



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

**USCIB's Initial Comments on the Proposed
Corporate Human Rights Benchmark Initiative Draft Indicators (July 2015)**

October 2, 2015

USCIB is grateful for the opportunity to comment on the Corporate Human Rights Benchmark Initiative's Draft Indicators (July 2015) (the "Benchmark" or the "Initiative"). We applaud the organizers of the Benchmark for the scale of their ambition in driving the "race to the top" in integration and implementation of the UN Guiding Principles' call for a corporate responsibility to respect internationally recognized human rights.

USCIB's multi-industry corporate membership generates annual revenues in excess of \$5 trillion globally and employs 11.5 million people around the world. We think the initiative is an important development that deserves attention and careful consideration. At the same time, given the increasingly crowded space of corporate environmental, social and governance (ESG) reporting initiatives,¹ our members think that every new initiative needs to demonstrate its unique value proposition. While it is likely that the majority of these initiatives do not yet explicitly track the UN Guiding Principles, many of them likely do track a significant number of the overlapping ESG issues that the Benchmark proposes to cover from an explicit human rights angle, albeit stated in different terms. Some audit of where the Benchmark is unique and necessary beyond the most relevant of these initiatives would be helpful in demonstrating its unique value proposition.

While we recognize that the Benchmark is intended to be an evolving platform, at this early stage in the Benchmark's development, our members are not yet convinced it has made this unique value proposition clear. We are also unsure whether the early draft consultation materials clearly demonstrate that its methodology is on a path to ultimately deliver on its proposed value to diverse stakeholders. We accordingly look forward to further consultations around how to improve the Benchmark's approach and to actively contributing to future iterations of the methodology. The below feedback is generally offered in the manner requested through your online consultation after some initial comments that we hope you find useful.

¹ The Global Initiative for Sustainability Ratings has tracked over 400 ratings, rankings and indices sponsored by diverse entities of companies performance on various environmental, social and governance issues. See <http://ratesustainability.org/hub/index.php/search/report-in-graph>.

I. OVERVIEW OF RECOMMENDATIONS

- Provide more analysis on how the ranking will add value, particularly for existing ESG investing frameworks and seek to synthesize and cross-reference existing initiatives where relevant.
- Expand and deepen engagement with investors and companies and knowledgeable practitioners to co-develop fewer, more impactful indicators in different sectors; deepen engagement going forward to socialize a community of actors into using and building trust in the Benchmark.
- Road-test metrics to gain insights into whether the Benchmark's scoring approach is effectively calibrated to incentivize incremental behavior changes, including whether comparability across sectors is desirable.
- Carefully consider how companies will be selected for inclusion as this relates to existing investment indices.
- Provide more detail on Benchmark's governance; implement (and disclose) procedures for dealing with judgment calls around adverse events, including an escalation procedure and management of information while reconciling conflict accounts.
- Revisit weighting of Adverse Events and Reporting/Transparency – both could stand to be reduced in favor of a greater emphasis on Grievance Mechanisms or other areas.
- Reconsider the metrics around certain labor practices, particularly freedom of association and the use of temporary workers.
- Reevaluate the metrics around incentivizing board and executive performance.

II. GENERAL COMMENTS

A. Measurement

It needs to be recognized that this project (or any like it) is inherently messy because it attempts to take a four dimensional reality (i.e., events happening in the world, including the passage of time) and to reduce it to a binary system of zeroes and ones. Considerable caution has to be exercised, then, in reducing a subject as complex as business and human rights to mere numbers.

For example, it appears that getting a Score 2 is twice as valuable as getting a Score 1. Often, however, Score 2 is attained merely by offering a specific example of the activity or effort that would otherwise merit a Score 1. But does the act of merely disclosing specific examples in the context of the Benchmark really demonstrate *twice* as much commitment or effort in integrating respect for human rights? To be sure, transparency should be highly valued; the question is whether the current approach is fine-tuned sufficiently so that it is not valued disproportionate to the hard work done

within companies to make progress on human rights challenges. Perhaps some other metric system would allow greater fine-tuning in this regard.

Furthermore, we are curious to know if the Benchmark's sponsors have road-tested the methodology and the weighting currently adopted to appreciate how different hypothetical scores under the current system would translate into a ranking collectively or within particular sectors? Such an approach might allow for a fine-tuning of the mathematical approach, which would in turn give the sponsors an initial appreciation for hypothetical situations in which a company's own score could vary and evolve over time and could vary vis-à-vis others against which it is being benchmarked. This kind of simulation would seem to be crucial given the aim of the Benchmark to drive performance within and across sectors.

B. Scope and Investment Strategy Nexus

Several elements of the scope of the Benchmark at this stage create a number of questions for USCIB's members. These questions go directly to the utility of the Benchmark in providing useful ESG data for investment analysts and consequently, its ability to initiate a "race to the top" and drive competition among companies for continuous improvement of their integration of their respect for human rights.

First, it is unclear what investment analysis benefits or competitive effects will be generated from assessing a large pool of companies in different industries who are not direct competitors. Most ESG investment analysis proceeds on a "best in class" methodology that selects companies within either geographic or industry verticals (or both). These analyses tend to consider categories beyond human rights, including other more commonly used and established ESG factors (governance, environmental management, etc). These selections across industries are often synthesized in large cap equity ESG funds that have varying mixes of sectors drawing from one of a few existing benchmarks (among U.S. investment firms, the most common benchmarks tracked by the 44 large cap equity funds are the S&P 500 and the Russell 1000).² This is only considering U.S. managed funds – what about European ones or other stock exchanges?

In light of the way investment funds are currently structured/focused, a further set of questions arises with respect to the focus on the "largest of global companies." It is unclear what "large" means – is this defined by market capitalization in total, or within a sector? Or is it defined by global revenues, or total employees? Are privately held "large" companies and "large" state-owned enterprises excluded? Further clarity – and engagement – on these issues would be beneficial.

Existing benchmark initiatives are far more constrained and focused on single industries and narrowly defined issues. We believe this is for good reasons, given the paucity of useful and relevant

² See U.S. SIF, Sustainable & Responsible Mutual Fund Chart (as of August 31, 2015) (there are 44 large cap equity funds of 204 SRI/ESG funds, according to Bloomberg LP data), at <http://charts.ussif.org/mfpc/?FundType=ELC&>. Such consultation should be relatively easy given that a majority of the funds in question are managed by Calvert Investments, one of the Benchmark's sponsors.

metrics and the competitive dynamics likely to ensue around narrowly targeted issues. Given this, USCIB is curious to understand how the Benchmark’s methodological choices were made and more specifically, how data will integrate into the existing valuation approaches described above, and what, if any, engagement with investment analysts has been done beyond the Benchmark’s sponsors. Without a more refined understanding of these analytical choices, it is fairly unclear what competitive effect various Benchmark scores might have on companies. Arguably, casting the net so widely across so many different elements of integration of the corporate responsibility to respect (as well as across different industries) creates so many variables as to dampen the impact that the other more narrowly targeted approaches can harness.

In short, what analysis has gone into the question of exactly how investors are going to use the information provided by the Benchmark and how this will affect their investment decisions? Is the Benchmark only intended to provide basic information that will provide more engaged investors with a snapshot of the issues on which to further pressure particular companies or is it meant to provide investment-ready information that can be plugged into existing investment strategies? If the latter, what are the impacts that the Benchmark believes it will have on valuation of companies within such existing ESG strategies? Hopefully the new information will have more than a *de minimis* effect on the outcome matrix of ESG factors; if so, what effect might it have among common approaches and weighting of governance and social issues? A related issue is how the Benchmark will synch with existing reporting standards – principally GRI and the Shift RAFI Framework – that already have a wide range of human rights and labor rights indicators and reporting approaches on human rights issues. **A greater effort at harmonization and synthesis would add tremendous value to the Benchmark’s approach.**

Second, the Benchmark puts “positive impacts” on human rights as out of scope. While the UN Guiding Principles clearly establish a “do no harm” approach, USCIB is unclear where the line will actually be drawn between so-called “negative” and “positive” impacts. This distinction seems to be a false one that ignores the actual approach to human rights challenges by companies and the need with respect to any number of human rights issues to contribute to so-called “positive impacts” in order to either prevent or mitigate negative impacts. Indeed, the Benchmark itself seems to award points for so-called “positive” impacts (e.g., under D.1.13 (land use acquisition) in the agriculture sector³ and for contributions to local capacity-building under A.4.1⁴).

It would also appear that the distinction could contradict or undermine other elements of the Benchmark, such as the emphasis on “Leadership.” This would extend to joining human rights-

³ For a Score 2, the KPI looks for sector specific practices such as “help[ing] [small scale farmers] gain access to resources, knowledge, inputs, technologies or insurance that increase their resilience against external shocks.” While perhaps desirable and strategic, these efforts go far beyond the UN Guiding Principles call to do no harm, particularly, but not only, if said “external shocks” are neither caused nor contributed to by the company in the supply relationship with the small scale farmer.

⁴ A.4.1. provides points for “Support for building local human rights capacity” demonstrated by the Company’s commitment or specific examples of “support[ing] capacity building of local communities, civil society or government to understand and promote respect for human rights.”

oriented Multi-stakeholder Initiatives or engagement with governments that may aim directly at creating positive impacts such as improvements in governance or labor protections at a regulatory level. Such engagements may make a company's other efforts at ensuring labor protections more effective. Viewed in this light, so-called "CSR initiatives" may play an instrumental role in respecting as well as supporting rights.

In sum, we would be grateful to have better understanding of some of the conceptual choices behind the framing of the Benchmark and we would appreciate further explanation and discussion about it going forward.

C. Governance of the Benchmark

There has been adequate disclosure as to the identity of the sponsors of the Benchmark, but we feel there is poor public information about the governance of the Benchmark. We understand that there is a Steering Committee, but we do not fully appreciate how the Steering Committee functions or how it makes decisions. It would be useful to have greater clarity on this, particularly as it relates to certain potentially controversial areas where the Committee will inevitably need to make judgment calls. This concern is dealt with in further detail below with respect to the handling of adverse events. Another governance question relates to the current holdings and investment products of the Benchmark's investor sponsors and how these might relate to the Benchmark's methodology.

Finally, we were informed that upwards of 400 individuals/organizations had provided some feedback, but there are currently around ten submissions posted on the consultation website. We recognize that some stakeholders may have expressed a desire to contribute feedback anonymously, but it nevertheless seems that an initiative driven by a desire for radical transparency should at least disclose the substance of all the feedback it received while making the identity of the respondents' anonymous (and perhaps merely indicating whether they are a company, NGO or other category of stakeholder).

D. Process

We encourage the Benchmark's sponsors to consider whether eight weeks is sufficient time to leave the portal open for company inputs, or whether more time should be allotted to get quality inputs from companies. We would also encourage the Benchmark's sponsors to evaluate whether it has the capacity to process and review the reports of companies and to consider external stakeholder inputs and then reconcile differences between these reports in the time period allotted (six weeks), including the potential that several, if not many or most of the disclosures of adverse events could take substantial time to investigate properly. On a related note, we question whether sufficient thought has been given to the feasibility of an annual reporting life cycle. Experience from other initiatives shows that a company would likely have little time to evidence progress before the life cycle renews, so a bi-annual life cycle may be more realistic and ultimately useful in driving change.

E. Future consultations

Given our view that the Benchmark should strongly consider substantial refinements before moving forward with its public launch, we recommend a reevaluation of the working methods of developing the methodology. In particular, it might be useful to look at other processes' methodologies. Notably, the Shift RAFI Framework carried out its work over a multi-year period of global consultations and multiple iterations. Similarly, the Social Accounting Standards Board (SASB) has a rigorous process and is an ANSI-accredited standard-setting institution.⁵ A significant element of the SASB process is the involvement of both company, investor and other expert input in creating metrics. The metrics and accounting that the Benchmark initiative proposes to create are at least as complicated if not more so than the SASB, as it involves an area of sustainability performance that is widely acknowledged to be far less robust and defined by a significantly lower degree of consensus and harmonization than many of the industry-specific metrics SASB is considering. Furthermore, most of what the Benchmark proposes to measure are social phenomenon that resist quantification more vigorously than most of the SASB sustainability indicators.

We hope that full appreciation of the complexity of the task at hand and the above comparison to other similar processes should give the Benchmark sponsors pause. Hopefully it will generate reflection on how to better directly engage and hopefully integrate companies, investors and civil society in the articulation of metrics in this area. This task is bigger than any small group of individuals and developing a larger community of practice that is engaged with the Benchmark in intimate detail can only enhance its long-term utility and credibility with diverse groups of stakeholders. In this regard, we join the NYU-Stern Center for Business and Human Rights in calling for fewer, industry-specific metrics that are "decision-useful" to companies and investors and demonstrably cut through the noise of corporate responsibility reporting and clearly drive performance and outcomes.⁶ In light of this proposal, USCIB does not have detailed comments at this time on all of the proposed KPIs and Key Sector Risks. We feel a more robust process of consultation and collaboration could lead to the development of more credible indicators and strongly encourage the Benchmark's sponsors to consider such an approach.

III. SELECTIVE RESPONSES TO QUESTIONS FROM THE BENCHMARK SPONSORS

A. 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)

Generally, the weighing of the measurement themes adequately balances measurement of policy and performance, with two notable exceptions: the 20% weight accorded to adverse events is currently

⁵ See <http://www.sasb.org/approach/our-process/>. ANSI is a U.S. nonprofit that oversees and facilitates the creation of voluntary consensus standards. Accreditation by ANSI signifies that SASB's procedures to develop SASB sustainability accounting standards meet the Institute's essential requirements for openness, balance, consensus, and due process.

⁶ See Sarah Labowitz and Michael Posner, *Comments on Corporate Human Rights Benchmark Initiative* (September 24, 2015), pp. 3-4.

not in proportion to the overall effort of companies to respect human rights and thus to the other themes. Simply put, even a leading performer on human rights implementation can be embroiled in an adverse event despite its best efforts, or it may receive negative inputs within the Benchmark framework based on other actors' views of the adequacy of the company's handling of adverse events in the past. But the relative weight of such impacts relative to a global company's total operations needs to be put in proper perspective and the 20% weight arguably overstates its overall value. In addition, the considerable concerns that USCIB has over the challenge of measurement of adverse events and the methodology for determining conflicting factual circumstances and substantiating claims related to such events compounds our concerns about such events being accorded a 20% weight (see adverse events below).

In addition, we found several areas of overlap among the themes and would suggest closely reevaluating them to ensure that redundancy is not built into the metrics. For example, as indicated by Shift, the draft methodology makes Human Rights Due Diligence and Embedding Policy subcomponents of Management Systems, perhaps implying that the management systems addressed under Embedding Policy are not part of human rights due diligence, and yet, indicators across these two sections (C.1 and C.2) do overlap but employ distinct terms. We recommend clarifying the relationships between these sections and reducing any redundancy or undue complexity wherever possible. As several stakeholders have noted, there is likely significant redundancy in having a separate "Reporting & Transparency" section to the Benchmark.

B. 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)

As a multi-industry member association, USCIB is not providing industry-specific comments at this time on key individual sector risks. We are, however, interested, as noted above, as to how the Benchmark's sponsors will define the borders of these sectors and the methodology for including certain companies in these different sector rankings.

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

Please see discussion above regarding Scope & Investment Strategy (Section B).

IV. FEEDBACK ON MEASUREMENT THEMES AND INDICATORS

A. Measurement Theme: Leadership - 10%

We echo the concerns of ICMM and other stakeholders regarding the leadership theme. As currently proposed, the Benchmark may not be appropriately calibrated to capture leadership on human rights issues. For one, the Benchmark assumes that it is practical for a company to influence a business association by leaving it as opposed to remaining in the association and continuing to work with other members to reach consensus on human rights challenges.

A second potential misalignment is the indicator related to leadership vis-à-vis governments (A.1.1). **The indicator fails to appreciate that providing specific examples of company leadership on human rights issues with governments might be difficult to disclose without endangering long-term business relationships and even corporate personnel, depending on the government in question.** This will not always be the case, but it may be the case often enough that the Benchmark should consider whether this particular indicator is well-designed.

B. Measurement Theme: Governance - 10%

Board skills/expertise (B.2.3) – We recognize that the Benchmark is not looking for the entire Board to have human rights experience or expertise, but it should also be kept in mind that Directors have many priorities and discuss a great number of issues, but these often don't require that a Board member have a specific skill in a particular area in order to understand the issue. Evidence of some training of Board members on human rights issues might be more realistic.

Board agendas (B.2.4) – Not all companies publish their Board of Directors' agendas, so the evidence for this indicator may be difficult to standardize and verify.

Board performance incentives (B.2.5) – This indicator seems a bit unrealistic and difficult to measure. How does one value human rights performance – particularly at the level of a global organization and in the hands of one or more individuals? USCIB would be curious to understand if the Benchmark has evidence of this in practice and how it has worked. Perhaps performance could be linked to retrospective evaluations (i.e., if no serious adverse incidents occurred in a given year), but this again creates the challenge of how to adequately *price* the daily work of preventing human rights impacts? Whereas a sports organization can calculate the value to its franchise of an athlete achieving individual performance metrics (which are easily discerned in the first place), this kind of performance-based remuneration structure seems much more challenging in a corporate governance context. Furthermore, whether intentionally or not, this metric commoditizes respect for human rights without there being very robust or universally applicable evidence for a business case.

C. Measurement Theme: Management Systems - 30%

Enterprise risk management (C.1.3) & Incentives and performance management (C.1.4.) – As noted with respect to the Board metrics, some companies do not publish Board agendas for reasons completely unrelated to human rights issues. This may make it difficult for evaluation of these. We also echo our concerns above about how realistic such performance metrics are, whether for executives or for directors.

D. Measurement Theme: Performance - 40%

1. KPIs & Good Practices (20%)

As discussed during the consultation period, USCIB has questions regarding how the Benchmark intends to handle endowment credits for past human rights promotion activities and any negative effects on scoring derived from so-called legacy issues that may have already been addressed?

We agree with Global CSR and other stakeholders who believe that that the indicators “should very precisely reflect the expectations to corporations from the UNGPs and do not include indicators that would promote corporate activities that are not explicitly expected by a pragmatic implementation of the UNGPs, nor activities that could lead to insufficient or unnecessary activities.” We would supplement this by noting that it would be extremely useful if all KPIs indicated their source in internationally recognized human rights and how they were formulated.

Living wage (D.1.12) – A prime example of this is the KPI around “living wage,” which in various manifestations of the concept has theoretical support in international human rights instruments but remains poorly and imprecisely defined at the international level and subject to a wide variety of definitions and measurement approaches in the jurisdictions in which the concept has either a legal foundation or is alive within social debate.⁷ At a minimum, it would be useful for the Benchmark to provide more detail about how they arrived at the definition they chose and which methodology or methodologies they anticipate endorsing for calculation and comparison across different companies.

It may also be quite challenging for an independent third-party to verify that all individual employees’ (which the Benchmark already defines robustly) wages are sufficient to “cover food and housing expenses and all other basic needs for themselves and their entitled official dependents (clothing, transport, education, health care, unemployment insurance, pension, etc.) and provide discretionary income.” In this regard, we recall the UN Guiding Principles’ call for reasonable

⁷ A recent survey by the International Labor Organization reviewed over 60 descriptions of living wage as well as tables indicating characteristics of 86 recent municipal living wage laws in the United States and 99 national minimum wage laws from around the world and reviewed 26 methodologies that have been used to measure living wage in high-income countries, developing countries and in the United States. The study concludes that while some general consensus can be found around general definitional aspects of a living wage, that measurement remains a significant issue. There are wide divergences in measurement methodology due, among other issues, to wide differences in living costs between locations within high-income countries and the fact that developing country methodologies generally fail to estimate city- or area-specific living wages, a particularly difficult problem in large developing countries where differences in living costs may vary even more widely than in developed countries. The study concludes that “[m]any organizations and companies working in developing countries would like to believe that it is possible to make reasonably accurate and convincing living wage estimates in a simple and quick way” but that “such a silver-bullet methodology” does not presently exist. R. Anker, [*Estimating a Living Wage: A Methodological Review*](#), ILO (2011), p. 52.

human rights due diligence based on a prioritization of severity of impacts and question whether this indicator is faithful to those Principles.⁸

This also has implications for a close review of the various Multi-stakeholder Initiatives the Benchmark implicitly promotes: has a review been done to ensure that these are promoting human rights in a rigorous way? It is possible that some of their standards may be aspirational, going above and beyond the corpus of established human rights law? As CSR Europe notes in its comments, a few of these initiatives have not made a deliberate attempt to align their approach with the UN Guiding Principles since they were endorsed in 2011, which reinforces the need for the Benchmark to make such foundations and connections explicit if it is endorsing them.

Direct Employment (D.1.3) – We echo IOE’s concerns that the KPI regarding “diminishing” percentage of temporary workers ignores the fact that making use of temporary contracts is not a human rights violation per se. In many industries and geographies the use of temporary labour and contingent workers is accepted practice and provides both workers and the employer with reasonable and often necessary flexibility. Temporary work is often seen as advantageous by parents, students or people seeking to slowly re-enter the work force. For many others it is a lifestyle choice. While some parties have closely identified temporary contracts with increased risks of human rights violations, this would likely be a contextual matter and the Benchmark has not been designed to accommodate differences between geographies, but rather, to capture global aggregate numbers.

Freedom of Association (D.1.8) – Similarly, in many jurisdictions (including the United States and United Kingdom, from which one could anticipate a large number of the target companies would be drawn), it is perfectly reasonable for a company to engage directly with employees and adopt other forms of consultation with employees without choosing to recognise a trade union for collective bargaining purposes. We echo IOE’s comment that use of the term “neutrality” in the context of human rights and freedom of association may inappropriately expand globally what is a distinctly U.S. labor relations law and practice, which is very diverse and varied even within the United States. Accordingly, the metrics in this KPI may need further adjustment to accurately reflect efforts by employers to respect the freedom of association of their employees. Therefore, adopting and applying some of these indicators without greater clarity and explanation could potentially create an adverse inference being drawn when none is warranted.

Considering all of these comments, we encourage the Benchmark to strive to identify proxies that are as reliable as possible in identifying *actual* human rights impacts. If there is substantial evidence linking a ‘diminishing’ global percentage of temporary workers with improved human rights

⁸ See Commentary to UN Guiding Principle 17 on Human Rights Due Diligence (“Where business enterprises have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers’ or clients’ operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence.”).

outcomes, it would be helpful to stakeholders for the Benchmark to identify that research and evidence base for stakeholders' consideration.

2. Adverse Events (20%)

As noted above with respect to the weighting of the themes, we are curious how the Benchmark will account for adverse events in the overall business context where it may be impossible to measure the absence of a negative? Notwithstanding the need to remedy an adverse impact, is a 20% weighting counter-balanced by all the adverse impacts that do not occur because of good management?

In addition, USCIB has considerable concerns regarding how the Benchmark intends to handle conflicts over how adverse events have been addressed. We recommend designing and getting feedback on an escalation procedure and ways to protect company reputation during the process of reconciling conflicting information.

Moreover, USCIB is unclear how the two kinds of adverse events (Severe vs. Medium) will be scored and why different sources of information are being used for each level.

E. Measurement Theme: Reporting and Transparency - 10%

As others have noted, several of the indicators here are similar with minor differences (e.g. having a policy in place versus reporting on it or a commitment versus a process) (see, e.g. **E.1.1 and B.1.1, E.1.2 and C.1.7, E.1.4 and C.2.2**). As noted above, we recommend striving for reducing any redundancies within the Benchmark as this could skew scores and thus the competitive dynamics the Benchmark is trying to put in place. One approach would be to limit the weighting of Reporting and Transparency to only 5%; the additional points could perhaps go to Remedies and Grievance Mechanisms (increasing to 15%).

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USCIB reiterates its appreciation to the Benchmark sponsors for allowing us an opportunity to comment on the draft methodology and will look forward to future consultations and iterations of the Benchmark as it evolves.