

HUMAN RIGHTS REPORTING AND ASSURANCE FRAMEWORKS INITIATIVE (RAFI)

Consultation with Civil Society Organizations

Jakarta, November 5, 2014

On November 5, 2014, Shift together with the Human Rights Resource Centre (for ASEAN) facilitated a half-day consultation with civil society organizations (CSOs) in Jakarta. The consultation was attended by 15 civil society organizations from Indonesia, including representatives working in communities across 28 provinces.

The consultation was organized to provide CSOs with a progress update on the work of the RAFI project team, and in particular to focus on developments taking place in the drafting of the Reporting Framework and its Implementation Guide.¹ Annex A contains the agenda of the expert consultation and Annex B lists the participants. The consultation comprised two parts:

- In Part I, Shift and HRRC facilitated a dialogue about the overall structure of the Reporting Framework, its rationale and the history of the RAFI project.
- In Part II, Shift and HRRC led a discussion about key sections of the Framework and its Implementing Guide. The first part of this discussion focused on the guidance as to how companies would define the human rights risks/impacts they would report on and was undertaken in plenary. The second part of this session then took place in small groups during which CSOs discussed the section of the Implementation Guide pertaining to stakeholder engagement.

The participants shared views based on their experience and expertise and were not speaking on behalf of their organizations. Accordingly, as with other consultation reports, this report does not attribute comments to individuals or organizations.

Part I: Overview of the Reporting Framework

The project team provided participants with an overview and background to RAFI and the development of the UN Guiding Principles Reporting Framework in particular. They emphasized several interrelated drivers for this focus on reporting on human rights, including new regulatory requirements pertaining to human rights reporting, increased awareness amongst companies themselves of the value of reporting on how they manage human rights risks and increased pressure from civil society organizations and investors that companies disclose this information. Particular examples were the US Department of State Burma Responsible Investment Reporting Requirements² and the launch by the Singapore stock exchange of a study to develop guidelines on sustainability

¹The Implementation Guide to the Reporting Framework is available at: <http://business-humanrights.org/en/draft-guiding-principles-reporting-framework-for-companies-now-available>

² This requires U.S. persons undertaking an investment (i) exercised in accordance with an agreement with the Myanmar Oil and Gas Enterprise or (ii) in excess of US\$500,000 in Myanmar to report on due diligence policies and procedures (including those related to risk and impact assessments) that address operational impacts on human rights, workers rights, and the environment in Burma. See <http://www.humanrights.gov/wp-content/uploads/2013/05/Responsible-Investment-Reporting-Requirements-Final.pdf>, in particular at paragraph 5, page 3.

reporting, with a view to making such reporting mandatory.³ This followed on from similar developments in Malaysia and Thailand, where the stock exchanges have issued guidance on mandatory sustainability reporting requirements.⁴

The project team explained how the Reporting Framework is based on the United Nations Guiding Principles on Business and Human Rights, and in particular their second pillar, which sets the expectation that companies should act with due diligence to avoid infringing on the rights of others and to address adverse human rights impacts with which they are involved. The goal of the smart questions that form the backbone of the UNGPs Reporting Framework is to provide companies with further guidance on how companies can disclose, in a meaningful way, what it is they are doing to align their policies and practices with the UNGPs.

The project team highlighted that the Reporting Framework is comprised of eight overarching questions and an additional 23 supporting questions. The framework has been developed with the aim that companies of various sizes and sectors could utilise it. Supporting guidance to the questions seeks to indicate how different companies might go about answering them to the best of their ability, based on their current progress in implementing the UNGPs.⁵ At a minimum, it is envisaged that companies should be able to respond to the eight overarching questions, with the extent of additional reporting varying depending on the experience of the business enterprise involved.

Plenary Discussion

During the plenary discussion that followed, CSOs raised a number of concerns regarding the utility and use of such a framework in Indonesia. Key issues raised were as follows:

Systemic challenges pertaining to company reporting on human rights exist in Indonesia, including a lack of accountability for violations that occur and minimal monitoring of sustainability reporting.

CSOs noted the prevalence of weak legal institutions in Indonesia, through which there appeared to be limited avenues for redress for human rights violations. There was a desire to see such reporting requirements as mandatory, in order to ensure that companies had to use the Reporting Framework, and some scepticism as to whether voluntary reporting would be undertaken. Further concerns were raised with regard to ensuring the violations experienced by communities were captured by the company, and that it did not become another form of window-dressing through which corporations could make themselves look good.

Understanding what had gone wrong in other reporting initiatives might be of value when considering how to ensure stronger engagement with RAFI: reporting on the Child Rights and Business Principles may be one example worth considering. Representatives from the child rights sector noted the challenges pertaining to reporting on violations relating to the *Child Rights and Business Principles (CRBPs)*, drafted by UNICEF together with UN Global Compact and Save the Children.⁶ They noted that CSOs in Indonesia had drafted their own framework for reporting on the CRBPs but had generally found that companies were unable to provide indicators that enabled

³See <http://www.eco-business.com/news/sgx-make-sustainability-reporting-mandatory/>

⁴Bursa Malaysia requires listed companies to report on CSR performance, but does not currently stipulate the form in which disclosure should be represented.

⁵The Implementation Guide to the Reporting Framework is available at: <http://business-humanrights.org/en/draft-guiding-principles-reporting-framework-for-companies-now-available>

⁶See http://www.unicef.org/indonesia/CHILD_RIGHTS_AND_BUSINESS_PRINCIPLES.pdf

relevant data to be collected convincingly. Furthermore companies generally failed to explain the process relating to their efforts to align their operations with the CRBPs. They noted, however, that transnational corporations appeared to be more willing to cooperate and to participate in discussions with civil society than local companies, providing the example of Anchor Hotels in this regard.

Increased knowledge and awareness of human rights instruments was still clearly needed in the private sector in Indonesia. Other CSOs noted the challenge of increasing awareness and understanding of human rights in the private sector. There was general agreement that companies were not aware of human rights instruments and standards and that even multinational enterprises appeared to have a limited understanding of how to engage with human rights issues. Greater awareness raising about human rights instruments, and how to report alignment with them, was clearly needed if RAFI were to prove useful in Indonesia.

There was quite a lot of scepticism around the merit of social auditing: positioning RAFI as driven by reporting (and not by external consultants) would be key to its success. Concerns were further raised relating to social auditing schemes and the lack of trust surrounding social auditing practices post-Rana Plaza. The inherent conflict of interest relating to the payment of third parties to conduct audits, bearing in mind they were often administered in a vacuum and without due consideration of worker's rights, was highlighted.

Utilizing the leverage created by global companies to push for greater transparency in their supply chain may prove useful; however, there was also a need for greater accountability from the government. There was some discussion centred on the Myanmar context, where reporting requirements were fuelling a 'race to the top' amongst Myanmar suppliers who wanted to attract business from multinational companies (who themselves, may be obligated to report on investments). CSOs noted that the Indonesian context was different, in that there were already laws in place that made social and environmental reporting mandatory, but that there was a lack of monitoring of this kind of reporting. Some CSOs felt that there had to be greater clarity from government as to how human rights reporting should form part of this requirement, and stronger mechanisms in place to ensure the requirements were met.

Companies and business enterprises working with international finance institutions, such as the World Bank and the IFC, did appear to be engaging more responsibly in Indonesia; however, utilizing the leverage created by financiers who had more stringent reporting requirements was challenging, due to the bureaucratic hurdles relating to reporting. CSOs also conveyed some scepticism about the utility of reporting and accountability mechanisms established through the World Bank and the IFC. They noted that there appeared to be weak measures in place to handle companies that did not comply with their guidelines requirements. Discussion then turned to the success of certain industry leaders in getting banks to require companies to have reached a particular standard or undertaken a particular process in order to receive financing. The example was given of the De Beers certificate of authenticity that diamonds had been sourced ethically and responsibly. CSOs seemed responsive to the idea of creating a trend toward better behaviour by companies when provided with such examples.

The project team noted that similar concerns had been raised during their consultations in Addis Ababa,⁷ particularly with regard to the viability and utility of such reporting where the State is failing in its duty to protect human rights.⁸ It was also noted that processes which made reporting mandatory, such as the Responsible Investment Reporting Requirements in Myanmar, did appear to be providing civil society with an avenue to push for greater accountability, by making information publicly available that CSOs could then utilize to lobby both government and companies. CSOs could also further engage in a conversation about the accuracy of such reporting which could in turn have an impact on the company's operations.

CSOs generally agreed that the gap between knowledge at headquarters level and that on the ground needed to be bridged, and that frameworks such as the UN Guiding Principles Reporting Framework may provide an avenue for change with regard to what was known and understood by those at the top.

Part II: Reviewing the Implementation Guide: Defining the Focus of Reporting and Stakeholder Engagement

Defining the Focus of Reporting

The project team led a discussion about defining the scope of reporting. Drawing from Part B of the Implementation Guide to the Reporting Framework, they highlighted key elements of reporting, including the choice of 'salient' human rights risks as the focus of reporting and how this can be distinguished from materiality. The team highlighted that 'salience' placed the focus on risks to people – namely, looking at how a company's activities and business relationships could lead to actual and potential human rights impacts on people. This was distinct from other forms of reporting, whereby a company considered risks that would substantively affect the sustainability of the business itself. A number of recommendations were raised by civil society in response to this conversation. Notably:

Defining 'severity' would be important in any definition of salience. Understanding which groups were most vulnerable in a particular situation, and providing guidance on that, may also prove useful. Civil society participants were keen to see a strong definition of salience, such that companies could not cherry-pick what they chose to report on. It was suggested that a focus on specific vulnerable groups be included when determining severity of impact.

It would be important to avoid a 'check-list' approach when it comes to reporting. However, at the same time, having some key indicators might be necessary. Some CSOs noted that a 'check-list' approach to reporting was likely to undermine any efforts at identifying salient risks. Generally speaking, CSOs were concerned that companies might encapsulate these risks in a manner that would lead to underreporting or under-engagement with the community. The notion that workers would fear reprisals and be unlikely to report on salient risks to their managers was also raised. At the same time, CSOs were keen to see some reporting in a format that they could engage with, and the challenge of finding accurate and adequate indicators was discussed.

⁷Information about Addis Ababa consultation is available here: <http://www.shiftproject.org/news/rafi-consultation-2014-african-regional-forum-business-and-human-rights-ethiopia>

⁸She noted that the conversation in Ethiopia very much centred around the capacity of companies to integrate and act upon their due diligence processes in order to meet the challenges raised by the actual and potential impacts such processes uncovered.

Small Group Discussion: Stakeholder Engagement

Participants were then divided into three small groups to discuss Part C2 of the Reporting Framework (Stakeholder Engagement) and its relevant sections in the Implementation Guide. When the groups returned to plenary, the following key points were made:

Selectivity of stakeholders would be challenging to assess. Ensuring companies spoke to the right people would be key to the value of reporting. CSOs find it challenging to assess the information provided in relation to a company's engagement with stakeholders. Ensuring that the company provided clear examples of how it had engaged in this process would be key to the information's credibility.

Ensuring stakeholders were free from intimidation when providing information on salient would be crucial. Understanding the context in which the information was provided was particularly important to civil society. Stakeholders should be free from intimidation when providing their responses.

Ensuring adequate follow-up on engagement would also be important. Companies should not simply see engagement as a one-off activity, but create an ongoing relationship and a communication structure that would allow for stakeholders to continue to provide feedback.

Conclusion and Next Steps

While civil society representatives initially raised several concerns regarding the framework's utility, they were generally enthusiastic about the possibilities that RAFI could provide, in terms of increasing the transparency and accountability of companies in Indonesia. The RAFI project team noted that the concerns raised would be considered and incorporated into the thinking behind ongoing drafts of the framework. The team further noted that CSOs would be kept up to date on developments for the project through the RAFI portal and via email.

ANNEX 1: AGENDA

Regional Consultation Meeting with Indonesian CSO on UNGP Business & Human Rights (Reporting and Assurance Frameworks) Jakarta, 05 November 2014 in Lounge 6, Level 6, Atlet Century Park Hotel, Senayan	
12:00	Registration and Walk-in lunch
13:00	Opening remarks / Welcome Marzuki Darusman Executive Director, Human Rights Resource Centre
13:15	Presentation of the RAFI Reporting Framework HRRC and Shift will present an overview of the RAFI reporting framework and implementation guide as they currently stand, including how they relate to other forms of reporting. This will be followed by discussion among the audience of their overarching reactions and suggestions.
14:45	Tea/Coffee break
15:00	Detailed discussion of the RAFI Reporting Framework Shift and HRRC will lead a discussion about some of the key approaches taken in the Reporting Framework, such as the focus on salient human rights risks and how they should be determined; the balance between process and outcomes; efforts to avoid 'cherry-picking' in reporting to incentivize improved reporting over time.
15:45	Discussion re: Ensuring Proper Reporting on Stakeholder Engagement Shift and HRRC will lead a discussion about how RAFI endeavours to integrate stakeholder engagement and stakeholder considerations into the reporting process. Discussion will focus in particular on Section C: Management of Salient Human Rights Risks.
16:30	Wrap-up and Close

ANNEX 2: LIST OF PARTICIPANTS

Regional Consultation Meeting with Indonesian CSO on UNGP Business and Human Rights (Reporting and Assurance Frameworks)

Jakarta, 05 November 2014 at Lounge 6, Level 6, Century Park Hotel

NO	NAME	Institution/Organization
1.	Nukila Evanty	Human Rights Initiative
2.	Teck TAN	Researcher for HRW Indonesia
3.	Hilman Handoni	INFID
4.	Bagus Wicaksono	Gugah Nurani Indonesia
5.	Astrid Maharani	HRWG
6.	Anugerah Perkasa	Business Indonesia
7.	Christian Ranheim	RWI Indonesia
8.	Aisyah Yuliani	RWI Indonesia
9.	Imam Shofwan	Pantau
10	Jamie Davis	Solidarity Center
11	Bahrain	Legal Aid Foundation/ YLBHI
12	Yasmin Purba	Legal Aid Foundation / YLBHI
13	Rohidin Sudarno	PATTIRO
14	Pratiwi Febry	Legal Aid Jakarta
15	Andhika Prayoga	Legal Aid Jakarta
16	Nur Hidayati	WALHI
17	Veronica Iswinahyu	Mercy Corps
18	PARK Dong Chul	Gugah Nurani Indonesia
19	Caroline Rees	Shift
20	Anna Triponel	Shift
21	Michelle Staggs Kelsall	HRRC
22	Faith Suzzette	HRRC
23	Ati Suryadi	HRRC
24	Ismail	HRRC
25	Bambang Irawan	HRRC