



**Comments on Shift and Mazar's discussion paper
“Developing Global Standards for the reporting and Assurance of
Company Alignment with the Guiding Principles on Business and
Human Rights”**

1 July 2013. The International Federation for Human Rights (FIDH), an international organization gathering 178 human rights organizations around the world, welcomes the opportunity to comment on the creation of a global standard for companies to assess and report on their human rights impact. Shift and Mazars' Discussion Paper advances that discussion by focusing on the need for establishing a credible framework by which companies can certify their compliance with human rights standards. Nevertheless, the plan as currently proposed raises several areas of concern, including: (1) the timing and UN Working Group on Business and Human Rights endorsement of the proposal; (2) the lack of an underlying legal framework; and (3) an overly narrow focus on process.

The Discussion Paper proposes a two-part process through which companies can certify their implementation of the UN Guiding Principles on Business and Human Rights. First, the company would prepare a Human Rights Statement describing its key human rights policies and processes and the extent to which they are aligned with the Guiding Principles. Next, an independent and competent third-party auditor would engage with the company and relevant stakeholders in order to issue an Assurance Statement verifying the company's Statement.

FIDH believes the proposal is premature. The scheme relies on due diligence standards that have yet to be elaborated and agreed upon. The requirements of the UN Guiding Principles on Business and Human Rights on due diligence are not yet sufficiently precisely defined, and as such their implementation cannot be effectively measured. The process for establishing due diligence standards should follow the process already established for legitimate standard setting: all relevant stakeholders, including governments, should be an integral part of the decision-making in regard to the standards and possible associated certification. We are concerned that the proposed plan will unilaterally set standards without such robust engagement. Furthermore, the plan's official endorsement by the UN Working Group gives considerable weight to a private initiative. The framework focuses exclusively on providing corporate guidance for the implementation of the Guiding Principles, giving no attention to the Principles' first and third pillars: the state duty to protect human rights and access to remedy. It is important that any comprehensive framework supported by the UN Working Group for implementing the Guiding Principles also take into account providing remedies to victims of abuses. Such a framework should also support the fulfillment of a state's duty to protect human rights, including the enactment and enforcement of relevant legislation by governments.

A second issue concerns the lack of an underlying legal framework to ensure the accuracy of both the company's Human Rights Statement and the auditor's Assurance. The Discussion Paper begins by noting that there is decreased confidence in human rights certifications because audits are often associated with "tick-box checks" or are based on information provided by the company. FIDH shares some of these concerns, but does not see how this assurance scheme would overcome the challenges of third party auditing in the field of human rights. Shift and Mazars propose to do so by applying the principles of financial reporting to human rights certifications. But the difference between the two is crucial: for both companies and auditing firms, vouching for an inaccurate financial report can result in civil and/or criminal liability and there are government agencies dedicated to uncovering such fraud. The absence of legal accountability for misstatements in the field of human rights leaves only reputation to motivate accuracy, the same flaw from which existing certifications all suffer. By contrast, the inclusion of human rights statement as a non-financial reporting requirement for companies in their annual reports would not be subject to the same legal assurance as financial reporting. Furthermore, the plan leaves no place for stakeholders to object to information contained in a company's final Human Rights Statement. Inaccurate claims regarding human rights would thus be much more difficult to counter and expose. FIDH believes any such certification scheme should involve increased transparency and full disclosure of companies' due diligence processes and human rights impacts throughout their value chain. FIDH supports mandatory non-financial reporting for businesses along with monitoring and enforcement measures to ensure full, accurate and credible disclosure, including the possibility for external stakeholders to challenge the information provided.

Finally, the Human Rights Statement and accompanying Assurance focuses on a company's process of assessing its human rights performance, rather than its actual impact. Such an approach problematically values procedures over results, and fails to measure the efficacy of a company's processes in a particular context; the credibility of an Assurance statement based solely on processes thus cannot be guaranteed. Given the complexity of corporate structures, a single Assurance statement given to a corporate group including a great number of subsidiaries, and linked to an even greater number of business partners might overlook some of its challenges, risks and impacts. Standards that are carefully tailored to particular issues and industries, such as those promulgated by ISO, have been more successful in achieving credible certification. By contrast, schemes that purport to certify an entire product or factory, or that set a single standard across industries, have proven difficult to credibly implement in practice. The scheme proposed by Shift and Mazars is even more ambitious in scale and scope : the proposed certification would set a single standard, without regard to industry.

For all these reasons, FIDH supports the view that the underlying principles for developing public, global standards for reporting and assuring companies' alignment with the UN Guiding Principles should thoroughly be debated before any drafting process is launched.