

Human Rights Reporting and Assurance Frameworks Initiative (RAFI)

Consultation with ASEAN Expert Stakeholders

Jakarta, November 7, 2014

On November 7, 2014, the project team for the Human Rights Reporting and Assurance Frameworks Initiative (RAFI) hosted a one-day expert consultation in Jakarta. Shift and Mazars, in liaison with the Human Rights Resource Centre (for ASEAN), established RAFI in 2013. Its aim is to develop, through a consultative process, a twin set of public frameworks: one to provide guidance for companies on what good human rights reporting looks like; and the other to provide guidance on what good assurance of such reporting involves. Further information on RAFI is available in the initiative's Framing Document.¹

This was the second round of expert consultations held in ASEAN for the project and involved a cross-section of individuals from companies, non-governmental organizations, governments, audit and assurance providers, investors, and academia.² All participants took part in their personal capacities and not on behalf of their organizations. The consultation was held under the Chatham House Rule in order to stimulate open and frank conversation. Annex A contains the agenda of the expert consultation and Annex B lists the participants. Similar in-depth expert consultations took place in London on April 24, 2014 and in New York on May 16, 2014. The reports of RAFI consultations that have taken place to date are available on RAFI's online portal.³

The primary focus of this consultation was to present the evolving draft of the **UN Guiding Principles Reporting Framework** and its **Implementation Guide**, as developed through RAFI, in order to solicit feedback from participants in ASEAN for the ongoing development of the draft. Discussions focused on the objective and general approach of the Reporting Framework, its structure, "smart questions," key concepts and the additional guidance contained in Implementation Guide. Specifically, the consultation discussed four substantive areas: (i) Overarching impressions from Expert Group and discussion of RAFI in its broader context, (ii) Detailed discussion of the draft Reporting Framework, (iii) Review of Key Sections of the Implementation Guide (iv) Discussion of the draft Assurance Framework.

¹ RAFI Framing Document (November 2013), available at <http://business-humanrights.org/media/documents/rafi-framing-document-2013.pdf>.

² The first round of expert consultations were held in London on October 17, 2013, in New York on October 23, 2013, and in Jakarta on November 20, 2013.

³ RAFI portal, available at <http://www.business-humanrights.org/Documents/RAFI#127250>.

Session 1: Overarching Impressions from the Expert Group and discussion of RAFI in its broader context

Overview from RAFI project team on the objective and approach of the RAFI, as well as its progress so far, and comments from the Expert Group:

The project team began the consultation by recalling for participants the objective of RAFI, and the approach the project team is taking. The corporate responsibility to respect human rights was discussed, as were the similarities and differences between the concepts of “business and human rights” and “corporate social responsibility”—the latter concept being more widely accepted in the ASEAN region. Shift further described the current state of corporate reporting on human rights, which, it was noted, largely consists of anecdotes and projects that vary across companies and across years, without a clear basis for the focus of reporting. Drivers for improvement in reporting were also considered (e.g., the UNGPs, mandatory reporting requirements, stock exchange demands or guidance, company best practices, investor and civil society expectations).

The project team then briefly updated the participants on recent developments and introduced them to the UN Guiding Principles Reporting Framework and its Implementation Guide. This was the first opportunity for the project team to present the Framework and Implementation Guide to a group of participants.

Participants from the RAFI Eminent Persons Group (EPG) noted that, in several countries in ASEAN corporate conduct pertaining to a corporation’s social responsibilities is already regulated. Additionally, there appeared to be a growing acceptance by business entities that they should act responsibly. Many companies are familiar with the concept of CSR and some even comply with ISO 26000. Companies mostly claim that they are doing very well; however, participants noted that there were often gaps between rhetoric and practice. In this respect, they noted the value of the UNGPs Reporting Framework as a practical tool that is based on universally acceptable principles.

Key points raised by participants included:

While publicly listed companies in ASEAN are being encouraged to report on the extent to which they are socially responsible, they are being given little guidance regarding *how* to do so. The first ASEAN-based national stock exchange to discuss human rights reporting was Bursa Malaysia. The Singapore Stock Exchange then also proposed non-mandatory GRI reporting. Presently, more than 100 companies have submitted GRI reports in Singapore, but the nature of reporting remains quite superficial. One expert indicated that a lot of people want to report, but they don’t know how. In a survey of companies operating in Singapore, business entities disclosed that if the government did not require them to do it, there was far less likelihood that they would spend time and money to generate these kinds of reporting. This was in part due to a knowledge gap as regards to how to report.

Some participants cautioned the project team from underestimating the costs of producing human rights reports, and to ensure human rights reporting formed part of an already existing reporting structure. Some participants stressed that companies would prefer to produce one report that covers everything that they are expected to be reporting to their stakeholders. The project team agreed that the UNGPs Reporting Framework should work seamlessly with other reports and that the aim of the

Framework is to help companies identify what kinds of human rights information should be included in their regular reports.

Participants emphasised that it is valuable to have a tool or a management system that allows companies to know what information they have about what they are doing in regards to human rights impacts. One participant shared his experience in helping businesses produce reports on corporate responsibility, such as the GRI's sustainability reporting, and noted that many of his clients had tended to shy away or be intimidated by the term "human rights." In some instances, companies had stated that they do not know or could not produce information related to their human rights activities. Others acknowledged that when companies understand what sort of information is expected and what data is needed, many companies realize that they actually already address many human rights standards through their existing processes. Those who discover gaps are then able to think of solutions to address them.

It was suggested that companies could use the framework in incremental steps. Entities may first use it internally; then, as they get more confident, they could put out information externally. There was perceived value in conducting internal reporting because it allows companies to find out gaps in their processes. For questions in the Reporting Framework where they cannot provide answers, companies can ask themselves why they do not have the necessary information.

Participants further emphasised that, while having an expert consultant produce reports can be helpful, the company eventually needs to learn how to produce such reports itself. Companies can be taught how to ask the right questions and reporting can become part of the ordinary course or normal cost of business. In this regard, the UNGPs Framework was seen as valuable because it sets out the questions that companies need to be asking themselves and to which they need answers internally as well. In this way, participants further noted that the UNGPs Reporting Framework helps businesses take ownership of their reporting mechanisms and see how to arrive at good answers over time.

Participants also reminded the project team that the expectation of reporting on human rights must be directed to all companies. Focus should not simply be on large multinational companies, but SMEs as well. In this regard, participants noted the role MNCs can play in driving human rights due diligence among their suppliers. If the supply chain is mandated by a particular MNC to submit human rights reports as part of the purchasing process, SMEs will be pressed to step up their compliance with human rights standards. MNCs were seen to have an interest in doing things right given their exposure to financial and reputational loss in relation to human rights abuses caused by SMEs with which they work.

Participants also expressed appreciation to the project team for its focus on ASEAN in the RAFI process to develop the UNGPs Reporting Framework. In this regard, several participants agreed that in ASEAN, the business community looks for processes that allow for discussions in which they can be involved. Consulting with businesses and including them in discussions to create a framework that is reasonable and implementable would likely enable the UNGP Reporting Framework to be accepted and used by companies and business enterprises in ASEAN.

Finally, participants praised the project team for producing the Reporting Framework. Previous consultations had largely revolved around abstract principles. Having a tangible framework as a basis for discussion was seen as enabling more productive consultations and swift progress on the initiative.

The recommendations from this session were as follows:

Help companies see how they can engage with stakeholders usefully and effectively in discussing how to report on their human rights impacts; Find ways to show companies that it is not unreasonably costly and that it is easy to do so long as companies know who their stakeholders are and are committed to meeting their expectations.

Given there are many drivers for reporting, try to identify the business case for human rights reporting and provide companies with 20-25 best practices that show how companies gain from complying with the UN Guiding Principles, including reporting on their human rights-related activities.

Session 2: Detailed discussion of the draft Reporting Framework

Overview from RAFI project team on the key elements of the Reporting Framework

The RAFI project team circulated in advance of the consultation the latest draft of the UN Guiding Principles Reporting Framework. The Reporting Framework has a three-fold objective:

- 1. To provide guidance to companies on how to disclose information on their human rights performance that it is meaningful for their shareholders and other stakeholders to read and which can support better on-going dialogues with their stakeholders;*
- 2. To provide guidance for human rights reporting that it is viable for companies to follow, recognizing resource constraints, legitimate legal constraints, and the need to be able to use the guidance also in the context of broader sustainability and integrated reporting frameworks;*
- 3. To ensure that use of the framework helps companies foster the internal conversations, decisions and actions that directly support more effective management of their human rights risks.*

The project team shared with the participants key elements of the reporting framework, as summarized at Annex A.

Highlights from this session included:

Some participants noted that requiring or pressuring companies to report on their human rights compliance (including information on their supply chain) may deter them from establishing operations in countries where the rule of law is weak or where there are serious human rights violations. Companies could be concerned that these reports will be used as the basis for lawsuits or to cause a “public relations battle,” even when the evidence base for the claims is very weak.

Participants noted that reporting takes time and effort, and that companies have to be “brave” to report externally. Many thus felt that there is a responsibility on civil society to recognize this effort and for civil society to “police” themselves and to use information given in reports responsibly, because unwarranted backlash discourages companies from reporting.

Participants noted that a human rights due diligence process can create avenues for conversations within a company as well as with affected stakeholders. Such discussions can help inform a company on what possible actions it can take in response to human rights abuses in its local supply chains. It was suggested that while some companies in ASEAN are human rights “mine fields,” businesses too often discover human rights abuses only after they have begun operations. In these situations, companies need to decide how to report the human rights risk/impact as well as their efforts to address them.

In this regard, the project team highlighted the relevance of Part C of the framework under which companies would report on how they manage risks and address impacts. They noted that there are companies working in difficult environments that are already releasing information on their human rights performance. Specific examples include Coca-Cola’s and Gap’s recent reports on their activities in Myanmar. It was noted that some companies talk openly about how they address issues such as child labor and land title in their supply chains: since these are systemic issues at several steps removed, they can often be reported on more easily.

Participants discussed the challenge of finding the right balance between providing clarity on what “good looks like” and ensuring that the Framework can reasonably be implemented by companies at any stage in the journey of implementing the UN Guiding Principles. If the reporting framework is too prescriptive, companies might simply say that they will not report at all.

It was noted that civil society could use companies’ reporting to then engage with them in a conversation about how the information relates to their own experience or how they could improve their reporting further. Participants noted that the benefit of the process can be that it opens dialogue and offers a challenge and opportunity for civil society to engage better with businesses.

Certain participants suggested that the project team consider setting a benchmark or example for how the reporting framework is to be used in practice. The project team confirmed that conducting pilots of the RAFI reporting framework would be part of the process and that Unilever had already begun the first pilot. Pilots would be important both for refining the Reporting Framework and to demonstrate that it is feasible and helpful to companies in advancing their human rights reporting.

Participants noted that the benefit of the reporting process was not merely to report, but to drive change. By seeking answers to questions for disclosure, companies were necessarily looking at how far they had implemented meaningful due diligence across their operations, identifying gaps and opening up internal conversations about how they could be addressed. In the end, a company may decide not to publish a report, but might still use the information gained from the process to take corrective measures.

Some participants inquired if the project team would consider incorporating the UNGPs Reporting Framework into a certification process. The project team responded that there is a need to avoid being an implicit stamp of approval. The purpose for RAFI is to promote better disclosure. Many different parties could then use that information to draw their own conclusions.

The project team inquired from the participants what they thought about having a minimum threshold for companies’ reporting on human rights. Participants suggested that having a process to handle negative situations could be a minimum threshold. When negative human rights issues arise, companies should have a process for how to respond to them. It was noted that investors generally want to know if companies can address challenges if they arise in the future. Using this reporting framework, companies can show that they do have such a processes.

Session 3: Review of Key Sections of the Implementation Guide

Overview from RAFI project team of the Implementation Guide for the Reporting Framework:

The Implementation Guide to the Reporting Framework on the UN Guiding Principles provides assistance to companies using the Framework. In relation to each overarching and supporting question, the Implementation Guide sets out:

- **The Objective:** A statement of the question's objective, to help the user interpret and understand it as intended;
- **Supporting guidance:** Additional supporting guidance on how to go about answering the question;
- **Relevant information:** Some examples of information that it could be relevant to include in a response;
- **The UN Guiding Principles:** Excerpts from the relevant parts of the UN Guiding Principles;
- **Other cross-references:** References to relevant provisions of broader reporting frameworks and industry- or issue-specific initiatives, so that companies can quickly and easily see how they fit with this Framework.

Participants at the meeting then formed into groups and were given a specific section of the implementing guide to discuss among themselves, with the participation of a member of the project team. These sections pertained to Stakeholder Engagement (C2), Integrating Findings and Taking Action (C4) and Remediation (C6). Participants were asked to consider if their section of the implementation guide elicits disclosure that:

- Is **meaningful** for companies' stakeholders to read;
- Supports better on-going **dialogues and conversations** (both internal and external);
- Is **viable** for companies to report.

Group 1: Stakeholder Engagement

- The group stated that they liked the term "engagement" and felt the questions were interrelated and worked well together. The focus on sharing information was positive and they suggested that the project team consider strengthening it. If companies are not giving stakeholders the proper information, then the engagement is not meaningful. The group also positively noted that references to what changes companies made in response to stakeholder feedback affirms the notion of having an on-going engagement process in place.
- The group observed that the framework refers to engagement with stakeholders in managing risks and suggested that the framework might refer to engagement with stakeholders even before risks arise, since trust-building is important. There may be benefits in making stakeholder engagement an "umbrella" section or at least including it earlier in the framework.

- They suggested that the framework be clearer as to which stakeholders are being referred to, for instance do specific sections refer to internal employees or workers in the supply chain?
- They proposed that the framework emphasize the expertise and relevance of the stakeholders that a company engages with. For instance, a stakeholder consultation participated in by many experts in environment and resources may not be equipped to tackle broader human rights issues faced by the company.

Group 2: Integrating Findings and Taking Action

- The group placed emphasis on how messages are communicated throughout an organization's structure, and how risks are understood by the different levels of a business entity. Emphasis was placed on how top management sets the right tone in communicating to the lower ranks so that human rights risk awareness becomes a normal part of business and is reflected in the company's key performance indicators.
- The group also stressed the need for operational staff to understand how risk is measured so that they can identify issues in their own daily tasks. Proper training should also be conducted to enable them to understand how to mitigate and address risks. The questions that address these issues were seen as particularly important.
- The group appreciated the forward-looking characteristic of the framework in that it provides guidance for how to establish processes that would help companies identify and address risks.
- The group recognised the tensions that occur when companies identify the presence of human rights concerns that are in tension with other company objectives. The group felt that the best course of action would be to have conversations about these risks and to collectively look for ways to improve the situation. It was suggested that companies do not have to always be risk-averse, but they need to be risk-aware and the overarching objective is to build relations and trust.

Group 3: Remediation

- The group observed that the overarching question ("Through what processes can the company address harms to individuals if it causes or contributes to an impact in relation to the risk?") is good because it looked at both cause and contribution and captures the range of harms with which the company could be involved.
- The group considered the capacity of companies to engage in remediation and whether or not it would be helpful to have external mediators as part of the remediation process. They posited if the company wants to outsource remediation, such referral should not be perceived or reported as an outcome in itself.
- The group welcomed the guidance for supporting question C6.1 (Through what means can the company receive complaints/concerns related to the salient risk?), which indicates that there should be no time limitations for the receipt of complaints.

- The group proposed that gender considerations should be taken into account by companies when reporting.
- They asked the project team to consider the implications of disclosing lessons learned from such remediation procedures. Would there be legal issues with companies disclosing these observations?

Session 4: Discussion of the draft Assurance Framework

Overview from RAFI project team on the overall approach to the Assurance Framework:

From its various consultations, the RAFI project team noted the varying ways the terms “assurance” and “audit” are used by different stakeholders from different fields of practice. It highlighted a short paper produced for RAFI by Adam Carrel, a participant in the October 2013 New York consultation, that looked at these distinct areas of practice.⁴ It distinguished between “**social audit**” which is geared towards confirming whether or not a certain facility/asset meets a certain standard at a certain time and “**non-financial assurance**”, which is geared towards confirming that an entity’s processes imply that all of its assets and activities are likely to converge towards an acceptable standard.

The project team presented some key challenges with regard to the development of an assurance framework in the area of human rights, as follows:

- The terminology of “human rights assurance” is confused and confusing;
- Non-financial assurance reports can be so heavily caveated that they lack value;
- Assurance may lend a false veneer of approval or “certification” to the company’s processes;
- There may be conflicts of interest between highlighting problems and retaining future business;
- A particular and difficult mix of skills is needed to carry out such assurance;
- There is no widely recognized qualification or regulatory structure to govern this field.

In light of these challenges, the way forward is envisioned as follows:

- Set a minimum threshold of reporting before assurance of that information can be credible;
- Start with limited assurance but move towards reasonable assurance where possible;
- Have longer assurance opinions that provide more complete information on the assurance process and findings;
- Require assurance providers to demonstrate the knowledge, skills and capacity needed in this field;
- Explore options for oversight and accountability to enhance the credibility of assurance, and manage conflicts of interest.

⁴ Adam Carrel, The Human Rights Reporting and Assurance Frameworks Initiative: Considerations for the development of an assurance framework (April 2014), available at <http://business-humanrights.org/media/documents/adam-carrel-white-paper-rafi-apr-2014.pdf>.

The project team recognised that some pitfalls would nonetheless remain. For instance, fuller information in assurance opinions may heighten company concerns of legal liability. Also, the cost of assurance will in part determine whether or not companies consider it worthwhile. Lastly, assurance will require judgment, looking beyond the existence of policies and processes to their effectiveness, without implying “certification.”

One participant noted that sustainability reporting, unlike financial statements, does not have a fixed format. Assurance is providing an opinion on a set of information. It thus becomes crucial that assurers understand what needs to be assured — does it involve data, processes, controls or all three? Additionally, an assurer needs to know the intended use of the report.

In instances where businesses would like to make a claim of “we respect human rights” assured, an assurer will have to understand (1) what “respect” means, and (2) what “human rights” means to the company. Bringing the intended user into the equation, the assurer would then have to determine if such company definition is acceptable to their stakeholders.

In contrast with assurance (which results in an opinion), auditing was seen as being about obtaining or verifying hard evidence. Thus, if a company claims to respect human rights, the auditor has to look for clear evidence to demonstrate stakeholders that the company is respecting human rights in practice. This was seen as extremely hard to do in terms of a general assertion of respect for human rights, as against for very narrow data points that may or may not reflect a broader culture of respect.

It was suggested that in instances where a company is not able to give satisfactory answers to questions, then the information may be deemed “not auditable.” In Indonesia, it was noted that there were not many engagements for auditing or assurance in relation to human rights since companies were not “auditable” enough. Instead, there is more focus on assisting corporates with good governance processes. Hopefully this process will lead to establishment of appropriate indicators.

It was noted that, specifically with regard to the UNGP Reporting Framework, focusing on the regularity of reporting might be an initial goal, rather than looking for assurance of the reports. There could be more benefit in having companies aim to regularly provide reports, rather than insisting on assurance as the end point of the reporting process.

Other participants noted that the value of reporting is how it has the promise of affecting performance. In this regard, it was generally agreed that the most important thing was improving company performance in respecting human rights. They suggested that the group first focus on getting the reporting framework right, then the assurance framework can be considered.

The project team confirmed that the Reporting Framework and Assurance Framework would be compatible but in no way required to be applied in parallel. Indeed, evidence suggested that the Assurance Framework (yet to be drafted) would likely be applied initially more by companies’ internal audit functions, rather than external assurance providers.

Next Steps

The project team shared a tentative timeline for the remainder of the RAFI process and outlined the key steps envisioned:⁵

- The draft UN Guiding Principles Reporting Framework would be available for comment on the RAFI project portal on the BHRRC website.⁶
- A pilot process is underway with Unilever to test the robustness of the Reporting Framework and to assess what responding to these types of questions will look like in practice. Lessons from this pilot will be fed back into stakeholder consultations.
- Other pilots of the Reporting Framework would be developed in the course of 2015, in parallel to the development of the Assurance Framework.

⁵ A 2014-2015 tentative calendar for RAFI, which will be further driven by the needs of the consultative process, can be found on the RAFI portal. See <http://business-humanrights.org/media/documents/rafi-tentative-calendar-2014-2015.pdf>.

⁶ <http://www.business-humanrights.org/Documents/RAFI>

ANNEX 1: AGENDA

REGIONAL ASEAN EXPERT CONSULTATION MEETING

Friday, November 7, 2014

The Luwansa Hotel, Jakarta

8.00 am	Registration <i>Coffee, tea and snacks will be served</i>
8:30 – 9.15 am	Welcome from Shift & HRRC / Presentation of the UNGP Reporting Framework After briefly going through the agenda and objectives for the day, HRRC and Shift will present an overview of the RAFI reporting framework and implementing guide as it is currently envisaged.
9:15 – 10:15 am	Overarching impressions from Expert Group and discussion of RAFI in its broader context HRRC and Shift will then field questions and comments from the group regarding the framework and an opportunity for initial, high-level feedback.
10:15 am	<i>Coffee break</i>
10:30 – 12.00 pm	Detailed discussion of the draft Reporting Framework Shift will introduce the key elements of the Reporting Framework, including the use of concepts such as “salience” and “severity.” This will be followed by an in-depth discussion led by HRRC among participants, with a focus on ideas for improvements of the draft.
12:00 – 1:30 pm	<i>Lunch break & Friday Prayer</i>
13:30 – 15:00pm	Review of Key Sections of the Implementation Guide Shift will present an overview of the Implementation Guide for the Reporting Framework. Key sections of the Implementation Guide will then for the first time be publicly discussed at the Jakarta meeting.
15:00pm	<i>Coffee break</i>
15:15 – 16:30 pm	Discussion of the draft Assurance Framework Shift will provide an update on thinking about the overall approach to the Assurance Framework and HRRC will facilitate a discussion seeking feedback on this as a basis the development of an initial outline of the Framework.
16:30 – 17:00	Conclusions and next steps This session will provide an opportunity to return to key issues from the day’s discussion.

ANNEX 2: LIST OF PARTICIPANTS

NAME	Institution/Organization
Mr Kun Wardana	Uni-APRO
Mr Daniel Mitchell	AMCHAM-Cambodia
Mr Mohd Shah Hashim	Global Compact Malaysia
Ms Patricia Waagstein	University of Indonesia
Ms Long Seh Lih	Loyar Burok
Ms Librian Angraeni	Asia Pulp and Paper
Ms Louise Pessireron	Kaltim Prima Coal
Ms Sari Kusuma	Kaltim Prima Coal
Ms Banita K. Sandhu	Maybank
Ms Krisnia Manikaputri	Nestle
Ms Cynthia Morel	NUS
Mr Rafendi Djamin	Asean Intergovernmental Commision on Human Rights – Indonesian Representative
Mr Thomas Thomas	ASEAN CSR Network
Ms Prabandari Murti	PWC
Mr Rob Daniel	PWC
Ms Bobbie Sta Maria	Business and Human Rights Resource Centre
Mr Nur Kholis	KOMNAS HAM, Indonesian NHRI
Ms Zely Ariani	Workers' Rights
Mr Daniel Derzic	Swiss Embassy
Ms Aude Spang	Swiss Embassy
Ms Alicia Portenier	Swiss Embassy
Caroline Rees	Shift
Anna Triponel	Shift
Michelle Staggs Kelsall	HRRC
Faith Suzzette	HRRC
Ati Suryadi	HRRC
Ismail	HRRC
Bambang	HRRC