

REPORTING AND ASSURANCE FRAMEWORKS INITIATIVE (RAFI)

ASEAN REGIONAL CONSULTATIONS, 18-22 NOVEMBER 2013

Synthesis Report on the 2nd Consultation Meeting with Civil Society on the Reporting and Assurance Frameworks Initiative Held in Jakarta on 18 November 2013

Introduction

1. On 18 November 2013, Shift, together with Mazars and in liaison with the Human Rights Resource Centre for ASEAN (“**HRRC**”) held a multi-stakeholder meeting in Jakarta, Indonesia to discuss the **Reporting and Assurance Frameworks Initiative (“RAFI”)**. RAFI is a project facilitated by Shift and Mazars to develop public reporting and assurance frameworks based on the UN Guiding Principles on Business and Human Rights (“**UN Guiding Principles**”). A separate expert consultation on RAFI was held in Jakarta on 20 November, as well as a multi-stakeholder regional consultation in Bangkok on 22 November. Reports of these meetings are available on the project portal.¹

2. The 18 November meeting in Jakarta was the project team’s second engagement with civil society organizations (“**CSOs**”) working in Indonesia. An initial meeting in Jakarta, held in June 2013, introduced CSOs to the project team and the goals of RAFI. The primary purpose of this second meeting was to provide CSOs with an update on the project team’s work and to obtain their inputs and insights on the project’s overall direction. It was conducted in accordance with the Chatham House Rule. As a result, this report provides a summary of the principal discussions without attributing views to individual participants.

Overview of Discussions

3. The consultation, being a second meeting with CSOs in Jakarta, served partly as an update on where RAFI stands today; the rest of the consultation was devoted to discussions of key questions stakeholders had about the project as well as suggestions on how they think RAFI can be improved.

4. Marzuki Darusman, Executive Director of the HRRC, noted a convergence around the UN Guiding Principles in Indonesia and commended civil society’s role in advancing the discourse on human rights and business practices. There have been projects to internalize the UN Guiding Principles, as well as Indonesian laws to foster responsible business practices and Corporate Social Responsibility (“**CSR**”). He expressed hope that ASEAN would endorse the UN Guiding Principles and that RAFI would be helpful in

¹ www.hrrca.org/business-and-human-rights

providing a reference point for national governments that wish to adopt the UN Guiding Principles and pass regulations that will enable companies to look at their business practices in order to align them with the UN Guiding Principles.

5. Caroline Rees, President of Shift, gave an update on RAFI on behalf of the project team. She highlighted RAFI's role in addressing the question of how a company can know and show that, in practice, it is respecting human rights. There is an increasing array of requirements and pressures on companies to report on their human rights practices – from regulators, stock exchanges, investors and other stakeholders; however, there is no clarity on what good reporting looks like. The goal of the reporting framework would be to support companies in developing reports that are both meaningful for stakeholders to read and, at the same time, viable for companies to provide.

6. Some participants asked if the assurance framework would use national legislation as a basis for measuring compliance. This was seen as problematic in areas where governments had not implemented their obligations under human rights treaties, such as in regard to migrant workers. Other participants highlighted the variation in standards applied by different companies. Some noted that Malaysian and Indonesian companies had withdrawn from the Roundtable on Sustainable Palm Oil and set up parallel Malaysian and Indonesian initiatives. Moreover, citing as an example the pledge of Asia Pulp and Paper to refrain from operating new plantations in original forests, participants wondered if the assurance of company compliance with their promises was too difficult to execute.

7. The project team clarified that the aim of the frameworks was not to be jurisdiction-specific: naturally compliance with domestic human rights-related laws would be an important component, but the framework would go beyond this to look at respect for human rights as recognized in international law.

8. The project team also noted that the assurance framework would include provisions regarding the competence required of persons assuring company reports. Comments by participants on the challenges of assurance in this field pointed in part to the need for stakeholder engagement and other means through which assurance providers could seek feedback and verification from stakeholders outside the company.

9. Discussions regarding the garment industry highlighted how some brand companies had agreed to ensure fair labor conditions only after they were pushed to do so by public opinion. This raised questions as to who would or could initiate the assurance process.

10. The project team noted the distinction between social audits of individual factories, and the kind of assurance envisaged under RAFI. The aim of the assurance

framework would not be to audit compliance with a standard, but to assure and validate whether a company's report reflects its actual practices. It anticipated that a company would have a report on how it addresses human rights risks, and that an independent assurer could then look at the report to see whether it is a fair representation of its practices.

11. Participants also inquired whether the project would take into account practices in a company's supply chain. In the garment industry in Indonesia, for instance, it was noted that suppliers currently look at the buyers as the main 'policy makers'. However, buyers had their own codes of conduct, which often varied, and made it harder to press for consistent minimum standards.

12. There was discussion of how the reporting framework could include meaningful questions to companies about how they drive respect for international human rights standards through their supply chains, including any necessary support to build suppliers' capacity. Some participants highlighted the important role of buyers/brands in pushing for sustainable solutions to the problems found through audits.

13. The group asked who would determine whether or not human rights violations had been committed and what the punishment would be if a company did not comply with human rights standards. For instance, could banks refuse to provide loans? The project team noted the risks of assurance providers becoming the arbiters of such questions, rather than government authorities or courts of law. The project's focus was therefore on trying to find the right kinds of questions for companies to be asking and answering, as well as empowering their stakeholders to have informed conversations about a company's practices. Readers of company reports might use the reporting framework as a benchmark against which to evaluate company reports: it could serve as a catalyst to request more information from enterprises. The framework could also empower investors and lenders to have more informed conversations with companies and then draw their own conclusions. This could indeed create some positive incentives for improved business practices.

Group Discussion

14. The project team asked the group to consider two issues in particular as regards human rights reporting: 1) quantity of information, and 2) reporting on process versus outcomes.

15. Regarding the quantity of information to be reported, the project team suggested that it would not be workable for companies, especially those with large operations, to report on all of their activities in relation to all human rights issues. Furthermore, giving large quantities of such information to stakeholders was not necessarily meaningful. This raised the question: *What is the most meaningful information for companies to report on?* For example, should companies focus their

reports on operations that are of high-risk because of their geographic location or products?

16. Regarding the question of reporting on process and/or outcomes, the project team pointed to two key factors: first, that the purpose of the UN Guiding Principles was to enable the improvement of outcomes – meaning, reduced impacts on human rights; second, the UN Guiding Principles focused on processes companies could put in place to achieve those improvements. It seemed natural that the reporting framework would ask companies to describe their processes for managing and preventing human rights risks. The more challenging question was how far the framework could push for reporting on outcomes as well, given the inherent limitations on an exercise in self-reporting. This raised the question: *How far should RAFI be pushing companies to report actual outcomes that result from their processes?*

Questions for Group Discussion

1. What areas of human rights performance should company reporting focus on?
 - a. Highest risk areas of operations?
 - b. Human rights most typically at risk?
 - c. Human rights most typically at risk within the highest risk areas of operation?
 - d. Others?
2. What should be the balance between reporting on process and reporting on human rights impacts/outcomes?

Group 1

17. The first group suggested including in the report information on the company's impacts on vulnerable groups, such as women, persons living with HIV/AIDS, children, migrant workers, refugees and minorities. The group believed that it would be meaningful to include information relating to discrimination in relation to workers rights, including wages, job security, health, occupational health, safety, and freedom of association. Additionally, information on how employers integrate issues of indigenous peoples rights—in terms of natural resources, land rights, clean water, and job opportunities—would be helpful. Lastly, the group would like the reports to reflect how effective the company's grievance channels are.

Group 2

18. The group expressed doubts about the initiative, saying that, whether or not the framework will be used ultimately depends on the good will of the company. The “dirtier” companies are those that will be less willing to use the process.

19. In terms of information that the reports should focus on, the group observed that there are environments where the risk for human rights violations is higher, for instance, in areas where there are weaker regulations. For this reason, the criteria should be based on areas where the risks of human rights abuse are higher. These criteria, however, should not be for the company to decide. Perhaps, the group said, there could be a mechanism for rights-holders, e.g., trade unions and indigenous peoples, to be engaged in defining what they feel should be reported on.

Group 3

20. The third group noted that indicators should identify high risk and high impact human rights concerns. The reports should contain information on the impact of the company’s operations on labor and staff, impact on the community (including vulnerable groups), and the impact of the supply chain. They noted that some companies only report what they are doing, but not the practices of suppliers—who could be violating human rights. The group also suggested reporting on the company’s compliance with standards set in international conventions signed by the company’s home country and country of operation. Also, there may be a need to tailor indicators according to industry or sector, as different sectors would have different high-risk areas. Lastly, the group said that the reports should contain information on whether the company uses the services of security forces.

21. With regard to increasing the motivation for companies to report their human rights practices, the group said that there was a need to link human rights to the market so that respect for human rights is seen as profitable: for example, reporting could be a requirement for publicly-traded companies and a pre-condition for loans. Universities could also contribute by setting up a centre that would help human rights reporting continuously develop.

Group 4

22. Group Four noted that land grabbing is one of the most important issues in Southeast Asia and that it concerns companies engaged in industries such as mining and agri-business. They raised the question of whether the reporting and assurance frameworks could be retroactive and cover a company's past activities that violated the rights of communities. This might include reporting on current legal actions that related to past abuses. Similar to previous groups, this group also suggested that companies report the practices of their supply chains and provide a degree of transparency that would allow final buyers/retailers of products and normal citizens to "follow the flow" of money.

23. In cases of violations of rights, the group asked whether there would be a mechanism that would allow or facilitate legal action. National Commissions on Human Rights, for instance, could be more empowered to initiate legal actions based on these reports, along the lines of what happened in regard to one Thai company in Myanmar.

24. The group, while accepting that the process is a form of self-regulation, inquired as to how this framework would differ from voluntary CSR reporting. They also asked how this framework could be synchronized with the Global Reporting Initiative ("GRI") and Voluntary Principles on Security and Human Rights ("VPSHR"). The group also sought clarification as to how independence of assurance providers would be guaranteed.

Responses and Conclusion

25. The project team noted that there were on-going discussions with GRI to look at dovetailing the framework with the G4 standard. In relation to the VPSHR, the project team was alert to the need to avoid reducing the space for issue-specific initiatives. RAFI was therefore focusing on questions that would provide a broad base of reporting for all companies, but leave room for companies to add benchmarks from other initiatives to supplement this framework.

26. With regard to the process being voluntary, the project team emphasized that, if RAFI is done well, those that have the mandate might choose to adopt the frameworks. The UN Guiding Principles are referred to in legislation and in court cases. Perhaps, in the future, regulators will refer to the frameworks.

27. The project team noted the project's starting assumption that reporting and assurance should include a company's business relationships, and how it addresses human rights risks linked to its products or services through those relationships. This would mean reporting on how it manages risks in relation to its supply chains, but also – depending on the company – business customers, joint venture partners, and even relationships with government.

28. With regard to the specific human rights concerns that participants had highlighted in Indonesia, the project team took note of the issues identified. Bearing in mind the country-specific and sector-specific nature of several human rights concerns, it was also acknowledged that the project team should explore whether the reporting framework could provide companies with specific guidance on selecting which issues to report. This might help narrow the scope for how those priorities were identified, but be more viable than dictating what they would necessarily be, as that would change with time and context.

29. The consultation yielded valuable insights and suggestions regarding the kinds of issues companies' human rights reporting should address as well as the relevant questions and indicators that could be developed. While the group highlighted the disadvantages of the voluntary nature of the proposed frameworks, many saw a need for a mechanism that could capture a business's human rights practices and stressed possible strategies to motivate human rights reporting so that it becomes a practice that is seen as profitable by business enterprises.