

Human Rights Reporting and Assurance Frameworks Initiative (RAFI)

April 2015

VISION FOR HUMAN RIGHTS ASSURANCE

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EXECUTIVE SUMMARY

The UN Guiding Principles on Business and Human Rights set out the policies and processes that companies need to have in place in order to “know and show” that they are meeting their responsibility to respect human rights. There are ever more actors – regulators, governments, investors, civil society and others – calling for companies to report publicly on how they are ensuring that they respect human rights in practice. Indeed, such reporting is increasing every year. In principle, expert, independent assurance of companies’ reporting should enhance confidence in its quality and reliability. However, until the recent launch of the UN Guiding Principles Reporting Framework, there was no clarity on what good human rights reporting looks like, and therefore uncertainty and debate as to what good assurance of such reports should involve.

The UN Guiding Principles Reporting Framework was developed through the Reporting and Assurance Frameworks Initiative (RAFI), a global, multi-stakeholder process facilitated by Shift and Mazars. It was launched on 24 February 2015. The second and related aim of RAFI is to develop an assurance framework for the assurance of human rights reporting in line with the UN Guiding Principles on Business and Human Rights. Subject to the consultations to be held in 2015, this Framework will be launched in early 2016.

This paper explores a range of challenges that the field of assurance currently faces with regard to human rights reporting, and which need to be addressed if it is to offer value to companies and reliability, trust and credibility to the readers of their reports. It is accepted that there are inherent difficulties in obtaining sufficient and accurate evidence on qualitative disclosures. Accordingly, our approach to assurance will aim to be innovative so that we can address the wider concerns of all stakeholders, not only shareholders. The assurance opinion on human rights disclosures should provide further insights and a level of trust in the information that is being assured. Included below are five summarised key elements for a vision of human rights assurance that could be credible and add value, as well as three remaining challenges that may demand further debate:

Five elements for a vision of human rights assurance

1. Companies should meet the minimum threshold of reporting on human rights as set out in the United Nations Guiding Principles Reporting Framework before assurance of that information can be credible and add value;
2. “Limited” assurance is a starting point, but there should be movement towards “reasonable” assurance where possible;
3. Assurance opinions will need to provide fuller and more insightful information on the assurance process and findings;
4. Assurance providers will need to demonstrate that they combine the requisite knowledge, skills and capacity to conduct human rights assurance with general assurance skills and technical expertise in the relevant industry;
5. Oversight and accountability for assurance in this field could enhance its value and credibility by helping to address actual and perceived conflicts of interest.

Three remaining challenges for human rights assurance

1. Expanding assurance opinions to include more insightful information may raise concerns in some companies about increased legal exposure, which need to be addressed through considered discussion;
2. In order for companies to be willing to pay for human rights assurance, they will need to see the potential costs as viable and worthwhile, based on the benefits gained internally and externally;
3. Meaningful assurance will need not just to verify whether a company's reported human rights policies and processes exist, but also to consider whether they are effective. This will lead to a more meaningful approach than certification.

While this paper focuses on the external assurance of a company's human rights reporting, in practice it seems likely that early-stage usages of the proposed assurance framework will be (a) by companies' internal auditors reviewing implementation of human rights commitments, and (b) by companies seeking external assurance *without* a public assurance opinion, as they build confidence in their policies and processes. Although they do not contribute to improved transparency, these usages could be valuable means of advancing companies' internal policies and processes for implementing their responsibility to respect human rights.

The challenges, ideas and proposals raised in this paper are based on inputs from a broad range of stakeholders who have been consulted over the last year as part of the on-going RAFI process. The paper is put forward as a means to further advance discussions about how best to approach the development of the assurance framework in the coming months. All feedback is warmly welcomed by the project team.

I. INTRODUCTION

In his 2010 report to the UN Human Rights Council, Prof. John Ruggie, former Special Representative to the UN Secretary-General for Business and Human rights and author of the UN Guiding Principles on Business and Human Rights, stated that “[t]he appropriate corporate response to managing the risks of infringing the rights of others is to exercise human rights due diligence. That very process helps companies address their responsibilities to individuals and communities that they impact and their responsibilities to shareholders, thereby protecting both values and value. Human rights due diligence can be a game-changer for companies: from ‘naming and shaming’ to ‘knowing and showing.’ Naming and shaming is a response by external stakeholders to the failure of companies to respect human rights. Knowing and showing is the internalization of that respect by companies themselves through human rights due diligence.”¹

In sum, businesses should be able to show how they meet their responsibility to respect human rights. There is growing recognition of the need for companies – particularly listed companies, state-owned enterprises, and companies operating in high risk contexts – to report publicly on their non-financial performance, including how they manage human rights risks. In principle, external assurance of such reports should enhance confidence in the extent to which they represent a fair and balanced picture. However, until recently there was little clarity on what good reporting of human rights performance looks like in practice, and therefore also much uncertainty as to what would constitute good assurance of those reports.

The Reporting and Assurance Frameworks Initiative (“RAFI”) is a consultative, multi-stakeholder process that was established in 2013 to address this gap by developing a twin set of public frameworks: one to provide guidance on what good reporting would look like; the other to provide guidance on what good assurance of such reports would look like. RAFI is facilitated by a “project team” comprised of Shift, a non-profit centre for business and human rights practice, and Mazars, a global provider of audit, accountancy, tax, legal and advisory services, in liaison with the Human Rights Resource Centre, a non-profit academic centre working on human rights issues in the Association of South East Asian Nations (“ASEAN”). Further information on RAFI is available on [the project’s web portal](#).²

In the early stages of RAFI’s consultations, feedback from stakeholders made clear that the initiative should concentrate on the reporting framework first, in order to ensure its content is driven by what it is meaningful to report, rather than what it is easy to assure. The project team has therefore focused its initial work on developing the United Nations Guiding Principles Reporting Framework, which was launched on 24 February 2015.³

Looking ahead to the development of the assurance framework, this paper explores how the practice of assurance can adapt to meet the needs of the business and human rights

¹ John Ruggie, “Business and human rights: further steps towards the operationalization of the ‘protect, respect and remedy’ framework”. A/HRC/14/27 (April 2010)

² RAFI web portal, available at <http://www.business-humanrights.org/Documents/RAFI>.

³ “UN Guiding Principles Reporting Framework with Implementation Guide” (2015, Shift and Mazars), available at <http://www.UNGReporting.org>

field; puts forward a five-point proposal for enabling assurance to do so; and highlights some remaining challenges.

The ideas presented here build strongly on the range of bilateral, group and multi-stakeholder consultations conducted to date through RAFI. These have included over 90 companies and business associations, 75 civil society organisations, 15 assurance professionals, 12 investors and 8 government representatives.

Section II of this paper sets out some of the features of assurance today that require fresh thinking in order to make it fit for purpose in the human rights context. Section III explores in further detail the issues underlying these challenges and how some new approaches might help address them. Section IV then sets out five key elements that analysis and consultations suggest would be necessary features of the assurance of human rights reporting, if it is to gain a sufficient level of trust and credibility. Finally, Section V highlights three remaining practical challenges that should be addressed if assurance is to make its full contribution to the respect of human rights by corporations around the world.

The ideas presented here are intended as a basis for continuing public consultation.

II. KEY CHALLENGES FOR THE FIELD OF HUMAN RIGHTS ASSURANCE

There are a growing number of drivers for improved reporting by companies on their “non-financial” performance. This evolution can be seen in the increased calls for greater transparency, ranging in form from regulatory requirements, stock exchange pressures and guidance, investor requests, and civil society demands.⁴ These calls often refer specifically to reporting on human rights, and in particular to information about the steps that companies are taking to ensure their operations are not harming individuals’ human rights. Moreover, research is highlighting the relevance of respect for human rights to companies’ financial and operational performance, due to the avoidance of costs from conflicts with workers or communities, the protection of companies’ reputations, or improved staff morale and retention.⁵

Despite these drivers for more and better reporting by companies on their human rights performance, actual practice remains varied and weak, even in comparison with other areas of non-financial performance, such as environmental issues.

Consultations under the Reporting and Assurance Frameworks Initiative have revealed particular concern among civil society organizations that many business enterprises tend to focus their reporting on the positive impacts of their operations, rather than the whole picture. The negative impacts that are reported tend to be brief and anecdotal. This has led to concerns that non-financial reporting has not generally been fair and balanced and that

⁴ “Update to John Ruggie’s Corporate Law Project: Human Rights Reporting Initiatives,” Shift, (2013), <http://shiftproject.org/sites/default/files/Update%20to%20Corporate%20Law%20Project%20November%2013.pdf>.

⁵ See Shift, CSR Initiative at Harvard Kennedy School, and the University of Queensland, Costs of Company-Community Conflict in the Extractive Sector (May 2014), available at http://shiftproject.org/sites/default/files/Costs%20of%20Conflict_Davis%20&%20Franks.pdf; and Reputation Dividend, The 2013 – 2014 UK Reputation Dividend Study (2014), available at http://reputationdividend.com/files/2413/9029/4988/2013-14_UK_Reputation_Dividend_Report.pdf.

where there has been some form of assurance, this potentially acts as a veneer to cover up otherwise improper behaviours. To further enhance the credibility of non-financial reporting, we suggest that Boards should publicly state that they believe that their reporting is fair and balanced.

Regulators have echoed the concern of reporting not being fair and balanced. For example, the UK Financial Reporting Council recently changed its guidance on corporate reporting to include the expectation that companies will “prepare clear and concise narrative reports that facilitate fair, balanced and understandable reporting” within the annual report.⁶

Added to this concern about the overall balance in non-financial reporting, many stakeholders also note that business enterprises frequently ignore certain areas of reporting altogether—such as human rights—because they believe it does not apply to them.

These concerns about the quantity and quality of human rights reporting by companies are matched by concerns regarding its assurance. Experts and stakeholders raise a number of factors:

1. **The very terminology of “human rights assurance” is confused and confusing.** Assurance is the process of verifying the quality of a company’s public reporting. But it is sometimes confused with the concepts of “social audit” and “certification,” which have been called into question following multiple human tragedies at manufacturing and farming facilities that had been positively audited or certified. The RAFI project team will work from the definition of an Assurance Engagement set out by IFAC (the International Federation of Accountants): “an engagement in which a practitioner expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.” In this context, the “outcome of the evaluation” is the assurance opinion; the “subject matter” is the reporting and the “criteria” are represented by the UNGP Reporting Framework.
2. **Currently, financial auditors generally have very limited obligations in relation to a company’s non-financial reporting.** In jurisdictions such as the UK, for example, they are required by law only to comment on a company’s non-financial reporting if it is inconsistent with the reporting of the financial information. The lack of balance in a company report alone would not require the auditor to take further action. In other jurisdictions within the EU, there is an overarching requirement for auditors to ensure that a non-financial report has been prepared and, depending on the state, is subject to varying levels of further assurance.
3. **Where non-financial assurance does take place, the assurance reports are sometimes so heavily caveated that the assurance loses much of its potential value.** For instance, assurance providers sometimes take as a starting assumption that the data and information being assured is complete, sufficient and authentic. Such limitations remove much of the value of assurance as they take as given

⁶ FRC, Guidance on the Strategic Report (June 2014) at 3, available at <https://www.frc.org.uk/Our-Work/Publications/Accounting-and-Reporting-Policy/Guidance-on-the-Strategic-Report.pdf>.

matters that should be subject to assessment. Moreover, they can lead to a perception that the assurance profession drafts its opinions in a manner focused more on absolving itself of responsibility than on providing meaningful information to the public reader of the opinion.

4. **Assurance may, de facto, provide a cover for a company by lending a veneer of approval to the company's processes**, making it more difficult for external stakeholders to highlight misconduct. This risk increases where assurance is so heavily caveated that the reader does not readily understand the limits on what is assured and to what level it is assured.
5. **An assurance provider may have – or be seen to have – a perverse incentive not to highlight inaccuracies** where it is seeking to build business with the company being assured.
6. **It is often unclear what skills or qualifications a particular assurance provider has in relation to the issues covered** under non-financial reporting – in this instance, human rights – and whether and how these are combined with expertise in assurance methodologies.
7. Linked to the above, **there is no widely recognised specialist qualification or regulatory structure** that could provide independent evidence of an individual's and/or firm's competence, their adequate understanding of relevant methodologies and their commitment to ethical behaviour.

The following section considers these challenges in greater detail and explores how they might be addressed.

III. EXPLORING AND ADDRESSING THE CHALLENGES

The Project Team aims to identify and articulate a broadly-accepted vision of what is needed in order for the assurance of human rights reporting to be credible, insightful and add value. However, this initiative is not the first to identify the challenges listed above – nor to try to tackle many of them – in the broader context of non-financial reporting. Indeed, many of the concerns mentioned here are relevant not only to non-financial assurance, but also to the field of financial assurance. In this regard, a variety of existing assurance standards and initiatives are relevant to this endeavour.

These include professional assurance standards – notably ISAE 3000 – which whilst written for professional accountants in public practice, also recognises that a competent practitioner other than a professional accountant may wish to represent compliance with ISAE 3000. Whilst, outside of the US, it is current best practice for accountants in public practice to follow ISAE 3000 for assurance on non-financial data, this is not mandatory. However, it has become the default guidance because it codifies basic principles and there is little else for practitioners to follow. However, in the sustainability world AA1000AS also has a substantial number of users. This standard is arguably more high level than ISAE 3000 and is more user friendly particularly to non-accountant practitioners.

In addition, some industry-specific assurance frameworks offer guidance on how to provide assurance to business enterprises in those sectors. A leading example is the Assurance Procedure of the International Council on Mining and Metals (ICMM), which sets out how assurance providers should approach external assurance of ICMM members' publicly reported sustainable development performance. This includes their human rights performance under Principle 3 of the 10 ICMM Principles, which requires members to "uphold fundamental human rights and respect cultures customs and values in dealings with employees and others who are affected by our activities."

Inevitably, the Project Team can learn much from such existing assurance standards and frameworks and their implementation, as some of the ideas set out in the following section indicate. However, the Project Team acknowledges that with the launch of the ground-breaking UNGP Reporting Framework, there is an opportunity to be equally bold with the assurance framework. The Project Team is keen to capitalise on wider interest in innovation in the assurance field and to identify approaches that are fit for purpose for human rights.

Providing clarity on what is meant by "human rights assurance".

Consultations in the context of RAFI have highlighted the need to distinguish clearly between the assurance of a company's compliance with a particular standard on the one hand, and assurance of its reporting on the other. Assurance of compliance with standards – often called 'social audits' or certification processes in the context of companies' supply chains – typically look at whether companies (or their suppliers) are meeting a code of conduct related, for example, to labour rights standards. Assurance of a company's reporting, by contrast, looks at whether the information it reports is fair and balanced.

Social audits of a company's compliance with human rights standards may provide some valuable feedback for a company internally, offering approximate snapshots of relevant human rights issues in a specific context (for example, a manufacturing facility, farm or mine site). However, certification (or, indeed, over-reliance on social audit findings) as a proxy for a company's overall performance is at best problematic in the human rights field, as stakeholders have repeatedly highlighted in RAFI consultations. Certification tends to focus on relatively narrow areas of human rights and/or to deal with adherence to a standard which does not necessarily take adequate account of the range of human rights issues relevant for a given company. Moreover, the implied level of certainty required for certification cannot readily be achieved for something as intangible and subjective as the treatment of multiple categories of potentially affected individuals over extended periods of time and in various operating contexts and value chains.

There are different, if not unrelated, challenges in providing assurance of a company's reporting, which are discussed below. However, the nature of the exercise makes it a more viable proposition given the ethical frameworks that already exist for assurance to ensure independence and impartiality. It is on this assurance of reporting that RAFI is focused, and not on the "auditing" or certification of a company's compliance with human rights standards.

Defining the scope of, and thresholds for, assurance

Under existing assurance practices in the social arena, the reporting entity and the assurance provider agree upon the scope of assurance. Quite often, the “social auditing” seen to date has been rules based as opposed to principles based. Most financial auditing standards in place today used in the audit of financial statements as well as sustainability reports are principles based and provide latitude to the auditor to exercise professional judgement. The Project Team sees this as the most appropriate path to follow for its assurance framework given its complexity and the judgement that will be required.

Under the UNGP Reporting Framework developed by RAFI, a company’s human rights reporting would be grounded in the UN Guiding Principles on Business and Human Rights, including the following areas:

1. The business enterprise’s commitment to respect human rights
2. How respect for human rights is embedded into the business enterprise’s culture and practices
3. The business enterprise’s salient human right risks and how they were identified
4. For each of those salient risks:
 - The specific policies and how they are embedded;
 - How stakeholders have been engaged;
 - How the business enterprise assesses potential impacts;
 - How the business enterprise addresses impacts;
 - How performance is tracked; and
 - How the business enterprise provides remedy in the event of actual impacts and the effectiveness of that remedy.

Many companies are in the early stages of implementing the UN Guiding Principles (and many more have yet to begin), and human rights reporting is also in its infancy. In line with feedback from all stakeholder groups, the UNGP Reporting Framework will allow business enterprises to start their journey of reporting and improve its quantity and quality over time.

The Reporting Framework sets a minimum threshold for its use, which would then also be a threshold for assurance of reporting under the assurance framework. It stipulates that before a company publicly references its use of the UNGP Reporting Framework, it must include answers to the eight overarching questions, with a focus on its salient human rights issues: those human rights at risk of the most severe negative impact through its activities and business relationships. A company may begin by reporting on its human rights performance for one particular business unit or country of operation, but not others. But the Reporting Framework stipulates that it should make (and justify) that selection based specifically on the level of risk to human rights and not on other business considerations. Absent these kinds of threshold requirement, there is a risk that the reporting is fundamentally inadequate, and that the assurance is therefore futile and lacking in value for both the company and the reader.

Different levels of assurance and the types of review they involve

In the world of assurance on company disclosure, there are two types of assurance: “limited” and “reasonable” (or, as termed under AccountAbility’s AA1000 Assurance Standard “moderate” or “high”). The conclusion in “limited” or “moderate” assurance is

framed as follows: “nothing has come to our attention which would suggest that the reporting is not...”[fair and balanced, for example]. Limited (“moderate”) assurance is the lower form of assurance and requires less work from the assurance provider. On the other hand, reasonable assurance results in a more positive view e.g., “In our opinion, the reporting represents [a fair and balanced] view of the state of affairs of the reporting entity at [date].”

Under present practice in the assurance of non-financial reporting, “limited” assurance is generally applied. In the discussion paper issued prior to the launch of RAFL, the project team proposed that a human rights assurance framework should require “reasonable assurance” of a company’s report. While a few submissions have supported this approach, most feedback has raised concerns. These reflected the qualitative and somewhat subjective nature of available and relevant data for assuring human rights information and the level of certainty an assurance provider would be required to reach before “reasonable” assurance could be offered. Care needs to be taken, however, not to exaggerate the problem. There are, for instance, a number of areas in financial reporting where the auditor often has to exercise significant judgement such as with regards to the valuation of financial instruments, intangibles and long-term work-in-progress.

Both forms of assurance will require the assurance provider to consider the effectiveness of those policies, processes and outcomes being reported, but to different degrees. It is also important, in both cases, that the assurance provider undertakes a review of the risk assessment process that the company performed in order to assess if the appropriate salient issues have been identified. In this, it will be important for the assurance provider to identify that the company has considered these issues from the viewpoint of the affected stakeholder, or potentially affected stakeholder, rather than the risks to the company. In this, the assurance provider will be able to identify those issues that were considered by the company but were not considered salient enough on which to report, and the reasons for that decision.

Whilst, on the face of it reasonable assurance may be preferable in principle, it may not, at present, be fully workable in practice. However, as some practitioners have suggested, experience over time may well bring insights into how assurance providers could provide this higher level of assurance across most or all human rights reporting.

In summary, key pros and cons of limited assurance relative to reasonable assurance would include:

Pros

- I. Companies can make greater use of “limited” assurance since it can be applied to a wider range of information due to the lesser degree of verification required;
- II. “Limited” assurance incurs less costs due to the smaller sample sizes required to express an opinion;
- III. It may not be possible to reach a “reasonable” opinion because of the qualitative and subjective nature of much of the information reported;

Cons

- I. Whilst a “limited” opinion does provide some level of comfort to the user, it may still leave some stakeholders with a lack of confidence in the information reported; and
- II. Given the smaller sample sizes required to express the “limited” opinion, there is a greater probability for errors and company processes not being as effective as stated.

Providing greater substantive insight into the assurance process and findings

In part, it may be possible to provide greater comfort and confidence in the value of an assurance opinion by addressing the level of detail included within the opinion. Currently, assurance reports, whether limited or reasonable, are fairly sterile in what they say. They typically set out the scope and criteria for what was assured and then provide a standard, one-sentence statement reflecting the level of assurance achieved, plus any material misstatements or omissions identified.

However, an assurance framework could guide the assurance provider to include comments on what it considers to be the main issues arising from a particular assurance engagement and whether it has recommended any improvements to the reporting entity. This would bring to the broader audience some key elements of the typical dialogue and debate with management that an effective assurance process should generate; i.e., a process through which the assurance provider raises with the company issues that appear inadequately reflected in the draft report, providing an opportunity both for correction of the report and for improvement in any particular practices concerned. Including some insight into this information could help avoid assurance being seen or used, in an inappropriate way, as a “stamp of approval”.

Furthermore, it may be possible to deliver a mixed opinion such that different levels of assurance can be applied on separate areas reported on depending on the information being assured. For example, reasonable assurance could be provided on the following:

- Verification of the overarching public commitment for embedding respect for human rights;
- A statement on the robustness of the process through which the company arrived at its decision on the salient human rights on which it is reporting;
- A view on whether the conclusion of those processes – the actual decision on the salient human rights – appears reasonable.

At the same time, the following may be subject to limited assurance:

- A clear statement about reporting on actual impacts that have occurred and how the company’s processes worked in practice;
- Confirmation of whether the policies and processes for respecting those salient human rights exist as stated in the company’s reporting;
- Reflections on the effectiveness of those policies and processes for respecting the salient human rights, potentially including:
 - information on issues raised by the assurance provider with management;
 - feedback sought by the assurance provider on stakeholders’ experience.

Greater transparency on the assurance provider's procedures and recommendations may be one way to accommodate limits on the level of assurance that can be achieved, while providing the reader with more meaningful information than is currently the norm. This would be in line with emerging developments in the realm of financial auditing, where audit reports are moving from being largely standard in nature to containing more discussion by the auditor of substantive issues that arose.

Setting standards for the knowledge, skills and training of assurance providers

Whenever a new form of assurance is introduced, there will be concerns about the skills and competencies of the assurance provider on the subject matter. For human rights in particular, it is unlikely that many assurance providers, outside, perhaps, of some specialist operations, will have significant specific expertise in this area. Although financial auditors and sustainability assurance providers are well versed in conducting interviews with personnel within business enterprises, they do not regularly conduct interviews outside of the enterprise. Likewise, although they normally review processes and controls in practice within a business enterprise, they do not to the same extent seek evidence of the effectiveness of such processes outside of the business enterprise, e.g., with supply chain workers, trade unions or local communities.

Meanwhile, those who provide "social auditing" (looking at compliance with labour rights and related standards) would normally have expertise in human rights – or at least those areas of human rights reflected in the standard against which they audit – but are less likely to have the critical assurance process skills and capacity to investigate the effectiveness of companies' internal processes and controls that a financial auditor or many sustainability assurance providers would possess.

Any framework for the assurance of human rights reporting will clearly need to address these issues of knowledge and skills. Discussions with stakeholders confirm that at least the following areas would need to be highlighted in the assurance framework with the overarching requirement being that of independence:

- **Expertise in human rights:** all assurance providers should be able to demonstrate that they possess a high level of expertise in international human rights standards, notwithstanding the potential need to bring in additional external experts, for example, in relation to specific human rights challenges in specific industry or country contexts. The key will be for assurance providers to "know what they don't know" and bring others into the assurance team with the necessary expertise. This will be familiar to experienced assurance providers.
- **Assurance skills:** assurance providers from the fields of financial audit, internal audit and those applying AA1000 AS will generally have several years of formal audit experience and the underlying process skills that will be relevant also for undertaking human rights assurance. This includes the need to demonstrate a good understanding of the planning phase for any assurance process, which requires risk assessments, use of appropriate sampling techniques, the application of judgment to findings, communication with appropriate members of the reporting entity, structuring engagement terms etc. These kinds of skills will be necessary for the assurance of human rights reports as well and will need to be demonstrated by firms leading engagements.

- **Training:** Business and human rights is a rapidly evolving space. Some business enterprises are already moving quickly to implement policies, controls and procedures and monitoring mechanisms in relation to the management of risks to human rights associated with their operations. Assurance providers will need to demonstrate that they also are keeping up to date with the evolution of leading human rights practices through training, which may be provided internally or externally.

Engagement with experts and stakeholders as part of the assurance process

In the financial audit world, it is expected that the team will engage with one or more external experts to address specific, complex issues that fall beyond the skills of the engagement team. International Standards on Auditing 620 defines such an expert as *“an individual or organisation possessing expertise in a field other than accounting or auditing, whose work in that field is used by the auditor to assist the auditor in obtaining sufficient appropriate audit evidence”*.

Although an assurance team would need to be fully skilled in the undertaking of assurance engagements and to have the requisite expertise in international human rights standards and the UN Guiding Principles, it is unlikely that most providers will possess all the skills on the risks that relate to specific jurisdictions, industries, vulnerable groups etc. Accordingly, it appears appropriate for the assurance framework to require that any assurance team, at the planning stage of each assignment, establish where there are gaps in their knowledge and skills and ensure they put in place a plan to engage with and involve the required experts. For those assurance providers who are likely to engage externally with workers and communities, they'll need to demonstrate care, understanding and attention to cultural specificities. They will need to have the requisite social science and engagement skills so as to ensure questions are respectful, unbiased, understandable and do not lead the interviewee. These skills will also be necessary to identify with whom best to engage for evidence collecting purposes independent of any company views as to who should be interviewed.

The following experts would likely need to be considered, depending on the specific needs of the assignments:

- *Jurisdiction experts:* this would include individuals who speak the language, understand the culture, and have the process skills to engage with local rights holders, including vulnerable groups, in an appropriate manner to solicit their views. It would also include individuals who understand local regulations, political dynamics and social practices as they relate to human rights. Such experts might also be needed to advise on security issues in relation to the assurance team's own safety.
- *Industry experts:* these specialists would help the assurance team understand and identify the key risks to human rights posed by the industry of the company that has requested the assurance. It is quite likely that the assurance team itself would include industry-specific skills. However, the team will still need to identify the appropriate person and document how the necessary industry expertise has been included.
- *Human rights experts:* since certain areas of human rights are specialized, requiring many years of experience and knowledge, assurance providers will not always know

how to properly identify whether the business entity's reporting on how it is addressing these human rights risks reflects a full understanding of the issues. External human rights expertise should be brought in to supplement the team where needed.

Professional judgement on appropriateness of the human rights issues reported

Throughout its consultations, RAFI has explored the question of “materiality” and its relevance to reporting human rights performance by business enterprises. Definitions of materiality can centre on valuation-based decisions by shareholders, on broader interests of shareholders, or on the perspectives of a wider set of stakeholders combined with assessments of the company's positive and negative impacts on society. Some practices look first and foremost at risk to the business, whereas the company's responsibility to respect human rights under the Guiding Principles focuses specifically on risks to human rights.

Companies' frequent belief that human rights are not material for purposes of public disclosure is often based on flawed thinking or processes, such as:

- An assumption that the company doesn't and couldn't be involved with negative impacts on human rights, based on a limited knowledge of human rights and how they can be affected by business activities and through business relationships;
- An untested assumption that impacts on human rights are without substantial risk to the company and are, therefore, not material, ignoring the many ways in which such impacts can lead to tangible and intangible costs and loss of value for the business, at least in the medium to long term;
- A materiality process that engages external stakeholders to inform its understanding of the company's material issues, but selects those stakeholders for their expertise in areas the company already assumes are material, such that their feedback reinforces the company's starting assumptions.

Many companies' existing materiality processes therefore fail to adequately reflect human rights issues.

Consultations under RAFI in relation to the “materiality” of information have suggested that when it comes to human rights reporting, it is most appropriate to apply the concept of “salient human rights issues” when considering the scope of issues to be covered in the report. A company's salient human rights issues are those human rights that are at risk of the most severe negative impact through its activities or business relationships.

The process to identify salient human rights issues provides an effective and consistent means for a company to identify the human rights issues on which it should report, in line with the Guiding Principles' focus on the severity of negative impacts on human rights. By focusing on the most severe negative impacts, the company will be identifying human rights issues that can be expected to converge strongly with risk to the business, whether in the

form of operational disruptions and delays, lost productivity and business opportunities, or reputational harm.

The UNGP Reporting Framework also points a company towards including in its report information on any severe human rights impacts that have arisen in the reporting period, and which would not be captured under its most “salient” issues going forward. Factors that need to be taken into account in determining the severity of the impacts are their scale (i.e., gravity), scope (i.e., the number of those impacted) and remediability (i.e., the ease with which those impacted can be restored to the previous enjoyment of the human right concerned).

This is relevant for the assurance provider in two respects. First, it would suggest that any assurance provider will need to begin its engagement by reviewing the processes by which the reporting company identified its “salient” issues and any additional “severe” impacts, in order to assess whether the focus of the report is well-founded. Absent such an assessment, assurance might ignore the omission of salient issues that are critical to an understanding of how the company meets its responsibility to respect human rights.

Second, the assurance provider would need to judge whether there are any material misstatement or omissions in the company report in relation to its progress in addressing those focal issues. “Material” in this instance could be defined as a misstatement or omission that would be likely to lead the reader of the report into drawing a wrong conclusion. Essentially this would be similar to definitions used in financial auditing.

Introducing regulation and oversight

At present, neither “social auditing”, nor the assurance of sustainability/corporate responsibility reports is necessarily subject to formal oversight procedures. In the financial audit world there are ethical standards of conduct to be adhered to and with which compliance is regularly reviewed by regulators. If the firm performing the human rights assurance is a firm of accountants, it is likely that its assurance processes will already be reviewed by the regulators. Specifically, if ISAE 3000 is followed, the assurance provider must disclose in its report that it complies with ISQC 1 (International Standard on Quality Control). If the firm is not a firm of accountants but follows AA1000AS, it needs to “be able to demonstrate adequate institutional competencies. Competencies shall include: assurance oversight mechanism to ensure quality of provision; understanding of the legal aspects of the assurance process, and infrastructure and systems to ensure quality delivery of assurance.” However, there is no requirement to state this in the assurance report.

It will be important for the RAFI consultations to address the question of whether and how there might be oversight of the conduct of assurance under the assurance framework. This will be particularly important if RAFI is to address the concerns of conflicts of interest raised by a number of civil society stakeholders, given the reality that companies will almost certainly be those paying for the assurance of their reports.

This issue relates directly to discussions regarding what appropriate, independent institution or institutions – existing or yet to be created – should “own” the final assurance framework. A competent institution that owns the assurance framework may also be able to accredit

assurance providers. Accreditation could formally recognize that a provider is equipped to apply the assurance framework in line with the foreseen ethical, competence-based and methodological standards. This possibility will be a critical subject for consultation during the remainder of the RAFI process. Furthermore, such an institution may be able to design an appropriate widely accepted international qualification for those wishing to perform human rights assurance.

IV. FIVE KEY ELEMENTS FOR A VISION OF HUMAN RIGHTS ASSURANCE

The prior section explored a number of possible approaches to tackling some of the key challenges in developing a framework for the assurance of human rights reporting. They reflect feedback already received from the range of consultations that the RAFI project team has held to date. If right, these approaches suggest that five key elements need to be features of a human rights assurance paradigm that can build and maintain credibility and add value for business enterprises, shareholders and others. These are:

- 1. Companies should meet a minimum threshold of reporting on human rights before assurance of that information can be credible and add value.**

Human rights reporting that is to be the subject of assurance – whether as part of an annual report, sustainability report or some other format – will need to meet a certain minimum threshold of information: one that allows companies to begin the journey of reporting in this field, but avoids assurance being undertaken on information that is manifestly inadequate.

- 2. Limited assurance is a starting point, but there should be movement towards reasonable assurance where possible.**

It is most likely, particularly in the early days of assurance in this field, that assurance providers will be requested (and feel able) only to provide a limited (moderate) rather than a reasonable (high) level of assurance. However, there may be specific elements of a report for which reasonable (high) assurance would be feasible and which could explicitly be singled out for the higher level of assurance. Moreover, experience gathered over time may demonstrate credible ways of providing a higher level of assurance across much or all of the content of human rights reporting.

- 3. Assurance opinions will need to provide fuller information on the assurance process and findings**

In order to provide the readers of assurance opinions with greater value, these opinions will need to include some reasonable level of relevant information about the assurance process, the key issues identified, and recommendations made to the company. They will also reflect any material omissions or misstatements that remain in the company's report following the assurance process.

- 4. Assurance providers will need to demonstrate that they combine the requisite knowledge, skills and capacity to conduct a human rights assurance with general assurance skills and technical expertise in the relevant industry.**

It will be imperative for assurance providers in this field to build a team for each assurance engagement that has the capacity to provide assurance of human rights reporting by the company in question, given its sector and operating contexts, and the salient human rights issues. Providers will need to possess the necessary expertise in international human rights standards as well as assurance process skills and knowledge of the relevant industry. It is likely that many assurance engagements will also require external expertise to supplement that of the internal team. Importantly, assurance providers will need to be able to demonstrate publicly that the assurance process was undertaken by a team with the necessary qualifications, experience and expertise.

5. Oversight and accountability for assurance in this field could enhance its value and credibility by helping to address actual and perceived conflicts of interest

The question of whether, how and to what extent assurance in this field (and potentially in other areas of sustainability) needs a level of oversight and accountability should be discussed with all those who have a stake in the issue. Based on feedback received, it would appear that some form of accountability would bring more credibility and trust to assurance providers' reports and, in turn, to the company disclosures on which they are based. An independent institution that 'owns' the assurance framework in the future could potentially accredit assurance providers based on criteria for ethical conduct, competence and methodological rigour contained within the framework.

V. OUTSTANDING CHALLENGES TO ADVANCING THE VALUE OF HUMAN RIGHTS ASSURANCE

The RAFI project team would welcome stakeholder views on the extent to which the five elements in the vision set out above could – if fulfilled – provide a sufficient level of confidence in the value of assurance of human rights reporting. However, it is not claimed that they are a complete answer to the challenges raised by this field of practice. The following additional three challenges, at a minimum, remain and are proposed as a basis for further, on-going consultations.

1. The disclosure of risks to human rights from company operations automatically raises concerns for many companies about prejudice, including legal liability. In practice, leading-edge company reporting is already showing that the disclosure of information about how a company addresses human rights risks – including specific cases – tends to bring positive recognition rather than legal exposure. Conversely, many companies have found that non-transparency has stoked speculation and even misinformation about their practices and intentions, heightening reputational risks. However, from feedback to date, in-house counsel in many companies remain at best sceptical about the merits of disclosure. This is relevant for the practice of assurance if – as proposed in the five-point vision set out above – assurance opinions are to begin including greater information about issues identified and recommendations made during the assurance process. It will be important to consider how assurance opinions could move in this direction without increasing

legal sensitivities. A considered discussion of these issues will be needed in order to advance thinking.

2. The cost of assurance will be a key factor in determining whether companies ultimately consider it worthwhile to seek independent, external assurance of their human rights reporting. As discussed, “reasonable assurance” would cost more than ‘limited assurance’. The substantive value of assurance in this field - at whichever level - will have to be apparent if companies are to spend the necessary funds. Internally, high quality assurance should help companies identify and implement improvements in their processes and controls to manage risks to human rights. Externally, high-quality assurance should help companies build trust among their stakeholders in the authenticity and consistency of their efforts to meet their responsibility to respect human rights. The assurance framework will need to provide the basis for an assurance that can meet these objectives.
3. This paper notes a clear distinction between social audits and certifications of companies’ compliance with human rights standards on the one hand, and the assurance of the information companies report about their human rights performance on the other. As an assurance provider moves beyond simply verifying the existence of processes referred to in a company’s report, and looks also at their appropriateness and effectiveness in practice – informed by actual outcomes and third party perspectives – they will need to manage this more subjective approach that necessarily requires judgement, and to define appropriate boundaries. However, the assurance opinion will need to avoid implying that a positive outcome equates with a statement that the company is “certified” or otherwise endorsed as being free of any human rights impacts or challenges across its operations.

VI. CONCLUSION

This paper has sought to explore some of the challenges facing the practice of assuring companies’ human rights reporting. Based on research, analysis and valuable inputs from all the stakeholder consultations conducted to date, it sets out a five-point vision for building confidence in the value of human rights assurance, as well as some remaining challenges that warrant further debate.

The primary focus of this paper has been on the practice of external, independent assurance of a company’s human rights reporting. However, as a practical reality, it seems likely that early-stage usages of the proposed assurance framework will more likely be (a) by internal auditors conducting their own review of how their company is implementing its human rights commitments, and (b) by companies seeking external assurance *without* a public assurance opinion, in order to gain independent feedback and have the opportunity to build and improve their processes, before they take the step of seeking a public assurance opinion. These usages could in themselves be valuable means of advancing companies’ internal policies and processes for implementing their responsibility to respect human rights.

The project team welcomes all reactions and ideas in response to this paper. Comments can be sent to [richard.karmel\[at\]mazars.co.uk](mailto:richard.karmel@mazars.co.uk) or [anna.triponel\[at\]shiftproject.org](mailto:anna.triponel@shiftproject.org).