Consultation on the Human Rights Reporting and Assurance Frameworks Initiative (RAFI)

Full-Day Convening of Expert Stakeholders in Jakarta on November 20, 2013

CONSULTATION REPORT

On November 20, 2013, a one-day expert consultation took place in Jakarta to discuss the development of a twin set of public frameworks for companies to report on how they meet their responsibility to respect human rights, and to have this report assured by an external party. The Reporting and Assurance Frameworks Initiative ("RAFI") was established in 2013 by the project partners Shift, Mazars and the Human Rights Resource Centre (for ASEAN) to facilitate this effort through an open, consultative and collaborative process with a full range of interested stakeholder groups. The objective is that the resulting frameworks become widely-accepted reference points for reporting and assurance with regard to implementation of the UN Guiding Principles on Business and Human Rights. As such, they should be of use to companies, auditors and assurance providers, investors, civil society organizations, governments and stock exchanges, among others. Further information on "RAFI" is available in the initiative's Framing Document.[1]

The Jakarta consultation involved a cross-section of representatives working in companies, trade unions, non-governmental organizations, government, audit and assurance providers, and academia. Experts came from five of the ten ASEAN countries.[2] All participants took part in their personal capacities and not on behalf of their organizations. The consultation was held under the Chatham House Rule in order to stimulate open and frank conversation. Annex A contains the agenda of the expert consultation. Annex B lists the participants. Similar in-depth expert consultations took place in New York and London in October 2013. The full reports for these consultations are available on the initiative's portal.[3]

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[1] RAFI Framing Document (November 2013), available at http://business-humanrights.org/media/documents/rafi-framing-document-2013.pdf

[2] The Association of Southeast Asian Nations comprises ten member states, namely: Brunei Darussalam, Cambodia, Lao PDR, Indonesia, Malaysia, Myanmar, Thailand, the Philippines, Singapore and Viet Nam. Participants attended the experts' meeting came from Cambodia, Indonesia, Malaysia, Thailand and Singapore.

[3] RAFI Portal, available at http://www.business-humanrights.org/Documents/RAFI#127250

Recognizing the growth in non-financial reporting over the past decade, the aim of the consultation was to obtain views, through a dynamic conversation among a range of expert stakeholders, regarding the appropriate foundations for establishing reporting and assurance frameworks in the area of business and human rights.

The consultation was divided into six sessions.   An introductory session to hear from stakeholders the opportunities and challenges they see for the project was followed by four substantive sessions to discuss (a) the project's general proposition to develop the frameworks, its context and its potential to add value; (b) the question of materiality in the context of human rights reporting; (c) the balance to be struck between reporting on processes and reporting on outcomes or "actual impacts"; and (d) the question of assurance of these reports, lessons from other forms of assurance and issues of competence to provide assurance in the human rights arena. The final session provided an opportunity to revisit additional issues that had arisen during discussions but warranted further attention.

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Identifying Opportunities and Challenges

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In the opening session, participants were invited to share their initial perspectives on the key opportunities and challenges for RAFI.   It was recognized that some opportunities also contained potential challenges, and challenges may also reflect opportunities.

OPPORTUNITIES
1. **Deepen meaning of CSR beyond philanthropy.**   One participant felt that a framework focused on respect for human rights could raise awareness that companies' responsibilities were not just voluntary or philanthropic.

2. **Set a baseline for all, not a ceiling.** The fact that the frameworks would not be legally binding was seen as positive by some, while still being an opportunity to set a baseline without defining the ceiling of good reporting.

3. **Provide guidance for executives.**   It was suggested that both the reporting framework and also the process of assurance could help get key messages to top management within companies and help improve performance.

4. **Provide more clarity on materiality thresholds.**   Many participants saw considerable value in having more clarity on what it is "material" or important to report with regard to human rights. One suggested that this would make it easier for companies to start down the road of reporting on human rights.

5. **Enable more systematic communication with stakeholders on some key issues.** It was suggested that clearer, principles-based reporting would increase transparency

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and enable companies to address questions in the minds of many stakeholders through a clear communication.

6. **Link with existing reporting initiatives in the broader field of sustainability.** RAFI's collaboration with the GRI was seen as a positive opportunity, including with regard to bringing in the stakeholder perspective on what is material. Others echoed the benefits of convergence and complementarity in this field.

7. **Encourage companies towards better practice.** It was noted that many companies put real value on being seen to be in alignment with well-respected good practice. Robust reporting and assurance frameworks could help set out what good practice in this field would be. One business participant noted that this could build confidence that a company was serious about addressing human rights issues. Another noted that it could help companies in terms of access to markets and customers as well as access to capital.

CHALLENGES:

1. **Persuading companies of the merits of seeking assurance of their reports:** A persistent question was how to make assurance something that companies themselves would see as beneficial.

2. **Lack of company awareness of human rights issues in the first place:** It was noted that many companies were not yet really aware that human rights was an issue for them to address, so it would be a challenge to engage them on the issue of reporting.

3. **Achieving a balance between clarity, breadth of application and specificity.** It was noted that too much specificity could risk losing the audience, while developing frameworks of broad applicability was also challenging. As one put it, "more general will be more acceptable; too general will be ridiculous".

4. **Avoiding a tick-box approach.** Many participants underlined the importance of the frameworks eliciting really meaningful information in reports.

5. **Importance of being inclusive of smaller and medium-sized companies.** Many participants highlighted the need for the frameworks to be relevant to SMEs, which make up a large proportion of businesses in the region.

6. **Need for the buy-in of all stakeholder groups.** It was noted that there is often a lack of common ground between civil society organizations and companies in regard to alleged human rights impacts, and frameworks in this space would need to be able to carry buy-in from both groups as well as government and others.

Overview from RAFI project team on the project proposition:

Despite growing requirements and calls for reporting on human rights with reference to the UNGPs, no holistic framework yet exists to define what good reporting would look like with regard to the corporate Responsibility to Respect. RAFI aims to fill this gap. In doing so, RAFI's objective is to protect the clarity and convergence provided by the UNGPs, while still allowing for an evolving understanding of their application in different sectors/areas. RAFI also aims to ensure that the frameworks developed will have broad buy-in; will be freely available, widely used and referenced; and can ultimately be owned by independent organizations that can provide for their oversight and evolution over time.

*The initiative now refers to reporting and assurance **frameworks**, rather than reporting and assurance standards. This change responds to feedback from stakeholders who were concerned about the binding and "tick-box" connotation of the term 'standards'.   The reporting framework would not necessarily imply a separate human rights report. It is much more likely to be used for reporting on human rights within an annual or sustainability report. The aim is that a human rights reporting framework should be both viable for companies and meaningful for stakeholders.*

In the lead up to these expert consultations, the project team received feedback on its discussion paper regarding the need for frameworks to dovetail with other reporting initiatives, such as the Global Reporting Initiative ("GRI") and the work of the International Integrated Reporting Council ("IIRC"). The project team is pleased to have representatives from GRI and the IIRC on RAFI's Eminent Persons Group that oversees the project, and will continue to work with these organizations, and others, to ensure RAFI dovetails with them to the greatest extent possible

Feedback from stakeholders has also highlighted the importance of building on other business and human rights initiatives that are developing indicators and assurance processes, including those developed under the Global Network Initiative and the OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, as well as ongoing work on the Voluntary Principles on Security and Human Rights. Additionally, the project team will seek to learn from the strengths and weaknesses of existing assurance and audit approaches, including in the financial, sustainability, and social auditing fields - including limitations on the transferability of these approaches to the human rights arena.

RAFI can learn from other initiatives. It was noted that a success of GRI had been the enabling of comparability across companies; at the same time, lessons had been drawn that a rating system based on assurance provided false security.

A framework that helps companies specifically report on their human rights policies and impacts would be useful. Several participants underlined the added value of a framework to guide company reporting in this space, not least since reporting on compliance with the law carried varying credibility depending on local standards and enforcement. Many noted that human rights reporting would differ across sectors as well as across countries.

Ownership of reporting within a company can make a difference to its quality. Stakeholders generally agreed that 'buy-in' needed to be secured from the highest levels of the company. Some noted the difference between reporting that was driven by the communications team as against a more operational part of the business: the communications product could sound good but be hollow. Equally, it was noted that if reporting was forced from the corporate level it could lead to pointless numbers and data and lack ownership from middle management and at the local or site level.   Still others commented on the need for employee voice to be heard, such that both a top-down and a bottom-up approach were needed at the same time.

Business needs to be incentivized to provide human rights reporting. Suggestions made as to how to incentivize human rights reporting included: (i) ensuring reporting be considered a key performance indicator for the CEO of the company; (ii) branding reporting similarly to compliance with ISO or use of GRI, which attached a certain prestige to companies that did so; (iii) adding a regional element to the reporting / developing ASEAN standards, to create incentives across ASEAN to promote the best practices of companies operating within particular countries. One business participant suggested CEO support was critical to good reporting, ensuring it was taken seriously across the organization.

A good reporting framework could help bridge information gaps within companies. One participant noted that negative information often doesn't reach the top of companies, and felt that a reporting framework should help to bridge these gaps. Company experience with the GRI framework suggested that the first report was the most difficult and subsequent ones become easier as information gathering processes are put in place.

Critical issue #2: Materiality with a Human Rights Lens

Overview from RAFI project team on materiality with a human rights lens: *The UN Guiding Principles focus on risks to rights-holders, and the importance of taking*

into account the perspectives of those who may be directly affected by companies' actions. This approach must inform any discussion of materiality with regard to human rights reporting, albeit the concept of materiality is rooted in an investor-facing analysis. GRI broadens the definition, by noting that materiality includes those areas that reflect the company's significant economic, environmental and social impacts or substantively influence the assessments and decisions of stakeholders. At the same time, there may be other words and concepts ('salience', 'significance', 'importance') that have a place alongside materiality in this discussion.

To date, the project team has heard feedback from various stakeholders in relation to the issue of materiality. On the one hand, companies are concerned that they need to focus reporting on relevant parts of their business activities if it is not to become overwhelming. On the other hand, civil society organizations are concerned that companies may selectively focus on those parts of their business that it is easiest to discuss or where they can showcase successes, rather than focusing where the greatest risks to human rights exist.

During a workshop that Shift facilitated as part of the UN Working Group's Latin American and Caribbean regional consultation in Medellin, many stakeholders shared the view that RAFI should ensure companies report on areas of business operations with the greatest risk to human rights, and/or on the most salient risks to affected stakeholders.

A framework may need to be flexible when determining what constitutes material information. Various participants noted that material information would differ widely depending on a company's industry and context. It was suggested that extensive stakeholder consultation would be required – identifying and mapping the issues via stakeholder consultations to help companies ensure they were capturing the most material issues. This could be particularly true in environments with endemic corruption, where it was more likely that top management would not get accurate information about local operations. Various business participants noted the merits of systems that require assessments at site/country level of the salient issues and then aggregate these centrally to identify the lead issues for reporting.

One effective approach may be to require justification of reporting choices based on criteria. It was suggested that a company could be asked to explain why it has selected certain issues on which to report. Information could be narrowed by having the company: (i) identify the most high risk **operations** and focus on reporting on those; (ii) identify the highest risk **locations**, and within those identify human rights most at risk; or (iii) identify the human rights issues most at risk both in its **sector** and where it **works.** Some participants noted concerns with regard to the choice of reporting. It was pointed out that determining reporting based on high-risk locations may result in a negative

response from governments for having being singled-out as such. Some suggested that stakeholder inputs could be a valuable means to identify priority issues; one participant noted the need for clear criteria to avoid being swayed too much by the campaign focus any particular NGO.

Certain kinds of data may be of limited value, particularly when not placed in context. Concerns were raised from the private sector regarding the extent to which quantitative assessments (i.e. raw numbers) taken out of their local context could be misleading. Members of civil society also noted that some qualitative information could mislead, for example the statement that a union is present in a company, when in fact that union protects the interests of the employer and does not represent workers. Information on whether there is a collective bargaining agreement might be a better indicator.

Stories or examples may be helpful to meaningful reporting. One participant noted that stakeholders sometimes asked for a number but that the request was driven by a desire to understand something deeper that could better be addressed through more narrative explanation. It could be useful to explain processes for monitoring human rights performance, why certain issues were prioritized, what the company feels it is doing well and what it feels needs improvement. Another participant noted that information regarding Global Framework Agreements between companies and Global Union Federations, as well as the issues arising in the implementation of those agreements, could be valuable to reporting.

> ### *Critical issue #3: Balancing attention to forward-looking process with actual impacts*

> *Overview from RAFI project team on balancing attention to forward-looking process with actual impacts:*
>
> *The objective of the UN Guiding Principles is to drive positive human rights outcomes: that is, reduced impacts on individuals' human rights. To meet this objective, the second pillar of the Guiding Principles focuses on processes for assessing and addressing human rights risks, including processes for remediating actual impacts. A reporting framework that is based on the UN Guiding Principles would logically put weight on the effectiveness of such processes. At the same time, information on how actual impacts are handled can be a key indicator of effectiveness. Moreover, while companies may be constrained from disclosing some impacts, assurance processes can still review these as part of assessing the effectiveness of a company's processes.*
>
> *In feedback to the project team, many civil society actors have shared concerns that a focus on process may be used to avoid disclosure of actual impacts, which they believe should be a significant component of reporting. Companies have shared concerns that they have real limitations for reporting on impacts, including legal liability implications. Some investors have indicated that a forward-looking focus on risk may be more*

meaningful than a dominant focus on previous performance, which is not always the best indicator of future performance.

Reporting on impacts is important but processes for addressing them are also crucial. It was noted that safety culture in the extractive sector had led to rigorous reporting on safety incidents. This was important information but it was also reactive. Forward-looking information that explains measures taken to address impacts and prevent them from recurring was particularly important and more telling with regard to future performance. It was noted that awareness of actual impacts and improvement of processes to address future impacts were often part of a continuous cycle.

Examples or case stories could include both processes and outcomes. The example of a forestry operation in Cambodia was raised as an instance where a company was able to discuss processes of engagement with stakeholders, identification of risks, measures to address them, processes for addressing disputes, as well as what grievances were raised, how many were resolved, how many went to labor dispute resolution and how many to the courts. Reporting this mix of outcome, process and context could be more informative than just outcomes or just process. Another business participant noted that the most important focus for her organization was on changing culture so that people feel ready and able to report risks and problems internally, in order that they can be addressed. This required top management messaging, training, feedback mechanisms and other processes. It should be possible to include reporting on these kinds of measures.

Various types of stakeholder feedback could be valuable in a report. It was suggested that feedback from employee satisfaction surveys and from complaint systems could be useful content for a report. Moreover, it was proposed that stakeholders should be able to provide direct feedback on a report, whether or not it was assured. There was some discussion around the challenges associated with obtaining feedback in the Asian context, when managers were often used to receiving orders and implementing them (rather than questioning them).

There may be constraints to reporting on both outcomes and risks. One example was raised of a robust impact assessment process that could then not be published in full due to legal concerns – not just to protect the company, but to protect individuals named in the assessment and comments about corruption and police abuse that would be highly sensitive for the government. The tension between rigor of assessment and limitations on disclosure were recognized.

Reporting on the challenges is also important. One participant underlined that reporting should not be just about the successes. Reports that gloss over the challenges reduce confidence, as many readers know the realities. Even recognizing a problem and conveying that the company is talking with key organizations to address it was seen as

valuable. Another participant noted that examples of successes should not be excluded as they could be good models for others.

It may be beneficial for a reporting framework to be relatively simple.   There was an overall tendency in the discussion to focus on keeping a reporting framework simple, with several experts noting that the majority of companies in ASEAN were SMEs and would be less interested (and have less capacity) to meet cumbersome requirements.

Critical issue #4: Internal Audit/ Assurance

Overview from RAFI project team on internal audit/ assurance:

An assurance framework, to complement the reporting framework, would be designed to assure the content of the human rights report: is the information provided a fair representation of reality? This resonates with the UN Guiding Principles, which are interested not just in the fact of a process, but also in its effectiveness.

Feedback to the project team from stakeholders has emphasized the differences between financial audits and appropriate approaches to assuring human rights reports. Clearly a focus on quantitative data is inappropriate. Yet the financial arena also offers precedents for looking at internal controls for risk management. Many stakeholders have highlighted the failings of the traditional social audit paradigm in that it often provides a superficial, "tick box" approach that can easily be manipulated, and typically does not scrutinize management systems. Still other stakeholders have pointed out the need to learn from weaknesses in current sustainability assurance practices, which are seen to be of varying quality. These practices often focus on evaluating the accuracy of reported data, rather than factors such as the sufficiency of information or adequacy of any systems described. Finally, the project team has heard from many stakeholders about the need for any framework to set out clearly the necessary competences for assurance providers with regard to human rights, particular operating contexts and stakeholder consultation processes. This may suggest in some contexts a need to work collaboratively with other individuals or organizations who hold particular expertise.

Assurance may add particular value in certain contexts. Several participants noted that in environments were there were high levels of corruption and deficiencies in governance structures there may be a particular need for assurance of company reports if they were to be trusted. At the same time, there had to be confidence that corruption would not affect the assurance process.

Verification with stakeholders is essential. One practitioner highlighted that assurance in this field cannot be done only internally to a company, but requires interaction with

stakeholders. Others noted that it would be difficult to trust assurance that did not provide for some form of validation or confirmation with relevant third parties.

The level of aggregation of information in the report is important. It was noted that the level of aggregation of information would affect what was perceived as "material". One participant noted that more aggregated and abstract information may be harder to assure in a meaningful way.   Another suggested that if information was too disaggregated it may be hard to tell the difference between one unusual incident and a pattern of problems that related to a policy or process or corporate culture.   A concern was voiced that for auditors, providing "reasonable" assurance would be extremely risky and expose assurance providers to a high-level of risk themselves.

An understanding of the operating context is needed. Participants noted the need for an assurance provider to understand the surrounding context of the company's operations. One participant noted that assurance providers should look not only at a company's own operations but also whether it was contributing to an enabling or a hostile environment for human rights: for instance, where factory management retains a good relationship with trade union representatives but contributes through other actions to an environment in an industrial zone where trade unions are undermined and workers are exposed to threats.

Human rights skills are essential. The qualifications of assurance providers to provide human rights assurance were considered key to the credibility of the assurance process. One participant noted that in verification processes for one particular standard in the field of CSR it was clear that different providers had different views on what would constitute a human rights impact, which in turn led to varying conclusions.

Attention to SMEs' capacity will be necessary. Many participants noted that in the ASEAN context assurance would need to be tailored to SMEs. It was felt that a failure to make this possible would risk alienating a large portion of the business community. One question was whether there might be some "graduated" set of levels, as in the financial arena, from having a report compiled, to reviewed, to assured.   Others noted the importance of education for companies in understanding both the reporting and assurance processes.   Another underlined that all the hoops to be jumped through should drive towards improvement and therefore add value. One participant suggested it may be worth having a specific ASEAN template at the start that could be taken up by regulators, civil society and stock exchanges.

Additional recommendations

A number of other recommendations were made in the course of the discussions. These were to :
   a) Draft a glossary of terms for the frameworks, to enable outsiders to understand what key terms mean;

b) Consider the manner in which to ensure competency and capacity of auditors/assurance providers in this instance;
c) Ensure there is enough flexibility in the reporting framework to enable it to be tailored to specific industries and sectors;
d) Create incentives for businesses to be involved, rather than relying on the 'fear factor' associated with human rights violations;

Conclusion & Next Steps

Overall, participants concluded that the consultation had raised some important questions and there was a need to continue the discussions on RAFI. A key finding of the consultation was the importance of balancing the pursuit of a global framework against an understanding of local and region/country-specific context. Ensuring that the added value of human rights reporting was clearly articulated was also a key concern, with many experts suggesting that companies would only do this kind of reporting if they could see a specific benefit to themselves.

The RAFI project team is grateful to all who took part in the consultation and contributed their candid, constructive and expert views to the conversation. Following completion of the consultations in London, New York and Jakarta, the project team will reflect on the implications of these inputs for both the conduct and content of the project and will issue some tentative ideas with regard to its next steps in the early weeks of 2014, as a basis for further stakeholder feedback.

<u>Annex A</u>: Agenda for Expert Consultation

Consultation on the Human Rights Reporting and Assurance Frameworks Initiative (RAFI)
Full Day Convening of Expert Stakeholders in Jakarta

November 20, 2013

9:00 am   **Welcome from Human Rights Resource Centre, Mazars & Shift**
Agenda & Objectives
Opening briefing: where the project stands

9:30 – 10:45 am   **Participatory introductions & key questions**
Session attendees frame key opportunities and challenges for the Reporting & Assurance Frameworks Initiative

10:45 am   **Coffee break**

Following the coffee break, the remainder of the day will focus on critical issues identified by the project team in advance. Each session will include:

- Framing of key issue
- Facilitated discussion on the issue
- Emerging conclusions or next steps for the project

11:00 am   **Critical issue #1: The Project Proposition**
Project process and ownership of the final products
Relationships with and to other initiatives
Potential for adding value

12:00 pm   **Critical issue #2: Materiality with a Human Rights Lens**
Defining materiality in a human rights context
Setting boundaries and thresholds for reporting
Implications for the development of frameworks and indicators

1:00pm   **Break and Lunch**

1:45 pm   **Critical issue #3: Balancing attention to forward-looking process with actual impacts**
Relevance and limitations of risk-based focus

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Relevance and limitations of reporting actual impacts

2:45 pm   **Critical issue #4: Internal Audit/ Assurance**
Challenges for tailoring assurance to human rights
Lessons from fields of financial audit, sustainability assurance and social audit

3:45 pm   **Break**

4:00 pm   **Summary of critical issue discussions**
Review of emerging conclusions
Review of additional issues identified
Feedback/ input on next steps

5:30 pm   **Conclusion**

Annex B: Participant List

Organizational affiliations are listed for participant identification purposes only. Participants attended in their personal capacities and were not asked in any way to represent the views of the organizations for which they work.

Expert Participants
1. Kirsty Hoban, Metal Workers Federation
2. Kun Wardana, Uni-APRO
3. Jerry Bernas, ASEAN CSR network
4. Daniel Mitchell, AMCHAM-Cambodia
5. Mohd Shah Hashim, Food Manufacturing Group
6. Alexander C. Chandra, International Institute for Sustainable Development
7. Patricia Waagstein, University of Indonesia
8. Long Seh Lih, Loyar Burok
9. Librian Angraeni, Asia Pulp and Paper
10. Riza Pratama, Freeport Indonesia
11. Arian Ardie, Terrasys Energy
12. Louise Pessireron, Kaltim Prima Coal
13. Mulyadi Setiakusuma, Association of Chartered and Certified Accountants
14. Banita K. Sandhu, Maybank
15. Devina Raditya, Holcim
16. Hasto Kuncoro, APP
17. Mohamad Azizi Azmi, National Human Rights Commission ??
18. Marzuki Usman, Indonesia Investment Coordinating Board
19. Rafendi Djamin, ASEAN Intergovernmental Commission on Human Rights
20. Tun Musa bin Hitam, Sime Darby Foundation

Project Team
21. Faith Suzette Delos Reyes, Human Rights Resource Centre for ASEAN
22. Paula Estrella, Mazars
23. James Kallman, Mazars
24. Meggy Parengkuan, Mazars
25. Caroline Rees, Shift
26. Michelle Staggs Kelsall, Human Rights Resource Centre for ASEAN
27. Ati Suryadi, Human Rights Resource Centre for ASEAN
28. Anna Triponel, Shift