

Submission to Mazars and Shift

Concerning the project

“Developing Global Standards for the Reporting and Assurance of
Company Alignment with the UN Guiding Principles on Business and Human Rights”

July 2013

Background

The Institute for Human Rights and Business (IHRB) appreciates the opportunity to provide comments to Mazars and Shift on the May 2013 discussion paper¹ intended to encourage dialogue on a joint project by the two organisations to develop standards for human rights reporting and assurance for companies consistent with the UN Guiding Principles on Business and Human Rights (Guiding Principles). The comments made in this submission focus both on points raised in the discussion paper as well as a number of other issues not specifically addressed which nevertheless are of importance to international understanding and further development of the corporate responsibility to respect human rights.

1. General Comments – Process, Engagement and Legitimacy

The Mazars/Shift discussion paper clearly sets out the context for the project by stating that while the UN “Protect, Respect, and Remedy” Framework and Guiding Principles clarify that all companies have a responsibility to respect human rights throughout their business operations and detail how this responsibility should be implemented, there is not at present a “global and widely accepted process for companies to demonstrate whether their policies and processes are indeed aligned with the UN Guiding Principles and therefore capable of meeting their responsibility to respect human rights.”²

The project seeks to fill this gap by designing, through multi-stakeholder consultation, “a global and widely accepted process for companies to assure their stakeholders that they are meeting their responsibility to respect human rights in practice.”³ The discussion paper points out that “the proposed Reporting and Assurance Standards are intended to work together to enable companies to show the extent to which they have effectively implemented the requirements of the Guiding Principles within their business.”⁴

¹ Mazars/Shift Discussion paper available at:
http://shiftproject.org/sites/default/files/Developing%20Global%20Standards%20Discussion%20Paper%20-%20Final%202013%2005%2001_0.pdf

² Discussion paper, page 5.

³ Discussion paper, page 5.

⁴ Discussion paper, page 6.

As the UN Office of High Commissioner for Human Rights (OHCHR) has made clear, in order to ensure effective implementation of the Guiding Principles around the world:

“Further work will be needed to develop such operational guidance, which will vary depending on the sector, operating context and other factors. The United Nations Working Group on Business and Human Rights will play a central role in this regard.”⁵

The importance of the process and actors involved in developing the proposed Reporting and Assurance Standards is thus key. The discussion paper states that the project is “officially supported” by the UN Working Group on Business and Human Rights.⁶ The UN Working Group’s support for the initiative is to be welcomed. However, no specific details are provided in the discussion paper explaining how the Working Group will be involved as the project develops, or whether the intention is that the Working Group will officially endorse the final products, and if so how it will consult with other stakeholders as part of its role in the process. More information on UN expert and OHCHR roles in the project would be helpful.

Similarly, the choice to ground the in-person consultations for the project only in the ASEAN region raises questions concerning the process and legitimacy of the final products. A regional focus is understandable for the reasons given in the discussion paper as well as the resource and other challenges associated with standard setting initiatives of this kind. While the discussion paper notes the objective that the final products will be applicable and used in other regions, it does not provide more information on how the experiences and inputs from actors in other regions will be gathered and included.

The discussion paper rightly points out shortcomings in current social auditing regimes as well as lack of broad public confidence in information contained in corporate sustainability reports⁷ but does not specifically address how the proposed approach will overcome the same challenges. While noting that the proposed Reporting and Assurance Standards would “fit under the broad umbrella of nonfinancial reporting” and are “intended to complement existing and on-going initiatives in this field”⁸ no specific reference is made to established reporting initiatives that include human rights such as the Global Reporting Initiative⁹ or to new efforts such as the Integrated Reporting¹⁰ process or to how the Mazars/Shift project will seek to be informed by and engage with such initiatives. Clearer understanding of the links between the project and relevant ongoing reporting initiatives would be helpful.

Likewise, there is no discussion of the overall governance approach for the standard. This may be coming at a next iteration but it would be important to reassure stakeholders how such a standard would be administered, how assurers would be certified, and how the credibility and independence of the process would be maintained.

2. General Comments on the Approach

The approach outlined in the discussion paper appears to fundamentally be one of assurance relating to human rights preparedness. While such preparedness relating to policies and processes is necessary, as described in the discussion paper, it not only places the onus on

⁵ The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, OHCHR, 2012. Available at: <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>

⁶ Discussion paper, page 3.

⁷ Discussion paper, page 8.

⁸ Discussion paper, page 9.

⁹ Available at: www.globalreporting.org

¹⁰ Available at: www.theiirc.org

companies themselves to define their materiality and strategies for addressing potential negative impacts but could incorrectly also imply that outcomes and performance are not of equal or greater importance. As IHRB has noted previously¹¹, although the due diligence process set out in the Guiding Principles is of critical importance, the steps expected of all companies are essentially procedural in nature. In the view of IHRB, there remains a need for “effectiveness criteria” for corporate due diligence that would provide critical benchmarks for companies in this area as well as for those providing assurance.¹² Such criteria would go some way in ensuring that the due diligence an enterprise conducts is legitimate and effective in human rights terms – i.e. that the processes result in better human rights outcomes. Human rights due diligence is an important means to the end of actually reducing negative impacts on human rights but should not be confused with the importance of the outcomes themselves. Without this important clarity around criteria for effectiveness in human rights due diligence, which IHRB has suggested the UN Working Group should lead, the reporting and assurance standard risks setting in motion a process that results in widely disparate assurances – all of which claim to provide assurance around compliance with the Guiding Principles but which have widely different outcomes for human rights. Without some agreement on what “effective” due diligence means, there is a risk that the process unwittingly leads to a lowest common denominator.

To illustrate the point, consider the example of community concerns over corporate actions that have resulted in contaminated water supplies causing negative impacts on the environment and health of individuals. Community representatives would naturally call for corporate responses identifying what has gone wrong and what remedies will be provided, as well as to what company policies concerning waste disposal or pollution treatment were and will be put in place. In other words, the challenge for the project in developing Reporting and Assurance Standards is not only to focus on corporate policies and processes consistent with the due diligence steps set out in the Guiding Principles but also to ensure that in so doing, expectations of companies are not limited to policies and processes at the exclusion of responsibility for addressing specific human rights impacts.

3. Specific Comments Concerning the Proposed Reporting Standard

The Project Team requested feedback regarding the level of selectivity companies might enjoy within the content of their human rights statements. IHRB would strongly suggest that at a minimum companies should generally report on their global operations in their entirety, with more detailed reporting on their highest risk geographies, activities and businesses relationships. This more focused reporting logically follows from company identification of their most salient risks, but a macro-perspective of the entire business will reinforce the credibility of any report in assuring against exclusion from the report of geographies, activities or other aspects of the business that present the most significant human rights risks. At a minimum, the statement should identify what is included and what is excluded. In line with the idea that implementing the Guiding Principles is a journey, the statement should also identify when the excluded dimensions will be included in future reports. Without this clarification, stakeholders could easily be confused about the scope of the report, as the standard of “material misstatement” would apply only to what the company chooses to include in its statement, rather than the company’s operations as a whole.

¹¹ IHRB Submission to the UN Special Representative concerning the draft guiding principles for implementation of the UN “Protect, Respect, and Remedy Framework on Business and Human Rights, 25 January 2011, Available at: http://www.ihrb.org/pdf/2011_01_25_IHRB-Submission_on_Draft_Guiding_Principles.pdf

¹² IHRB Submission to the United Nations Working Group On Human Rights And Transnational Corporations And Other Business Enterprises Concerning Key Thematic Priorities For The Working Group, December 2011, Available at: http://www.ihrb.org/pdf/2011_12_08_IHRB-UNWG_Submission-FINAL.pdf

With respect to salient human rights, the draft refers to them as the “most at risk” and “typical” which is not necessarily the same thing. This demonstrates the importance of absolute clarity of concepts, definitions and explanations to avoid confusion in the development and application of the standard going forward. The discussion paper would benefit from clearer framing of how it is treating severe human rights risks as this important issue seems to be given a secondary focus. A review of how severe impacts are treated throughout the text would be of value to the process going forward, especially where companies may have a risk of severe impacts on vulnerable individuals or groups. Similarly, a review of how prevention is treated in the text would be beneficial as it should be prioritised over mitigation but currently does not appear to be given much attention in the discussion paper.

IHRB also recommends that the standard refer to impacts on workers in business relationships and to business relationships more generally rather than just to supply chains, in line with the Guiding Principles concept.

4. Specific Comments Concerning the Assurance Standard

The discussion paper contains a useful overview of the complex issues involved in developing an effective Assurance Standard. IHRB will limit its comments in this submission to a select number of challenges in this area.

The discussion paper repeatedly refers to an Assurance Standard that will assess the “existence, suitability and effectiveness” of a company’s human rights risk management system. The *existence* of systems aligned to the Guiding Principles’ standard risk management system structure is one thing, but assessing their *effectiveness and suitability* is another point of analysis and, as above, is highly dependent on the outcome of the company’s interventions, not just the existence of policies and processes alone. Unlike scientific and engineering processes, where measurable indicators are available, current human rights frameworks do not have similar processes, and there is no luxury of universally agreed measurable standards. As a result, the discussion paper refers to terms in a manner that assumes they have a precise legal meaning. Examples in the paper include terms such as “existence, suitability and effectiveness of criteria,” a phrase which appears frequently, without clear definition, and which leaves assurers a very wide margin of judgement.

Similarly, Section 3.5 limits the review to the existence of “quality” processes. Yet without juxtaposing processes against intended outcomes a holistic view of whether such processes and systems are indeed effective and suitable is difficult to achieve. As such, IHRB would strongly encourage the Project Team to incorporate human rights outcomes as an overt and integral part of any human rights statement or assurance.

IHRB recognises the challenges and benefits for business in engaging with stakeholders and acknowledges that this may be difficult to achieve consistently each year around an assurance process. However, at a minimum, there should be some step built into the process of providing an opening for stakeholders to provide comments on reports that are then an input into the assurance provider’s review the next year. Companies may choose to go above this in engaging with workers and other stakeholders as part of the process, but this could be a minimum.

The discussion paper rightly stresses that assurance providers are “crucial to the credibility of the Assurance and the trust that stakeholders must have in the Statement as an accurate statement of the company’s journey towards respecting human rights.”¹³ While agreeing with the

¹³ Discussion paper, page 17.

conclusion that assurance provider teams with different skills will be needed depending on company size, operating contexts and business relationships, the discussion paper lacks details with respect to how such individuals and organisations will be trained or certified as being credible and independent. In particular, reference to assurance providers having only to be “familiar” with human rights raises concerns. Human rights are a complex topic; it is unclear how someone only familiar with human rights would be able to make the kind of important judgments set out in the discussion paper. The risk is a situation in which a wide and potentially conflicting range of understandings and approaches to human rights and Assurance unfolds that may unintentionally result in a lowering of standards and not improvement in human rights outcomes. The risk is a new industry of assurers, similar to the auditing industry that lacks a long-term vision or evaluation framework to demonstrate that the processes it has put in place have had an appreciable impact on human rights outcomes over time. IHRB recommends that as the project develops, specific attention be directed to issues relating to certification of Assurance providers based on consultation with a range of stakeholders and lessons learned from other areas.

5. Concluding Comments

The initiative by Mazars and Shift to develop global standards for the reporting and assurance of company alignment with the UN Guiding Principles on Business and Human Rights is an ambitious undertaking with the potential to move implementation of the Guiding Principles forward significantly. However, IHRB believes that while standards to assess policies and processes are needed, they should not be developed in isolation from equally important efforts to assess human rights outcomes over time. Enabling “the company and its stakeholders to regularly track progress made on implementation of the Guiding Principles”¹⁴ will not necessarily reflect a full picture of human rights outcomes without thoughtfully incorporating indicators of harms avoided, risks reduced and impacts remediated.

To assert “the Statement and Assurance report would provide transparency and credibility to the work that many companies are undertaking to implement the Guiding Principles and *thereby reduce the risk of human rights impact*”¹⁵ (emphasis added) is an overstatement of the flow of logic. If carefully crafted, a Reporting and Assurance Standard could undoubtedly contribute to the credibility and transparency of a company’s efforts, but that does not necessarily extend to the eventuality of reduced impact. In IHRB’s view, outcomes must be an overt and integral part of the report and assessment; otherwise the result of prevention and mitigation actions is ignored. Indeed the “showing” part of “knowing and showing” respect for human rights is anchored to successful outcomes from interventions against human rights risks and actual impacts.

IHRB once again thanks Mazars and Shift for this initiative and the opportunity to comment on the discussion paper. We look forward to learning more about the project as it develops and to being involved in further consultations over the coming months.

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¹⁴ Discussion paper, page 7.

¹⁵ Discussion paper, page 8.