

**February 2016 Public Consultation Online Feedback on Corporate Human Rights Benchmark Methodology**

March 2016

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# Organization: twentyfifty Ltd

**Name:** Amelia Knott

**Feedback:**

Thank you for the opportunity to comment on the revised methodology for the Corporate Human Rights Benchmark, which we find to have made considerable strides forward. We would like to commend the considerable effort which it is clear has gone into this work.

There are seven areas on which we would like to comment.

**1. Continuous improvement vs. compliance**

Good practice approaches to human rights adopt a continuous improvement mindset, rather than one of compliance. Furthermore, the UNGPs expect companies to be proactive in their human rights due diligence. Currently, the language used in the CHRB does not appear to reinforce that need for proactivity and continuous improvement. While it may be implicit, it is not clear enough in the indicators to become a point of differentiation.

**Suggestion:** For example, the requirements around policies could include a commitment to continuous improvement, and the section on due diligence could explicitly refer to the need for proactive (not just ongoing) identification of human rights risks and impacts.

**2. The potential for ‘health and safety’ to be an easy win for companies on human rights**

Within the methodology, there are requirements for performance incentives, both for board members and for managers, in relation to human rights. To score 1 (or 2), the board member must have remuneration linked to at least one major human rights risk to their industry. There is a similar (and separate) requirement for managers. The major industry risks are listed and for each sector (apparel, agriculture, extractives), health and safety are included as one of those risks. However, it is not unusual for companies to factor health and safety into performance incentives, whereas it is highly unusual for them to do so with other risks listed (e.g. land access, rights to water etc.). Unfortunately, this means that for many companies, this will be an easy ‘win’, despite no particular focus on or understanding of human rights.

**Suggestion:** One option could be to ensure that if health and safety is the only issue for which there is a performance incentive, that it includes the health and safety of local communities (extractives, agriculture) and/or workers in the supply chain (apparel).

**3. Risk identification and management**

There is an assumption in the scoring criteria that an aligned enterprise risk management system exists in a company (with which human rights risk management can then align). However, we know from experience that this is often not the case and risk management approaches can vary extensively within companies.

Furthermore, in the language under ‘Assessment of risks’, the scoring criteria asks companies to identify ‘salient human rights issues’ and invites quite a generic list of broad issues, rather than encouraging companies to be specific about particular human rights risks to particular vulnerable groups in particular locations or from particular activities/products/services/business relationships. The language currently does not encourage the building of ‘local’ capacity and process that is core to successful human rights due diligence.

For extractives companies, ESIAs with a human rights component appear to be equated with HRIAs. We would argue that HRIAs are qualitatively different from ESIAs and there are limitations to attempts to combine them. Standalone HRIAs should also be considered a central tool of human rights due diligence for high risk areas.

**4. Training incentives and limits**

The criteria for score 1 focuses on those most in need of human rights training and specifically references departments that they are involved in. However, while the extractives sector-specific requirement is for security personnel and those involved in community relations to undergo human rights training, it excludes any reference to those managing contractors and contractor relationships, although this is where a lot of the risks lie.

Secondly, to score 2 under training, there is a requirement to train all staff on the human rights policy commitments. Therefore, a company could be encouraged to require everyone to undergo (very high-level) awareness training and miss the point of the need to build specific capacity in certain roles, yet still score 2 points here.

**Suggestion:** The training requirement could instead focus on building the capacity of individuals and teams in relevant functions (in terms of severe human rights risks) within companies to identify and address human rights risks and impacts, with a higher score awarded for evidence that this capacity is monitored and measured.

**5. Supply chain limits**

There has clearly been a lot of thinking around how to make companies more responsible for their supply chains. However, the scoring criteria mostly refers to company’s suppliers and the responsibilities they have to them, rather than encouraging them to look further down supply chains where the impacts may be most severe. For example, under the section on grievance mechanisms, apparel and agriculture companies are expected to ensure that their suppliers have grievance mechanisms, but the wording implies Tier 1 suppliers only. In practice, many global multinationals are already asked by their business customers and civil society to look beyond Tier 1 to where risk is greatest. This is also what major international frameworks (such as the OECD due diligence work) is converging towards.

**Suggestion:** Many of the references to suppliers would be better if referring to supply chains, and we would encourage adding a focus on investing in deeper assessments or capacity building where risks for severe impacts are highest (even if that is beyond Tier 1).

**6. Children’s rights**

There is nothing on children’s rights beyond references to child labour. The Children’s Rights and Business Principles are mentioned as one of the policy commitments on affected groups to which companies can sign up. Extractives companies are required to look at their impacts on local communities, but how these communities break into specific affected groups (women, children etc.) is not included.

**Suggestion:** Explore opportunities to strengthen children’s rights throughout the benchmark, and provide more insight into what could be particularly affected groups for businesses.

**7. Performance criteria**

Each sector has specific performance requirements for what the CHRB has deemed major industry issues. However, those picked for extractives specifically exclude women’s rights and therefore risks of sexual exploitation, despite this being a known challenge across the sector that is currently under-addressed. The issues for extractives also exclude excessive hours and freedom of association, although this is something that we have identified in our work as an issue. The issues for agriculture exclude indigenous peoples’ rights, despite impacts such as access and benefit sharing in the sector. The issues for apparel focus only on gender discrimination and not on other forms of discrimination which are equally relevant.

**Suggestion:** Include additional issues under the performance criteria.

# Organization: Christian Aid

**Name:** Kenneth Boyce

**Feedback:**

As with my initial input into the benchmarking criteria, my input into the revised draft focusses not on what has been included but rather on what has been left out. I disagree with the notion that indicators on climate change or tax cannot be adequately incorporated into this first iteration of the Corporate Human Rights Benchmark. While it is clear that both these issues often do not provide easy, direct links between those responsible for human rights violations and those affected, it is nonetheless clear that certain actions by companies in these two areas will have negative human rights consequences.

Companies must be judged on their actions. A harmful action remains a harmful action regardless of whether a victim can be identified. The burden of proof to make a direct link should not be placed on affected or individuals communities, who are often in possession of scant or little information to be aware that their rights may have been negatively impacted by company behaviour e.g. in the case of company lobbying of their government on egregious tax incentives. Otherwise human rights due diligence is skewed towards assessing which actions companies can be held accountable for and which they can “get away with,” rather than a proactive exercise which should help companies avoid actions with negative human rights consequences.

In its report [“Tax Abuses, Poverty and Human Rights”](http://www.ibanet.org/Article/Detail.aspx?ArticleUid=4A0CF930-A0D1-4784-8D09-F588DCDDFEA4) the International Bar association states that, “tax abuses deprive governments of the resources required to provide the programmes that give effect to economic, social and cultural rights, and to create and strengthen the institutions that uphold civil and political rights” (p. 148). It makes the following recommendations for businesses which could be considered as indicators:

* Adopt human rights policies that contain explicit commitments to respect human rights throughout all its operations, including the full range of economic, social and cultural rights.
* Undertake due diligence measures and impact assessments of all of its operations, including with respect to its tax planning practices and the financial flows and tax revenues that are thereby generated in different jurisdictions.
* Refrain from negotiating special tax holidays, incentives and rates that will prevent governments from fulfilling their human rights obligations.
* Provide greater transparency and access to information to tax authorities and through public reporting on a country-by-country basis.
* Engage in industry-specific discussions about ethical practices and effective contributions to sustainable development with respect to tax matters.

The current references to taxation in Measurement Theme D of the draft benchmarking criteria refer only to the extractives sector. Taxation is material to all companies and will continue to be material to all companies. It therefore makes very little sense not to include it in criteria for all companies from the beginning.

In the report [Getting to Good – Towards Responsible Corporate Tax Behaviour](http://www.christianaid.org.uk/images/Getting-to-good-corporate-tax-November2015.pdf), Christian Aid, together with Action Aid and Oxfam, outlines 8 areas of responsible corporate tax behavior. Under each of these areas, examples of behaviour are outlined which could be incorporated as indicators in your benchmarking. Examples include:

**Public Transparency and Reporting Examples**

* 2B: A corporate group publishes, for each jurisdiction where it is liable for tax, a list of tax incentives and reliefs (both statutory and discretionary) which contribute either to a significant difference between the company’s accounting profit and taxable profit in that jurisdiction; or a significant reduction of the effective tax rate on the company’s taxable profits in that jurisdiction; or a significant reduction in the company’s liability to other taxes (e.g. VAT or excise tax).
* 2C: A corporate group publishes basic statutory accounts for every subsidiary, branch or joint venture, whose tax accounting should include pre-tax profits, a clear reconciliation between accounting profits and taxable profits, and a clear reconciliation between the nominal tax rate on taxable profits and the effective tax rate.

**Non-Public Disclosure**

* 3A: A corporate group provides the entire country-by-country reporting (CBCR) mandated by the OECD BEPS project directly to the tax authorities of any country where it has a subsidiary, taxable branch or tax residence – even if this is not required by OECD standards.

**Tax Function Management and Governance**

* 5A: A corporate group develops a corporate responsibility/ sustainability-linked tax strategy which is approved at board level, and published.

**Tax Lobbying/ Advocacy**

* 7B: A corporate group publishes details of all meetings it or its representatives have with lawmakers, government and inter-governmental officials regarding changes to national or international tax rules and policies (where details of these meetings are not already published by governments or lawmakers). It also publishes all submissions it makes to those governments and intergovernmental bodies regarding such tax rules and policies.
* 7C: A corporate group commits not to lobby governments to conclude tax treaties particularly advantageous to its own business or structure.

Likewise, by its very nature Climate Change will never have an easy direct linkage between those exacerbating harmful climate change and those most impacted by it. However as [Resolution 7/23](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf) of the Human Rights Council emphasizes, “climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights.” A company’s attempts to mitigate its negative climate impacts as part of global action on climate change should be central to an assessment of its human rights record.

A [recent report by the Climate Disclosure Standards Board](http://www.cdsb.net/sites/default/files/cdsb_comply_or_explain.pdf), drawing on the disclosure of environmental reporting in FTSE350 companies’ annual reports highlighted that only 79% of companies disclosed the breakdown between their Scope 1 and Scope 2 emissions. This should be 100% and performance in this area should be an indicator in the CHRB.

The report also highlighted that by sector, environmental matters are identified as a principal risk by 38% of discretionary, 73% of energy, 54% of industrial and 37% of IT companies. However, they are represented in KPIs in 29%, 20%, 39% and 21% of companies in each of these respective sectors. Company KPIs in relation to climate change should be used as an indicator in Measure Theme A: Governance and Policies.

GRI and CDP have worked together over the years on alignment in their indicators on climate change and energy. As a result information requested in CDP’s climate change questionnaire can be reported in a G4-based report. Given the current Pilot Benchmark’s reliance on GRI disclosures as disclosure points, I would recommend at minimum looking at how some of the alignment work undertaken between CDP and GRI could allow for CDP reported data to be included in the CHRB. See the [March 2015 report](https://www.globalreporting.org/resourcelibrary/GRI-G4-CDP-2015-Climate-Change-Linkage-Document.pdf) on the linkages between the two systems.

Most importantly of all, the CHRB should assess whether companies set and publicly report on science based targets for their greenhouse gas emissions in line with [Article 2 (a) of The Paris Agreement](http://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf) in which all 195 UNFCCC participating member states and the European Union have committed to “Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.”

[Science Based Targets initiative](http://sciencebasedtargets.org/) is a joint initiative by CDP, the UN Global Compact (UNGC), the World Resources Institute (WRI) and WWF. Emissions reductions targets adopted by companies to reduce GHG emissions are considered “science-based” if they are within the level of decarbonization required to keep the global temperature increase below 2°C compared to pre-industrial temperatures, as described in the Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) and now the Paris Agreement.

To date, 120 companies, many of which will be included in the CHRB ranking, have committed to set greenhouse gas emission reduction targets as part of the science based targets initiative. Given that this initiative gives some flexibility on [methods chosen](http://sciencebasedtargets.org/methods/), including a [sectoral decarbonisation approach](http://sciencebasedtargets.org/wp-content/uploads/2015/05/Sectoral-Decarbonization-Approach-Report.pdf), and has a [clear criteria for the commitments required](http://sciencebasedtargets.org/commit-to-setting-science-based-targets/), CHRB should include commitments and reporting on science based targets in either its Measurement Themes B or D.

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# Organization: Erasmus School of Law Rotterdam the Netherlands/Pels Rijcken & Droogleever Fortuijn

**Name:** Prof. Martijn Scheltema

**Feedback:**

Some overlap seems to exist in indicator A.1.1 and A.1.2, as both relate to 'human rights' entailed in the UNGP (as those entail ILO core conventions). The same seems to hold for indicator A.1.3 and A.1.4 as specific groups mentioned under A.1.3 (e.g. indigenous people) might be part of a local community (mentioned in A.1.4). It might be A.1.3 refers to people hired by or under contract with the company only, but this is not completely clear. Some clarification might be helpful.

Indicator A.1.7 requires (score 2) working with business relationships/suppliers to remedy adverse impacts directly linked to its operations. The UNGP require the exercise of leverage (if possible) to make the business relationships remedy these impacts. The exercise of leverage seems to be broader (e.g. also connecting to/working with industry organisations, governments and labor unions) then working with business relationships only. Furthermore, the term 'working with' might also imply responsibility for the remedy by the business relationship/supplier which is in my view not entailed in the UNGP (see also indicator E.1.3).

Indicator B.1.2 (score 1 or 2) might also emphasize that human rights risks to rights-holders (preferably) should be assessed through (meaningful) dialogue with (legitimate representatives of) these rights-holders (see also indicator B.1.8 and B.2.1 (score 2)).

Indicator B.1.8 might (also) honor the use of a (n experienced) third party neutral to facilitate engagement with (potentially) affected stakeholders.

Indicator C.1 states operational level grievance mechanisms should not undermine the role of trade unions. That said, should trade unions or other NGO's representing affected stakeholders have access to these mechanisms (e.g. in connection with score 2) (see also indicator C.5)?

Indicator D.1.8 states harassment, retaliation etc. against union members should be prohibited by the company. Should this hold for others engaged in parallel means for engagement if union rights are restricted by law (also indicator D.2.7a and AG D.3.8a)?

(These suggestions do not exclusively relate to the changes made, but might be helpful nonetheless).

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# Organization: Jackson Canter Ltd (North West-based solicitors)

**Name:** Mira Hammad

We welcome the collaborative approach used in the development of the Benchmark and appreciate the opportunity to provide feedback on the CHRB methodology. The CHRB in itself represents a step forward in the business ethics field, and potentially a vital decision-making tool for both consumers and investors.

Feedback given in the first consultation phase has clearly been taken on board and positive development of the CHRB is clear. In particular, we highlight the following positive aspects of the revision:

* The increased focus on practice in the weighting is an important improvement to the first draft CHRB indicators.
* Giving online users the ability to change the weightings is an innovative addition to the benchmark.
* Amending the CHRB structure to be more in line with the UNGPs assists businesses in navigating the business and human rights field. Providing the relevant UNGP sources alongside each indicator likewise assists streamlining of human rights reporting across different instruments.
* The inclusion of serious allegations is a welcome addition to the measurement themes.
* The addition of points of disclosure clarify an area that was a little confusing in the last draft, namely, what is expected of businesses regarding disclosure.

All in all, the structure of the CHRB methodology provides a well organised and coherent measurement framework. The conceptual intent underlying each area is also well thought out, clear and rigorous. We also commend the ambitious reach of the CHRB in measuring the human rights performance in companies’ extended supply chain. Furthermore, the industry specific aspects of the CHRB, which have been stressed in the latest draft, make it a targeted tool.

However, some challenges to the efficacy of the CHRB as a measurement tool remain. In this respect, we would like to draw from NYU Stern Centre for Business and Human Rights (NYU Stern) feedback on the first draft of the CHRB methodology. The three main challenges presented by Michael Posner and Sarah Labowitz were broadly in line with our concerns regarding the first draft of the CHRB methodology. As NYU Stern observe, these challenges are obstacles to all well-intentioned stakeholders working to measure corporate human rights performance (including ourselves).

Below, we list each challenge raised by NYU Stern and discuss which aspects, in our opinion, have been addressed by the second draft and which remain.

**Challenge 1: Prioritising outcomes over process**

The readjustment of the weighting in favour of performance aspects has overcome one element of this challenge. Giving online users the ability to shift the weightings also addressed this aspect of the CHRB methodology.

However, in our view, the second element of this challenge remains unaddressed by the current draft of the CHRB methodology. The practice indicators still appear to provide a binary measurement tool that rewards disclosure above outcomes and will create a reporting ‘race to the top’ rather than one in practice.

We take as an example EX D 1.6 Health and safety: fatalities, lost days injury rates:

Score 1 The Company discloses quantitative information on health and safety for its employees related to injury rates or lost days (or near miss frequency rate) and fatalities. Score 2 The Company also provides an explanation of the figures provided or describes the resulting corrective actions or action plans Or sets targets related to rates of injury, lost days and fatalities AND, if the Company had already set targets related to the reporting period, it either has met the targets or provides an explanation of why these were not met. (emphasis added by ourselves).

As can be seen above EX D 1.6 effectively measures disclosure. A company which reports a high number of fatalities, for example, but provides the required explanation, would achieve the same score as a company which has achieved better on-the-ground health and safety performance. Furthermore, the only standard against which the companies are measured are their own targets and even in that regard, they can achieve score 2 if they fail to meet their own targets. An objective target, based on industry best practice, would help this indicator to measure practice rather than disclosure.

We recognise the difficulty of setting objective performance targets. However, without this element it is difficult to see how users of the CHRB will be able to compare practice records of different corporations.

**Challenge 2: Providing metrics that are “decision-useful” for consumers and investors**

The second draft methodology addresses this challenge positively through providing fewer and more targeted indicators. Inclusion of disclosure points integrating other standards (particularly GRI disclosure points) also goes some way towards addressing this challenge.

However, the substance of this challenge remains unaddressed, particularly as regards the inclusion of metrics such as mapping and turnover in the supply chain. Furthermore, there are no baseline and best practice markers which give consumers and investors an idea of whether the metrics provided by a corporation put it in regards to competing corporations.

**Challenge 3: Where the information comes from**

The inclusion of the serious allegations section in the second draft is a very positive step in ensuring that the benchmark balances what companies say about themselves against what others say about them. Splitting allegations into two levels based on the amount of substantiation provided is also informative and useful.

Having said this, we do not think that the inclusion of a requirement for ‘a clearly mentioned and identifiable’ victim is necessary to achieve a level 1 status. Given issues of confidentiality, possible reprisals and power imbalance between victims and corporations, this requirement is likely to be a barrier to credible allegations from NGOs or news organisations seeking to protect their sources.

In general, while the concept underlying the allegations section is one we commend, the detail of the indicators fails to live up to this promise. Of particular concern in this regard is the inclusion of a ‘cop out’ score for companies that do not acknowledge the impacts.

Once an allegation has met the Level 1 threshold, it has reached a level of credibility that an organisation should not be able to negate by failing to acknowledge it. To allow an organisation which fails to acknowledge impacts and therefore does not in practice provide remediation (regardless of whether it explains how it would do so) to achieve Score 1 and 2 unfairly penalises organisations which take public responsibility for alleged violations. There is the additional risk that this element of the indicator encourages poor practice in avoiding responsibility for human rights violations.

We recognise the risk of unfair and unsubstantiated allegations being held against a company, however, indicators of credibility can be added to the benchmark, providing perhaps an additional level to one and two. For example, findings of a public inquiry, judicial findings and audio-visual evidence could all be weighed into consideration. When an impact is thus substantiated, a corporation should not be able to achieve scores for failing to acknowledge it.

Another aspect of verifying what companies say about themselves is through external third party monitoring. While we recognise that score 2 for indicator B.1.6 is dependent on external monitoring, external monitoring is an essential element of good practice regarding corporate human rights and this should be reflected in the CHRB methodology.

We look forward to the release of the final draft methodology and hope that the CHRB will represent a step forward for human rights in business.

# Organization: Institute of Human Rights and Peace Studies, Mahidol University

**Name:** Matthew Mullen, Ph.D

**Feedback:**

Dear CHRB Team,

This is a useful initiative. Thank you for your work and for the opportunity to provide feedback. In reviewing the Feb 2016 report, the following points stood out to me. I am happy to expand on any or all. I have also written a book chapter on how to measure the substance of a business' human rights policy and would be happy to share this privately. Thanks again for the chance to highlight the following points:

For section A (the policy commitment section):

A best practice policy should do more than declare a commitment to respect. It should detail what that means. What does this dutyship entail? How does a business interpret its duty to respect?

In articulating a commitment to respect human rights, it should be clear that a business is committing to international human rights norms. Best practice would be to invite stakeholders to hold the business to international standards, regardless of local laws and regulations. Too many policies make an 'in principle' commitment to respect IHRL, then immediately hedge with operational or substantive commitment to local laws and regulations. This can be a very public hedge against international norms. Policies need to clarify that principally, substantively and operationally, the business commits to the international standards.

Many human rights policies also publicly recognize that the state is the primary duty bearer. While this is in line with the UNGP, it can be read as a business deflecting responsibility. A best practice here would be a commitment to comply with IHRL regardless of whether a state effectively fulfills its duties.

For stakeholder engagement groups, there should also be a section - perhaps A.1.5 - for a business' commitment to its consumers (consumer rights).

In sections A and B, there is an emphasis on top-down commitments and making policies and procedures available. A best practice policy would be accessible and functional for stakeholders. A best practice would be a policy and system that stakeholders can use, whether that be to make enquiries or seek accountability. Functional or accessible human rights policies and systems make the rights of stakeholders substantive or realizable.

Section D refers to compliance with local laws around collective organizing and bargaining, which is not an appropriate indicator. This actually leaves space for lackluster performance in contexts where union rights are systemically under threat. The best practice here would be to measure a business' collective organizing and bargaining practice against ILO norms. Again, this indicator should not enable businesses to use a state's lackluster human rights performance as an excuse, hedge, or bailout.

General comment: When the benchmark refers to auditing human rights impact, it is not clear whether these audits should be externally sourced and/or publicly accessible. Independence and transparency around auditing seems quite important.

General comment: The use of living wage as an indicator does not seem to indicate best practice. I realize this may be more quantifiable than a 'fair' wage. But I think there may be ways to more apt indicators capture best practice approaches to wage.

Again, thank you for this opportunity and best wishes with this initiative. Please do not hesitate to contact me.

# Organization: The Evidence Project/RAISE Health

**Name:** Carolyn Rodehau

**Feedback:**

The Evidence Project/RAISE Health Initiative is pleased to submit comments on the Business & Human Rights Resource Centre’s 2016 CHRB Pilot Benchmark. A major goal of RAISE Health is to improve the health of women and men workers by promoting access to health information and services in policy dialogues on human rights and sustainability to help corporate and institutional partners move beyond the occupational health approach to integrate health into their standards, policies and practices.

Health has long been recognized as a basic human right and a vital component to improve the long-term quality of life of communities. As you well know, there is a growing set of standards and increased public expectations around the role of corporations to respect and protect human rights; yet, despite this momentum toward corporate attention to rights, there is a distinct lack of focus on health rights. Health at the workplace is viewed through a narrow and traditional lens of occupational health and safety (OHS) compliance. In this context, companies focus on inputs (number of nurses or availability of first aid kits) and safety issues (use of protective clothing) rather than on the provision or referral of quality health services for their employees. As a result, the quality and management of health services provided are under-prioritized, and workplace health providers who could do much more to promote healthier behaviours are underutilized.

In many cases, workers lack access to health services simply because health needs are not even considered a part of their employment arrangement. Long working hours, distance to health facilities, and lack of credentials to access public services further inhibit access. Systematically, ignoring the broader health needs of workers whose access and utilization is diminished due to their employment arrangements, we argue, violates their human rights. Thus, the 2016 CHRB Pilot Benchmark should emphasis that companies have a responsibility to uphold the health needs and rights of their workers. It is no longer enough to rest on existing occupational health standards as the benchmark for determining whether corporations and their supply chains are respecting human rights with respect to the health of their workers.

Considering business’ existing legal obligations in many countries to provide health services for employees, as well as the UN Guiding Principles on Business and Human Rights goal of further defining a company’s sphere of influence, we urge that the Benchmark should emphasize health services provision and policies as part of a company’s human rights obligations, which includes suppliers. There are many effective health models including onsite health clinics at the workplace, arrangements with mobile service providers, and/or strong referral systems through facilitated, convenient access to local community health resources. Language that does not make broader health issues, including women’s health, explicit will fail to achieve the underlying principles of the Benchmark.

**SPECIFIC RECOMMENDATIONS**

1. **Ensuring Accessibility to Comprehensive Health Services**

We recommend that the Benchmark specifically require that Companies ensure access to health services for workers. Some suggested available ways to provide health services or access to services for workers can include mobile clinics, referral systems, cooperative agreements with NGO providers, voucher or insurance systems, and the provision of transportation/leave time to get offsite facilities. The standard should emphasize that health care issues in the workplace are squarely based on rights and that companies’ obligations relate to the general health of workers, not just specific safety concerns in the workplace. We encourage you to emphasis “access to health services” so that companies do not assume you are requiring a prescriptive obligation that the employer always be the actual provider of the care. Considering the long hours most workers work, many workers may or may not get health care based on the employer’s willingness to provide access to that care, either onsite or via access to providers. In effect, the employer is the main gatekeeper to health. Many countries’ laws recognize this and mandate (though poorly enforced) a key role for employers in health care provision or access. So, the obligation of employers to provide access to care is not a new or particularly radical or innovative concept.

We also suggest that these health services are gender equitable and that the document also use gender inclusive language to distinguish between the services available for men and for women workers each. Workplace circumstances often affect women differently than men and lead to conditions such as urinary tract infections, poor menstrual hygiene, increased risk of sexual harassment and unwanted pregnancy. These are exacerbated by a lack of access to not only general but also reproductive and maternal health services.

1. **Gender-Specific Vulnerabilities: Addressing the Unique Health Rights and Needs of Women**

The global economy has changed dramatically and there are more women joining the formal workforce than ever before. Women’s health, in particular, is all but absent in most standards based on the false assumption that the terms “worker” or “employee” covers all general or occupational health issues affecting men and women. However, traditional OHS standards were designed with men in mind and do not reflect the unique health rights and needs of women. Moreover, the health impacts on women directly related to safe labor practices are different from the health impacts on men.

Occupational health standards typically address reproductive health from the perspective of protection: against pregnancy tests, against chemicals that may damage fertility; and against harassment and violence. Protection is no doubt essential, but women workers are also harmed when their reproductive health needs are not acknowledged. For example, the lack of access to sanitary napkins at the workplace can lead to gynecological infections, not to mention lower productivity.

Access to safe, voluntary family planning (FP) and reproductive health (RH) counselling and services be prioritized. The CHRB Benchmark has taken some good steps forward in this area by relating reproductive health and family planning services to working conditions and women’s rights in the Agriculture Indicator, AG D.3.10.a – Women’s Rights (in the Company’s own operations) – Score 1. Our recommendations, seek to expand this indicator.

Services, products, and accommodations such as pregnancy care, parental leave, access to feminine hygiene products, unrestricted bathroom breaks, and facilitated accommodation for breastfeeding and child care are all issues that should be clearly and explicitly reflected. Feminine hygiene products should also be available to women workers for good practical hygiene on the job and beyond the workplace.

1. **Provision of Health Educational Materials**

We recommend health education materials (e.g. handouts or posters) should be available to all workers covering topics that address the overall health and unique needs of male and female workers (e.g., hand washing, proper nutrition, disease prevention, menstrual hygiene, reproductive health, and family planning). These materials should be easily accessible and comprehendible by workers. This includes providing materials in local languages with illustrations that demonstrate proposed health practices and rights.

1. **Using Gender-Inclusive Language:**

We also suggest the use gender inclusive language, referring to workers as “male and female/men and women workers”. Even though the Benchmark does discuss women’s rights in context of the workplace (in Indicator A.1.5. Commitment to Incorporating Human Rights Into Business Relationships), gender inclusive language should be included in a more systematic way throughout the document.

Gender is now a very central issue in corporate codes of conduct and the Benchmark should reflect this. The replacement of workers with “men and women workers” is a way to highlight this. It is especially important when discussing health issues and rights, as men and women have different health needs, particularly in relation to reproductive health and family planning. This is also why we suggest that workplace data be sex disaggregated (see below).

1. **Include Sex-Disaggregated Data Collection**

We recommend that management ensure that all factory data is collected and disaggregated by sex and this disaggregation. The Benchmark should include how this will be done and how it will apply in other data collection and disclosure requirements. This is particularly relevant with respect to health services or infirmary data collection.

1. **Expanding on Sexual Harassment and Violence**

Indicators EX D.1.8., AP D.2.6., AP D.2.7., AG D.3.8., and AG D.3.10. discuss policies on sexual harassment and gender-based violence with reference to CEDAW, which specifically lists sexual and reproductive rights. We feel the document can go further by discussing the education of men and women workers regularly about sexual harassment at work and in the community. Regular educational sessions are especially recommended to refresh the knowledge and skills of workers as well as to inform any newly on-boarded staff.

1. **Suggested References/Resources for Inclusion**

Please find some resources below that we recommend referencing in the Benchmark:

* WHO’s Health Workplace Model and Initiative (2010) Based on the WHO Healthy Workplaces Framework (2010) - This model offers a management approach to companies for addressing comprehensively the overall health needs of their workers beyond just the potential occupational health hazards and impacts of environmental damages or dust/chemicals. Employers should ensure that workers (and, ideally, their families) have timely access to services, whether they are provided at the workplace, via mobile service providers, and/or through facilitated, convenient access to local community health resources.
* The Women’s Empowerment Principles (WEPs) website and corresponding PDF (2011) - This set of Principles offers guidance on how to empower women in the workplace, marketplace and community. They are the result of a collaboration between the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the United Nations Global Compact and are adapted from the Calvert Women's Principles®.
* WEPs Call to Action: Invest in Women's Rights to Health (2011) – This call to action encourages companies to ensure the health, including sexual and reproductive health, of all workers. Investing in women’s health not only benefits employees and surrounding communities, but it can also have a positive social and economic effect on the private sector. In ensuring that workers have safe working conditions and available health services, companies establish healthier staff, better relationships, and in many cases higher Return-on-investment (ROI).

It is also worth mentioning that, from a business perspective, there is a strong case to be made for companies to incorporate general worker health concerns into their business approach to responsible labor practices and human rights due diligence. A wide range of studies in developing and developed countries documents the benefits to companies and their workers when worker health needs are addressed. Studies undertaken by Business for Social Responsibility and others indicate a strong return on investment from reduced absenteeism and turnover, and note a wide range of other qualitative benefits when a workplace addresses the heath needs of its workers. For the human rights community, worker health and reproductive rights are inseparable from women’s empowerment, gender equality and labor rights. We would assert that companies that demonstrate care for worker health, not just safety, are more likely to perform better across a range of human rights concerns.

We thank you for your consideration of our input to this process. Please feel free to make our comments public as appropriate. We are happy to provide further input or answer any questions as our initiative is about developing practical proposals for expanding worker health policies and standards in global supply chains from both a rights and a business case perspective.

# Organization: United Nations Global Compact

**Name:** Shubha Chandra

**Feedback:**

**(Previous A.4.1, now removed) Support for Local Human Rights Capacity**

* We noticed that this section has been removed. We believe support for local human rights capacity is important, and goes beyond respecting the human rights of particular relevance to local communities (A.1.4) or engagement with stakeholders (A.1.6). We would therefore add back the section, together with reference to the Global Compact Local Networks. For example: “Commitment in principle to capacity building of local communities, Global Compact Local Networks, civil society or government to understand and promote respect for human rights, OR the Company gives specific examples.”

**(P.11, A.1.1) Commitment to Respect Human Rights**

* We would suggest that score 2 (not score 1) be given to companies that commit to the Ten Principles of the UN Global Compact since principles 1 and 2 include a commitment to respect human rights which are identical to the UN Guiding Principles.

**(P.11, A.1.2) Commitment to Respect Labour Rights**

* Global Compact principles 3, 4, 5, and 6 are identical to the ILO core labour standards, so we would rephrase as: “(principles 3 to 6 are identical to the four fundamental principles and rights laid out in the eight ILO core conventions.”
* Declaration on Fundamental “Principles” and Rights at Work (word missing from the Declaration’s title)
* We would consider awarding a Score if a company has signed a Global Framework Agreement

**(P.12, A.1.3) Commitment to respect human rights of individuals** **belonging to specific groups or populations that require particular attention**

* We would define “Individuals belonging to specific groups or populations that require particular attention (for example, women, children, indigenous peoples, minorities, persons with disabilities, and/or migrant workers and their families)” as a short term, such as “vulnerable peoples” in the Glossary, or in the first paragraph of A.1.3, before Score 1, where it is currently defined.
* Once defined, we would also use the same language for the title of Box 2 (currently titled, Key Instruments Protecting the Rights of “Individuals/Groups that may Require Particular Attention”); EX D.1.3 Land Rights (P.39) and AG D.3.4 (P.48), which currently refer to “vulnerable tenure rights holders”; and B.1.8 (P.24), which currently refers to “those at heightened risk of vulnerability or marginalization.”
* Score 2 - We would add “OR the Company has publicly committed to a special initiative in support of respecting the human rights of specific groups that require attention.” An example of such initiatives may include the WEPs.
* Industry locks
	+ The “OR” in AP&AG industry locks for Score 1 should be changed to “AND,” in line with the notion that a company’s good behavior in one area (e.g. women’s rights) cannot off-set the bad behavior in another area (e.g. children’s rights). Score 1 should be awarded for a statement of policy committing it to respect women’s rights AND children’s rights; Score 2 should be awarded for explicit references to CEDAW/WEP AND CRC/CRBP, consistent with the deepening of engagement from Score 1 to 2.
	+ For the EX industry lock, note that the commitment to ILO C 169 and UNDRIP (currently Score 1) already includes a commitment to apply FPIC (Score 2). FPIC is required under ILO C 169 (Art. 16), and UNDRIP (Articles 10, 11, 19, 28, 29, 32). Score 1 should therefore be awarded for a commitment to respect indigenous peoples rights; Score 2 should be awarded for explicit adherence to all aspects of ILO C 169 and/or UNDRIP, including FPIC.

**(P.14, A.1.5) Commitment to incorporating human rights into business relationships**

* While the document generally separates labour and human rights issues, this section combines the two. To maintain consistency, we would either:
	+ (Suggestion 1) Rename this section as “Commitment to incorporating labour rights into business relationships” as the Scores focus on the ILO labour standards, and add a separate section on “Commitment to incorporating human rights” or
	+ (Suggestion 2) Rename this section as “Commitment to incorporating human and labour rights) and broaden the rights addressed in the Scores (such as, the UN Guiding Principles, which refer to both labour rights and human rights).
* Industry locks - The word “expects” should be replaced with “required,” which suggests the company takes a stronger commitment by not merely expecting but requiring suppliers to respect key rights. Note: this issue also arises in A.1.8. and in Section D.

**(P.16, A.1.8) Respecting rights of human rights defenders**

* Great that this was added
* Score 1 – We would suggest removing the clause after “OR” as it weakens the Score
* Industry locks - The word “expects” should be replaced with “required.”

**(P.17, A.2.1) Commitment from the top**

* Score 1 – we would remove “OR speeches, presentations or other communications”, to read: “The Company’s human rights policy commitment(s) has been approved at board level, by the Board or the CEO by name setting out the Company’s approach to human rights or discussing its business importance are made by Board members and/or the CEO” to encourage companies to formalize its commitments. This is to encourage any commitment expressed in speech/presentation to be formalized in a permanent human rights policy, as is often the practice.
* Score 2 – "a Board member or Board committee is tasked with addressing one or more areas of respect for human rights" seems to be a higher requirement than the Scores in the immediately following section, A.2.2. We would therefore move this to A.2.2, Score 2.

**(P.17, A.2.2) Board Level Accountability – Board agenda**

* We would either rename this section “Board Level Commitment”, or include measure of actual board accountability, e.g. involvement of board members in Grievance Mechanisms and board responsiveness to the claims raised.
* Score 2 of A.2.1 should be added as Score 2 here.

**(P.22, B.1.5.) Training on Human Rights**

* We would relabel the section as Training on Human Rights “and Labour”
* Scores 1 and 2 – We would clarify that the training should be on the Company’s human rights “and labour” policy commitment(s) and cover at least the UN Guiding Principles in addition to the ILO core labour standards.

**(P.23, B.1.6.) Monitoring and corrective actions**

* Score 2
	+ We would clarify that providing one example of corrective action is not sufficient for a Score 2, by capitalizing the word “and” at the end of line 1.
	+ As the provision of the “number of incidences” would be of limited value in itself, we would also require the provision of an example of corrective action in addition to the number of incidences, by changing the word “or” to “and.”

**(P. 24, B.1.8.) Framework for engagement with potentially affected stakeholders**

* This indicator seeks to address many issues at once. Specifically, the reference to bribery is very important, but perhaps this should be made into a separate indicator.
* We would define “those at heightened risk of vulnerability or marginalization” in the Glossary.
* We would suggest that Score 2 for the AP sector also include an example of how stakeholder engagement takes place (identical to Score 2 for the EX and AG sectors)

**C. Remedies and Grievance Mechanisms**

* Terrific job fleshing out these indicators!!

**(P.32, C.1.) Grievance channels/mechanisms to receive complaints or concerns from workers**

* Score 1 – We would include a line stating that the mechanism is available to all workers and takes into consideration sensitivities related to gender.

**(P.33, C.2.) Grievance channels/mechanisms to receive complaints or concerns from external individuals and communities**

* Score 2 – We would again include a line stating the mechanism is also sensitive to gender (e.g. it may be harder for women to access the mechanism than men).

**(P.34, C.3.) Users are involved in the design and performance of the channel/mechanism**

* Score 2 – We would include a description of how the company determined who its potential and actual users are.

**(P.35, C.4.) Procedures related to the mechanism(s)/channel(s) are publicly available and explained**

* We would merge Score 2’s requirements into Score 1, as any effective complaint mechanism must permit escalation (appeal) to a higher authority. Score 2 could instead reference that senior management (e.g. a board member) is involved in the matter (not that it is just escalated to them).
* The Scores here do not fully capture the “public disclosure and explanation” element in the title of this section. We would create a separate section on raising awareness of the mechanism, e.g. creating and distributing flyers in the local language, and posting information on office walls or on its website, hosting an information session/training, etc.

**(P. 35, C.5) Commitment to non-retaliation over concerns/complaints made.**

* Score 2
	+ A “retaliatory suit” in the first line adequately covers any “case for defamation or similar actions against claimants or their lawyers” in the last line, and thus the last line (“and has never btought..”) may be removed.

* + We would rephrase human rights “impact” to human rights “abuse”
	+ We would also remove or rephrase the word “credible,” as credibility would be difficult to determine, especially from a company’s perspective.

**(P.37) Key Industry Risks**

* An elaboration on the rationale/choice of key industry risks would be helpful.

**D. Performance: Company Human Rights Practices**

* Terrific for the deep dive into some of these challenges for the sectors
* P.37, line 3 from the top - companies misspelled as “company’s”
* EX industry risks:
	+ We would consider the addition of “Child Labour” and “Forced Labour” as key risks in the EX industry.

* + We would also consider adding “Conflicts” as a key risk in the EX industry, and measure how companies operating in conflict zones are taking steps to further peace, e.g., through joining the UN Global Compact’s Business for Peace initiative. Score 1 may be provided for having a conflict-sensitive policy and minimizing negative impacts to conflict; Score 2 may be provided for addressing the drivers of conflict and supporting peace.
* Generally, for supply chain risks addressed in this section for AP and AG:
	+ The word “expects” used throughout this section should be replaced with “required,” which suggests the company takes a stronger commitment by not merely expecting but requiring suppliers to respect key rights.
	+ That the company “ensure” good conduct in the supply chain, stated throughout this section, should require more than to “describe how it works with suppliers to improve their practices” often used for Score 2. The standard for Score 2 should be raised to meet the goal to “ensure.”

**(P. 38, D.1.1.) Living wage in the Company’s own operations**

* Score 2 – We would consider raising the requirement for Score 2 to require that Living wage targets are met. While considerable challenges do exist in negotiating and agreeing on a living wage target, once agreed (Score 1), we see less challenges for companies to proceed with implementing the payment.

**(P.39, EX D.1.3.) Land Rights**

* We would define “vulnerable tenure rights holders” in the Glossary.
* Score 2 – These indicators should include company efforts to advocate for respect of land tenure rights, and company assertion of zero tolerance for land grabs. Many companies are already implementing both policies, therefore the indicator presently falls short of some companies’ actions in this area.

**(P.40, EX D.1.5.) Security**

* Score 2 – We would include that the Company trains security personnel on the Guiding Principles and responsibilities under international humanitarian law.

**(P.41, EX D.1.7) Access to water and sanitation**

* Score 2 – While a company on its own may not negatively affect access to safe water, companies should also consider the collective and cumulative impact of the actions of several actors. See here.

**(P.44, AP D.2.6.) Women’s Rights (in the supply chain)**

* We would consider adding to score 1: “OR the Company works with suppliers to improve their practices in relation to women’s rights, such as expanding business relationships with women-owned enterprises, including small businesses, and women entrepreneurs.”
* We would also add reference to women’s health concerns, as these are a significant challenge in the apparel sector.
* Score 1 – We would remove the last phrase, “through document retention,” to address broader restrictions of freedom of movement. For example, many garment factory workers live in factory-operated hostels with strict curfews and requirements to obtain permissions to leave the premises on a daily basis.

**(P.48, AG 3.4) Land Rights**

* We would define “vulnerable tenure rights holders” in the Glossary.
* Score 2 – These indicators should include company efforts to advocate for respect of land tenure rights, and company assertion of zero tolerance for land grabs.

**(P.49, AG D.3.5) Access to water and sanitation**

* Score 2 – While a company on its own may not negatively affect access to safe water, companies should also consider the collective and cumulative impact of the actions of several actors. See here.

**(P.54, AG 3.10.b) Women’s Rights (in the supply chain)**

* We would add to score 1: “OR the Company works with suppliers to improve their practices in relation to women’s rights, such as expanding business relationships with women-owned enterprises, including small businesses, and women entrepreneurs.”

**E. Performance: Serious Allegations**

* We would add “Freedom of Speech” and “Privacy” as issues with a Clear Human Rights Link (List on P.55).

**(p. 61 E.1.3) The Company has taken appropriate action to address the alleged impacts.**

* We would add the words “where business enterprises identify that they have caused or contributed …”, from UN Guiding Principles 22, which clarifies that expectations for remediation arises once a business decides that there are valid claims against them (but not for fictitious claims that they do acknowledge).

* Score 1 – While it is certainly a good expectation for a company to engage with stakeholders even if the company does not acknowledge the impacts, this is not strictly required under UN Guiding Principles 22. There may be some situations where a company may decide not to engage with stakeholders over fictitious claims. Therefore, while engagement may be good practice, it should not be linked to remediation under UNGP 22. If it is, UNGP 22 should be added in its complete language to clarify what it does require.
* We would flip score 1 and 2 for the scenario where the company does not acknowledge the impacts, so that such a company achieves Score 1 by describing a potential remedy and Score 2 by engaging with the stakeholder.

**Annex:**

**(P.63) Acronyms**

* We would include UN Global Compact, WEPs and CHRBs (see below).

**(P.68) "Sources Referenced"**

* Under the box for UN Global Compact (P.69), please also add, above the UN Global Compact CEO mandate:
	+ UN Global Compact Ten Principles
	+ Women’s Empowerment Principles (WEP)
	+ Children's Rights and Business Principles (CRBP)
* Under Reporting Framework, we would also consider adding “WEPs Reporting Guidance” (this is aligned with GRI 3 and GRI 4. See <http://www.weprinciples.org/Site/WepsGuidelines/>)

**General Comments:**

* The methodology should be clear in defining human rights and labour rights. Sometimes, the two are conflated and addressed together; other times, they are used independently.

# Organization: Vale

**Name:** Raquel Althoff

**Feedback:**

**Indicator A.1.4**

We suggest the following adjustment:

“EX For Score 1, this includes a commitment to respecting human rights in maintaining the safety and security of operations (based on relevant UN instruments or on the Voluntary Principles on Security and Human Rights (VPs) or is a member of the Voluntary Principles on Security and Human Rights (VPs) or to using security providers who are members of the International Code of Conduct of Private Security Providers (ICoC).”

Argument: The Voluntary Principles on Security and Human Rights (VPs) are extremely relevant to the extractive industry. Using then as reference is as important as relevant UN instruments.

**Indicator A.1.8**

It is not clear how the company should indicate that it has not been involved in these types of actions. Should it be a public statement?

The same comment should be considered for indicators C.5 and C.6

**Indicator B.1.5**

For score 1, it is said that “The training covers at least the ILO core labour standards.” Then for ‘extractives’ it is said that “For Score 1, relevant managers and workers include all security personnel

(employed or contracted, public or private) and community relations personnel.”

But ILO core labour standards aren´t the mains topics to train community relations personnel. The training for community relations personnel must be mainly focused on community rights.

**Indicator B.2.1**

For score 1 it is asked that “The Company describes the process(es) to identify its human rights risks and impacts in certain locations or activities, covering its own operations (i.e. impacts to which it may cause or contribute) as well as through relevant business relationships (i.e. impacts to which it may be directly linked) (see the industry locks below).” Then for ‘extractives’ it is said that “For Score 1, relevant business relationships include on-site contractors and operating partners.”

We believe that own operations and business relationships should not be at the same score. For big companies, implementing HR risk and impact assessment is a complex process. The first step is naturally to implement it internally and then externally. If both internally and externally are at the same score, efforts made to implement internally as a first step would not be considered.

This aspect could be considered to other indicators also.

**Many indicators**

It is not clear who are considered ‘operation partners’. This definition should be at the glossary.