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Institute for Human Rights and Business
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Business and Human Rights Resource Center
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**Submission to the Corporate Human Rights Benchmark
by the International Corporate Accountability Roundtable (ICAR)**

September 24, 2015

The International Corporate Accountability (ICAR) is a coalition of leading human rights, environmental, development, and labor organizations working to ensure corporations respect human rights throughout their global operations.

We commend the initiative taken by your organizations to develop the Corporate Human Rights Benchmark (CHRB), which measures and ranks the top-listed global companies on their human rights-related policies, processes, and practices.

The development of the business and human rights agenda has generated numerous tools targeted at embedding, integrating, and communicating a company's responsibility to respect human rights. To date, however, there is no comprehensive tool to assess a company's performance individually or against its peers. The CHRB could therefore serve as a powerful lever for accountability by clarifying expectations and driving increased human rights performance by those companies it ranks.

Given this importance, both the processes used to set the benchmarks and the benchmarks themselves are critical to the success of the initiative. ICAR therefore offers the following general and specific comments to improve the CHRB.

General Comments on the Process and Framing of CHRB

First, ICAR recommends that the consultation process used to develop the CHRB be structured to yield more substantive and transparent results. For this initiative to

succeed, it must have buy-in from the various communities that will feed information into it, use it, or be ranked by it. As such, involvement of a diverse array of stakeholders, including affected groups and their representatives, in setting the benchmarks is critical. ICAR therefore recommends that the consultation process be made more transparent by publishing a list of all individuals or entities consulted with, as well as easily accessible summaries of the consultations.

Next, ICAR seeks clarification on the definition of a “company” for the purposes of the CHRB. Corporate form has evolved to a host of different structures, including parent and subsidiary relationships. In the context of the CHRB, it is unclear whether the entire corporate family or only particular components of it will be assessed.

ICAR is also concerned about the allocation of weight to the respective indicators. The current framing of the CHRB heavily weighs process and policy disclosure without giving significant weight to tracking and disclosing outcomes of activities, including steps taken to mitigate or remedy any harms. The CHRB should clearly articulate why a particular percentage value was assigned to each element.

Specific Comments on the CHRB Indicators

Under the specific indicators outlined below, ICAR offers the following comments and recommendations:

Key symbols.

The CHRB employs symbols to differentiate essential indicators (E) from desirable indicators (D), giving each different weight in scoring. It would be helpful to have an explanation outlining the reasoning behind which indicators are determined to be essential and which are desirable in order to better understand the merits and drawbacks of such an approach.

A. Leadership.

Currently, to score a 1 in each of the indicators under Leadership, a company must “in principle” commit to carry out a stated activity OR provide examples. However, to score a 2, a commitment must be “backed with specific examples.” It is unclear what examples would be needed to score a 2 versus those provided to score a 1. Furthermore, it is unclear what specific actions qualify as committing “in principle” to advocate for human rights with the various groups listed.

A.3.1. Activities within multi-stakeholder initiatives.

The industries subject to the CHRB can and should participate in multi-stakeholder initiatives that address components of their operations. Extractives are a large user of private security. Therefore, they have a role to play in promoting adherence by private security contractors to standards as set forth in the International Code of Conduct for Private Security Providers (ICOCA), an initiative to set human rights and humanitarian law-based standards for the private security industry.¹ Currently, A.3.1 only considers whether companies in the extractive sector have signed on to the Voluntary Principles on Security and Human Rights and/or the Extractive Industries Transparency Initiative. ICAR recommends that extractives that participate in the ICOCA as observers, or who link contract eligibility to compliance with the ICOCA, be given an increased score to reflect this commitment.

A.4.1. Support for building local human rights capacity.

The language used for this indicator is especially vague. It would be helpful to offer a clear definition of capacity building, with some examples of qualifying activities.

B.1.2., E.1.7., E.1.8. Commitment to respecting the core and/or additional ILO Conventions; Reporting on some ILO Standards; Number of human rights related incidents and corrective actions.

Respecting human rights is not a choice between conventions. Rather, as the UNGPs and the international legal standards upon which they are based make clear, “[t]he responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labor Organizations’ Declaration on Fundamental Principles and Rights at Work.”² As the commentary to Guiding Principle 12 continues, “[b]ecause business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights.”³ Therefore, it is inappropriate to reward any companies that fail to respect some rights. ICAR recommends that any company that fails to respect, at a minimum, the International Bill of Human Rights and the ILO core conventions must not be given any

¹ INT’L CODE OF CONDUCT ASS’N, <http://icoca.ch/> (last visited Sept. 21, 2015).

² John Ruggie, Special Representative of the Sec’y-Gen. on the Issue of Human Rights & Transnational Corps. & Other Bus. Enters., *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, Guiding Principle 12, U.N. Doc. A/HRC/17/31 (2011), available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

³ *Id.* at Commentary to Guiding Principle 12.

points. This same argument is applicable to each of the B indicators in this section, as well as the E indicators above.

B.1.7. Commitment to remedy.

Absent from this indicator is the specific form of remedy being assessed. ICAR recommends that it be made explicit that companies should “commit to enable access to remedy for stakeholders who may be adversely affected by the Company’s operations, including judicial and non-judicial mechanisms, as appropriate.” For the full score to be granted, such a commitment should be made not just for the parent company, but also throughout the corporate group.

C. Management systems.

Minimized from the indicators in this section are the outcomes that result from a company’s operations in a particular context. While the indicators here focus on assigning responsibility within a company and include the development, communication, and tracking of human rights policies, there is little mention of how the management system addresses negative outcomes when they occur. Instead, these indicators largely focus on company processes, which may or may not lead to addressing harms if and when they occur. For example, a company could theoretically score very high in this section by communicating a number of processes that they have, all the while having negative impacts. A robust human rights management system moves beyond policy and process to include tracking, assessing, mitigating, and remedying harms when they occur. ICAR recommends that C.2.4 and C.2.5 therefore be strengthened to reward those companies that are acting through their management systems to address outcomes, rather than simply communicating processes to do so.

C.3. Remedies and grievance mechanisms.

Missing from this section is an assessment of the company’s participation in lobbying efforts where such efforts seek to minimize remedial avenues. Where a company participates in a process—either through lobbying independently or as part of an association— and such activity challenges human rights protections, this should be assessed by CHRB. On the other hand, if a company chooses to step away from lobbying activity that subverts remedial avenues, it should be credited with a positive score.

C.3.2. Effectiveness of channel(s)/mechanism(s).

The CHRB awards points when “[t]he channel/mechanism is effective, organized, and is aligned with at least the most measurable aspects of the UNGPs effectiveness criteria

such as those on accessibility and predictability.” ICAR is concerned about the selection of these two criteria alone. The UNGPs contemplate eight effectiveness criteria for non-judicial grievance mechanisms and, as the commentary to Guiding Principle 31 suggests, “[t]hese criteria provide a benchmark for designing, revising, or assessing a non-judicial grievance mechanisms to help ensure that it is effective in practice.” Companies should therefore be expected to meet the full effectiveness criteria outlined in the UNGPs and evidence how they do so in order to score in this regard.

D.1.13. Land use and acquisition.

ICAR has recently launched project entitled *Tainted Lands*,⁴ which focuses on addressing corruption in large-scale land acquisitions around the world. Ample evidence suggests that corruption is a major challenge impacting the human rights of those who occupy land that is transferred to private investors. We therefore recommend that this indicator explicitly address when a company discloses its policies on land acquisition and award points for a zero-tolerance policy in terms of the payment or receipt of either financial or non-financial benefits in exchange for land titles.

E.1.6. Human rights screening / investments or contracts including human rights clauses.

It is unclear how scores will be determined for this indicator. A score of 1 is offered based on the total number of significant investment agreements or contracts incorporating human rights concerns, while a score of 2 is given based on percentage and total number. However, the number or percentage necessary to achieve either score is not elucidated in any detail. ICAR recommends that the evaluation methodology be made clear; additionally, ICAR urges that the CHRB place a greater emphasis on percentage rather than total number of agreements in order to ensure that larger companies do not receive an unfair advantage in scoring. For example, both a score of 1 and a score of 2 could be based on percentage of contracts or investment agreements incorporating human rights concerns, with a lower percentage required for a score of 1 and a higher percentage required for a score of 2.

Ultimately, ICAR believes that the CHRB has the potential to serve as a valuable tool for furthering corporate accountability. Because of this potential, it is critical that the processes used to set the indicators as well as the content of the indicators themselves be developed in careful consideration, with key involvement of those affected by the impacts of business activity.

⁴ See ICAR, *Land, Corruption, and Human Rights*, <http://icar.ngo/initiatives/land-rights/> (last visited Sept. 21, 2015).

We offer our willingness to engage in constructive dialogue with your organizations to help CHRB realize its potential.

Sincerely,

A handwritten signature in black ink, appearing to read "Amol Mehra". The signature is fluid and cursive, with the first name "Amol" written in a larger, more prominent script than the last name "Mehra".

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