

ACCOUNTABILITY COUNSEL

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Via Electronic Mail

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Re: Comments on Shift and Mazars' Discussion Paper: Developing Global Standards for the Reporting and Assurance of Company Alignment with the UN Guiding Principles on Business and Human Rights

Dear Mr. Manurung and Ms. Triponel:

Accountability Counsel commends Mazars and Shift for this step towards operationalizing the U.N. Guiding Principles on Business and Human Rights (“UNGP”). Accountability Counsel, an organization based in San Francisco, California, supports communities around the world to use accountability mechanisms to defend their environmental and human rights. We work at the policy level to ensure that accountability systems are robust, independent, fair, and effective. We therefore take great interest in the creation of a global standard for corporate human rights reporting and assurance, as it marks the growing recognition of the responsibility businesses have towards the communities impacted by their activities.

Shift and Mazars' Discussion Paper on Developing Global Standards for the Reporting and Assurance of Company Alignment with the UN Guiding Principles on Business and Human Rights (“Discussion Paper”) is an important first step in establishing a robust corporate human rights reporting and assurance process. We offer suggestions targeted primarily towards two key issues identified in the cover letter accompanying the Discussion Paper: (1) forward-looking

human rights risk management; and (2) the integration of perspectives of affected stakeholders.¹

We believe the reporting and assurance process can encourage forward-looking risk management by requiring more outcome-based reporting and broadening the scope of review required for a human rights statement. We also identify points where increased stakeholder input would make the process more effective. Specifically, we believe companies should solicit input from potentially affected stakeholders when identifying human rights risks, when evaluating the efficacy of policies, and when assessing the veracity of reports.

I. General Comments

a. Reporting Standards Should Focus on Outcomes Over Process

The Discussion Paper focuses on reporting about company process and policy. While inviting companies to make their human rights risk management processes public is a good start, there is a risk that the focus on policies and procedures may detract from addressing and resolving on-going human rights issues. We recommend that the proposed reporting standards focus more on the monitoring and analysis of human rights policy outcomes. Outcome-oriented reporting standards that require, for example, an assessment of actual human rights impacts and analysis of how actual impacts are addressed are more rigorous than reporting standards focused on policies and procedures. Third-party assurance based on scrutiny of a company's actions will be more meaningful than assurance based on policy.

The UN Working Group on Business and Human Rights has similarly noted that the human rights due diligence required by the UNGP must include reporting on outcomes, not merely on policies.² Additional support for outcome-oriented reporting requirements and examples of tools to gauge outcomes come from the United Nations Conference on Trade and Development Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting ("ISAR") and the International Finance Corporation's Guide to Human Rights Impact Assessment and Management ("HRIAM").

ISAR has developed a best practices guide for general corporate social responsibility reporting based on research in the area dating back to 2001.³ ISAR promotes outcome-oriented reporting rather than process-oriented reporting as a best practice in non-financial corporate reporting, noting that the "impact of business operations cannot be assessed solely on the basis of the management processes and policies" and that allowing companies to publicize third party assurance of their policies as promulgated in a human rights report risks blurring the line

¹ See Cover Page for Discussion Paper Launch.

² United Nations Office of the High Commissioner for Human Rights, *Statement by the UN Working Group on Business and Human Rights concerning shareholder resolutions requiring companies to perform human rights due diligence* (May 13, 2013), available at http://business-humanrights.org/media/documents/13_05_13_wg_statement_shareholder_resolutions_and_hr_due_diligence.pdf.

³ See United Nations Conference on Trade and Development, *Guidance on Corporate Responsibility Indicators in Annual Reports* (2008) [hereinafter "*ISAR Guidance*"], available at http://unctad.org/en/docs/iteteb20076_en.pdf.

between process and outcomes.⁴

HRIAM contains further guidance on effective performance- and outcome-oriented human rights reporting, outlining best practices including reporting on: numbers of complaints filed with grievance mechanisms; specific measures adopted in response to grievances; and the stakeholder engagement process.⁵ Reporting on outcomes of grievance mechanisms could also enable a third-party audit of reported outcomes that would include stakeholder consultations. Disclosing community views regarding the specific grievance and company policies more generally could create feedback loops to improve forward-looking human rights risk management and stakeholder perspective integration policies.

b. Standards Should Avoid Shortcomings of Non-Financial Reporting Schemes

A human rights reporting and assurance process would join a growing group of non-financial reports in environmental and social areas. While guidelines appropriately draw on well-established norms for financial reporting and assurance,⁶ an emerging standard for human rights reporting and assurance should also draw on lessons learned from previously developed standards for non-financial corporate reporting on environmental practices, sustainability, and social responsibility.

Although there has been enormous growth in these reports, they suffer from transparency and governance issues, and the quality and usefulness of the reporting is, at times, questionable.⁷ Even environmental reporting, which has gained significant public buy-in and corporate credibility since it debuted in the 1990s, faces the continued failure of even the most committed companies to adequately engage stakeholders or produce consistent, comprehensive reports.⁸ There are lingering questions about the competence of non-financial report auditors and assurers as well.⁹

⁴ *ISAR Guidance*, *supra* note 3, at 14.

⁵ International Finance Corporation, *Guide to Human Rights Impact Assessment and Management* [hereinafter “*HRIAM*”], 59 (2010), http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Guide+to+Human+Rights+Impact+Assessment+and+Management.

⁶ Mazars & Shift, *Developing Global Standards for the Reporting and Assurance of Company Alignment with the UN Guiding Principles on Business and Human Rights: A Discussion Paper* [hereinafter “*Discussion Paper*”], 6-7 (May 1, 2013), available at <http://shiftproject.org/sites/default/files/Developing%20Global%20Standards%20Discussion%20Paper%20-%20Final%202013%2005%2001.pdf>.

⁷ See Assoc. of Chartered Certified Accountants, *Towards Transparency: Progress on Global Sustainability Reporting* [hereinafter “*Towards Transparency*”], 8-9 (2004), http://www2.accaglobal.com/pdfs/environment/towards_trans_2004.pdf.

⁸ *Id.*, at 14-15.

⁹ AFL-CIO, *Responsibility Outsourced* (April 2013), available at <http://www.aflcio.org/content/download/77061/1902391/CSReport.pdf>.

The Discussion Paper does not address the problems that have challenged more established non-financial reporting and assurance procedures. The proposed reporting and assurance standards could add value to the entire ecosystem by addressing pitfalls of earlier non-financial reporting efforts. This could include addressing transparency and governance issues that have affected other reporting standards by offering a realistic assessment of the current capacity of human rights report assurers, including resources for these organizations to improve their competence in human rights risk assessment. The Discussion Paper should also create a clear framework for the periodic assessment and revision of the reporting and assurance standards. Finally, encouraging meaningful stakeholder inclusion and requiring reports to go beyond summarizing corporate policies would be an improvement on prior non-financial reporting standards.¹⁰ The last two points are addressed in greater detail in Part II of this letter.

II. Specific Comments

a. Reporting Standards Need a Consistently Broader Scope

Requiring companies to report on all aspects of their operations would strengthen the proposed reporting standards. In the Discussion Paper, companies have discretion to limit the scope of their reporting to particular aspects of their operations.¹¹ This cuts against the stated goal of providing a comprehensive “process for a company to report on its *overall alignment* with the Guiding Principles.”¹² The Discussion Paper does not provide a timeline or imperative for companies who issue limited Human Rights Statements to increase the scope of that review to their entire business. This provision could allow companies to knowingly exclude business operations with troublesome human rights implications and still report and receive assurance that they are actively implementing and complying with the UNGP. This loophole diminishes the efficacy of the reporting process for surfacing issues of concern and could erode the credibility of this reporting and assurance mechanism.

ISAR suggests that if companies need to take a more incremental approach on their journey to alignment, they should be allowed to “start with indicators that address issues that an enterprise has control over and for which it already gathers [...] relevant information.”¹³ A company could be allowed to start the reporting process with human rights indicators for which it has the capacity to collect data, but the limited report should not selectively omit programs or units of the business. The proposed reporting standards should also include clear labeling of a report as incomplete for reporting and assurance purposes, and there should be a timeline for companies to increase capacity to measure all indicators in order to secure an assurance.

¹⁰ *Towards Transparency*, *supra* note 7, at 14-15.

¹¹ *Discussion Paper*, *supra* note 6, at 10.

¹² *Id.*

¹³ *ISAR Guidance*, *supra* note 3, at 14.

b. More Stakeholder Involvement in Risk Identification Will Lead to More Comprehensive Reporting and Better Risk Management

We commend the authors of the Discussion Paper for echoing the UNGP's call for stakeholder engagement. The proposed reporting standards' public disclosure requirement for identified risks and mitigation policies is a good first step. We believe the reporting standards could more effectively preempt potential infringements on human rights by requiring more stakeholder involvement in the identification and assessment of salient human rights risks.¹⁴ In the Discussion Paper, human rights risk identification relies on a company's self-assessment and identification of salient human rights risks posed by its activities.¹⁵ Relying solely on corporate self-reporting could lead to misreporting or underreporting of human rights risks, especially given the difficulties involved with gauging human rights impacts down the supply chain. Bringing stakeholder perspectives into the process as risks are being identified will give reporting companies a more complete foundation upon which to base risk management policies. Moreover, impacted communities are likely better equipped than companies to identify the relative salience of risks.

The ISAR report highlights the importance of ascertaining stakeholder views – including the surrounding community and civil society – when identifying key issues.¹⁶ According to ISAR, early stakeholder dialogues, especially through community panels or workshops, lead to a more accurate identification of human rights risks and a more meaningful process for the surrounding community.¹⁷

Impacted communities would benefit from a more robust public disclosure requirement as well. The Discussion Paper does not go beyond the UNGP's general call for businesses to communicate with impacted stakeholders.¹⁸ The proposed reporting standards should explicitly define impacted stakeholders to include communities harmed by development projects. The requirement should also explicitly require more than public disclosure of the company's report and assurance; the proposed reporting standards should lay out with specificity mandatory engagement with communities, a reporting category that analyzes community engagement and responsiveness to grievances, and a mechanism by which stakeholders could appeal for a rescission of the third party assurance or for an added investigation into allegations of misconduct or omitted human rights risks.

¹⁴ *Discussion Paper*, *supra* note 6, at 11-12.

¹⁵ *Id.*

¹⁶ *ISAR Guidance*, *supra* note 3, at 5-6.

¹⁷ *Id.*

¹⁸ United Nations Human Rights Office of the High Commissioner, *Guiding Principles on Business and Human Rights*, 23-24 (2011), available at http://shiftproject.org/sites/default/files/GuidingPrinciplesBusinessHR_EN.pdf; Discussion Paper, § 2.3, p 12.

c. Allowing Too Much Additional Information in the Human Rights Statement May Decrease Effectiveness

The proposed reporting standards should place constraints on the inclusion of tangentially related information. Allowing companies to disclose additional information is generally helpful, but the emphasis added in the Discussion Paper on the disclosure of a company's general philanthropic efforts and social responsibility could render this process less useful for identifying human rights risks.¹⁹ To be clear, voluntary corporate social responsibility ("CSR") and corporate philanthropy programs do not and should not be used to hide failures to address and report on human rights impacts, which are most often wholly unrelated to such programs. The proposed report should not be touted as a platform that companies may use for public relations purposes. Examples of past successes should be more tightly limited to successful human rights grievance, mitigation, or community engagement outcomes, and they should not distract from reporting on identified human rights risks or less successful outcomes.

d. More Rigorous Assurance Standards Would Ensure Truthful Corporate Reporting

While external validation of company-produced reports is an important step, a few specific changes would make third-party assurances more rigorous and more responsive to stakeholder concerns. Best practice in human rights reporting, according to HRIAM, is to value community feedback on human rights reports alongside professional verification of company reports.²⁰ The Discussion Paper should therefore require assurers to include feedback from direct community engagement as a means of report validation.

Just as we recommend that reporting requirements focus on outcomes over process, the assurance process should go beyond verifying "the existence, suitability and effectiveness of the policies and processes for managing human rights risks."²¹ Assurers should be required to examine the outcomes of issues resolved through a company's human rights policies and procedures. Importantly, assurers should be required to look beyond company-produced or procured evidence and work directly with impacted stakeholders. The limited scope of the proposed standard might allow companies to make claims regarding their compliance with the UNGP based only on the fact that they have written policies and processes. The assurance provider's mandate should incorporate a greater amount of outcome investigation to mitigate this risk.

Finally, there should be stronger standards to deal with reports found to contain material misstatements or omissions. The focus on stakeholders' needs in the Material Misstatement/Omission guidelines and the requirement of public disclosure of material misstatements or omissions alongside the publication of an assured human rights statement are a good start, but more explanation is needed regarding the process triggered by the identification of a material

¹⁹ *Discussion Paper*, *supra* note 6, at 13.

²⁰ *HRIAM*, *supra* note 5, at 59.

²¹ *Discussion Paper*, *supra* note 6, at 17.

misstatement or omission.²² Rather than allowing the publication of misleading documents as “assured,” the importance of third party verification should be leveraged by withholding assurance until the discrepancies in a company’s human rights statement are rectified. There should also be a process to rescind an assurance if a misstatement or omission comes to light after the assurance was granted.

We appreciate the opportunity to comment on this Discussion Paper, and we look forward to continuing engagement with Shift and Mazars on this important endeavor. Please do not hesitate to contact us with any questions about our comments.

Sincerely,

A handwritten signature in purple ink that reads "Natalie Bridgeman Fields". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Natalie Bridgeman Fields
Executive Director
Accountability Counsel

²² *Discussion Paper*, *supra* note 6, at 14-15.