

**PROJECT TO DEVELOP PUBLIC, GLOBAL STANDARDS FOR  
THE REPORTING AND ASSURANCE OF COMPANY  
ALIGNMENT WITH THE UN GUIDING PRINCIPLES ON  
BUSINESS AND HUMAN RIGHTS**

**EVOLVING SUMMARY OF POINTS RAISED, WITH CLARIFICATIONS,  
RESPONSES AND EMERGING PRIORITIES FOR CONSULTATION  
(AS AT 29 JULY 2013)**

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# EVOLVING SUMMARY OF POINTS RAISED, WITH CLARIFICATIONS, RESPONSES AND PRIORITIES FOR FURTHER DISCUSSION

## A. INTRODUCTION

In March 2013, Mazars and Shift, in liaison with the Human Rights Resource Centre for ASEAN, announced a new project to develop public, global standards for reporting and assuring company alignment with the UN Guiding Principles on Business and Human Rights.<sup>1</sup> On 1 May, the project team launched a Discussion Paper that aimed to set out the background to the project and identify some key issues and questions with regard to each proposed standard.<sup>2</sup>

The project team is grateful for all the comments received to date on its Discussion Paper. Over thirty sets of comments have been received, from individuals, organisations, and associations that collectively represent many thousands of members. Wherever those who submit comments agree to have them shared publicly, they are posted on the Business and Human Rights Resource Centre website<sup>3</sup> and the website of the Human Rights Resource Centre for ASEAN.<sup>4</sup> Where comments are submitted privately, every effort will be made to bring the issues raised into the public debate, without attribution. The period for reactions to the Discussion Paper has been extended to 1 September to enable further inputs from stakeholders.

This document seeks to do four things with regard to comments submitted so far:

1. offer a number of clarifications about the project in general;
2. summarize themes arising across the comments received;
3. provide preliminary responses from the project team to some of the substantive issues raised;
4. highlight issues for on-going discussion and debate as part of the project's consultation process.

Following the completion of the extended consultation period on 1 September, the project team will post an updated version of this document to reflect any additional issues arising from submissions.

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<sup>1</sup> Human Rights Resource Centre, Announcing the collaboration between MAZARS and SHIFT on developing global human rights auditing standards, available at <http://hrrca.org/content/announcing-collaboration-between-mazars-and-shift-developing-global-human-rights-auditing-st>.

<sup>2</sup> Developing Global Standards for the Reporting and Assurance of Company Alignment with the UN Guiding Principles on Business and Human Rights: A Discussion Paper, available at <http://business-humanrights.org/media/documents/developing-global-standards-discussion-paper.pdf>

<sup>3</sup> <http://www.business-humanrights.org/Documents/ShiftMazarsDiscussionPaper>.

<sup>4</sup> <http://hrrca.org/business-and-human-rights>.

## **B. POINTS OF CLARIFICATION**

This section sets out a number of points of clarification in response to submissions received and questions raised regarding the project.

### **1. Oversight of the project**

The project team consists of Shift, Mazars and the Human Rights Resource Centre for ASEAN. In parallel with the development of the Discussion Paper, the project team has been establishing an Eminent Persons Group (EPG) to oversee the project. The EPG consists of individuals from a broad range of stakeholder backgrounds, globally and in ASEAN. It will provide strategic oversight of the project's process and substance and advice on its overall direction. The group will meet every six months and be engaged by email and phone between meetings.

The EPG is chaired by Marzuki Darusman, Executive Director of the Human Rights Resource Centre for ASEAN (also UN Special Rapporteur on human rights in North Korea and former Attorney-General of Indonesia). The EPG currently comprises 11 members. A copy of the list of current EPG members is attached to this document as Annex A. However, the EPG is still in the process of being constituted to ensure the necessary breadth of representation. In particular, the project team is currently seeking additional representation from the investor community and civil society.

### **2. The nature of the proposed standards**

The project aims to develop public, global standards for how companies can report on their implementation of the UN Guiding Principles, and also provides guidance to assurance providers for how to assure such reports.

The proposed standards would be 'public' in that they would be non-proprietary, publicly available, and open to all companies and assurance providers to use in their work. They are intended to be global in that they should be relevant to, and viable for, companies and assurance providers in any region. It is also envisaged that they would be 'owned' and overseen by one or more independent global standards bodies, once completed (see point B.5).

### **3. Binding or non-binding status of the proposed standards**

This project does not propose to – and has no capacity or mandate to – produce standards that are binding in their own right.

The UN Guiding Principles, which were unanimously endorsed by the UN Human Rights Council in June 2011, set the minimum expectations of all companies in all situations and provide the foundation for this project. They do not state that all companies should report formally on their human rights performance, but they do highlight the need for formal reporting by those “whose operations or operating contexts pose risks of severe human rights impacts”. This provision may provide one reason for companies to report on their human rights performance. There may also

be other reasons, including requirements of regulatory or other official bodies, or the independent choice of companies to do so.

For example, the project recognizes that in a growing number of jurisdictions there are existing or emerging requirements – from regulators or stock exchanges – for certain types of company to report on their ‘non-financial’ performance, including human rights. In addition, there are increasing calls from investors and other stakeholders for more transparency in this regard. Many of these demands or requests reference the UN Guiding Principles as a critical framework for reporting.

As companies respond to such requirements and requests, this project aims to help answer the inevitable question: ‘what would meaningful and viable reporting that is in line with the UN Guiding Principles look like?’ And as more assurance providers begin to assure such reports, the project aims to provide clarity on what meaningful and viable assurance should entail.

#### **4. Use of the proposed standards**

It is envisaged that the standards that result from this project may be used in a variety of ways. Some companies may use the reporting standard to issue stand-alone human rights reports, while others may use it to formalize their reporting on human rights in annual or sustainability disclosure. Some companies’ internal auditors are beginning to audit how the company meets its commitment to respect human rights and may use the assurance standard to guide their work; and of course some companies may seek external assurance. In addition, some investors, civil society organizations and other stakeholders may use the standards to review companies’ human rights reporting and gain greater clarity on how companies react to certain human rights challenges. The project team recognizes the need for consultation on the ways in which the standards can or should be used.

#### **5. Governance of the proposed standards**

Once the standards are completed, it is envisaged that they should be ‘owned’ and overseen by one or more independent global standards bodies – whether existing bodies or new bodies established for this purpose. Such bodies would have responsibility for providing appropriate governance and determining any future evolution in the standards to reflect learning from their application.

Options for future governance of the standards will be included in the project’s consultation processes.

#### **6. Status of the Discussion Paper**

The project team issued the Discussion Paper in May 2013 as a starting point to begin a discussion about the rationale and underlying premises for this project. The paper does not attempt to cover every issue the project will need to address; rather, it aims to raise a number of particular challenges in undertaking such a project, suggest

possible approaches, and request stakeholder engagement to inform its forward direction.

The Discussion Paper is not a draft of the proposed standards. Drafting of the standards will not begin until the project as a whole has been further discussed with stakeholders and processes for on-going consultation established.

## **C. ISSUES RAISED REGARDING THE PROJECT IN GENERAL**

The following section focuses on issues raised regarding the project in general. It does not attempt to capture every comment made to date, but to reflect those themes that were repeated by more than one commentator. Over time, more issues will be added to this section, as they arise.

### **1. The timeline for the project, including these first stages, is too short/too rushed**

The project team is keenly aware of the need for full and broad engagement with all stakeholder groups in the development of this project and appreciates that the timeline indicated previously was ambitious.

The period for consultation on the basic concept for the project (as set out in the Discussion Paper) has been extended to 1 September. The timeline for the remainder of the project will be revised and will ultimately be driven by the need for an inclusive consultation process that can help build a product that carries broad stakeholder support.

The project team is continuing a range of bilateral and group discussions aimed at ensuring the most adequate engagement process as the project moves forward. We welcome all suggestions in this regard.

### **2. The process needs to be driven by broad and meaningful engagement with stakeholder groups**

The project team is committed to broad and meaningful engagement throughout this project with the full range of stakeholder groups. It recognizes that the discussion paper placed emphasis on the engagement process in the ASEAN region. It believes that there is considerable value in holding regular and focused consultations within ASEAN, a region from which the project has a great deal to learn.

The team also recognizes that the Discussion Paper did not place enough emphasis on the need for global consultations, which are crucial for these standards to benefit from the widest expertise possible and to be seen as relevant and useful in all regions. We are developing a plan for broad and inclusive engagement at the global level, in addition to specific consultations in other regions.

The project team is aware of the many challenges for this project, a good number of which have been reflected in the submissions received. The team makes no claim to having the answers to all these challenges and adopts a consultative approach towards finding them. We will continue to engage in bilateral outreach, facilitate collective discussions, share views received, disseminate reports of consultations, and continually seek inputs through on-line and other means. When the drafting process begins, the project team will develop incremental and iterative drafts based on on-going contributions, in an effort to advance towards standards that can carry broad support.

### **3. The UN Guiding Principles are an appropriate/inappropriate basis for reporting and assurance standards**

Some submissions question whether the UN Guiding Principles are adequate as a basis for reporting and assurance standards given their level of generality and lack of detailed definitions of concepts such as human rights due diligence. Others take the view that if standards are to be developed for reporting they should not go beyond the UN Guiding Principles, which are widely accepted and carry international authority.

The project team confirms that it does not intend to exceed, rewrite, expand or dilute the UN Guiding Principles in this project. Rather, it will take them as the foundation for the proposed standards. It will be important for consultations to consider how to evidence effectively, through a reporting and assurance process, a company's implementation of the policies and processes described in the Guiding Principles. This discussion will need also to take account of any variations in the types of evidence that would be relevant and meaningful in different sectors or situations.

### **4. The project needs to take account of/dovetail with existing initiatives in the field**

Many submissions point to the need for this project to take account of, and where possible dovetail with, existing initiatives, notably in the field of non-financial and integrated reporting.

It is clear that the proposed standards will be less useful and less used if they are seen as simply adding burden to existing reporting demands, or requiring parallel systems to those already in place.

The project team is engaging in discussions with leading reporting organizations and intends for the standards developed to be complementary with these other initiatives. We are also pleased to have the Chair of the International Integrated Reporting Council on the project's Eminent Persons Group (see point B.1 above),

Some submissions note that there are issue-specific or sector-specific initiatives that have more extensive or detailed reporting requirements than those established in the

UN Guiding Principles, and which they would not wish to see diluted.<sup>5</sup> This project takes the UN Guiding Principles as its basis, since they constitute the authoritative global reference point for all companies in all situations. It will nevertheless be important for consultations to examine the extent to which the learning from more narrowly-focused initiatives can add value to the public, global standards proposed under this project. The project team will seek to engage with these initiatives directly, and looks forward to including this question in the general consultations.

## **D. ISSUES RAISED IN RELATION TO THE REPORTING STANDARD**

The following section focuses on issues raised in relation to the proposed reporting standard. It does not attempt to capture every comment made to date, but to reflect those themes that were repeated by more than one commentator. Over time, more issues will be added to this section, as they arise.

### **1. The name of the Human Rights Statement/Report is not clear**

A couple of submissions reflect that the use of the term 'Human Rights Statement' in the discussion paper is confusing, leading some to equate it with a company's human rights policy (or 'statement of policy' in the terms of the Guiding Principles).

The term 'Human Rights Statement' was initially chosen in order to emphasize that companies can include this type of disclosure in an annual report, in conjunction with its financial statement. However, it is clear that this term is leading to confusion, and therefore the project team proposes to replace this it with 'Human Rights Report.'

### **2. The independent or integrated status of the Human Rights Report is not clear**

Some submissions raise questions about whether the project envisages a company issuing a self-standing report on its human rights performance, or whether it could or should be part of a broader sustainability or annual report.

The Discussion Paper notes that a Human Rights Report could be self-standing, part of a broader Sustainability Report or part of a company's Annual Report, and that it could contribute to, and become part of, a company's integrated report. Many, but not all, submissions highlight a preference that this not be a stand-alone report. The project team proposes that this issue be taken up in consultations.

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<sup>5</sup> For example, the principles, guidelines and framework produced by the Global Network Initiative to protect and advance freedom of expression and privacy in the ICT sector (available online at: [www.globalnetworkinitiative.org](http://www.globalnetworkinitiative.org)) or additionally, the OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (available online at: [www.oecd.org/daf/inv/mne/GuidanceEdition2.pdf](http://www.oecd.org/daf/inv/mne/GuidanceEdition2.pdf)).



### **3. The scope of the reporting standard should include all parts of a company's operations/allow more focused reporting on certain areas of a business.**

Many submissions raise concerns about companies choosing to report on parts of the business where they have successes, while ignoring those where they have more challenges. At the same time, other comments underline legal and resource challenges in trying to report across an entire corporation, including subsidiaries. Some suggest that a reporting focus on certain areas of the business may be essential in terms of feasibility, but could be acceptable if based on clear criteria.

It is clear that this project will need to find the right balance between ensuring that reporting is meaningful for readers (not least, providing a fair and representative picture of real human rights performance) and viable for companies. The project team proposes that this should be a key area for further consultations.

### **4. The reporting standard should avoid (a) companies 'cherry-picking' what they report; (b) inflexible assumptions about what is relevant for different companies to report.**

Some submissions highlight the need for the reporting standards to avoid inflexible and false assumptions about what it is most important for companies in different sectors to report. The Discussion Paper notes that one of the issues the project aims to address is the tendency for many company reports to showcase social investment or philanthropic projects. While some submissions note that many companies already go well beyond such reporting, others highlight that regulators have increasingly expressed dissatisfaction with the non-financial information disclosed in annual reports.

It is clear that the project will need to grapple with the question of how reporting standards can ensure a focus on the most relevant and important information regarding a company's implementation of the UN Guiding Principles, without ignoring important differences between sectors, companies and contexts (see also point D.6 below).

### **5. A Human Rights Report should not include information on philanthropic or social investment projects**

The Discussion Paper suggested that a company may wish to include two types of additional information in a Human Rights Report, beyond that which is required. First, it may wish to include information that provides further public evidence of its efforts to meet its responsibility to respect human rights. Second, it may wish to include information on its philanthropic or social investment projects that are not related to the mitigation of human rights risks or impacts.

The clear view from submissions received is that a Human Rights Report should be focused and not include information on projects that are unrelated to the management and mitigation of human rights risks or impacts, or community

engagement outcomes. The concern is that this would dilute the report's content, cause confusion and make it less useful. The project team is mindful of this view and will ensure that the project addresses it.

#### **6. The reporting standard should include reporting on a company's salient human rights risks, appropriately defined**

Many submissions agree that it will be important for a Human Rights Report to identify those human rights risks that the company has assessed as 'salient'. ('Salient human rights risks' indicates those human rights that stand out as being most at risk in relation to the company's operations, with the focus on the risk to individuals). Some commentators note a need for the reporting standard to define, or provide criteria for, 'salience' in order to avoid arbitrary judgments. This will be an important issue for the project to consider in the context of consultations.

#### **7. It is unclear what place the concept of materiality should have in the reporting standard**

A few submissions raise the concept of 'materiality' in relation to the reporting standard. This is in many regards reflected in the concept of 'salient risks', whereby those human rights most at risk from the company's operations are treated as material for reporting purposes. Some submissions indicate that any decision to limit reporting to certain parts of a business might be based on 'materiality' understood as those parts of the business with the greatest human rights risks. A recurring concern is that these concepts should be underpinned by criteria or further explanation to avoid arbitrary judgments.

The use of the term 'materiality' in the context of the reporting standard, its definition and usage will be an important issue for consultations.

#### **8. Reporting on actual impacts and how they are addressed should have a greater focus/have a limited place in the reporting standard**

Most submissions address the issue of the balance between reporting on impacts and reporting on policies and processes. The Discussion Paper proposes that, based on the Guiding Principles, the reporting standard would focus on the reporting of a company's policies and processes for addressing potential negative human rights impacts (i.e., human rights risks), while including also a need to report on its remediation processes for actual impacts. It suggests that companies *may* also report on how specific impacts are addressed.

Many commentators have felt strongly that reporting on actual impacts and how they are addressed should be a necessary part of a reporting standard – some suggesting that reports should offer a full account of impacts, others that it might be more limited. One concern is that without this specific information, reports may ignore the outcomes of a company's policies and processes, and therefore be too generic and meaningless. At the same time, a number of submissions indicate practical and legal

limitations on the extent to which actual impacts can or should be reported by companies.

The Project Team included this issue in the Discussion Paper in recognition that it would be one of the toughest issues for developing standards that can be both meaningful and viable. This will be a central issue for continuing consultation, fully acknowledging the arguments on all sides.

## **E. ISSUES RAISED IN RELATION TO THE ASSURANCE STANDARD**

The following section focuses on issues raised regarding the project in general. It does not attempt to capture every comment made to date, but to reflect those themes that were repeated by more than one commentator. Over time, more issues will be added to this section, as they arise.

### **1. Parallels with the assurance of financial reporting and sustainability reporting should be handled with care**

A number of submissions take exception to the statement in the Discussion Paper that “[t]he assurance review would be analogous to a financial auditor’s assurance with respect to the effectiveness of the internal control systems that underlie a company’s financial reporting.” Many commentators underline the very different natures of financial and non-financial reporting, with the latter being far more qualitative and therefore requiring different and additional methods for the gathering and analysis of information. A number of submissions point to the closer analogy in this regard with other areas of sustainability assurance. Some express a concern that sustainability assurance is too variable in quality and see an opportunity for this project to address some of those concerns. One submission suggested that assurance in a field such as human rights would be too subjective and uncertain to be viable at all.

The Discussion Paper used the analogy with financial auditing as a means to distinguish between auditing of financial accounts and auditing of the internal controls (i.e. key processes) that should ensure financial risks are appropriately managed. Accordingly, the Discussion Paper proposes that the human rights assurance process focus on the company’s internal controls for managing human rights risks.

The project team recognizes the limitations of this analogy and the very different nature of much of the data entailed in assuring human rights or other non-financial performance. It is clear that the ISAE3000 and AA1000AS auditing/assurance standards are important reference points for this project.

The project team also recognises the challenge of providing assurance where data is often necessarily qualitative and needs to be sought from, or checked with, many individuals outside the company itself. It is proposed that this set of issues be a subject for further discussion through the consultation process.

## **2. It is unclear how the assurance process would equate with or differ from social audits (factory/farm labour rights audits)**

Some submissions raised parallels with ‘social audits’ at a factory or farm, often conducted by, or on behalf of, a buying company. These audits usually take one or two days, at most a few days, and are limited in the extent to which they are able to look at policies, processes and systems, let alone seek evidence of their effectiveness in practice.

The Discussion Paper envisages an assurance process focused on assuring whether a company’s report on its alignment with the UN Guiding Principles is a fair representation of its progress on the journey of implementation, in accordance with the reporting standard. The proposed assurance process would focus on internal controls and risk management processes and their effectiveness in achieving respect for human rights in practice.

## **3. It is unclear how the assurance process would equate with or differ from certification processes**

A number of submissions refer to ‘certification’ with regard to the assurance process. The project does not envisage that the assurance process itself would lead to a ‘certification’. It envisages assuring a company’s report on its alignment with the UN Guiding Principles. The assurance process would therefore not look at whether the company has perfectly implemented the Guiding Principles, but whether its public report is a fair representation of where it stands on its journey towards implementation.

The project does not propose certification of assurance providers, but a standard for their conduct in providing assurance in this field. This might then be used by a standards body to oversee the practice of assurance and/or accredit assurance providers. It would likely also mean that professional firms that provide assurance in this field have to submit for review their expertise and methodology to their local regulator. All these potential developments can be further discussed in consultations. Related points on the competencies of assurance providers are addressed below in point E.5.

## **4. The assurance standard should/should not be limited to providing ‘reasonable assurance’ as against ‘limited assurance’**

The Discussion Paper proposed that the assurance standard should require ‘reasonable assurance’ of a company’s report – a higher standard of assurance than the ‘limited assurance’ that is typical in current sustainability reporting.

While some submissions have supported this approach, many have raised concerns given the qualitative and somewhat subjective nature of relevant data for assuring human rights performance. A number of submissions have commented that human rights assurance at a level of ‘reasonable assurance’ would be difficult, if not

impossible, given the level of certainty an assurance provider would be required to reach. One submission has suggested a new, tailored level of assurance might be defined for this field to fit the needs.

The project team recognizes that this is a very complex issue in practice and that while reasonable assurance may be preferable in principle, it may not be – or not always be – workable in practice. This is one of many areas where piloting of the envisaged standards at a later stage in the project will provide important learning. In the meantime, it is proposed that this be an issue for further consultation to understand fully the opportunities and limitations.

#### **5. The competence, independence and professionalism of assurance providers will be essential to meaningful assurance in this field**

Almost all submissions raise the issue of the competence, independence and/or professionalism of assurance providers. Some raise concerns that the field of sustainability assurance shows too much variability in standards of practice, and see an opportunity for this project to reduce that. Many underline the importance of thorough expertise in the relevant sector, context and human rights. A number of comments highlight that the human rights focus will require assurance providers to enhance their knowledge and skills, and/or to work with others who have specific expertise.

The Discussion Paper echoes many of these challenges. It raises both the issue of general professional competence regarding the assurance process and specific competence in the field of human rights, as well as the sector and jurisdiction(s) involved. It is clear that the assurance standard will need to address these questions in detail to meet the concerns raised. The related question of certification of assurance providers is addressed under point E.3 above.

#### **6. Materiality**

A few submissions address the various types of materiality raised in the Discussion Paper in relation to the proposed assurance standard: Scoping Materiality, Material Weakness and Material Omission or Misstatement. A number of questions and suggestions are made in this regard. The project team will collate these and other comments on materiality in the assurance process as they are submitted, for further consultation.

#### **7. Evidence for assurance must include evidence from external third parties, including affected stakeholders**

A number of submissions welcome, or echo, the emphasis placed in the Discussion Paper on the need for any assurance provider not to rely on company documents and internal interviews alone, but to triangulate information with third parties, including affected stakeholders, to understand their perspective and identify gaps. Some commentators suggest that the standard should make clear the extent of external engagement needed and how it should be planned and conducted.

The Project Team recognizes the need to build more clarity in this regard through the consultation process.

## **F. CONCLUSION**

This document has sought to summarize some of the key themes emerging from comments on the Discussion Paper, provide some clarifications and initial responses, and highlight key areas for on-going discussion. It is not an exhaustive list of all comments received, in particular of those many comments that were in agreement with the content of the Discussion Paper.

As further comments are submitted that raise additional issues, the document will be updated accordingly and posted on the website of the Human Rights Resource Centre for ASEAN at: <http://hrrca.org/business-and-human-rights>, and the Business and Human Rights Resource Centre at: <http://www.business-humanrights.org>. Insofar as stakeholders have comments specific to this document, these are also welcome.

## ANNEX A

### The Global Reporting and Assurance Standards Project Eminent Persons Group

1	<b>Marzuki Darusman</b> Executive Director, Human Rights Resource Centre for ASEAN, Special Rapporteur on the situation in North Korea
2	<b>John Ruggie</b> Chair of Shift's Board and former Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises
3	<b>Makarim Wibisono</b> Executive Director of the ASEAN Foundation
4	<b>Thomas Thomas</b> Chief Executive Officer of the ASEAN CSR Network
5	<b>Helen Brand</b> Chief Executive Officer of the Association of Chartered Certified Accountants
6	<b>Paul Druckman</b> Chief Executive Officer of the International Integrated Reporting Committee
7	<b>Gro Nystuen</b> Member of Ethical Council of The Government Pension Fund of Norway
8	<b>Mr. Pavel Sulyandziga</b> Chair of the UN Working Group on Business and Human Rights Alternate: Alexandra Guaqueta
9	<b>Rafendi Djamin</b> Indonesian Representative to the ASEAN Intergovernmental Commission on Human Rights
10	<b>Tun Musa Hitam</b> Chairman of United Malayan Land Berhad and Lion Industries Corporation Berhad
11	<b>Peter Herbel</b> Senior Vice-President and General Counsel, Total