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Mr UN Working Group on Business and Human Rights
Thematic Engagement, Special Procedures and Right to Development Division
Special Procedures Branch
UNOG-OHCHR
CH-1211 Geneva 10, Switzerland

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Dear Secretariat of the UN Working Group on Business and Human Rights,

Ipieca, the global oil and gas industry association for advancing environmental and social issues across the energy transition, would like to thank the UN Working Group on Business and Human Rights for the opportunity to participate in the consultation on Investors, ESG and Human Rights.

We welcome the UN Working Group's readiness to engage and consider the views of stakeholders on the issues covered by this consultation, including states, businesses, civil society and other stakeholders. We see the value of the report in better aligning the ESG approaches with the UNGPs in the context of financial products and services. Previously, Ipieca has also provided input to the consultation on the Extractive sector, just transition and human rights.

Our detailed comments on the consultation questions are provided below.

We appreciate the UN Working Group's approach to incorporating the input of various stakeholders in the drafting of the report.

We would be happy to discuss our views further with you if desired and to continue to engage positively with the UN Working Group as your plans develop.

Yours sincerely,

Brian Sullivan
Executive Director, Ipieca

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Ipieca response: Investors, ESG and Human Rights

GENERAL

QUESTION 1 – What do you understand Environmental, Social, and Governance (ESG) in finance to mean? How are human rights standards and frameworks considered by investors, if at all, in ESG?

Ipieca is an industry organisation working on a wide range of ESG matters on behalf of our corporate members in oil, gas and lower-carbon energy production, processing, transport and marketing. Our members' understanding of "ESG in finance" is that members of the investment community factor ESG matters into their business processes, such as deciding which companies to invest in or to recommend to their clients, and assessing the performance of companies in which they have shares. Our members' experience is that individual members in the investment community do this to varying extents.

ESG and human rights issues are highly relevant to the energy sector and to its investors. There is a proven commitment of corporations in oil, gas and lower-carbon energies to continuously improve their management of ESG issues, both through due diligence and by strengthening communication and disclosure of how they are doing so, especially to investors and other financial institutions.

Through its work on many ESG topics, including human rights, Ipieca supports its members' efforts to continuously improve their ESG performance and transparency.

We believe that there is growing awareness among investors that their clients' financial success, attractiveness to shareholders and public reputation often depend partly on their ESG performance.

QUESTION 2 – Which are the main types of investors using ESG approaches, for example, in decision-making or engagements? On what basis are they making decisions on human rights, climate change and other related matters?

In the experience of Ipieca members, the inclusion of ESG matters in investors' scrutiny of companies is growing. Investors and other financial institutions working with the energy sectors are inquiring more about the management of ESG issues among the companies they invest in or recommend to investors.

Evidence of ESG due diligence processes, on human rights in particular, is an example of a topic that attracts more inquiry and scrutiny now than in the past.

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

Our members believe that there are opportunities for fruitful ESG discussions between investors and the companies they invest in; for example, such discussions can provide companies with clarity on what information and evidence investors are expecting about policies, procedures (such as due diligence on human rights and other ESG topics), performance and reporting, and what standards or indices (for example, UN Guiding Principles, IFC Performance Standards) they assess companies against.

Constraints or confusion may occur if investors do not provide companies with clear information on a) their ESG expectations and what they mean by 'human rights'; b) the type and extent of performance evidence they wish companies to provide; and c) which standards or ESG indices they use to assess companies.

QUESTION 4 – What responsibilities and capacity do ESG index and data providers have regarding the assessment of adverse human rights and environmental impacts, and how can ESG indexes and research products be improved to align with the UNGPs approach?

Provided that ESG indices on human rights topics are developed in line with expectations in the UNGPs, corporations can then use the indices to help improve and report their performance to demonstrate progressively closer alignment with the UNGPs.

Some ESG ratings systems would benefit from increased transparency and accountability about the methodology and metrics that the agency is using.

Some companies in the energy sector have concerns about an apparent inbuilt bias against industries that are essential for global economic and social progress and yet hard to abate (e.g. extractive industries)

Inconsistent criteria across different raters can create challenges for companies who try to respond to multiple ratings agencies' surveys.

It is important for ratings agencies to avoid conflicts of interest.

STATE DUTY TO PROTECT HUMAN RIGHTS

QUESTION 1 – What state, regional, and international mechanisms and regulations exist to promote or restrict investment/financing using an ESG approach that takes human rights into account and how do they align with the UNGPs? How do these mechanisms and regulations promote or inhibit business respect for human rights consistent with the UNGPs?

The Principles for Responsible Investment and the Equator Principles are examples of useful international frameworks to guide investors who wish to incorporate ESG issues into their investment practice.

The EU's sustainable finance agenda includes proposals about the ESG ratings market. The EU Commission is proposing a Regulation to improve the reliability and transparency of ESG ratings activities. While it is too early to be sure what the effects of such a Regulation would be, there is potential for it to have a beneficial effect once enacted.

We welcome the creation of the International Sustainability Standards Board (ISSB) and support a single framework of globally accepted standards for sustainability reporting, including the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). We believe that harmonised standards would benefit the investment sector as well as other sectors.

QUESTION 2 – To what extent do current regulations ensure adequate information and disclosure for investors adopting an ESG approach to understand human rights impacts of businesses?

Ipieca members believe that the impact of European and American legislation has generally been positive, including for regions such as Latin America that do not have their own equivalent legislation.

QUESTION 3 – How can States encourage and regulate accurate communication of ESG practices by businesses and investors to prevent misleading or unsubstantiated claims regarding respect for human rights?

- Ipieca and its members have done much work over many years to incorporate the UNGPs into business processes. We believe that States can support implementation of the UNGPs by first of all setting a good example. This means incorporating the state duty to protect human rights into their own national legislation and then working to ensure that state bodies (e.g. judiciary, police, armed forces, civil service and other national agencies) implement the duty.
- Regarding the disclosure query, States can assist by providing a legislative environment on ESG that is aligned with the UNGPs, such as requiring businesses – including investors - to respect human rights and to report their performance accurately. States can also support compliance by keeping bureaucracy to a practical minimum.

QUESTION 4 – How can policies, programs, plans and activities in one State concerning regulation of investors in relation to human rights have potential or actual adverse or positive human rights impacts outside of their territory or jurisdiction?

QUESTION 5 – How can States better advance human rights-compatible regulation and policies concerning investors and financial institutions generally in a manner that fulfils their international legal obligation to protect human rights?

We suggest that States consider the following actions:

Integrate the UNGPs expectations (both the State duty to protect and the business responsibility to respect) into national legislation and make adequate resources available for effective enforcement.

Ensure that national legislation on business and human rights applies to investors as it does to other types of business.

Harmonise their respective legislation and enforcement activities on business and human rights to: a) help create a level playing field for companies, including investors; b) reduce the effort for companies, including investors, of demonstrating compliance with sometimes widely differing legal requirements of multiple jurisdictions.

Support the development of common standards and benchmarks, to allow comparison of environmental social and governance (ESG) reporting metrics (including human rights) and to improve transparency. We welcome the creation of the International Sustainability Standards Board (ISSB) and support a single framework of globally accepted standards for sustainability reporting, including the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). We believe that these initiatives are also relevant to investors.

Support the development of sustainable finance taxonomies that include ESG and human rights considerations.

CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

QUESTION 1 – To what extent are investors aware of their responsibility to respect human rights? Are some types of investors more likely than others to align their practices with the UNGPs? Does it depend on the type of investor?

In our experience, increasing numbers of investors and financial institutions are aware of their responsibilities concerning human rights, are inquiring more into these issues, and are aligning their processes with the Equator Principles, the IFC, and the OECD standards. This promotes increasing alignment with the UNGPs. There is also an increasing awareness that human rights risks are usually greater both for rights-holders and for companies in countries with weak governance, a history of conflict and a record of proven human rights abuses.

Some investors are also increasingly interested in human rights in their clients' supply chains – for example, labour rights.

Our impression is that many investors' due diligence systems currently focus on ESG and human rights impacts of traditional oil and gas businesses. Investments in lower-carbon energy projects are likely to continue increasing. It is important that investors adapt their existing ESG and human rights frameworks to encompass investments in these new types of energy, rather than creating separate, standalone frameworks.

Investors also need to consider that the concept of 'human rights' is interpreted in widely differing ways in different geographies and cultures. They may need to adapt their approaches to take account of these differences.

If investors make it clear that they will ask companies for evidence of responsible business conduct and explain what evidence they require, this can beneficially influence the way that businesses implement new projects and operations.

Ipieca is willing to participate in further conversations with investors about how to promote States' protection of human rights and businesses' respect for human rights.

QUESTION 2 – How effective are international instruments, institutions and guidance that promotes HRDD, such as by the UN global compact, equator principles, principles of responsible investment, investor alliance for human rights, business for social responsibility and other entities, effective in increasing awareness of human rights impacts among investors and other businesses? Please provide examples of participation, integration, or adherence of investors in these instruments and bodies.

The international instruments mentioned in the question are well-established, and they are relevant to investors as well as to other types of business. Some have been designed by and for investors. It is likely that these in particular have contributed to the increased awareness of human rights impacts among investors.

QUESTION 3 – How should investors integrate human rights considerations throughout the investment process, including when constructing, underwriting, and/or investing in an ESG product or service? How do these steps vary for different asset classes?

Like other businesses, investment companies should integrate human rights into their investment plans, activities and decision-making, in line with their UNGPs responsibility to respect human rights and to provide remedy where appropriate. Examples include: human rights due diligence, engaging with affected communities and stakeholders where appropriate, and transitioning their energy portfolios in a manner that avoids harm to and/or marginalization of vulnerable groups.

Investors should be conscious that varying approaches are likely to be needed for different countries and cultures. Variables include the type and severity of potential impacts to rights-holders, States' performance in implementing their UNGPs duty to protect human rights, and factors such as the status of women, Indigenous Peoples and other potentially vulnerable groups.

QUESTION 4 – To what extent do investors assess human rights risks and adverse impacts using a risk to right-holders lens as being separate from ESG materiality considerations or as part of a double materiality assessment?[1] Are these integrated into an ESG approach and, if so, how? Please provide examples of practices.

Ipieca's observation is that our members are receiving more requests for information about human rights due diligence. This may mean that for investors, the issue is shifting from a purely financial and reputation interest to a closer alignment with the UNGPs expectations that companies focus on risks to rights-holders. However, we are unable to say whether they are assessing risks to rights-holders as a separate process form their ESG materiality considerations.

QUESTION 5 – What does appropriate investor action entail in the event that a client or portfolio company causes or contributes to a potential or actual adverse human rights impact?

Investors should have a standard process that they follow for all cases where they believe that a client or portfolio company may have caused or contributed to ESG impacts, including human rights impacts. Human rights concerns should be integrated into this process rather than be the subject of a separate process.

QUESTION 6: What leverage do investors have to address human rights and climate change issues, and how does it differ based on asset classes and investment types? How does investor leverage differ based on asset classes, stocks and bonds, and lending?

QUESTION 7 – What provisions can be included in contracts or investment agreements to encourage respect for human rights? Can technological devices like blockchain assist in this regard?

- Not all existing concessions, contracts and bilateral investment treaties (particularly those concluded a long time ago) contain an obligation on all parties to the agreement to protect human rights (in the case of governments and their agents, such as police and armed forces) and respect human rights (in the case of business). This historic problem should decline over time.
- Consistent human rights wording in all such agreements going forward would place all parties on a level playing field and improve clarity about their respective human rights and other ESG obligations.

[1] https://www.bsr.org/en/reports/double-materiality-for-financial-institutions; https://www.bsr.org/en/blog/impact-based-materiality.

QUESTION 8 – In what circumstances should investors refrain from making ESG-related investments in view of potential risks of adverse human rights impacts?

We believe that like other businesses, and in line with the UNGPs expectations, investors should assess risks to rights-holders when contemplating investments, assess whether these can be managed to a satisfactory level, and then decide whether to invest.

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

In general we believe that investors should implement the same standards of reporting transparency as other types of business, including on their human rights processes. It is helpful if they describe the extent to which these processes are aligned with the UNGPs.

QUESTION 10 – Explain the differences and similarities of ESG approaches, including their approaches to human rights risks, with the human rights-based approach set out by the UNGPs?

QUESTION 11 – Is the role of consultation with stakeholders, such as the local communities, women and indigenous peoples, the same for an ESG approach and an approach set out by the UNGPs and, if not, in what way do they differ? What expectations and/or challenges do investors face in undertaking meaningful stakeholder consultation?

In our view, the role of consultation is important for both ESG and UNGPs-based approaches. We suggest that when possible, the two should be combined, to avoid bureaucracy for all participating parties and confusion/overload for consultees.

If investors are considering local consultation, they should also consider how to manage the risk of multiple layers of consultations (for example, consultations may already be planned by the government and the company implementing the project).

In some locations consultation on human rights issues may be highly sensitive (for example, when human rights defenders are at personal risk if they speak out publicly).

QUESTION 12 – How should investors take gender-responsive, disability-responsive, and intersectional-responsive approaches? How should investors take a heightened human rights due diligence approach in conflict affected areas?

Human rights due diligence should include groups that may be particularly vulnerable, such as women, Indigenous Peoples, ethnic or religious minorities, LGBTQI+ people and those with disabilities.

In conflict-affected areas, the Voluntary Principles on Security and Human Rights are an example of a very well-established methodology to assess and manage risks on these issues.

Investors may find it beneficial to participate in multi-stakeholder initiatives that seek to address the challenges of operating businesses in regions with complex problems such as post-conflict situations and weak governance.

QUESTION 13 – Are there any roles which stock exchanges could play in ensuring investors, and the businesses in which they invest, respect human rights?

ACCESS TO REMEDY

STATE-BASED JUDICIAL AND NON-JUDICIAL MECHANISMS

QUESTION 1 – What steps have states taken to investigate, punish, and redress business-related human rights abuses connected to investors, and how effective are they? What challenges and opportunities for participation by affected stakeholders and/or redress have you observed?

QUESTION 2 – Please provide examples of cases submitted to state-based judicial and/or non-judicial mechanisms regarding investors in the context of business-related human rights and environmental abuses. How effective are these in providing remedies to the victims and how can they be improved?

NON-STATE BASED MECHANISMS

QUESTION 1 – What remediation responsibilities should investors have? Should these responsibilities vary depending on the nature of the responsibility e.g., Cause, contribute to, or be directly linked to the adverse human rights impact? Should it vary depending on the sector invested or the type of investment activity?

Since the UNGPs apply to businesses in general, they logically apply also to investors. The starting point for investors should therefore be to understand the UNGPs expectations on remedy and then decide how to address them in their own business.

If investors already have remediation processes in place for their investments in oil and gas projects, it is important to adapt and apply these to lower- and no-carbon energy projects, rather than creating separate new frameworks.

QUESTION 2 – What measures and mechanisms, including grievance mechanisms, should be provided at the investment-level that enable individuals or communities affected by the business in which the investor has invested (e.g., The portfolio company) to report adverse human rights impacts to the investor and seek effective remedy for human rights and environmental abuses? How effective are these in providing remedies to the victims? Please provide examples of business or industry association actions in this area.

As per the UNGPs, clear and accessible internal grievance and remedy mechanisms should be available to rights-holders who could be affected by companies' actions. This logically includes investors.

Investors may need to consider whether or not rights holders potentially affected by their own activities are the same people who could be affected by the companies implementing the project on the ground.

In addition, it may be confusing the local stakeholders if they see more than one process for lodging grievances. Investors may therefore wish to consider whether the project implementer should lead on grievance processes and provide the investor with performance updates.

GOOD PRACTICE

QUESTION 1 – Please provide examples of any good practices, tools, guidance, policies, etc., regarding the integration of the responsibility to respect human rights by investors, including examples of investors actively preventing or mitigating (including by using leverage or undertaking a responsible exit) any adverse human rights and environment impacts of the businesses in which they invest.

Investors may provide specific examples of their own specific actions. A general example would be investors holding discussions with client companies on the management of human rights before agreements are concluded, so that companies clearly understand what human rights standards the investor will expect them to meet, and what information they will need to provide to the investor.

QUESTION 2 – Are there any specific recommendations to states, businesses (including investors), civil society, UN bodies and national human rights institutions that would assist in ensuring that investors act compatibly with the UNGPs?

The energy sector can continue its outreach and collaboration - for example with OHCHR and other UN bodies, and with other sectors including the investment sector - to share its work on business and human rights to date, and to learn from other sectors.

Ipieca's members would be happy to participate in discussions with investors about promoting effective collaboration on business and human rights for the benefit of all.

More broadly, it is important for the energy industry to be involved in conversations about how to further the entire UNGPs agenda. Ipieca is willing to continue participating in such dialogues, as we are very active in enabling our industry to implement the UNGP.

Internationally, multilateral organisations should continue to use their convening power to provide different stakeholders, including investors, with incentives and platforms for information exchange and collaboration on business and human rights. The UN and other multilateral institutions can help to foster trust between the various actors.

Where human rights standards or requirements (e.g., legislation) for investors are introduced, they should align with the expectations on businesses in the UNGPs, so that all businesses are aligned in their approaches to implementation and disclosure.

Promoting external independent verification of company sustainability reports, including those by investors, can help to address issues of alleged greenwashing and green scamming.

OTHER COMMENTS

ANY OTHER COMMENTS?