

29 February 2016

IOE Comments on the Revised Draft Measurement Themes and Indicators for the 2016 Corporate Human Rights Benchmark (CHRB) Pilot Benchmark

The International Organisation of Employers (IOE) attaches great importance to business and human rights. The IOE was actively engaged in the mandate of the UN Secretary-General's Special Representative on business and human rights, endorsed both the UN "Protect, Respect, Remedy" framework and the UN Guiding Principles on Business and Human Rights, and has actively contributed to the dissemination and implementation of the framework and the UN Guiding Principles. The IOE argues for preserving the approach agreed by these principles. The IOE has already provided written comments on the Corporate Human Rights Benchmark (CHRB) and has participated in a number of consultations. The following comments build on these former statements.

General Comments

- The IOE reiterates that the CHRB should not lead to a proliferation of standards or place an excessive burden on business to comply with divergent and potentially competing directives. In addition to the Global Reporting Initiative (GRI), the United Nations Guiding Principles Reporting Framework (UNGPRF) already advanced a dedicated framework to report on human rights issues in line with the United Nations Guiding Principles on Business and Human Rights. As stated before, the CHRB should be fully based on the UNGPRF and GRI framework and should not go beyond them in order to ensure that companies are not burdened with additional and unjustified reporting obligations. The IOE appreciates that in the revised draft CHRB links are made to existing GRI and UNGPRF indicators. This creates the transparency necessary in the draft measurement framework. However, some of the revised measurement themes and indicators are still not based on the UNGPRF and GRI framework, nor do they reflect the provisions of the UNGPs. These indicators must be deleted.
- The CHRB must not go beyond the provisions of the UN Guiding Principles on Business and Human Rights. The UNGPs are the authoritative framework with regard to business and human rights. By going further, the CHRB not only fails to make the most of the high consensus the UNGPs enjoy, but also jeopardises its credibility. At the end, some of the indicators seem to be set arbitrarily.
- The CHRB must respect the need for confidentiality: Some information such as bonuses and incentive schemes, internal structures or grievance cases, may be confidential and not appropriate for publication in a public portal.

- Because there are still many open questions with regard to the individual indicators, the CHRB should not enter directly into the pilot phase; another review and consultation round is necessary.
- The CHRB must be voluntary. This means that if a company decides not to participate, it should not be ranked. This applies particularly to the pilot phase, in which the methodology is tested.

Specific comments

Indicator A.1.1.: It is not clear why a company that commits explicitly to the UNGPs gets a higher score than a company that commits to respect the rights under the Universal Declaration of Human Rights. The UNGPs ask for a commitment to respect human rights, not for a commitment to respect the UNGPs.

A.1.2. – A.1.4.: It is not clear why the CHRB demands a special public commitment on certain rights. A company might well have specific policy in place to ensure that the rights of, for instance, local communities (A.1.4.) are respected, but in the policy statement the company might give a general commitment to respect rights under the Universal Declaration of Human Rights, which also covers the rights of singled-out groups.

A.1.5.: It is not clear why in the company's policy commitment there needs to be an explicit mention of freedom of association and collective bargaining in the reference to relevant business relationships. UNGP 16c only asks that the commitment "Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;"

A.1.6.: UNGP 18b asks that companies engage in meaningful consultation with potentially affected groups and other relevant stakeholders. However, neither UNGP 18b nor any other ask to have a publicly available statement, committing the company to engage with its stakeholders. As the indicators before, A.1.6. confuses statement and processes.

A.1.7. UNGP22 states that where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes. This is again a process, but must not necessarily be part of the public policy statement.

Ex D.1.1.: As the indicator rightly stresses, there is no general definition of a living wage. Because there is no clarity with respect to what constitutes a "living wage" and there is no internationally adopted and accepted living wage given the wide disparity in socio-economic conditions throughout the world, it is inappropriate to include a reference to a "living wage" in any of the KPIs. This KPI, therefore, presents considerable uncertainty and seeks to measure something that does not in fact exist. This applies also to AG D.3.1.b and others.

AP D.2.4.a. ff: The CHRB requires in these indicators, as in many others, that follow, that a "company ensures its suppliers refrain...". A company cannot ensure a supplier do something or not do something. The UN Guiding Principles on Business and Human Rights acknowledge that there is a difference between an enterprise's own activities and those of a business partner and distinguish therefore between the necessary action. UN Guiding Principle 13 states that the responsibility to respect human rights requires that business enterprises **avoid causing or**

contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and **seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations**, products or services by their business relationships, even if they have not contributed to those impacts. The term “seek to” implies that there are limits to what companies can do.

AG D.3.3. This provision neither reflects the UNGPs, nor any other reporting standard. Moreover, in some sectors the names of direct suppliers are considered confidential business information.

E. Serious allegations: It is still not clear how the CHRB will deal with a situation where there is a contradiction between information contained in an NGO’s allegation and the response given by the company concerned. Moreover, it is not clear how the CHRB will establish whether action to address the alleged impact has been appropriate in providing remedy.