



PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND  
www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

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

REFERENCE: SPB/SHD/NF/GF/ff

21 September 2020

**Submission to the Principles for Responsible Investment (PRI)  
Human Rights Framework Consultation**

Dear Ms. Reynolds,

We are writing to you on behalf of the [United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises](#), in response to PRI's consultation on its [draft human rights framework](#).

The Working Group is a group of five independent experts appointed and mandated by the United Nations Human Rights Council (resolutions 17/4, 26/22, 35/7, and 44/15) to promote dissemination and implementation of the [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#). The UNGPs provide the globally recognized and authoritative framework for the respective duties and responsibilities of all governments and all business enterprises to identify, prevent, mitigate, and address business-related human rights impacts.

The Working Group has engaged with PRI throughout our mandate, including recently at the [7 July 2020 launch of the Working Group project](#) assessing implementation of the UNGPs to date and developing a roadmap for further action over the course of the next decade and beyond. The Working Group recognizes PRI's vital role in facilitating institutional investor capacity and action on a range of environmental, social, and governance (ESG) factors, including increasingly in the area of human rights.

The [Working Group's 2018 report to the UN General Assembly](#) called on investors to "implement human rights due diligence as part of their own responsibility under the UNGPs, more systematically require effective human rights due diligence by the companies they invest in, and coordinate with other organizations and platforms to ensure alignment and meaningful engagement with companies."

As such, we are very pleased to see the increasingly vocal part that you and your team have played in emphasizing the critical role of human rights in responsible investment and sustainable business more broadly. In particular, we are encouraged to see PRI basing its human rights work and support of its investor signatories, including via its draft human rights framework, on the UNGPs and on an understanding that

Ms. Fiona Reynolds  
Chief Executive Officer  
Principles for Responsible Investment (PRI)

investors, like all business enterprises, have a responsibility to respect human rights throughout their business activities and relationships.

The Working Group and its advisors have closely reviewed PRI's draft human rights framework and appreciate the opportunity to provide feedback. We would like to highlight here our key reflections on the existing strengths of the framework and how it could be further improved.

### **Target audience**

As PRI's impressive signatory base includes a wide range of investor types engaged in the full range of investment activities, we would encourage further clarification of the intended audience of the framework. For instance, it is currently unclear whether the framework's intended audience includes both public and private investors (and those in between); active and passive investments; and equities, fixed income, and other asset classes. Additional details regarding the framework's target audience(s) and where further guidance for specific investor types and asset classes can be found would greatly enhance the clarity of the framework and its coherence with existing resources, such as the [OECD's 2017 guidance for institutional investors](#) and the [2020 Investor Toolkit on Human Rights](#).

Several areas of the framework, such as pages 8 through 10, also appear to focus on bettering investees' rather than investors' human rights policies, process, and practices. While there are potential overlaps between responsible investment practices and the human rights performance of portfolio companies, this is an important distinction in building guidance on the investor responsibility to respect human rights. In particular, there are institutional practices that need to be taken internally within an investment organization that are linked to but distinct from bilateral engagements with investees.

### **Scope of the investor responsibility**

The investor responsibility to respect human rights covers all investment activities. We would recommend that the framework state this explicit scope of the investor responsibility upfront so as to avoid reinforcing many investors' current misunderstanding of human rights as a 'niche' or specialized area that only relates to separate ESG-related funds.

The investor responsibility to respect human rights also extends to investor contributions connected to the Sustainable Development Goals (SDGs), such as impact investing. As such, we would recommend that the framework's connections to the SDGs further centre engagement with the investor responsibility to respect human rights across all investment activities – rather than, for example, only in relation to specialized ESG funds – as the most important way for investors to contribute to positive impacts on people. The Working Group has [previously noted](#) that, “For business, the most powerful contribution to sustainable development is to embed respect for human rights across their value chains. And business respect for human rights is not a choice, it is a responsibility.”

We would also highly recommend revising the guidance on pages 9 and 11, as well as and throughout the framework, to clarify that the responsibility to respect extends beyond “a) identify[ing] negative human rights outcomes and b)

communicat[ing what investors are] doing to others.” Specifically, the scope of the investor responsibility to respect covers both *actual* and *potential* adverse human rights impacts, not just *outcomes*.

We would also recommend that the framework presented on page 9 more holistically depict the investor responsibility as extending across the whole of business relationships, with information flows expected across all directions throughout those relationships. For instance, in addition to receiving meaningful information from investees, investors are also expected to develop and communicate their own commitments and expectations when it comes to human rights. This extends to engagements with investees as well as externally commissioned managers, ratings and rankings agencies, research firms, consultants, and other service providers, as well as civil society and government representatives.

### **General alignment with the UNGPs**

The Working Group welcomes PRI’s effort to provide clear and user-friendly guidance to its investor signatories when it comes to practical implementation of their own human rights responsibilities. We are pleased to see many of the expectations for business set forth in Pillars II and III of the UNGPs reflected in the framework. We are glad that the UNGPs are a foundation upon which PRI is developing its guidance, and we offer our comments below in the spirit of helping PRI further refine its draft text to align more closely with the text of the UNGPs.

To achieve further alignment with the UNGPs, we would encourage directly sourcing the precise language of the UNGPs, as well as [OHCHR’s interpretive guide on the corporate responsibility to respect](#), when describing key concepts such as the three pillars of the UNGPs (summary on page 7), the human rights due diligence framework (summary on page 11), and salience and leverage (descriptions on pages 12 and 13). We would also recommend using “human rights due diligence” instead of “due diligence” throughout or clarifying the important distinction between the general concept of due diligence and human rights due diligence upfront.

We would also strongly discourage the description of the UNGPs as a “private sector standard” throughout the framework. The UNGPs are a set of international human rights standards endorsed by UN Member States (rather than developed by an industry association, for instance) that apply to States and business enterprises (both public and private and in between) alike. It is critical for the PRI framework to reflect this accurately. Moreover, the UNGPs reinforced, clarified, and elaborated on existing international human rights standards rather than establishing new ones, so we would recommend revision of the language on page 6 as it currently runs the risk of depicting the UNGPs as having done the latter.

We would also strongly advise against suggesting that PRI promotes investment screening based on the UNGPs, as mentioned on page 8. The UNGPs provide a normative and operational framework for identifying, preventing, mitigating, and addressing business-related adverse human rights impacts. They are centred around continuous improvement rather than “in-or-out” screening as is typically done with traditional investor screenings. All businesses can potentially become involved in adverse human rights impacts on people and, even with the best policies and processes in place, adverse impacts on people may continue to happen. As such, we would encourage promotion within the framework of principled and practical assessment of, as

well as engagement with, investees based on salient issues by [sector, location, and business models](#). While there may be meaningful approaches to how an investor might use certain criteria, such as those outlined in the OECD guidance for institutional investors, to divest in specific situations, this is distinct from a binary screening approach to human rights issues.

Relatedly, in the guidance on page 10 and throughout, the framework could be clearer regarding investors' own human rights due diligence responsibilities and what the appropriate response is in cases of cause, contribution, and linkage. In most cases, investees need to be in the driver's seat in identifying and prioritizing their own salient human rights issues, as they are often best placed to obtain the type of information mentioned and have the responsibility to directly address adverse impacts that they cause or contribute to. It is not the role of investors to do that on their behalf, as indicated on page 10. Instead, investors directly linked to adverse impacts are responsible for using their leverage to push for robust human rights due diligence and remedy processes at the company level. We would refer you to the [Dutch Banking Sector Agreement's paper on enabling remediation](#) and [OHCHR's BankTrack advice paper](#) as reference points to build from in developing guidance for investors in this area.

Lastly, we would encourage further cross-referencing and sourcing in the framework to the OECD's guidance for institutional investors and the Investor Toolkit on Human Rights, which provide detailed frameworks and practical tools for investor action on human rights. We would also be very interested in learning about additional details regarding the specific strategies and timelines for the next stages of PRI's human rights work, as outlined in the next steps at the end of the framework. As we are developing a [roadmap to advance implementation of the UNGPs in the next decade](#), and we consider the role of investors to be a key potential driver for greater progress in this context, we remain keen to explore ways to build synergies and reinforce our respective efforts.

We look forward to the continued development of PRI's human rights framework and to further opportunities to support PRI's important and promising work in the area of human rights.

Yours sincerely,



Anita Ramasastry  
Chairperson

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