



Corporate Human Rights Benchmark
1-3 Charlotte Street
London, W1T 1RD
United Kingdom

September 30, 2015

Submission on the Corporate Human Rights Benchmark regarding the Draft List of Indicators for Public Consultation

The Institute for Multi-Stakeholder Initiative Integrity (MSI Integrity) welcomes this opportunity to provide comments on the proposed Corporate Human Rights Benchmark (CHRB). Consistent with our expertise, our submission is focused solely on the indicators relating to multi-stakeholder initiatives (MSIs).

Summary

We support the CHRB’s underlying aim of “incentiviz[ing] better human rights performance over time” and see the value of measuring companies on their human rights performance.¹ However, the proposed indicators relating to MSIs will not achieve this goal. Indeed, they may risk undermining that objective. This is because they are not sufficiently connected to human rights performance or outcomes. Instead, they ask whether companies are members of “at least one MSI”,² without considering the quality and rigor of that MSI and whether it has the potential to improve a company’s human rights outcomes. We are deeply concerned about the incentives this could create, including a race to join or form MSIs without considering whether initiatives are sufficiently designed or implemented to encourage human rights protection.

We submit that the current draft indicators related to MSIs should be removed from the CHRB. While assessing human rights leadership by looking at policy commitments – such as membership in MSIs – creates simple measurement metrics, from a human rights perspective such simplicity is dangerous. The CHRB must also assess the quality of human rights commitments and consider whether they are meaningful, as based in evidence and outcomes. If the CHRB wishes to include MSI-specific indicators, the indicators must entail an assessment of whether an MSI has the potential to be effective as a human rights instrument, and therefore whether membership in that MSI is a sufficient proxy or indicator of human rights commitment or leadership. In addition, any MSI-related indicators should measure a company’s performance in the MSI, including their compliance with the MSI’s standards and/or whether grievances are pending in the MSI. Such indicators would necessarily be more nuanced, but they are within the stated scope and aims of the CHRB.

¹ Corporate Human Rights Benchmark, *Framework Paper for Multi-Stakeholder Consultations* (June 2015), 3.

² Corporate Human Rights Benchmark, *Draft List of Indicators for Public Consultation* (8 July 2015), 9.

MSI Integrity would be happy to share its expertise and guidance on these issues with the organizations developing the CHRB to ensure that if MSI-related indicators are included in the CHRB they are robust and advance the aim of improving human rights protection.

About MSI Integrity and the Scope of this Submission

MSI Integrity is a nonprofit organization dedicated to understanding the human rights impact and value of voluntary initiatives that address business and human rights. MSI Integrity researches key questions surrounding the effectiveness of these initiatives, facilitates learning in the field, and develops tools to evaluate initiatives from a human rights perspective. MSI Integrity takes a particular interest in how initiatives include, empower, and impact affected communities.

Our comments in this submission derive from our experience researching and examining the effectiveness of MSIs. In particular, we draw on our experience developing a tool to evaluate the effectiveness of the institutional design of MSIs from a human rights perspective. During this process MSI Integrity, in conjunction with the International Human Rights Clinic at Harvard Law School, has thoroughly researched the factors that relate to MSIs' effectiveness for human rights, including a global consultation process for feedback on the draft indicators for the *MSI Evaluation Tool*, during which over 100 individuals and organizations from six continents participated in consultation meetings or submitted written feedback. This has been tested through comprehensive pilot evaluations of five MSIs, which involved extensive consultation and engagement with staff members in each MSI. More recently we applied its general principles to an extensive assessment of governance of the Extractive Industry Transparency Initiative.

We note that our submission is confined solely to draft indicator A3.1, the only MSI-specific indicator in the CHRB.

Specific Comments on Indicator A.3.1

This submission is concerned with draft indicator A.3.1, which currently states:³

A.3.1 Activities within Multi-Stakeholder Initiatives (MSIs)

The Company is a member and actively participates in (a) Multi-stakeholder Initiatives (MSIs) which aim to promote respect for human rights and sustainable business practices.

Score 1 *Membership of (a) relevant MSIs*

Score 2 *Plays a leadership role within the initiatives or helps to create such initiatives where none exists.*

AG *A score 2 depends upon the belonging to at least one MSI that covers human rights issues in the sector*

AP *A score 2 depends upon the belonging to at least one MSI related to labour standards in the supply chain such as Ethical Trading Initiative (ETI) or Fair Labor Association (FLA)*

³ Corporate Human Rights Benchmark, *Draft List of Indicators for Public Consultation* (8 July 2015), 9.

EX For score, the Company needs to be either signatory to the Voluntary Principles on Security and Human Rights (VPs) or Extractive Industries Transparency Initiative (EITI) and a score of 2 requires both VPs and EITI membership.

Indicator A.3.1 is in the CHRB category measuring leadership on human rights, which contains “indicators [that] are aiming to advance [the/a] human rights agenda through working with third parties (peers, governments etc.)”⁴.

1. *Indicators should not reward participation or leadership in MSIs without consideration of whether those MSIs improve a company’s human rights performance*

The indicators related to MSIs currently focus only on the acts of joining, forming, and/or participating in MSIs. However, membership in MSIs, per se, is not an indicator of human rights leadership or performance. We raise a number of concerns with the approach of focusing solely on membership, without looking at the quality and design of the MSI, including:

- The CHRB can reward a company for membership in MSIs without examining its performance in the MSI. This means a company could be rewarded even if, for example, the MSI has found that it was not in compliance with the MSI’s human rights standards or if they had grievances pending in the MSI.
- There is no consensus definition of an MSI and no comprehensive industry-specific mapping of initiatives has yet been undertaken.⁵ There are numerous initiatives that might self-identify as “multi-stakeholder” and “relevant” in the three industries targeted in the CHRB. Given the prevalence of initiatives, without assurance of their aims, qualities, or outcomes, mere membership in an initiative should not be equated with human rights leadership or actions to advance human rights.
- Within this broad range of MSIs there will be significant variance both in the function and quality of the initiatives. Without examining the particular MSI for its quality or rigor, there is no guarantee that an MSI may reliably be advancing human rights.
- Any proposed indicator that rewards membership in an MSI, without inquiring into the effectiveness of that MSI, risks creating perverse incentives. For example, it may motivate companies to join the least onerous MSI in its field, therefore creating a race to the bottom. Alternatively, it may contribute to further creation of new initiatives, adding to the confusion and complexity inherent in an already crowded field, and contributing to a race to the bottom.
- By treating all MSIs equally and failing to consider the individual merits of an MSI, the Benchmark fails to reward companies that exhibit genuine human rights leadership by participating in MSIs with more robust capabilities to advance human rights.

We recognize the attraction of simple, easy to verify indicators. However, the danger of such indicators is immense. We strongly submit that any recognition for participating in an MSI

⁴ Corporate Human Rights Benchmark, *Draft List of Indicators for Public Consultation* (8 July 2015), 8.

⁵ To address this knowledge gap, MSI Integrity is currently developing a project in partnership with the Duke Human Rights Center at the Kenan Institute for Ethics at Duke University, and the law firm Miller Chevalier in Washington, DC, to identify and map key institutional design characteristics of existing MSIs in each sector. For details and updates on this project, visit our website: <http://www.msi-integrity.org/mapping-msis/>. We would be happy to share progress and results with the organizers of the CHRB to assist them with development of the indicators.

requires an assessment, at the very least, of whether the MSI is designed in a way to enable human rights protection. For example, the Extractive Industries Transparency Initiative (EITI) is expressly listed as an eligible MSI, but membership in this initiative does not obligate companies to undertake any behavioral changes. Instead, EITI sets requirements for *governments*. Therefore it is hard to see how membership in EITI is an indicator of an individual company's human rights performance. To arrive at this conclusion requires an examination of the MSI itself, which we recommend and discuss further below. We are happy to provide guidance on the core qualities essential to examining the design of an MSI from a human rights perspective, if MSI-related indicators are to remain in the CHRB.

2. Indicators should not reward participation in specified MSIs without sufficient justification

The indicators currently set out that membership in certain specified MSIs will be rewarded with a score.⁶ There is no justification for why four MSIs have been singled out above the myriad other MSIs in each industry (or why no agricultural MSIs were highlighted despite there being many MSIs in that sector). If the CHRB is attempting to encourage MSIs to meet specific criteria, then it needs to identify those criteria rather than arbitrarily identifying some MSIs to the exclusion of others. As we explain further below, there are now some internationally accepted essential practices for MSI design that could be reflected in the CHRB if desired. However, in the absence of such criteria or of credible, independent human rights impact assessments into particular MSIs, we submit that it is premature to list specific MSIs in CHRB indicators.

3. Transparency on weightings and process

We note that indicator A.3.1 is currently weighted as “desirable” as opposed to “essential”. While we make no comment on this particular designation, we encourage the developers of the CHRB to outline the factors that result in this differentiation.

4. Ambiguity of language

Some of the terms in the indicator are subjective and/or require specificity. For example, terms such as: “leadership role”, “multi-stakeholder initiative”, and “relevant MSIs”. We encourage CHRB to seek expert input on any attempted definition of “multi-stakeholder initiative” given that it is widely accepted to not have a formal definition and any attempted definition of this term would have significant normative consequences.

Recommendations

In order to more appropriately include indicators related to MSIs, we recommend that the CHRB should remove the draft indicators. If any indicators relating to MSIs are to be included in future iterations of the benchmark, they should be firmly based on whether a company's involvement in an MSI would, over time, lead to improved human rights performance.

⁶ The named MSIs are: Fair Labor Association, Ethical Trading Initiative, Voluntary Principles on Security and Human Rights, and Extractive Industries Transparency Initiative.

Based on our concerns above, we emphasize that any MSI-related indicators must address factors relevant to obtaining human rights outcomes, such as:

- (i) *Whether the MSI(s) that a company participates in ensures human rights protection (i.e., the effectiveness of the MSI).* Rather than encourage or reward membership in any MSI, the CHRB would need to assess whether the MSIs that a company participates in have the capacity to ensure human rights protection. This entails examining whether the MSI meets international good practices for effective MSI design. We would encourage CHRB to examine utilizing reliable measures of MSI effectiveness, such as the seven core components of MSI design in MSI Integrity's *MSI Evaluation Tool*. We strongly encourage the organizers of the CHRB to contact us if they elect to include such indicators, as we would be happy to share our extensive research and consultation outcomes relating to this issue.
- (ii) *Whether the company is meeting its responsibilities in accordance with the initiative (i.e., the effectiveness of the company's participation).* This entails verifying whether the company has been reported to be in breach of the MSI's standards, whether it has grievances pending, and other factors related directly to company behavior within the MSI. This is consistent with the performance section of the CHRB. However, without the CHRB releasing a detailed methodology it is difficult to understand how it will reliably measure if issues related to grievances or non-compliance within MSIs exist, since such information is often not within the public domain but instead held by the company and/or MSI.

This revision would obviously entail developing more detailed indicators. However, if the CHRB wishes to include MSI-related indicators in its framework, then these indicators should – like all of the CHRB indicators – be linked to the stated aim of the CHRB: to incentivize positive human rights performance over time.

MSI Integrity is happy to provide further input into the development of the CHRB, and we encourage the organizers of the CHRB to contact us if they continue to consider including MSI-related indicators in the final benchmark.

Sincerely,



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