

Comments on the Discussion Paper:

(Please note that the following numbers correlate with those in the paper.)

- 2.1
 - Ideally, companies should not be able to limit their statement to certain aspects of their operations simply because they wish to avoid highlighting potential deficiencies in other areas.

However, to encourage companies to sign up to the assurance mechanism, a progressive approach to assessing the degree of success a company has had in implementing the Guiding Principles, may be appropriate.

In practice, this might mean that in the first year efforts (and thereby the subject of the statement and audit) focus on one aspect of operations and in the next another and so on. The extent to which one division is chosen over another, or only 20% of operations are covered rather than 50%, would depend on, for example, the severity and risk of adverse impacts, as well as available funding, which might be set externally as a % of revenue.

Inspiration for such an approach could be drawn from the principles underlying Article 2 of the International Covenant on Economic, Social and Cultural Rights, which states:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

Applying this sentiment to business, companies subscribed to the assurance mechanism could be expected to take steps, according to available resources and the degree of risk ascribed to each aspect of its operations, to achieve progressively the full realisation of the Guiding Principles as evidenced by an annual statement on the same, verified by an Assurance Provider.

As well as undertaking the annual human rights audit, the Assurance Provider could advise on remedying deficiencies identified in its audit and assisting with developing the remit for the following year’s statement, as well as the strategy for realising the companies objectives in this regard.

- 2.2
 - Salient human rights risks and related policies and processes should be included. Though there may be some cross over with potential ‘severe’ impacts discussed in paragraph 2.3.

- 2.3
 - Whilst companies are not obliged under the Guiding Principles to disclose information that would pose a risk to stakeholders, employees or commercial confidentiality, where there has been an actual adverse impact in these circumstances, there should be a mechanism by which the Assurance Provider can assess the adequacy of companies' responses. The Assurance Provider might then mention in its assurance report whether the responses were adequate, without giving the relevant detail that might compromise the safety of a stakeholder or employee, or confidentiality.

- 3.1
 - Per capita income and minimum wage are other factors that might be relevant to 'location' as a criterion.

- 3.3
 - Input from interested and independent third parties such as NGOs might prove a useful objective counterbalance to the potentially subjective information from companies and stakeholders. They will usually have human rights as their foremost concern too.

- 3.4
 - In addition to complying with the law and internal ethics policies, there might also be a mechanism by which any such activity, be it criminal or simply of grave concern, can be addressed immediately by the company with the assistance of the Assurance Provider.

- 3.5
 - Putting aside the obvious that to respect human rights is a moral obligation, it is necessary to consider the financial incentives to companies of compliance and how this should be played out by the assurance mechanism.

With the development of social media and thereby a greater awareness amongst individuals both of finance and ethics in a business context, it is likely that there will be an exponential increase in individuals investing in companies, whether through financial institutions or directly, that respect human rights. One only need look at some of the most successful campaigning charities in the world today to observe the amount of money being invested in a better world. So add to that the opportunity for an individual to make a return at the same time as supporting an ethical enterprise and the corollary is clear.

This assurance mechanism provides the potential for companies to demonstrate their commitment to human rights. However, whilst the

standard of 'reasonable assurance' backed by an audit report is adequate evidence to do so, it could go further.

Unlike large-scale investors, such individuals described above will likely be smaller scale, but cumulatively significant. Whereas large scale investors would review the entire of a financial statement before investing, individuals may be more satisfied with snapshots. As such, the assurance mechanism could also offer a more nuanced grading system than simply 'reasonable assurance' or not. It could, in addition to reasonable assurance, give a grade to companies from say 1 to 5 or 'Excellent' to 'Very Bad', to indicate companies' human rights performance.

Assurance Providers would be well placed to give this in light of the qualitative evidence they have reviewed set against their knowledge of the Guiding Principles. Or grading criteria could be developed.

This would allow investors to quickly ascertain companies' attitudes without having to go over the full assurance report for detail. The assurance report will be more important for those seeking in depth analysis of a company, or for the company itself to assist it in developing its internal systems and improving its record.

- 3.6

- Given the nature of the assurance sought, the notion of 'teams' seems highly appropriate. They can be tailored to the audit at hand according to type of business, size and locality and might consist of linguists, country / industry specific experts and compliance and human rights specialists.

There could be established a body that certifies that each 'team', put together for a specific audit, is adequate for the task. Or, alternatively, companies could be certified as having the requisite personnel and depth of expertise to put together adequate teams and undertake such audits.

- Some kind of certification is very important. Reports by qualified people garner higher regard and trust.
- The entity undertaking the human rights compliance audit must be independent i.e. not connected to the company being audited in any way. If undertaken by a firm that is also carrying out another audit on the same company, sufficient safeguards should be in place to protect against any potential conflict of interest. The conflict might be, for example, the concern of losing a lucrative financial audit as a result of highlighting significant shortcomings in the same company's human rights due diligence / compliance.