

THE BUSINESS AND HUMAN RIGHTS REPORTING AND ASSURANCE FRAMEWORKS INITIATIVE (RAFI)

Consultation in Addis Ababa, Ethiopia on 16 September 2014

On 16 September 2014, Shift facilitated a half-day consultation as part of the 2014 African Regional Forum on Business and Human Rights held by the UN Working Group on Business and Human Rights in Addis Ababa. The consultation was attended by 75 participants, primarily from civil society from across Africa, including from South Africa, Malawi, the Democratic Republic of Congo, Cameroon, Morocco, Guinea and Ethiopia. A few of the participants were from business, government and national human rights institutions.

The consultation was organized in two parts, with the first part focusing on human rights reporting in the African context, and the second part seeking views on the human rights reporting framework being developed through the Reporting and Assurance Frameworks Initiative (“RAFI”). The objective was to gain insights from local and regional stakeholders as to how this RAFI reporting framework could be developed such as to be of value and utility in the African context.

The consultation was facilitated by Anna Triponel from Shift on behalf of the RAFI project team comprising Shift, Mazars and the Human Rights Resource Centre in ASEAN. 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, except for the panelists.¹

Part I: Human Rights Reporting in the African Context

The panelists set the stage for the conversation on human rights reporting in the African context, before the session delved into a plenary conversation.

Introducing the session, **Anna Triponel from Shift** described the rapid increase in demand for information from companies on their human rights performance. Research conducted during John Ruggie’s mandate as Special Representative to the UN Secretary-General on Business and Human Rights, looked at how corporate and securities laws were evolving to reflect human rights. With pro bono support from 20 law firms, this research reviewed 39 jurisdictions, including in Africa, and showed that the demand for sustainability reporting was on the rise.² Shift updated this research last year, and

¹ All of the RAFI consultation reports can be found on the RAFI portal, available at <http://business-humanrights.org/en/business-and-human-rights-reporting-and-assurance-frameworks-initiative-rafi>

² *Human rights and corporate law: trends and observations from a cross-national study conducted by the Special Representative*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Addendum,

found a further increase in demands for corporate reporting specifically on human rights from a wide range of stakeholders, including international organizations, national legislators, regulators, stock exchanges, and investors.³ Many of these initiatives reference the UN Guiding Principles as a key framework for reporting.

Alan Fine from Russell & Associates focused on the drivers for reporting on the African continent, based on his experience working to implement the Guiding Principles at AngloGold Ashanti, and his current role advising a number of companies on sustainability reporting in South Africa. Alan highlighted the increase in demand for information on how companies are integrating the UN Guiding Principles, and that producing this type of information can in turn help companies improve their human rights performance and their relationship with communities.

He noted a number of remaining challenges:

- It is difficult for companies to report when they do not have a methodical human rights due diligence process already in place.
- Some companies frequently focus on a small area of human rights in their reporting, rather than all internationally recognized human rights.
- Company risk analysis normally refers to risk from the company's perspective; whereas the UN Guiding Principles approach requires human rights risk to be viewed from the perspective of the rights-holder. Few companies have yet grasped and implemented this approach.
- Companies' lawyers can frequently be an obstacle to cutting edge company disclosure due to their natural caution in seeking to protect the companies from possible litigation.
- And finally, many companies have not yet understood disclosure tends to be welcomed by civil society organizations ("CSOs"), especially where challenges are openly disclosed.

Reinford Mwangonde from Citizens for Justice Malawi shared views, from his experience acting as an "honest broker" between companies and communities in Malawi, on the kind of information that communities are asking for. Communities want information from companies throughout the lifecycle of a project, from the inception, all the way to the winding up of a project. The language provided by companies has to be clear and simple, and targeted to the people that live and work where the company is operating. Communities want concrete and practical information, such as the human rights assessment tools the company is using, how the company is complying with the

A/HRC/17/31/ Add.2, 23 May 2011, available at <http://www.shiftproject.org/publication/human-rights-and-corporate-law-trends-and-observations-cross-national-study>.

³ This includes for instance recent regulatory developments in the European Union, the United Kingdom, Denmark, and France, and demands from stock exchanges in Thailand, Malaysia and India. See Shift, Update to John Ruggie's Corporate Law Project: Human Rights Reporting Initiatives (2013), available at <http://shiftproject.org/sites/default/files/Update%20to%20Corporate%20Law%20Project%20November%202013.pdf>.

Equator Principles, which kinds of audits the company is conducting, and how the company is conducting human rights due diligence.

Communities also want to know how the company is conducting stakeholder engagement (who is involved, what is discussed, etc.), and why specific actions are chosen. They want to know how they can participate in a project's design on an ongoing basis, for instance through a platform for engagement that is available to workers and communities. In short, communities want to know that companies 'walk the talk'. Not providing this information has very real implications for a company, as demonstrated by the front page of the Malawi newspaper this week, which describes a blockage by communities of access to a company's operating site. This could have been prevented if the company had provided more and better information to surrounding communities. The UNGPs can help provide a good platform for engagement, seeking redress and trust building among key stakeholders.

The plenary conversation that followed highlighted a number of considerations on human rights reporting in the African context.

Participants from civil society highlighted particular challenges that exist on the African continent. A number of African countries have a weak regulatory framework and/or weak enforcement of laws. Some of these countries are post-conflict countries where severe human rights impacts frequently occur. Governments frequently have a perverse incentive to accept business without appropriate constraints because of the state revenues it can generate. Companies can hinder the governments' ability to ensure corporate respect for human rights through their negotiations and lobbying. Companies can be aware of the right thing to do, but seek loopholes in regulation to reduce the pressures on them to deliver. There are a number of examples where consultations with communities do not take place in advance and are not well informed. Companies frequently fail to include the right community representatives, and target those who are more influential or compliant, rather than those who have an accurate sense of the situation on the ground.

Civil society participants expressed clear dissatisfaction with the type of information that is currently provided by companies operating in Africa to communities on the ground. They noted that current reporting tends to highlight a rosy picture, which can be very different to the real situation on the ground. Participants highlighted the urgent need for companies operating in Africa to communicate accurate information to communities. In particular, it's important for companies to be clear about the rights people have, and how business operations can impact those rights.

Importantly, companies should be seeking meaningful and interactive dialogue with communities. Public reporting can be one way of helping this dialogue, but should not be used as an alternative to this dialogue.

The drivers for reporting do not stem from legislation or stock exchange requirements in the African context, in the same way as on other continents. Larger companies that care about their reputations are more willing to provide relevant information than those that are not subject to public scrutiny. Rather than regulators or stock exchanges, civil society organizations (“CSOs”) play a key role in holding companies to account with regard to the information they provide. They can highlight inaccuracies. However, this can be challenging for CSOs given that they are often small and relatively weak in comparison with companies, and can lack the necessary capacity and resources.

Part II: Reporting and Assurance Frameworks Initiative (RAFI)

On behalf of the RAFI project team, Anna Triponel presented an overview of RAFI.

The Reporting and Assurance Frameworks Initiative is a response to the increase in demands for corporate reporting on human rights performance and the risk of highly divergent understandings of what this means in practice. Through a multi-stakeholder consultative process, RAFI aims to develop a twin set of frameworks grounded on the UN Guiding Principles: one with guidance for companies on what good reporting on human rights looks like (the reporting framework) and the other with guidance on what good assurance of such reports should involve (the assurance framework).

Anna provided an overview of the progress of RAFI to date, including feedback from multi-stakeholder consultations in other regions, how these were informing the process to develop the reporting framework, and its early content. Slides from the presentation, together with key documents can be found on the project portal together with this report.⁴

Specific questions for discussion included the following:

- To what extent do the key findings emerging from the consultations to date resonate in the African context?
- Do participants use public reporting by companies and, if so, how?
- Do participants prefer to see reporting from the headquarter level (that captures more of the governance of human rights) or from the site level (which captures more of the country-specific human rights risks)?
- How can the RAFI reporting framework encourage companies to start reporting, while encouraging them to increase disclosure over time?
- How can the RAFI framework encourage companies to disclose actual impacts and how they are managed, while recognizing legitimate constraints on such disclosure?

There was a general welcome of the RAFI reporting framework and the proposed

⁴ <http://business-humanrights.org/en/business-and-human-rights-reporting-and-assurance-frameworks-initiative-rafi>.

categories it provides for. There was recognition of the need for a common framework to help companies report on their progress on the UN Guiding Principles. In addition, participants emphasized that people are eager for practical information on how companies are managing their human rights risks. They want to know how companies are moving from paper to practice. One corporate participant noted that the company's practical tools used to conduct human rights due diligence are downloaded much more frequently than its sustainability reports. Reporting on concrete indicators can also provide key information.

A number of recurring themes emerged from the consultation for consideration as the drafting of the human rights reporting framework moves forward.

First, reporting should be seen as a tool to improve relationships with communities, and not as a replacement for dialogue. Human interaction is important, and reporting should not replace that. It is important to think about what the outcome for reporting is: ultimately, communities want companies to listen, to seek to build relationships with them, and to help build community organizations. Reporting should be done in a way so as to help further this dialogue and the building of trust. Agreements that are reached between companies and communities should be reported on accurately and in detail. This includes considering the impact of terminology used in reporting on communities, such as the terminology of 'risks' where communities could feel as though the company views them primarily as a liability for their operations.

Second, although the RAI reporting framework focuses on disclosure from companies, states play a crucial role in this area in Africa. Is there a way of further addressing the role of states within the reporting framework? For instance, can companies report on how they are negotiating with states in a manner that is respectful of human rights? Can companies report on what they are doing to help ensure that they do not constrain a state's ability to protect human rights? Pillar 1 of the UN Guiding Principles, which describes the state's duty to protect human rights, is important and should be reflected somehow in the reporting framework.

Third, although there is a use for public information produced by companies, its utility is limited without a guarantee of its accuracy. Companies' public reporting is currently used in different ways. For instance, one National Human Rights Commission noted that it was relying upon publicly reported information to look into allegations of human rights violations; and civil society organizations are seeking to rely upon this reporting to better engage with companies. However, it is not clear how accurate and credible this information is since it is self-reported. Assurance and verification of information have a role to play. In addition, it can be challenging to find specific information at a country-level that is useful, since most corporate reporting starts from the headquarter level.

Fourth, alignment with other initiatives will be important. This includes dovetailing with existing reporting initiatives, as well as seeking to tie into broader debates that are

occurring, such as those on tax justice and on transparency. Could the reporting framework encourage companies to provide further information on what they are doing on these topics? Could the reporting framework cross-reference to some of these existing debates?

Fifth, it will be important for the data to be used in a way that helps companies improve their human rights performance. Reporting, without corresponding progress by companies, is useless. It will also be important to acknowledge progress so that companies are encouraged to disclose information relating to the challenges they face. Civil society is increasingly relying upon company reporting to push companies to disclose more and do better. Civil society and investors increasingly assess a companies' human rights performance based on the information they put out in the public domain. The reporting framework can help improve the information that is available which civil society organizations and investors use as they assess companies' performance.

Finally, there are a number of additional points that it will be important for the reporting framework to consider. These include for instance how to address parent reporting and subsidiary reporting, how a company should report where joint reporting with other companies that might be involved with cumulative impacts might be relevant, and how to ensure that sectors beyond the natural resources sector focus on meaningful public reporting as well so that other potentially affected stakeholders are not left behind.

Conclusion

The views and feedback expressed at this consultation will feed into the ongoing development of the human rights reporting framework. They will play a critical role in helping shape the RAFI reporting framework so that it can be used by companies operating on the African continent to the benefit of all stakeholders. RAFI will also seek opportunities to consult with companies based in and/or operating in Africa. A preliminary draft of this framework be the subject of further consultations in the remainder of 2014 and 2015, as well as company pilots.

A range of participants expressed a wish to be kept informed on project developments, and the facilitator encouraged continuing contributions as the initiative evolves. Participants emphasized that this first RAFI consultation on the African continent should be followed by others to ensure the frameworks could work in this context. The possibility of a company operating in Africa piloting the reporting framework was also raised.

All of the latest documents on RAFI are available on the RAFI portal: <http://www.business-humanrights.org/Documents/RAFI>. Participants are also encouraged to contact the RAFI project team via [anna.tripone\[at\]shiftproject.org](mailto:anna.tripone[at]shiftproject.org)