

Sent by email.

2 October 2015

■ Dear Vicky,

IPIECA would like to thank the Corporate Human Rights Benchmark (CHRB) for the invitation to comment on the first iteration of the initiative's methodology. IPIECA is the global oil and gas industry association for environmental and social issues. Our global membership includes 35 oil and companies as well as 16 associations, forming a network of over 400 companies.

IPIECA has been working on human rights issues and raising awareness across the oil and gas industry for over a decade. We support the framework laid out by the United Nations Guiding Principles on Business and Human Rights (UNGPs) which provide clarity on the state duty to protect human rights and the business responsibility to respect, as well as a common language for human rights and a set of high-level principles as a framework for managing human rights issues and risks.

IPIECA shares the CHRB's objective of driving better corporate human rights performance. We believe that this objective would best be achieved within the framework of the UNGPs. In its current form, several aspects of the methodology of the Benchmark appear to be inconsistent with the UNGPs, for example the use of the term 'human rights due diligence' is not as stated in the UNGPs, and the indicator 'raising human rights concerns with governments', appears to contradict the tenets of the UNGPs by advocating that businesses involve themselves in efforts to *protect* human rights.

Furthermore it should be noted that 'human rights' cover a wide range of issues. Companies manage (and report on) a number of issues that relate to human rights, without necessarily framing them in human rights terms, for example, for an oil and gas company, health and safety processes integrate human rights, but are unlikely to be communicated as such in publicly reported information. It is not clear how the CHRB will distinguish this information when ranking companies.

In our view the current indicators, scoring criteria, and methodology all require further work to make them clearer, easy to measure and apply, and ensure that a meaningful outcome will be achieved. We have also found that the weighting framework is duplicative and overlapping between several categories. There is feedback that would help to improve this included in our detailed response attached to this letter.

In addition the proposed process for conducting the review of companies needs to be clarified and simplified, otherwise it will result in the collection of an overload of data, that will be difficult to handle and meaningfully analyse, and extremely resource and time intensive for the Benchmark to review as well as for companies to gather. To meet the CHRB's aim of encouraging a "race to the top" for human rights performance, the value-to-effort ratio for companies and the insight-to-volume ratio for stakeholders posed by additional disclosure expectations than existing initiatives already request/require need to be carefully weighed up. Reporting simply to meet the expectations of the benchmark's methodology with a sole focus on adverse impacts, can lead to disclosures that fail to

provide stakeholders with a clear understanding of how organizations are managing human rights risks and issues and may indeed draw focus away from a company's most salient human rights issues and work to operationalise the UNGPs.

We thank you once again for the opportunity to comment on the methodology. Our detailed response to the specific questions asked, and feedback on the indicators is provided in the attached document, as well as submitted through the online consultation platform. Please do not hesitate to contact us should you need clarification on any aspects of our response.

Best regards,

Helen Murphy
Social responsibility manager
IPIECA

I) BROAD CRITICAL ISSUES

1. Have we got the principles behind the weighting of the measurement themes correct to ensure a balance between policy and performance? If no, what needs changing? (Refer to Page 7 of the Framework Paper)

Score weighting and repetition

The scoring and weighting methodology need to be further improved and clarified. Presently, several of these are unclear and repetitive/duplicative.

■ The framework paper says the intent is to take a process and systems approach (p. 5) but the weightings then give 60% to performance, reporting and leadership and only 40% to process and systems.

Is it necessary to have an additional section on reporting and transparency weighted 10% when the whole benchmark is based on transparency and publically reported information? This creates repetition across the sections, e.g. the content under “Reporting” appears to be redundant with other Themes. E.g. B.1.1. (“company has a public statement...”) and E.1.1. (“company’s human rights policy is publicly available”). The Human Rights Due Diligence section also contains a reporting component.

Weighting of adverse events as 20% of the overall score seems high, as a large multinational company could have a robust system of due diligence, transparently share data on KPIs and performance, and nevertheless be allegedly involved in adverse event, as reported by news media. The verification of the adverse event and the facts surrounding that event need to be robust to justify such a weighting. In addition, the company should be provided with an opportunity to put forward their information, and have it considered. Yet if the allegation is the subject of legal action, they may not be in a position to do so.

Concept of leverage

The benchmarking does not adequately address the concept of leverage in the UNGPs or realistically deal with the limitations of leverage with respect to business relationships in the extractives sector. A number of the indicators under sections C&D assume leverage where often there may not be any leverage or any prospect of obtaining leverage. For example the scoring for extractives sector mixes together several business relationships and treats them as though there were one with the same amount of leverage available for all – suppliers, contractors, joint ventures (whether operated or non-operated, large or small shareholding), and operating partners. Degrees of leverage over these business relationships vary widely in the context of Oil & Gas. Companies may have greater influence and leverage over operated JVs, and to an extent over contractors and suppliers, than over operating partners and non-operated JVs, which are harder to influence and engage. For the latter leverage depends on the share percentage and how the partnership is set up – e.g. which partner has responsibility over aspects of operating and performance, whether they are a national oil and gas company, publically listed, etc.

See further comments on weighting and scoring in response to Question 3 and in the feedback on specific measurement themes and indicators, below. Given the weaknesses with the current section on “adverse impacts”, this should not be 20% of the overall benchmark.

The policy indicators for management systems are overly detailed. They should be simplified and subject to a relevance test.

The reporting/transparency section is duplicative.

2. Have we covered the Key Sector Risks that we should be considering for the Extractive, Agriculture and Apparel Sectors? (Refer to Page 22 of the Draft List of Indicators)

Issues of forced labour and child labour are more relevant to AP and AG than EX.

For extractives:

- Responsible security could be covered more extensively as this is a major issue for extractives and much work has been undertaken in this area. The fact that extractive companies work with public security forces, and realistic expectations of what can be achieved in terms of provision of training etc., are not reflected adequately.
- Health and safety focus on the workforce, as well as community / public health. Consider adding workforce welfare, e.g. labour practices and working conditions.

- There are critical differences between each sector covered by the methodology at present. It is difficult to see how the benchmark could successfully compare and ultimately rank companies from each in its current format. This can be seen in the far higher requirements for extractives in the draft methodology. We propose that each sector be aligned in terms of expectations, either by reducing the requirements for extractives or raising the requirements for agriculture and apparel. Also, the questions do not reflect the fact that also companies within the same sector may have significantly different risks due to the nature of the portfolio, geographical spread and many other factors influencing the human rights risk picture.

3. Is the Benchmark fit for purpose for all stakeholders? (Refer to Page 4 (Expected Impacts) of the Framework Paper)

General fit for purpose issues:

Expected impacts of framework

Framework papers explains that “Business will be incentivised to make information publicly available and when adverse events do occur they will be more likely to demonstrate how they addressed them and ‘lessons learned’, resulting in greater preventative measures as well as adequate remedies for victims.”

We are not sure that the benchmark will be successful in its aim of incentivising companies to make information publicly available when adverse events occur. This will only be the case if the adverse event is not at risk of becoming the focus of litigation, if it is, then companies are unlikely to be able to discuss it transparently due to potential legal consequences.

A more realistic impact is that businesses will be encouraged to quicken the pace of UNGPs implementation and disclose more about what they’re doing in this respect to conduct due diligence and prevent adverse impacts.

Design

Framework paper explains the CHRB, “will utilise the UN Guiding Principles on Business and Human Rights as a foundation, and will complement these with additional human rights sector or issue principles and guidance.” However, it is unclear what’s meant by that assertion and, based on the simplistic 1-2 scoring scale and “essential” vs. “desirable” categorization of indicators, how the benchmark’s current design incorporates the UNGPs, whether as a baseline/minimum expectation or as a positive level of achievement.

We suggest that an appropriate design would explicitly map to the UNGPs and allow a company that demonstrates alignment with the UNGPs to be scored positively against the benchmark's criteria, e.g. receives a "good." If a company goes above and beyond the prescriptions of the UNGPs, that should be communicated as "better than good", e.g. the company receives an "excellent." Companies not meeting the requirement of the UNGPs (as per the CHRB analysis) could be scored as "not meeting expectations". To do otherwise would de facto penalize companies for not doing more than what the UNGPs set out. For instance, since raising Human Rights concerns with governments as Pillar 2 "exists independently of States' abilities and/or willingness to fulfil their own human rights obligations." Another option would be to present the results as a balanced scorecard for companies, this would reflect the cross-cutting nature of how human rights issues and risks are managed across companies (e.g. across environment, health and safety and governance). This could be undertaken across each theme:

- Leadership
- Governance
- Management systems
- Etc.

Refer authors to commentary under 2nd foundational principle for business in the UNGPs (emphasis added): "An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work. *These are the benchmarks against which other social actors assess the human rights impacts of business enterprises.*"

The benchmark appears to lack a clear definition of "human rights" in the list of indicators and the framework paper. A possible definition may be found in the UNGPs but this is high level. As a result the CHRB becomes a measure without a standard.

Also, the questions do not reflect the fact that also companies within the same sector may have significantly different risks due to the nature of the portfolio, geographical spread and many other factors influencing the human rights risk picture.

Reporting and scoring process

As stated in your framework paper, the main objective is to measure and rank top listed companies based on their human rights policies, processes and practices. Consider 3 measurement themes instead of 5 keeping:

- Governance (15 - 20%) - involves Policy Commitment, Accountability, and incorporate some of the Leadership and Transparency indicators.
- Management Systems (40%) - how a company uses processes to implement due diligence is key to "advancing the practice" in this area. It should have a higher criteria weight than the current 30%.
- Performance (40%) - In addition to KPIs/Sector Specific Practices and Adverse Impacts, it should include Continuous Improvement and Positive Impacts. The Reporting measurement theme can also be incorporated here.

By limiting scores to 1 or 2 it will be difficult to gauge improvements, best practices, etc. As the benchmark is calculated over time, the limited scoring range could make the benchmark less useful to its intended audiences (investors, companies, civil society and government). Furthermore, additional explanation of how Essential vs Desirable indicators are scored is needed.

The Framework paper says the CHRB, “will use information in the public domain to benchmark companies. [t]he Benchmark will request companies to submit information into a public portal but will also use a wide range of information in the public domain from and about companies.”

However, many of the KPIs are somewhat or highly subjective (e.g. B.1.7. Commitment to remedy; C.1.1. Responsibility and resources for day-to-day human rights function), so there is room for varying interpretations of achievement by the scoring body versus what a company represents through reporting.

Our industry has already adopted many of the indicators listed in the draft list, albeit under different language/categories, as part of existing/core business practices and risk management systems. Further emphasis on companies to disclose ‘performance’ will not change existing focus on performance of health, safety, environmental and other social issues. Reporting metrics may not in themselves translate into better performance, rather these may detract from day to day operations.

■ Additionally, some information may not be available to the scoring body unless disclosed by the company (e.g. C.1.6. Communication/dissemination of policy commitment to business relationships - “Score 2: The Company extends the communication of its human rights to business relationships globally”), but the scoring methodology doesn’t allow for an accounting of missing information, so companies stand to be unfairly penalized for non- or partial disclosure. It might be beneficial to have a “Not Ranked” category, for organizations that cannot or will not provide adequate information for complete ranking.

It is not clear from the information available the level of rigour and fact checking that will be undertaken in determining the results of the benchmark.

For the sake of the credibility of the methodology, the CHRB should ensure that only validated and credible information is reviewed in the scoring and review process.

We would also appreciate more clarity of the threshold for inclusion in the ranking and the timeline of events, e.g.

- If an event was covered in the methodology the previous calendar year will it again be considered the following year?
- What about historical/legacy events?

CHRB should also indicate how they will account for internal company cultural differences in how human rights are managed and embedded across functions, e.g. for an oil and gas company health and safety processes integrate human rights, but are unlikely to be communicated as such in publicly reported information.

Convergence:

We strongly suggest that convergence between the UNGPs Framework and the CHRB is maximised. Recent years have seen a significant expansion in the reporting requirements (voluntary and mandatory) placed upon companies. Each new requirement or expectation places further reporting burden upon company resources, while company efforts should be rightly spent on performance.

Continuous Improvement: One of the principles of the UNGP Reporting Framework is that business enterprises demonstrate Continuous Improvement, understanding that implementation of policies and process for respecting human rights takes time and evolves over time. The benchmark does not really capture a way to articulate continuous improvements clearly, especially given the binary (1 / 2) nature of the scores. The benchmark should reflect continuous improvement activities by businesses.

To meet the CHRB’s aim of encouraging a “race to the top” for human rights performance, the value-to-effort ratio for companies and the insight-to-volume ratio for stakeholders posed by additional

disclosure expectations than existing initiatives already request/require need to be carefully weighed up.

Reporting simply to meet a high minimum standard with a sole focus on adverse impacts, can lead to disclosures that fail to provide stakeholders with a clear understanding of how organizations are managing human rights risks and issues and may indeed draw focus away from a company's most salient human rights issues and work to operationalise the UNGPs.

B.1.5. – Business Relationships

Would suggest that the joint venture partner references be carefully considered to reflect the understanding that most of the positive influence companies have on joint venture partners (specifically NOCs) is most effective when managed locally and non-confrontational. Would urge authors to consider requesting reports of progress made in joint venture locations to achieve an “excellent” rating.

The methodology assumes a level of data and assurance from JV partners. This is unrealistic for companies involved in non-operated JVs where they are the junior partner.

In a number of places the benchmark confuses contractors and JV partners, see below comments in relation to C.1.7, C.1.10, C.3.2, and D.1.10.

Ranking of sectors

The ranking for sectors is imbalanced, e.g. C17 Training on human rights scoring for AP and AG is “relevant workers” for EX it is “relevant business relationships include contractors and joint venture or operating partners”.

Overall, the exact audience for this benchmark is unclear.

The information would be onerous even for the benchmark team to get through.

It is unclear exactly what will be achieved by collecting all of this information.

(II) FEEDBACK ON MEASUREMENT THEMES AND INDICATORS

(please refer to the Draft List of Indicators)

A. MEASUREMENT THEME: Leadership - 10%

Please include any suggested comments on the measurement theme, on the list of indicators, on the wording of indicators or scoring.

This category is not aligned with UNGPs, and seems highly problematic to be reviewed for benchmarking. Specifically:

A.1.1. Raising human rights concerns with governments: This indicator seems to contradict the tenets of the UNGPs by advocating that businesses involve themselves efforts to *protect* human rights. The indicator supports businesses overstepping their agreed role in the “protect, respect, and remedy” framework and infringing on the role of government. Only States have international human rights law obligations and the sovereign duty to protect and promote the rule of law; nowhere is it established that businesses should play a role in influencing laws concerning human rights. In fact, to encourage such behaviour runs the risk of allowing private bias into States’ determination of human rights legal regimes.

A1.1 & A.2.1 rely on the company being able to openly discuss its efforts to raise human rights concerns with the government or industry peers. In certain countries where Oil and Gas companies operate openly lobbying the Government on human rights is highly risky and could put operations as well as employee wellbeing and security at risk if done publicly. Yet just because the advocacy is not public, does not mean it is not occurring.

A.4.1. Support for building local human rights capacity: Again, question the alignment of this indicator with the UNGPs. Also question the soundness of advocating that businesses be involved in building the capacity of or educating communities, civil society and especially governments on human rights, and have concern about encouraging that level of influence from business on how these groups understand and promote respect for human rights.

There may not be opportunities to do all of the things listed under leadership in any given year, it will very much depend on where the company operates, what industry body activity is, etc. How will scoring be applied if a company does not have new examples for a given year, will past examples count?

- Is leadership the right title for this section? All companies cannot be leaders in this space. Furthermore, the questions in this section appear to be more about advocacy or external engagement on the issue than leadership, e.g. leading by doing or by example.

Additionally, of note from the UNGP Reporting Framework: “The responsibility to protect human rights is distinct from a company’s efforts to support or promote human rights.”

Consideration should be given to voluntary membership of leadership associations that are setting benchmarks and seeking to improve performance.

B. MEASUREMENT THEME: Governance - 10%

Please include any suggested comments on the measurement theme, on the list of indicators, on the wording of indicators or scoring.

B.1 Policy Commitments (5%)

B.1.1: only voluntary codes should be referenced and not regulatory requirements such as the OECD Guidelines which are really not voluntary.

B.1.2: The scoring is unclear - How will the benchmark judge what the higher standard is? A score of 2, the indicator assumes that companies only operate in regions of weak legal/regulatory frameworks. The score of 2 is not appropriate in contexts of well-regulated standards of e.g. health, safety, environment or labour.

B.1.3: EX: ILO convention 169 and UNDRIP apply to states. For a score of 2, there needs to be clarity on what is the standard, as these tend to be interpreted FPIC very differently.

B.1.5 – EX – requiring contractors, JVs or operating partners to commit to respecting human rights of indigenous peoples or VPSHRs is usually done through contract clauses or seeking to influence a partner as a shareholder (often a minority shareholder), not through policies. The policy may have a broad statement to the effect that the company expects / seeks its contractors and JVs to meet the principles / requirements of its policy, but the specifics may not be fully detailed in the public policy document.

B.1.6. - Commitment to engage with its stakeholders - Score 2 language is too vague for large, complex multinationals. Would suggest adding a prioritized aspect to the score; such as geography or areas of concern.

B.2 Board Level Accountability (5%)

There is a section on leadership under A, then again under B.2.1 -- 'Leadership from the top', examples include speeches or presentations setting out the company's position on business and human rights by BoD members or the CEO, would this not belong better under section A Leadership?

B.2.2: Scoring unclear: e.g. what is the score if human rights are one of several elements considered by the board, but not reported on separately? What will be the score for a company that has sustainability (or similar) committee/s of the Board that govern all the issues viz safety, security, environmental, social, ethics, transparency issues i.e. related to human rights?

B.2.3. How would you verify the Board being able to describe the human rights experience of a Board member? Also, Board members tend to be regularly appraised of issues such as health, safety, diversity, etc. which are also human rights issues. A senior manager often has more oversight and relevance to this topic than an actual board member. Board members should be informed but are not the subject experts

B.2.4: Indicator and scoring are unclear – e.g. the Board agenda topics could include integrated human rights issues in relevant functional topics.

B.2.5: There are different types of roles of the Board in different companies, this should be kept in consideration for framing this indicator. There are management incentives for meeting health, safety, environment, diversity etc. targets – all these cover human rights issues.

B.2.6:

- Repetitive of B.2.1 on Speeches or presentations by the BoD or CEO on the company's stance on human rights.
- Would add 1-2 more layers of management in order to meet the needs to companies whose Boards don't communicate externally their behalf, are larger or whose CEO doesn't have a very public image.

C. MEASUREMENT THEME: Management Systems - 30%

Please include any suggested comments on the measurement theme, on the list of indicators, on the wording of indicators or scoring.

C.1. Embedding policy (5%)

C.1.1 & C.1.2 – Companies do not normally go into great detail in their Sustainability Report on how responsibility for human rights implementation is organised across relevant internal functions, or how internal policies and processes 'embed the human rights policy into routine details of company management'. How would / where would you expect this information to be provided in the public domain? Companies tend to typically provide a good overview of their overall approach to management of human rights issues and risks, on their websites and public reports.

C.1.2 is unclear – e.g. for a score of 2, what evidence will be used to determine "ongoing alignment"? or "alignment in practice with most important functions"? C.1.4. Would suggest that this goes above and beyond the UNGPs, but also that this is irrelevant and most Boards have reputational, ethics and compliance metrics by which they incentivise management.

C.1.3 'Audit' clause should be removed – companies regularly assess internal practices and policies without invoking the word 'audit' per say

C.1.4 is also duplicated with B.2.5.

C.1.7 – Scoring for EX here and in a number of subsequent indicators lumps together contractors and joint ventures. In fact there is a significant difference between these types of business relationships. Oil and Gas companies often have greater leverage over contractors than joint ventures, particularly where the joint ventures are non-operated.

C.1.11. Would suggest that the detail in Score 2 for this item are quite onerous and burdensome.

C.1.9 Score of 2 requires extensive auditing and monitoring suppliers. Silent for EX, but in other sections relevant business relationships included contractors and JV's.

C.1.10 To achieve Score 2, expectation is that Company is working with major or critical contractors to improve human rights performance. We need to ensure that the responsibility of major contractors vis a vis UNGPs remains with them (they are business enterprises). (UNGP Principle 14)

C.2. Human Rights due Diligence (15%)

C.2.2 – Key risks for EX:

- Health and safety should focus on the workforce, and also on community / public health.
- Consider adding workforce welfare, e.g. labour practices and working conditions.

C.2.3 – this is repetitive of C.1.11 – Framework for stakeholder engagement. Suggest incorporating C.1.11 into C.2.3 and avoiding repetition. Regardless, would propose to be more explicit about stakeholders and specify topics or regions of concern for the company in order to not be too vague or onerous.

C.2.5 – other indicators in this section are focussed on risk and impact assessments, while it is odd that this indicator talks about tracking and communicating assessment of the implementation of the human rights policy? It should more explicitly be focussed on tracking and communicated implementation of actions in response to risk and impact assessments. For Score 2 – need to acknowledge that companies may not have dedicated management systems for managing human rights, but instead have a company-wide management system into which human rights and many other operational risks and impacts are integrated for management.

C.3. Remedies and Grievance Mechanisms (10%)

C.3.2

- Score for EX, it is not clear whether this would be required for each or just for a Score 2. Recommend that provision to operated JVs forms part of score 2. It would not be appropriate to score against provision of the company's grievance mechanism to JV's where the company is not the operator (such JV's should either have their own grievance mechanism or use the operating company's grievance mechanisms). In practice it will be significantly challenging to apply company grievance mechanisms to a non-operated joint venture.
- There are several different terms used in this section with respect to what a grievance mechanism is intended to capture, e.g. human rights complaints, human rights concerns, and lead to the identification of human rights impacts. It should be recognised that the grievance mechanism will typically capture all types of concerns and complaints, a company then needs some sort of mechanism / assessment process in the background to determine which of these rise to the level of human rights complaints or concerns – typically very few. The majority of complaints or concerns will likely be about routine issues such as noise, dust, traffic that do not rise to the level of adversely impacting human rights (under the UNGPs – Access to remedy is the human right).
- How are companies expected to 'ensure' that 'all relevant stakeholders' know about their mechanism? What evidence is needed to show this? How will this be measured by the benchmark?

C.3.3. Large companies will have several different mechanisms and won't likely be able to prove stakeholder involvement in all of them. This needs to include some sort of prioritization or regional aspect based on risk and relevance.

D. MEASUREMENT THEME: Performance - 40%

Please include any suggested comments on the measurement theme, on the list of indicators, on the wording of indicators or scoring.

D.1. KPIs & Good Practices (20%)

In general, KPIs do not lend themselves to effective tracking across multiple industry sectors, nor do accurately reflect 'performance' as such.

For KPIS in this section, see above comments about extractives sector scoring. Contractors, operators and JVs should not be lumped together. These types of business relationships are very different and leverage over contractors of owned or operated assets is rather different to leverage over non-operated JVs which depends on shareholdings, partnership structures and is much more complex. Also, there is an important distinction to be made between operated and non-operated JVs which is not addressed in the scoring and needs to be taken into account. Would strongly suggest that score 1 applies to contractors, score 2 applies to other operators and joint ventures. Leverage is greater for own contractors and operated JVs than for non-operated joint ventures or operating partners.

D.1.1 Score of 2 requires implementing and checking the practice of employment agencies and recruiting intermediaries.

D.1.3. Direct employment [AP, AG]; D.1.12. Living wage [AP, AG, EX]: These indicators seem to go beyond established definitions of human rights

D.1.3, D.1.4, D.1.5: the indicators need to be reworded and set sharply in references to ILO standards core conventions.

D.1.10 – The expectation on Extractives Sector to provide these Health and Safety figures for JVs at the outset in order to just achieve a score of one is not realistic. It is also inconsistent with what is being asked for other sectors and their joint ventures. As explained above the situation for JVs is complicated by the distinction between operated and non-operated JVs.

D.1.13

- The scoring for extractives on this indicator assumes that involuntary resettlement has taken place in the reporting year or that there has been some sort of significant land use dispute in the reporting year. If no involuntary resettlement has taken place and there are no land disputes, how can a company receive a score of 2? Suggest changing this to allow companies to explain their approach, akin to the option under C.3.5.
- Would suggest that mention of FPIC be moved from Score 1 or "good" to Score 2 or "excellent."
- Are both D.1.13 and 1.14 on Land acquisition and resettlement required? The scoring overlaps quite a bit, would suggest that one indicator could cover this. Also the scoring for extractives on D.1.13 - score 2 seems more applicable to D.1.14

D.2. Adverse Events (20%)

D.2.1. – How do you propose to include an adverse event that involves a business relationship? The criteria and investigation / verification on whether or not the company has contributed to / or is directly linked to the adverse event will need to be sophisticated and robust.

Detail on scoring needs to be published and we would suggest it should be subject to consultation at least with affected sectors. What happens if an adverse event takes place toward the end of the reporting period and there isn't sufficient time to demonstrate that the event has been investigated by the company, relevant learnings applied and preventative / remedial action taken? How is it to be judged whether a remedy is satisfactory? What if the detail of remedial action can't be disclosed by a company due to confidentiality (either to its business partners or affected persons)?

The examples related to FoA / CB could invite a lot of subjectivity, e.g. 'refusal to recognise or bargain with a union, unless for reasons recognised as reasonable' – reasonable by whose standards and according to whom?

The thresholds on accidents seem rather arbitrary (and could possibly affect the credibility of CHRb). Does one accident need to result in 5 or more deaths, or would 5 separate accidents resulting in fatalities count? For accidents in the Company's supply chain, presumably this would apply in the production of goods or services for the Company. Simply using a supplier that has had 10+ serious accidents, but not whilst in service of the Company should not qualify as an adverse event.

Is there sufficient justification for a vastly different threshold for contractor / supply chain accidents resulting in deaths or serious injuries vs threshold for fatalities resulting from actions of security forces? Most companies aim for zero fatalities, is CHRb saying its okay to have 4 fatalities in the company and up to 10 in the supply chain?

Is it anticipated that EIRIS will simply determine whether this number of deaths or serious injuries was likely only avoided by chance on the basis of news reports? If so, that would be rather arbitrary given the level of reliability and detail of most news reports. For example, how would EIRIS take account of a company's emergency plans, etc.?

D.2.2 – As above, section D.2.1 – further detail is required on the methodology to be applied in this domain and should – when available – be subject to further consultation.

This section appears, on the evidence of the consultation draft, to require additional development. In the absence of detailed information pertaining to the gathering and analysis of adverse event reports/allegations – in particular on the application of credibility thresholds to blog or social media material – this section is likely to remain a source of uncertainty and concern on the part of benchmarked companies.

Sections D.2.1 and D.2.2 may undermine the initiative's broader credibility in the event that companies do not receive reassurance as to the provenance of allegations/reports and the methodological rigour to which they will be subject. There are specific, practical/technical considerations which merit further elucidation, particularly as regards:

- The practicability of responding to a large number of such "adverse events", if the intention is to apply a low threshold of credibility – benchmarked companies may well lack sufficient time and resources to produce corrective information in the event that the portal carries information pertaining to multiple instances of negative news stories in print, online, NGOs, blogs and social media.
- What level of information is to be publicly visible on alleged/reported "adverse events"? This is likely to be an important determinant of benchmarked companies' preparedness to submit corrective information and of wider judgements of credibility.
- What mechanism (if any) will be available for the submission of corrective or explanatory information in confidence? In the event that such a mechanism is available, what secondary mechanism (if any) will be employed to make the submission of such corrective or supplementary information visible to visitors to the portal?

- What is your intended approach to dialogue with benchmarked companies as regards “adverse events” – more detail on this would be welcome.

Positive impacts

We propose that the benchmark takes into account positive impacts – perhaps by expanding the leadership section. As per the UNGPs, positive impacts do not offset negative impacts, but by only focusing on adverse impacts, the benchmark will not lead to a “race to the top” as intended. We feel it would be better for the CHRB to contribute to defining what “better than good” human rights performance from a company is, and then laying out how a company could perform well.

An example of where a sector has managed to successfully focus on positive impacts to drive improvements is in infrastructure (see [BREEAM](#), [GRESB](#) or [LEED](#)).

Examples of positive impacts that could be covered include local content, e.g. human rights aspects of employment or inputs, goods and services procured from local sources, operations carried out in partnership with local entities, development of enabling infrastructure, the improvement of domestic capacity, or the improvement of local technological capabilities. Another example is a question from the BHHRC January 2015 questionnaire which covered engagement with local governments on human rights. However, if the leadership/positive impact is included, it will be very important to clarify that the benchmarking goes beyond the UNGPs, so that the benchmarking is not perceived as benchmarking of UNGPs implementations only, when in reality, it goes beyond it.

There is considerable overlap between ‘management systems’ and ‘performance.’ If these categories remain intact, lower the percentage for ‘performance’ and remove emphasis on KPIs, as they do not lend themselves to tracking across multiple industry sectors and do not accurately reflect ‘performance’ as such.

E. MEASUREMENT THEME: Reporting and Transparency - 10%

This section seems redundant. The entire benchmark is about transparency and is based on publically available information. The indicators in this section could easily be incorporated into prior sections. E.g. E.1.1 into section on policy commitment and E1.2 into section on KPIs. E.g. E 1.7 to 1.9 is repetitive of much of what is asked for in the KPIs section, seems like double counting. If all that is being assessed here is whether this information is publically disclosed or just provided to the benchmarking team, then why not simply add an additional weighting or score to the relevant section above, e.g. KPIs section?

E.1.2 – Consider that not all employees will have roles that are relevant to operations and for which human rights training is needed. Similarly, not all security personnel will need to be trained in human rights, those in high risk locations or operations will need the training more than others.

E.1.5 – Scoring for extractives on this indicator is not clear. Is it proposed that for a score of 1, the company must conduct joint assessment and monitoring on salient human rights issues? If so, that is rather unlikely to take place in all projects or operations. Consider whether joint assessments / monitoring belongs under stakeholder engagement or impact assessment section and management?

Similarly, E.1.1 and B.1.1, E.1.2 and C.1.7, E.1.4 and C.2.2, A3.1 and B1.1 - are duplicative, while E1.7 is unclear.

(III) ADDITIONAL FEEDBACK AND COMMENTS

The benchmark seeks a lot of additional detail and information that would not be appropriate to disclose in a Sustainability Report that has limited space and is intended for a broad audience, not solely those interested in human rights performance. Not all of the issues requested by CHRB will be material

to the wider audience of these reports in any given year. What channels does the benchmark expect companies to use to disclose additional information in response to the benchmark, should they see fit? It is important to balance the benchmark's request for information with the intended desire to see progress on business and human rights and create a race to the top. If the majority of company specialists are focused on gathering data for external reporting, that will take precious time away from their ability to focus on implementation and improvement of human rights performance on the ground. Consider whether all of the granular information being sought in this benchmark is really necessary, or whether it can be focused further on the really material / salient issues?

We are concerned about the speed of the process – will CHRB be able to effectively integrate all the changes to the methodology needed for the outcome to be credible for a pilot to take place in Q1/Q2 2016? We would propose CHRB extend their timeline in order to ensure that the end result meets the original goals of the benchmark.