

Corporate Human Rights Benchmark
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GLOBAL CSR comments to the Corporate Human Rights Benchmark and associated groups:

Thank you for the invitation to provide comments on the July 2015 "[Corporate Human Rights Benchmark – Draft List of Indicators](#)." Our firm's perspective and approach reflect our knowledge, experiences and feedback from corporations, investors, governments, professionals and academics since our firm started advising on business and human rights in 1996. With the UNGPs from 2011 app. 90 per cent of our work relates to the proper implementation by corporations and investors of the 'responsibility to respect human rights'.

We strongly welcome your initiative to create a corporate human rights benchmark. However, we find it crucial that the indicators 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.

At this stage of implementation we find it premature to seek to make indicators industry-specific; the rate of implementation and the early practices that we are noticing in the field are as yet at a stage where it appears that the ground-work requires attention. Diverting attention to industry specific approaches based on inadequate analysis may slow down the process of scaling up respect for human rights globally. GLOBAL CSR will point to some of the dilemmas and challenges that may occur from such early attempt when commenting on some of the proposed indicators; confer below.

Secondly, as an overall comment, we are concerned with the use of scoring. The UNGPs, providing for the global minimum standard for a management system required for a company to claim that it respects human rights, enables all stakeholders to evaluate whether a given company respects or do not respect human rights. 'Hiding' some of the 'essential' requirements in a scoring system may eventually lead to a situation where a company scores relatively well, however does not 'respect human rights'; e.g. that the policy commitment was not adopted at the highest governance level of the company.

Thirdly, GLOBAL CSR would recommend aligning the benchmarks much closer to the recently proposed RAFI framework. This framework is aimed at guiding large corporations in their annual reporting in alignment with the UNGPs; thus aimed at providing investors with adequate information on the company's efforts, and to some extent results, in respecting human rights. With the globally agreed standard for managing adverse impacts on human rights, the UNGPs, in place, it will become a challenge if various groups of stakeholders and experts propose different directions to larger companies. Hence, our

strong recommendation is to ensure that the proposed benchmarks, at a minimum, are fully aligned with the foundational and operational principles of the UNGPs.

Due to the natural limitations inherent to voluntary stakeholder feedback, GLOBAL CSR chose to provide written comments to some indicators only; however seeking to raise issues that may well pertain to a series of indicators. When first reading the draft GLOBAL CSR CEO, Sune Skadegaard Thorsen, noted questions related to almost all indicators. As such the following comments are not exhaustive:

Page 2: In the example for an indicator (C.1.7.) it is suggested that employees have a direct responsibility to respect human rights. The UNGPs define only what corporate respect for human rights entails. The UNGPs, or for that matter the UN, have never defined an individual's or individuals 'respect for human rights'. Therefore the respect for human rights by employees only occurs within the context of the corporation and the corporation's commitment to respect human rights.

Indicators:

A.2.1.: The *desirable* action to leave a business association if that association does not agree to the position of the company on a particular human rights issue seems exaggerated. With this indicator GLOBAL CSR reads – as an example: A company would like a business association to intervene or exert leverage, e.g. in relation to a government institution that causes adverse human rights impacts and that the company is linked to. If the business association does not meet the wish for the desired collaboration, the indicator promotes that the company leaves the business association. GLOBAL CSR suggests to insert 'the UNGPs' instead of the 'Company's position' and to rephrase the indicator towards the business association's general commitment to promote and assist in the proper implementation of the UNGPs.

A.3.1.: GLOBAL CSR appreciates the *desired* notion that corporations participate in MSIs to promote respect for human rights; we suggest making it precise using the term 'corporate respect for human rights in alignment with the UNGPs'. To this end the references to ETI and FLA in relation to the AP sector and the VPs or EITI in relation the EX sector need more consideration; some experts would claim that the referenced MSIs did not (yet) align their guidance material and activities to the intention (or wording) of the UNGPs – to scale up proper respect for human rights.

B.1.1.: GLOBAL CSR recommends that the indicator and in particular the sentence - "...human rights more generally, rather than to only (re. one) or more selected human rights issues, for example, non-discrimination" - is aligned with Foundational Principle 12 – i.e. referencing *at a minimum* the human rights contained in the International Bill of Human Rights, including the four core labour rights from ILOD. In addition score 2 becomes confusing, as it suggests that a company would have to commit to respect the UNGPs (or the OECD Guidelines). All companies are expected to respect human rights as outlined by the UNGPs and copied into the OECD Guidelines; whether they commit or not – a 'circle reference' in the commitment to respect the UNGPs as a means to fulfill the UNGPs' Policy Commitment requirements would appear awkward.

In terms of which human rights instruments that form the scope of the commitment, and should be referenced, GLOBAL CSR suggests reference to the IBHR; a reference to the UDHR only is a less optimal

reference compared to referencing the two binding covenants considering that governments are bound (hard law) by the covenants; i.e. the State Duty to Protect rest on the Covenants.

The references for EX could imply for EX companies that the three options (divided by 'or's) are sufficient to meet the minimum expectations for a policy commitment in the UNGPs principle 16 as informed by Foundational Principle (FP) 12. This should not be the case.

B.1.2.: This may be confusing for companies and make them think that they now need two policy commitments; one on human rights and one on the core labour rights. The benchmark should, as did the ILO, clearly acknowledge that the four core labour rights are all part of the IBHR. Score 1 is in direct conflict with UNGPs FP 12 and Score 2 may enable companies to 'score well' despite the lack of respecting human rights. The selected additional human rights that are highlighted for the three sectors appear somewhat random; possibly the selection pertains to a presumption that the human right to a 'safe and healthy working environment' is of specific importance to the three sectors (as it would be for any other sector) and that 'the right to rest, leisure and paid holidays' (referred to in the benchmark as 'working hours' – although there is no 'right to working hours') is only particularly important for AG and AP. This is problematic as it suggests that it is not important for EX, to deal with their obvious potential adverse impacts on their employees' right to rest and leisure.

In addition the AG sector addition highlights one potential adverse impact, freedom of association and collective bargaining, in relation to one stakeholder group, namely farmers; apparently such mentioning rests on the assumption that it is a general tendency of large AG sector corporations (those to be benchmarked) to 'impede on' this human and core labour right? The use of 'impede on' could also be confusing: We suggest using the language of the UNGPs ('cause', 'contribute to' or being 'linked to') to make this clearer.

Please note that adverse impacts by AG sector companies on 'the right to adequate food and its fair distribution' is not mentioned once throughout the benchmark, despite the fact that the former UN Special Rapporteur on the right to adequate food clearly demonstrated that the market created by this industry led to adverse impacts on this human right for millions of individuals. It is therefore important to include the right to adequate food and its fair distribution as a salient human rights issue for the AG sector.

B.1.3.: GLOBAL CSR disagrees that explicit mentioning of particular vulnerable groups in the policy commitment is expected by the UNGPs. Special attention to vulnerable groups is definitely required in both human rights due diligence and remediation; however, specific mentioning in a very large corporation's policy may lead to unfortunate disregard of attention to other vulnerable groups during implementation. Indigenous Peoples', women's and children's rights are all part of the IBHR and separate commitments to these instruments should not be deemed *essential* from a benchmark point of view; especially not at this (very early) stage of implementation.

B.1.4.: The human rights referenced or implied under the issues mentioned are already included in B.1.1. (with this *desired* indicator companies may get the impression that it is voluntary/not part of the UNGPs requirements to manage impacts on communities and when they do; that they need to consider a handful of rights only (out of the minimum scope of no less than 48 human rights referenced in the IBHR, incl. ILOD).

B.1.5.: "...it has a 'comprehensive' policy applying to business relationship". GLOBAL CSR finds that this essential indicator may lead companies to believe that they need a separate policy commitment for business relationships, whereas it is actually an explicit requirement to the overall policy commitment of the company (UNGPs P. 16) that the policy commitment specifies the expectations of the company towards its business relationships. The benchmark also chooses to only include upstream (supply chain) business relationships in the scores; and not downstream (the distribution chain). The UNGPs clearly state that the company is responsible for adverse impacts in the full value chain. Therefore both elements should be included.

GLOBAL CSR finds it problematic that the sectors AP, AG and EX can score 2 when requiring that suppliers merely respect 6 of 48 human rights. This is not requiring suppliers 'to respect human rights as defined by the UNGPs', as this would require reference to all 48 human rights in the IBHR.

B.1.6.: The minimum requirement should relate to engage with 'potentially and actually impacted' stakeholders and not more broadly with stakeholders, which could give companies the impression that it is sufficient that they engage with some arbitrarily selected groups of stakeholders.

B.1.7.: 'Desired' is misleading. It is part of the UNGPs requirements that business remediate where they cause or contribute to adverse impacts.

B.2.1.: 'Desired' is misleading - and is senior management sufficient? Are speeches sufficient or a discussion in the Board?

B.2.2.: This is not required as an essential indicator - could be desired; the commitment rests with the highest authority of the company. Proper assignment, however, is required when addressing adverse impacts identified through the human rights due diligence process. In relation to AP and AG this indicates again that companies need two separate policy commitments, confer comment on B.1.2. and B.1.5..

B.2.3.: The human rights expertise does not need to rest with board members; and 'expertise' is not obtained through some training on human rights issues.

B.2.4: Should include advancements in implementing the UNGPs required system and progress in addressing severe and salient impacts (that GLOBAL CSR does not define as completely overlapping).

P.17.: General 'Condition': I.e. a company that does not meet the basic requirements of the UNGPs may still be considered beyond 'limited policy'.

C.1.1: GLOBAL CSR suggests score 2 to reflect geographies instead of functions. The reference to supply chain only for AP and AG is misleading; these sectors may get the impression that responsible supply chain management only is required.

C.1.2.: Why is the benchmark limited to these functional areas only? Operations and sales/marketing - to mention two other functional areas - will definitely have potential adverse impacts on a range of human rights.

C.1.5.: UNGPs require that the policy commitment is communicated to all potentially impacted stakeholders; not only employees and 'other workers'.

C.1.7.: ad score 1 – Individuals responsibility to 'respect human rights' has not been authoritatively defined by the UN.

Ad score 2 – UNGPs FP 12 would require training in all rights from the IBHR as a minimum. The Benchmark should not encourage companies to train employees of business relationships. Business relationships should themselves respect human rights; i.e. they should train their employees. With these indicators we can end up in a situation where companies insist training employees from other companies on 2 labour rights only (out of a minimum of 48 human rights) thereby undermining proper implementation of the UNGPs by business relationships. Since various court systems are slowly appropriating the UNGPs as a standard for 'duty of care' this could theoretically lead to a situation where the buyer is held liable for the supplier's mismanagement of human rights adverse impacts in relation to adverse impacts that were not part of the training.

C.1.10: Need to clarify whether UNGPs aligned management systems, or whether the supplier 'performs' correctly in relation to some specific impacts matter? "Performance" appears to point to the latter; at this stage of implementation such focus seems premature.

C.1.12; D.1.1 – D.1.14: There is a risk that the mentioned sectors will not assess impacts where they are not mentioned. All 'issues' should be re-phrased as human rights. It is vital that the Benchmark is aligned with UNGPs FP 12 and – as a minimum – mentions the human rights mentioned in the IBHR, incl. ILO.

D.2.1.: It is a challenge that the indicator mentions ILO standards only.

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