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Consultation on PRI's Human Rights Paper

We welcome the opportunity to share our insights on the UN PRI's draft human rights paper which provides investors with a six-part guiding framework for considering human rights in investment decision making processes. Human rights issues remain a consistent and important feature of our approach to responsible investment. Given this context, our commentary focuses on the potential of the paper to provide more detailed guidance on investor responsibility, case studies and examples, and suggested approaches for investors faced with challenges commonly experienced while analysing human rights risks of investees. The 6 questions featured in the consultation and our respective responses are detailed below:

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

- **Clear and Useful:** We would largely agree that the framework is both clear and useful. It would be helpful for the PRI to identify what type of investor this paper is directed to regarding the stage of the process they are at in considering human rights in their investment decision making.
- **Investor Responsibilities Beyond Communicating Actions:** The core pillars of a due diligence process, and the related responsibilities, are covered. The framework would still benefit from further context and practical guidance to make it more useful. There are some key aspects of the investor responsibility towards human rights that need to be expanded upon (see below) and further detail on how an investor could meet the various steps of the framework. For example:
 - In the opening paragraph of the section “How investors can respect human rights” (page 9) the investor responsibilities are laid out as a) identifying human rights impacts and b) communicating actions. It is implied in the latter statement that the investor has actions to communicate, but would an investor be meeting her responsibilities by communicating the fact they are doing nothing? It would seem that aligning with the UNGPs would entail an active responsibility to respect human rights, which further entails some additional and expected form of substantive action in the face of human rights impacts, beyond solely communicating what those actions are. As such, perhaps the missing step is for the investor to use her leverage to mitigate the impacts.
- **Context-Specific Information with Respect to Implementing the Framework:** The framework could be more useful if it:
 - Flagged parts of the framework that can be or have been difficult for investors to implement and made specific recommendations on how those difficulties could be overcome (some examples in question 2).

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- Grappled more substantively with the human rights issues at play in various sectors and geographies. For example, it would be helpful if the framework could identify rights that are at high risk of being compromised in certain contexts (e.g. privacy and surveillance in tech). If this would be out of scope for the paper, resources to support this analysis could be referred to. The paper does mention the IAHR as a resource at the end, but we believe that given the global presence of the PRI, this is an area where the PRI could fill a current information gap.
- **Case Studies:** In general, some actual examples or case studies would be helpful. We note again that the paper does reference the IAHR Investor Toolkit on Human Rights which contains explicit examples and case studies. However, the PRI guidance could benefit from either referencing these more specifically in the body of the document, or by drawing out some key aspects. For example, the Investor Toolkit provides examples of how to craft a human rights policy. This is practical guidance that investors should be made aware of more explicitly.
- **Appendix:** The report would benefit from an appendix at the end that categorizes and lists all of the resources referenced in the paper.

2. 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)?

- **The Relationship of Investors to the UNGP Hierarchy of Risk:** The paper is relatively thorough in its treatment of the subject, but we believe the paper could do more to explain the relationship of investors to the UNGP hierarchy of risk (e.g. “contributing to”, “directly linked to”, “causing”). Specifically, we feel the paper overlooks some key aspects of investor responsibility that do not accurately describe the scope of investor obligations.
- **Investor Responsibility beyond being “Directly Linked”:** It is our understanding of the impact hierarchy that the limitations for investor responsibility do not end at being “directly linked” as is implied on page 10. While the paper notes that the direct actions of the investor (e.g. its employees) could lead to an investor “contributing to or causing” or if an investor has a controlling stake (page 14) it could be culpable beyond being “directly linked”, these are not the only situations in which an investor could be found to be contributing to human rights impacts. Day to day investment activities can also lead to this situation.
 - For example, investor inaction in the face of clear human rights impacts at a portfolio company could move an investor from “directly linked” to “contributing to”. Consider the example of an investor voting with management against a proposal on human rights due diligence at a company where human rights impacts are actively occurring. Assuming that the proposal was otherwise

sound, in our minds the act of voting against the proposal would constitute actively discouraging the company from being accountable (and preventing other investors that are trying to exert their leverage in the situation) and as such would label the investor as contributing to the human rights impact. The act of neglecting to hold the company accountable would move the investor from directly linked to actively contributing to the impacts. We believe it is important to clarify this distinction when explaining investor responsibilities.

- Divestment in the Instance of Human Rights Violations: On page 13 the paper addresses the situation where the investor has used her leverage (or has a lack of leverage entirely) but has determined the financial impacts of divestment are too great to walk away. The investor must disclose the steps she has taken and the rationale for her actions but is not required to actually divest to still be performing adequate due diligence. This is an accurate translation of the steps laid out by the OECD. However, we feel this situation exemplifies the importance of using a salience lens versus a materiality lens. Just as we expect companies to consider the impacts on stakeholders (and not simply the company’s bottom line) the same can be said of investors. There should not be a situation where the violation of human rights is outweighed by a financial benefit to the investor.
- Enhanced Context: We would recommend that the paper keep the current discussion in place, but provide the context above to show that considering salience can lead to very different decisions.
- Valuable insight from the PRI’s Global Perspective on Overcoming Challenges: Given the PRI’s global perspective, it would be helpful to learn of the organization’s insights on how to properly overcome the challenges that can hinder an investor’s ability to successfully implement a “know and show” strategy such as:
 - 1) how can investors overcome lack of data disclosure with respect to human rights concerns (the “know”) and
 - 2) how can investors ensure that investees are implementing human rights policies in an effective way (the “show”).
- More Direction for Implementing Policies, Identifying Impacts and Tracking Management of Human Rights Outcomes:
 - With respect to step 1 – “Adopt a policy commitment to respect human rights” (page 11) the PRI could address some key elements to consider when adopting a policy commitment to human rights that is built to work. Questions such as the following could be considered: What are the key pillars for developing a well drafted policy? How should the policy influence the due diligence process? Are there elements of a policy that may be more or less critical for investors depending on their size or geographic location?

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- In step 2 of the framework – “identifying impacts” (page 11) the framework would benefit from further guidance on how that could be achieved. Or perhaps it could expand upon the challenges of trying to do this through corporate disclosure alone. The kinds of human rights impacts that can show up in a portfolio tend to come to light through external sources – be it media coverage, civil society, NGO campaigns or other means. As such, the act of due diligence is similar, but distinct, from the general act of integrating ESG information into your investment process. As a result, a distinct and deliberate effort must be made to monitor your portfolio. There is also an element of timeliness to the question of due diligence. Is it adequate to only perform this due diligence annually? We would suggest that while a real-time due diligence process might be unwieldy and impractical, the act of identifying risks should be done more frequently than annually. We employ a quarterly process to assess our risks.
- The PRI could provide more guidance on step 4 - “due diligence process” (page 11) to “track ongoing management of human rights outcomes by investees”. It would be helpful if the PRI could provide investors with some concrete steps on issues to consider when tracking management of human rights. The PRI could better explain the need for investors to consider how well policies of investees align with their actual practices. For example, the paper could consider the strengths and limitations of supply chain audits in evaluating whether human rights in a company’s supply chain are being upheld.

3. 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)

- Lack of Attention to Human Rights concerns in the Investor Community: The simple lack of attention to the issue is currently the biggest barrier. The lack of a direct economic rationale for addressing human rights (not always the case) runs contrary to the primary driver of ESG integration globally – namely that it is a material investment risk/opportunity. The shift to salience as opposed to materiality is one that is not a neat fit into the growing dogma around ESG materiality. Aside from the moral argument that human rights are unequivocal, the framing is one that is more systemic in nature. At a systems level, the ability of society to broadly enjoy the exercising of basic human rights will likely lead to numerous economic advantages (and thus investor opportunities) but at the corporate level it is not always as clear. As such, the discussion on salience could be expanded. As well, this belies an opportunity for the PRI to drive the importance of salience with its membership.
- Lack of Quality Data: Otherwise, there is a lack of quality data on company efforts to perform due diligence on human rights and this will translate into difficulties for

investors to perform due diligence in the pre-investment phase. Again, this is an opportunity for the PRI to get behind frameworks such as the UNGP Reporting Framework in order to drive the widespread adoption of this disclosure from companies.

- Inconsistent Data Reporting: Where data is disclosed, inconsistent data reporting limits investors' ability to properly "know" and understand the human risks faced by an investee. Information may look different based on the different norms within a local economy. The paper doesn't mention how investors who invest across geographies could manage inconsistencies in data disclosure when developing a scalable human rights policy and due diligence process.
 - Additionally, investors are often faced with evaluating how to weigh disclosure of negative information, against no disclosure at all. That is to say, we do not want to discourage transparency where companies share information about shortcomings in their policies or processes but still need to hold companies accountable for these shortcomings if left unaddressed. Would the PRI be well positioned to provide some suggestions on how investors should respond to negative information as disclosed by investees beyond simply articulating their awareness of the risk?
 - Evaluating the Implementation of Well Drafted Policies: We regularly grapple with how to ensure that well drafted policies are effectively implemented 'on the ground' where companies operate. We are oftentimes confronted with the reality that policies and implementation may not be aligned. The usefulness of this report would be heightened if it could provide some tangible steps to investors on how to ensure a company is effectively operating in accordance with their policies. For example, what are the cues investors can look for to get a sense of this alignment?
 - More Guidance for Passive Investors: The paper could also consider more relevant insight for passive investors. The guidance only briefing touches on the potential challenges of various investment mandates and tools (e.g. fund of funds). However, considering the growth of passive investing, particularly in the retail space, it would be useful for the PRI to dig deeper into how passive investors can abide by the UNGPs. This might require further research/roundtables to ascertain a path forward, but absent guidance in this area we believe that there will be a growing body of assets that are not actively addressing this core responsibility.
- 4. 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?**
- IAHR Investor Toolkit: We would once again refer to the IAHR Investor Toolkit for useful examples of detailed guidance and/or case studies. Whether the PRI creates



new ones, or leverages the existing work of the IAHR, we would agree that greater context and guidance through examples would strengthen the paper.

5. 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?

- **Practical Next Steps:** The next steps outlined seem practical and practicable. We agree with the intentions stated and the timeline suggested seems reasonable. We agree with the addition of human rights questions to the reporting framework to increase investor accountability and would suggest that the PRI consider these additions sooner than later. However, we also believe the PRI is well positioned to urge investors to consider human rights and this "new social contract" as an opportunity for investees to show leadership as they proactively consider a broader stakeholder centric approach, and not solely view human rights issues as a source of risk to be mitigated.

6. Do you have any other comments on the paper?

- We commend the PRI for making human rights a priority. We are very supportive of the efforts behind this paper and look forward to seeing this initiative develop and grow.

Best regards,

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A handwritten signature in black ink, appearing to read "Jamie Bonham".

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