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IN THE CITY OF NEW YORK

SCHOOL OF INTERNATIONAL AND PUBLIC AFFAIRS

Vicky Dodman
Corporate Human Rights Benchmark
1-3 Charlotte Street
London, W1T 1RD
United Kingdom

October 2, 2015

Dear Vicky Dodman:

Thank you for the opportunity to participate in the Corporate Human Rights Benchmark Multi-Stakeholder Consultation held in New York on 25 September 2015. The Corporate Human Rights Benchmark is a potentially critical development in advancing corporate respect for human rights. We are grateful and honoured to have been given the chance to be a part of the process of its development.

Below please find our submission consisting of recommendations and further questions for consideration regarding the CHRB, derived from our reflections on the discussions at the Consultation, the CHRB Framework Paper, and the Draft List of Indicators.

We look forward with great interest in following the development of the CHRB.

Sincerely,

Business and Human Rights Clinic
School of International and Public Affairs
Columbia University

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Recommendations and questions on the Corporate Human Rights Benchmark

Submission of

Business and Human Rights Clinic School of International and Public Affairs, Columbia University¹

October 2, 2015

Recommendations:

- It is critical that the Benchmark’s indicators reflect the information needs of business and human rights advocates and workers and communities vulnerable to corporate abuse. To this end, we propose that sector-specific consultations be held with NGOs working as well as workers and communities impacted by that sector to find out what information they want to see that is not ready available in the public domain. Additional indicators could then be devised – or proposed indicators revised - based on the information needs identified.
- Companies are likely to be resistant to putting into the public domain some information that civil society wants to see (see the example of lobbying or supply chain, below). Consideration should be given to whether the company would be permitted to present evidence of positive steps to *prevent* human rights violations - such as supply chain mapping - to the CHRB that would not be made public, or would be made public with sensitive information redacted, if the company so chooses. Consideration would then need to be given as to whether the company should “lose points” for not making this information public.
- Whether a company has mapped its supply chain is a fundamental indicator of corporate human rights responsibility. It should be included as an indicator in the benchmark and companies should be requested to provide their mapping as evidence. The CHRB is a highly ambitious project, and as such it would be advisable to with a small set of key indicators – arguably evidence of supply chain mapping should be one of them.
- The indicators should capture and highlight concerted efforts made by companies to build longer-term business relationships, specifically with suppliers and joint venture partners that have strong human rights performance.

¹ Allison Walker, Anatole Douaud, Andrew Wilcock, Chatrini Weeratunge, Ginger Whitesell, Haoran Luan , Ishita Rahul Petkar, Max Anderson, Michael Adams, Satbir Chowdry, Samantha Weinberg, Sethaly Beyer. Faculty: Joanne Bauer.

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- Corporate lobbying (positive and negative) is an important measure of human rights performance that the Benchmark needs to consider. Performance indicators for corporate lobbying could include: 1) Value and allocation of resources used to lobby governments in each country. 2) Issues that are the focus of lobbying efforts and the intended impact on the issues of interest. 3) Relevant company legal proceedings and their position on the issues involved.
- The CHRB framework and indicators should incorporate a more nuanced approach to capture the manner in which policies/commitments are actually implemented. For example, the indicators should not only capture whether a company has a policy on annual leave or a grievance mechanism for employees, but also how many employees were granted annual leave or have utilized the grievance mechanisms.
- The Benchmark should incorporate a mechanism to obtain responses from relevant stakeholders (employees, advocates, affected communities, researchers, journalists etc.) to the information disclosed by companies. This will provide an added dimension on human rights performance that goes beyond the data provided by companies. However, processes would have to be introduced to verify the accuracy of the information provided by stakeholders.
- The CHRB explanatory materials should include clear language that reduces the possibility that the Benchmark might be co-opted. For example, clearly explaining that the Benchmark measures a company's performance against international human rights standards, and not just against its competitors, would avoid the possibility of a company touting itself as 'best in sector', even when its human rights record is objectively inadequate.
- It may not always be obvious to companies how a particular indicator relates to human rights. Making the sources of legal authority of each indicator clear to business will not only underscore the validity of that indicator, but also increase the value of the Benchmark as a tool to educate business about human rights.
- The designations “E” (for Essential) and “D” (for Desirable) are misleading – a viewpoint that was shared by others at the Consultation. A better alternative may be “Phase/level 1 and 2” designations, which can signal a progression of improved performance that is clear to companies. For example, in the Benchmark’s Governance and Policy Commitments section, all the indicators are rated as (E) except for the ‘Commitment to respecting additional human rights of or relevant to local communities’ and the ‘Commitment to remedy’ indicators.

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However, these are also essential to respecting human rights since, after all, “additional human rights” of the local communities are still their human rights. Moreover, it must be a basic standard for companies to at least have a commitment to remedy harm done.

Questions:

- How will adverse impacts be incorporated into the indicators? Will there be demerits for adverse impacts, and merits for dealing with the adverse impacts in a positive manner? How will the CHRB “grade” the remedy?
- Will consideration be given to how long it takes for a corporation to respond to allegations of human rights harms or implement measures they promise to undertake? Are there scoring implications for delayed action? How will unreasonable delay be defined and measured?
- The larger the company, the more adverse impacts or incidents it is likely to have. Will a very large company with, say, 27 incidents be ranked below a much smaller company (in any measure: sales, market cap, employees) with 22 incidents? Or will there be weighting according to the size of the company?
- Since there is an emphasis on collecting data from companies, how will the CHRB obtain buy-in from the companies that are to be included in the CHRB? What is the process for verifying that information provided by companies? The Dow Jones Sustainability Index has suffered from corporate dishonesty, a recent example being the revelation that ANZ Bank, which at the time it was the top rated bank on the Index was discovered to have knowingly funded a major land grab in Cambodia. Is it sufficient to include a mechanism for civil society responses to company information (see recommendation above) to protect against this?
- What steps will be taken to ensure the security of human rights advocates and victims who provide information to the Benchmark about abuses?