

## Corporate Human Rights Benchmark Consultation Response

Most of the Key Sector Risks have been covered. An additional risk of this nature would be discrimination across all sectors and land ownership issues could be extended to both agriculture and apparel. The benchmark focuses heavily on labour-related human rights impacts, and we consider the scope of impacts should be more balanced between labour rights and other human rights.

From an investor perspective, the tool starts out well by distinguishing between the provision of information on policies and processes and the provision of examples. It would be good if this methodology were applied throughout the benchmark, using, for example, a Score 3 category for examples of how companies have enacted and enforced policies and processes. We find that often annual reports and CSR reports provide great detail and evidence of the existence of policies and systems but very little information on how these tools work in practice. In order to assess the actual impact of the tools, an explicit request for examples would be extremely helpful in understanding whether financial, operational and reputational risks are likely, and if so, what they are likely to be.

### A. LEADERSHIP

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#### A.1.1. Raising human rights concerns with governments

Examples should get higher scores than commitments. So, for example, this indicator would be improved if score 1 were a commitment, score 2 were examples, and score 3 were both the commitment and examples.

#### A.2.1. Raising human rights concerns with industry peers

No comments.

#### A.3.1. Activities within Multistakeholder Initiatives (MSIs)

Multi-stakeholder initiatives (MSI) are of highly variable quality, so recognising that this could be problematic politically, if there is a way of identifying the better initiatives, this could be helpful in driving up the quality of MSIs overall which would feed into the incentive-driven model of the benchmark.

#### A.4.1. Support for building local human rights capacity

There needs to be a clear definition of capacity building. For example, does this mean the donation of a school (corporate philanthropy) or the construction of a local content clause in an investment treaty to include fair tax burdens for both the company and the community (systemic approach).

## **B. Governance**

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### **B1 POLICY COMMITMENTS**

#### **B.1.1. Commitment to respecting human rights**

It would be preferable if there were appended to this indicator a reference to the fact that human rights are legal rights, not just concepts created by voluntary codes and standards.

#### **B.1.2. Commitment to respecting the core and/or additional ILO conventions**

We are not convinced that there should be a labour rights indicator separate from B.1.1., the human rights indicator, as labour rights are technically part of human rights law, as recognised in the UN Guiding Principles on Business and Human Rights. There has been a historical disconnect between labour rights and other human rights, and we are concerned that this framing of rights reinforces this disconnect. One suggestion would be to merge B.1.1. and B.1.2. to make a three tier scoring system whereby recognition of labour rights is incorporated into one of the higher scoring brackets. In any case, we would like to see all of the four core labour standards covered in Score 1 and an additional reference to freedom of association and collective bargaining required to achieve Score 2. There should also be a provision on collective bargaining in the apparel scoring threshold.

#### **B.1.3. Commitment to specifically respecting the rights of human rights of individuals belonging to specific groups or populations that require particular attention**

The extractives paragraph should ask that full prior and informed consent (FPIC) be in line with international law and standards, not just standards. There should also be a commitment to respecting case law and rulings by the treaty bodies, not just a reference to standards. Otherwise, companies can define the content of the law as is convenient to them, which can lead to operational, financial and reputational problems. It would also be helpful if land use and ownership issues were incorporated in the agriculture and apparel sector criteria.

#### **B.1.4. Commitment to respecting additional human rights of or relevant to of local communities**

The word 'of' should be removed from the indicator heading.

The indicator would benefit if non-discrimination and land use and ownership were added to the sector-specific criteria. It would be helpful if the sector-specific criteria were in the same order for each indicator.

#### **B.1.5. Commitment to incorporating human rights into Business Relationships**

It is not clear why Scores 1 and 2 only refer to the inclusion of ILO conventions rather than other human rights instruments as the Guiding Principles explicitly cover all human rights. We recommend that this provision be extended to accept references to a broader range of human rights instruments.

#### **B.1.6. Commitment to engage with stakeholders**

We recommend that the indicator include the appropriate identification of stakeholders as well as engagement. Industry criteria on stakeholder engagement such as that provided for the extractives industry would be also be helpful for both agriculture and apparel sectors.

#### **B.1.7. Commitment to remedy**

It would be helpful if this indicator asked for a public company commitment to not impede access to judicial remedies as well as enabling access to non-judicial remedies. It would be helpful if some examples of such remedies in practice were incorporated into a Score 3 category.

The box setting out the four fundamental labour principles is very helpful.

There are some typos in B.1.2. (the word Principles should follow Fundamental in the opening paragraph) and B.1.3. (the opening paragraph and Score 1 repeat the words 'human rights of').

### **B.2. BOARD LEVEL ACCOUNTABILITY**

#### **B.2.1. Leadership from the top**

No comment.

#### **B.2.2. Senior responsibility for human rights**

No comment.

#### **B.2.3. Board skills and expertise**

No comment.

#### **B.2.4. Board agenda**

We recommend adding a Score 3 to require that both Scores 1 and 2 be met, and the examples of discussion items be provided, respecting any confidentiality requirements.

#### **B.2.5. Performance incentives**

No comment.

#### **B.2.6. Relationship to corporate strategy**

We suggest that Score 1 cover speeches, presentations or other communication, that Score 2 cover acknowledgment of human rights issues in corporate strategy, and that Score 3 require clear examples of how human rights policy has been developed as part of the wider corporate strategy.

## **C. MANAGEMENT SYSTEMS**

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### **C.1.1. Responsibility and resources for day-to-day human rights function**

It would also be helpful to know how the Company determined that the internal functions it has identified are relevant to the responsibility of day-to-day human rights efforts. We would like to see a Score 3 that includes examples of human rights allocation as well as Score 1 and 2 criteria. An extractives category should request an outline of human rights responsibilities for an appropriate Group-level manager.

### **C.1.2. Alignment of other internal policies and processes with the human rights policy**

We consider the addition of a score 3 would improve this metric by asking for examples of alignment between human rights and other internal policies as well as Score 1 and 2 criteria. It would be helpful if there were an extractives sector provision asking for policy clarity on contracting business partners, such as how security services are tendered and contracted.

### **C.1.3. Integration with enterprise risk monitoring generally**

It would be helpful if there were a Score 3 to award for examples of the criteria in Scores 1 and 2.

### **C.1.4. Incentives and performance management**

No comment.

### **C.1.5. Communication / dissemination of policy commitment**

We consider that a Score 3 would be helpful in requesting examples of how this communication has worked in practice and whether it has been successful in reaching intended audiences, in addition to Score 1 and 2 criteria.

### **C.1.6. Communication / dissemination of policy commitment to business relationships**

We consider that a Score 3 would be helpful in requesting examples of how effective this communication has been with business partners, in addition to Score 1 and 2 criteria. An extractives industry provision requesting information on coverage of security contractors or government security forces would be useful.

### **C.1.7. Training on human rights**

A Score 3 option requesting examples of training content and impacts, in addition to Score 1 and 2 criteria, would be helpful.

### **C.1.8. Regular review of human rights policy**

A Score 3 option requesting examples of changes to policies as a result of the review, as well as Score 1 and 2 criteria, would be useful. In our view, this indicator would be better placed after C.1.2.

#### **C.1.9. Monitoring and corrective actions**

It would be helpful if a Score 3 option requested examples of how the monitoring approach and corrective actions have been implemented in practice, in addition to Score 1 and 2 criteria.

#### **C.1.10. Engaging business relationships**

We consider that a Score 3 option requesting examples of how these relationships have affected decisions on how to engage with stakeholders would be of benefit to investors in identifying potential human rights and operational risks to the business.

#### **C.1.11. Framework for stakeholder engagement**

It would be helpful if there were a Score 3 requesting examples of stakeholder engagement, in addition to Score 2 criteria.

#### **C.1.12. Health and safety management**

It is not clear why this is a separate metric under this heading. We suggest it would fit better under the sector criteria. It would help if there were a Score 3 option requesting examples of training content and how it works, in addition to Score 2 criteria.

As with the prior section, we would like to see a Score 3 with examples building on the Score 1 and 2 criteria to clarify how policies and processes are actually enacted and enforced.

### **C.2. HUMAN RIGHTS DUE DILIGENCE**

#### **C.2.1. Existence and triggers for identifying human rights risks and impacts**

We would recommend that the indicator be called 'Processes and triggers for identifying human rights risks and impacts'.

#### **C.2.2. Assessment of risks and impacts identified (salient risks and key sector risks)**

The extractives, agriculture and apparel criteria should include discrimination. In relation to the apparel criteria, rather than single out women and children, we would prefer a reference to vulnerable groups and then the inclusion of women, children and migrants as examples of such groups.

#### **C.2.3. Identification and consultation with stakeholders on salient human rights issues**

We would like to see the following wording added after 'identify and consult stakeholders' - "and where necessary gain their consent". The extractives criteria should have additional wording at the end asking that "FPIC is fully met where required." It would be helpful to have agriculture sector criteria as well.

#### **C.2.4. Acting on outcomes of the assessment**

This should be an essential indicator. We consider Score 2 would be improved by incorporating the Score 1 criteria, or both Score 1 and 2 criteria could be required to

achieve a Score 3. Agriculture and apparel sector criteria applicable to the supply chain and with examples would be helpful.

**C.2.5. Tracking the implementation of actions to respond to the assessments**

It is our view that this is an essential indicator. It would be useful if the examples of lessons fed back as a result of the due diligence process were Score 3, in addition to the Score 1 and 2 criteria because all of the criteria set out are important for disclosure.

As with the prior two sections, we would like to see a Score 3 with examples building on the Score 1 and 2 criteria to clarify how policies and processes are actually enacted and enforced.

**C.3. REMEDIES AND GRIEVANCE MECHANISMS**

**C.3.1. Channel(s)/mechanism(s) to receive human rights complaints or concerns**

We recommend that Score 1 cover all of the groups mentioned and that Score 2 ask that affected stakeholders can escalate their concerns beyond the company level if their concerns are not being addressed adequately. Score 3 could require that both Score 1 and 2 criteria be met, as well as requesting examples.

**C.3.2. Effectiveness of channel(s)/mechanism(s)**

No comment.

**C.3.3. Oversight and review of the channel(s)/mechanism(s)**

No comment.

**C.3.4. Process for incorporating lessons learnt**

**C.3.5. Remediating any impacts identified**

In our view, both C.3.4. and C.3.5. are essential indicators.

As with the prior sections, we would like to see a Score 3 with examples building on the Score 1 and 2 criteria to clarify how policies and processes are actually enacted and enforced.

**D. PERFORMANCE**

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**D.1. KPIs & GOOD PRACTICES**

**D.1.1. Forced labour: bonded labour and other unacceptable financial costs**

It would be helpful to see a link to core ILO Conventions 29 and 105 for this indicator. We recommend that Score 1 clarify that the Company should pay at least the legally-mandated minimum wage.

#### **D.1.2. Forced labour: Restrictions on workers**

We recommend that cash be added to the list of things the Company should refrain from retaining to ensure that restricting worker movement does not happen. In our view, Score 1 would better read 'The Company does not retain the workers' personal documents and does not deny them access...'

#### **D.1.3. Direct employment**

A link to ILO conventions covering employment contracts would be helpful.

We recommend that Score 1 include contract workers as well as temporary workers and ask that employment providers used by direct employer be disclosed. This indicator would benefit from a Score 3 that requests examples be disclosed of steps taken to employ permanent staff directly and pay full benefits.

#### **D.1.4. Child labour: Age verification and corrective actions**

A link to ILO Conventions 138 and 182 would be helpful, as well as a box with definitions of child labour, child work and youth work (and any other categories deemed relevant). A Score 3 option requesting examples of transition of children from work to education and participation in transition programmes would be helpful too. In our view, the apparel sector criteria should include night work as a special focus, and the agriculture sector focus should cover children not being required to use harmful chemicals.

#### **D.1.5. Child labour: Hazardous work**

It would be helpful to have a link to ILO Convention 182. A Score 3 option requesting an example of what happens or would happen if such a situation is found would also be useful.

#### **D.1.6. Non-discrimination: Workforce composition**

It would be helpful to have a link to ILO Conventions 100 and 111. We recommend that Score 1 ask for an equal opportunities policy covering the categories mentioned. We also recommend that Score 2 cover what is currently under Score 1, and that a Score 3 option be added to cover what is currently Score 2, as well as asking for examples actions to improve workforce diversity.

#### **D.1.7. Non-discrimination: Board composition**

LAPFF is a member of the 30% Club Investor Group so at present would advocate aiming for a 30% level of gender equity at board level but would be pleased if a higher percentage were achieved.

#### **D.1.8. Freedom of association**

We think it is important to clarify that relevant 'independent' trade unions are granted access to workers... and that discrimination be included as one of the practices companies should prohibit in relation to unionisation. It would be helpful to provide a link to ILO Conventions 87 and 98. We recommend that Score 1 also refer to a representative 'independent' union, and Score 2 refer to a prohibition of discrimination against trade union and trade union representatives, along with the other prohibitions.

#### **D.1.9. Workers covered by collective bargaining agreements**

We believe that the criteria for Scores 1 and 2 should be reversed as it seems more important for companies to remain neutral on employee membership than it is for them to provide statistics on collective bargaining. Presumably, if the first criteria is met, the statistics will improve. We would advocate that there be a Score 3 option requesting examples of how a trade union operates at a given facility or how it was elected.

#### **D.1.10. Health and Safety: fatalities, lost days, injury rates**

In our view, a Score 3 should be added to request an example of how a health and safety situation was rectified. Apparel and agriculture sector criteria could request disclosure of MSDS procedures in the supply chain.

#### **D.1.11. Working hours**

A link to the relevant ILO Conventions would be helpful as would a reference to appropriate consultation with workers in setting fair work hours, both in the opening paragraph and in the Score 1 paragraph. We also recommend that the Score 1 paragraph refer to setting fair overtime schedules. We further recommend that Score two include the first AND third components, and that the Score 3 cover examples of Score 1 and 2 criteria and how the working hours contract provisions are enforced. This indicator would benefit from a Score 3 under the agriculture and apparel criteria that requests an explanation of how the Company sources in a way that does not encourage excessively tight turnaround times, penalties for late production caused by the Company or overtime at the supplier and how the contract terms are enforced. The addition of extractives sector criteria requesting examples of how contract terms are enforced would improve the indicator as well.

#### **D.1.12. Living wage**

This indicator would benefit from a box with the definition of minimum wage and living wage. In line with international practice on living wages, discretionary income of at least 10% should be specified. We recommend the following scoring criteria. Score 1 would request disclosure of the living wage methodology used. A Score 3 option requesting achievement of Score 1 and 2 criteria and examples of outcomes for workers and communities would be helpful. In our view, an apparel industry criteria should clarify that where workers are paid by piece rate, this rate should allow them to meet the living wage rate established through the Company's selected living wage methodology.

#### **D.1.13. Land use and acquisition**

In our view, Score 1 should refer to customary land and resources owners and users and their rights. It would be helpful if there were a link to the FPIC standard set by the Inter-American Court of Human Rights. Score 2 needs to be re-worded; it is unclear at the moment. Proposed wording: 'The Company provides fair terms of use and compensation where land is acquired, used or use restricted, and where land markets are not functioning. Arrangements must cover direct, short-term financial costs of

land affected and longer-term economic and social impacts resulting from projects that affect land or natural resource use or rights of structure compensation, such as income streams for those with land-based livelihoods. Examples are...’ It would be helpful if the agriculture sector Score 2 requirement for companies to share risks with farmers were fleshed out as this might be deemed excessively onerous for companies. A Score 3 option requesting an example of such a situation and how the Company approach was applied would be welcome. Examples of how the Company gains consent rather than just engaging in consultation with relevant stakeholders would also be useful. In our view, this standard should apply to apparel and agriculture industry criteria as well.

#### **D.1.14. Land use and acquisition: Resettlement**

It is not clear that this metric should be separate from the general land acquisition indicator. Links to the GRI G4 and IFC PS 5 standards would be helpful. In our view, Score 1 should commit to applying international law and standards. Score 2 should cover the first part of the current Score 1 and make reference to resettlement as a last resort. The current Score 2 should be Score 3 and should ask for examples of how resettlement was avoided or undertaken in accordance with appropriate laws and standards. It would be helpful to have apparel industry criteria as well to cover when a factory or manufacturing facility is set up.

## **D.2. ADVERSE EVENTS**

### **D.2.1. HIGH SEVERITY - There are allegations of severe breaches of ILO standards or the right to security of persons against the Company or the Company’s supply chain (data provided by EIRIS)**

This definition would benefit from covering lawsuits and official worker or community grievances or complaints. Severe breaches of international human rights law more broadly could be covered as well as breaches of ILO law. The topics listed could link to relevant international law, such as General Comment 12 and ILO conventions, as well as voluntary standards such as the Voluntary Principles on Security and Human Rights.

### **D.2.2. MEDIUM SEVERITY – The Company faces criticism or negative news stories related to Labour and Human Rights (data provided by RepRisk and Business & Human Rights Resource Centre)**

This definition should cover criticism from workers and affected stakeholders identified through news stories, studies or reports, and Company responses should be assessed for reasonableness, not just any response.

As with the prior section, we would like to see a Score 3 with examples building on the Score 1 and 2 criteria to clarify how policies and processes are actually enacted and enforced.

## **E. REPORTING / TRANSPARENCY**

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### **E.1.1. Public policy available**

The first sentence might better be phrased as ‘The Company has made publicly available and reports on whether and how...’ In our view, the apparel and agriculture industry criteria should read ‘In addition, for each score, the Company must communicate its policy to suppliers.’ A similar clause should apply to the extractive industry criteria in relation to joint venture partners and contractors. It would be helpful if there were a Score 3 requesting examples of how the policy is being received and/or used by stakeholders.

### **E.1.2. Reporting on human rights training**

It would be useful if Score 1 included a request for the training policy. In our view, a Score 3 category should then ask for examples of how training has worked in practice, for example through providing worker or community testimonials.

### **E.1.3. Reporting on the implementation of human rights management system**

This indicator would benefit from a Score 3 that requests an example of a situation that was monitored, how it was monitored, and the outcome of the monitoring. It would be helpful to request criteria for the extractives industry category such that for Score 1, security contractors are monitored, and for Score 2, the proportion of contractors monitored is disclosed.

### **E.1.4. Disclosure of human rights risk/impact assessments**

It would be useful if this indicator had a Score 3 that requested examples of how assessment findings are prioritised and how corrective actions are enforced. The indicator would benefit if apparel and agriculture sector criteria request Correction Action Plan disclosures to achieve a Score 3 rating. To be consistent with the apparel industry and agriculture industry criteria, under the extractives industry criteria, for a Score 2 rating, the results of monitoring should be requested and for a Score 3 rating the disclosure of the action plan and examples of enforcement should be requested.

### **E.1.5. Detailed reporting on stakeholder engagement on human rights issues, including salient human rights issues**

Score 1 would benefit from an explanation of how stakeholders are identified and engaged with. In our view, Score 2 should ask for the percentage of operations engaging with local communities and how, and a Score 3 option requesting lessons learnt from stakeholder engagement would be helpful.

### **E.1.6. Human rights screening / investments or contracts including human rights clauses**

In our view, the word 'agreements' should follow the word 'investment' in the indicator heading and Score 2 should request the content of human rights criteria and clauses in contracts. A Score 3 option would then ask for examples of how these criteria and clauses have linked to human rights impacts in the Company's experience.

#### **E.1.7. Reporting on some ILO standards**

It is unclear why this indicator is restricted to ILO standards rather than human rights treaties more broadly. If the ILO focus is retained, the indicator should cover incidences of child labour and forced labour, as well as the other quantitative indicators. We recommend that Score 1 request reporting on the total number of adverse human rights impacts the Company was accused of during the year under review. In our view, Score 2 should encompass all of the current metrics listed, as well as any broader human rights indicators stemming from other international human rights law. A Score 3 option should then request examples of remedial and enforcement efforts undertaken by the Company. Apparel and agriculture sector criteria that requests reporting on MSDS results for Score 2, and MSDS remedial measures for Score 3 would be helpful.

#### **E.1.8. Number of human rights related incidents and corrective actions**

It is unclear how this indicator is different from E.1.7. In our view, the two indicators should be merged. For the apparel industry and agriculture industry criteria, a Score 3 rating should request corrective actions requested and explanations of why the Company decided to terminate business relationships rather than undertake efforts to correct the violations. The term ‘human rights-related incidents’ is confusing. The definition of this term should be clarified.

#### **E.1.9. Number of grievances**

We would like to see this indicator reflect that both judicial and non-judicial grievances should be reported and that information be provided for both external and internal channels and mechanisms. In our view, Score 1 should cover trends, Score 2 should cover details related to monitoring grievance mechanisms and disclosing the number of grievances, and Score 3 should request examples of when and how the grievance mechanism has been used and steps taken to address both judicial and non-judicial grievances.

#### **E.1.10. Reporting is verified and informed - Stakeholder verification and input**

It would be helpful to clarify that data should be independently verified by a credible third party. In our view, Score 1 should be independent verification by an independent third party, Score 2 should be stakeholder verification of reporting, and Score 3 should request examples of how stakeholder engagement has informed report writing. We would also like to see the extractives industry criteria include data on security providers being verified by an independent third party for Score 1 and stakeholder engagement regarding security providers informing report-writing for Score 2.

As noted, the overarching requests are that examples be provided in a Score 3 Category; that there be consideration of whether a broader range of human rights be covered by the benchmark; that appropriate links to international human rights law are provided for relevant indicators; and that sector scoring descriptions are available to all sectors where possible and that sector-specific criteria be listed in the same order for each indicator. It would also be helpful if the indicators could be linked across

categories. For example, it could be revealing to see how the response to C.1.1. works with the response to B.2.1.

Additionally, it is important to ensure that the tool does not unduly separate labour rights from human rights and unwittingly reinforce this false dichotomy that has existed historically. Some of the definitions need to be clarified as well. For example, under Key Terminology, it should be clear that adverse events covers ‘a direct or indirect company activity on an individual's...’ The human rights due diligence definition should include identifying as well as assessing actual and potential human rights impacts. It should be clarified whether key sector risks and salient human rights risks are identified solely by companies or stakeholders more broadly. The definition of remedy needs to be re-written - it is confusing as is. Stakeholders can be affected by an organisation's direct or indirect activities. Under stakeholder engagement/consultation, there needs to be clarification that interaction is between both affected and potential affected stakeholders and that the enterprise should integrate, as well as hear, understand and respond, to stakeholder interests and concerns. The definition of workers as it stands is legally incorrect in a number of jurisdictions, many of which distinguish between employees and workers. This might not be a problem, but if this categorisation remains there should probably be an acknowledgment or explanation for why these categories have been conflated.