management has actively engaged companies to use the UN Guiding Principles Reporting Framework. Investors, led by Boston Common Asset Management, urge companies to join the early adopters, Ericsson, H&M, Nestlé, Newmont and Unilever, in using the Reporting Framework to proactively assess and manage their human rights risks, demonstrate how they meet their responsibility to respect human rights, and support long-term financial stability. The framework is an essential tool that enables investors to assess companies’ understanding and management of human rights risks.⁴
- UN engagement: In response to calls made by the UN Special Rapporteur on the situation of human rights defenders, in April 2018 the Investor Alliance for Human Rights released a first of its kind statement endorsed by 68 institutional investors, calling on companies to make commitments to protect human rights defenders, and specifically, take immediate action to ensure the protection and physical safety of indigenous rights defenders at risk in the Philippines, including the UN Special Rapporteur on the rights of indigenous peoples. This action was followed up by investors, civil society allies, business organizations and indigenous advocates in their engagements with companies and the Philippines government.

The May 2018 launch of the Investor Alliance for Human Rights, supported by institutions with over \$2 trillion in assets under management, illustrates the growing investor attention to human rights risk and the need to support investors in their efforts to address it.

Challenges for Due Diligence

Despite these advances, significant challenges currently exist when it comes to ensuring investors are able to promote the uptake of corporate human rights due diligence, including:

- Insufficient awareness among and guidance for the investor community about its human rights responsibilities, including how to address potential conflicts between an investor’s fiduciary duties and its obligations to respect human rights. In particular, investors are typically focused on risks to companies, or to their portfolios, where the UNGPs require a focus on impact to rights-

³ www.globalnetworkinitiative.org

⁴ A member of the undersigned Alliance Steering Committee was a member of the Eminent Persons Group that oversaw the development of the UNGPs Reporting Framework.

holders, a key consideration noted in the OECD's guidance on responsible business conduct for institutional investors.⁵

- Governments, multi-lateral institutions and standard-setting bodies have only recently begun to set expectations for investors to operationalize human rights due diligence.
- The number of opportunities and initiatives for maximizing investor leverage through collective action to specifically address adverse human rights impacts they may be directly linked with have been relatively few when compared to the magnitude of human rights and business risks that investors face.
- It is challenging for investors to evaluate human rights risk effectively across portfolios based on currently-available information. International human rights standards have not been integrated consistently into corporate reporting frameworks. Company reporting on human rights is inconsistent and lacking in comparability, and where it is undertaken, often focuses on policies and processes rather than real-world impacts and effectiveness. Data providers rely to a great extent on corporate disclosures and media reports, with meaningful stakeholder engagement, including affected communities, remaining a challenge.
- Variation of legal standards between countries and regions regarding corporate human rights due diligence—for example, the non-financial disclosure requirements in the European Union or the French Duty of Care law—poses a challenge for investors. Companies often take action on human rights due diligence where it is required and not elsewhere. Further, many companies provide boilerplate disclosures in response to these legal requirements.

Request to the UN Working Group

In light of investor responsibilities, as well as practical examples of investors operationalizing human rights due diligence with respect to investee companies, we call on the UN Working Group to recognize, engage and support investors as key stakeholders for advancing corporate respect for human rights in the 2018 General Assembly Report and in other relevant activities and reports of the group.

In particular, we encourage the UN Working Group to:

- Ensure that UN human rights bodies, including treaty bodies and special mandate holders, consider the role of investors in advancing corporate respect for human rights. This should include targeted recommendations for investors that acknowledge the differing size, capacity and leverage of investment institutions.
- Call on all UN agencies tasked with promoting human rights and sustainable economic development to ensure policy coherence regarding the roles and responsibilities of investors. Particular attention should be placed on the role of investors in encouraging companies to carry out human rights due diligence as the first step towards realization of the Sustainable Development Goals of the 2030 Sustainable Development Agenda.

⁵ OECD, *Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises*, 2017: <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>

- Call on governments to scale up the corporate responsibility to respect human rights through the development of robust National Action Plans on Human Rights and Business (NAPs) that:
 - Engage and build the capacity of investors on human rights and business in the consultation phase;
 - In the content of the NAP, include regulatory requirements on corporate human rights reporting to enable investors to evaluate corporate human rights due diligence and act upon these findings; and
- Call on companies to “know and show” respect for human rights through annual, public, comprehensive human rights reporting, including meaningful stakeholder engagement. Human rights reporting should be proactive and refer to the most salient risks facing a company.
- Engage ESG reporting frameworks, and data providers, to ensure human rights criteria are in line with internationally recognized human rights standards, and prioritize company impacts to rights-holders in addition to policies and processes.

Respectfully submitted,

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