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Note on ISO 26,000 Guidance Draft Document

The International Organization for Standardization's initiative to develop a "Guidance on social responsibility" for all types of organisations (ISO 26,000) is as important as it is complex. It has the potential to support the United Nations "protect, respect and remedy" framework for business and human rights which the UN Human Rights Council welcomed unanimously in 2008, and which it has asked me to further "operationalize" – that is, to provide concrete guidance and recommendations to states, companies and other social actors. For the Guidance to support the UN framework it would need to reflect the framework's core provisions where the two overlap.

The "protect, respect and remedy" framework rests on three differentiated yet complementary pillars: the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which in essence means to act with due diligence to avoid infringing on the rights of others; and greater access for victims to effective remedy, judicial and non-judicial.

I am pleased that the draft Guidance identifies respect for human rights as one of the key principles of social responsibility, and human rights as one of the core subjects. The other principles of social responsibility identified in section 4 are also important in guiding the approach of companies with regard to human rights.

I note with particular interest that the section on human rights (6.3) is aligned with the UN framework on the corporate responsibility to respect human rights, particularly as it relates to the due diligence necessary to discharge this responsibility.

The reference to the concept of "sphere of influence" in the human rights section corresponds broadly with how it is described in the UN framework

document: namely, that it can be a useful metaphor for companies to employ in identifying opportunities to support human rights, but that influence by itself is not an appropriate basis on which to attribute specific social responsibilities to companies.

However, the same alignment on “sphere of influence” does not exist elsewhere in the document. The draft Guidance is internally inconsistent on this issue, and beyond the human rights section it is inconsistent with the UN framework. This will send mixed and confusing messages to companies seeking to understand their social responsibilities, and to stakeholders seeking to hold them to account.

For example, in the chapter entitled “Recognising social responsibility and engaging stakeholders” (section 5.2.3), the Guidance states: “Generally, the responsibility for exercising influence increases with the ability to influence.” This sentiment is repeated later in the chapter entitled “Guidance on integrating social responsibility throughout an organization.” In section 7.3.2.1, on “Assessing an organization’s sphere of influence,” the text states “there will be situations where an organization’s ability to influence others will be accompanied by a responsibility to exercise that influence.”

Under the circumstances, may I take the liberty of drawing upon paragraphs 13 and 14 of my report on this subject to the UN Human Rights Council (“Clarifying the concepts of ‘sphere of influence’ and ‘complicity’,” A/HRC/8/16), which forms an integral component of the thinking behind the UN framework:

Anchoring corporate responsibility in influence defined as leverage is problematic, because it requires assuming, in moral philosophy terms, that “can implies ought.” However, companies cannot be held responsible for the human rights impacts of every entity over which they may have some leverage, because this would include cases in which they are not contributing to, nor are a causal agent of the harm in question. Nor is it desirable to require companies to act wherever they have influence, particularly over Governments. Asking companies to support human rights voluntarily where they have leverage is one thing; but attributing responsibility to them on that basis alone is quite another.

Moreover, using influence as a basis for assigning responsibility invites strategic manipulation. This is so because influence can only be defined in relation to someone or something. Thus, it is itself subject to “influence.” A Government can deliberately fail to perform its duties in the hope or

expectation that a company will yield to social pressures to promote or fulfil certain rights that constitute duties of States. Of course, attempts to shirk responsibility can also work in the reverse direction.

The conflation of influence and responsibility in parts of the Guidance document is contrary to the UN framework. Within the framework, the scope of a company's responsibility is determined by the impact of its *activities* on human rights, and whether and how the company might contribute to abuse through the *relationships* connected to its activities. The national and local *contexts* in which the business operation takes place should also serve to alert the company to any particular human rights challenges it may face on the ground. Situational variations will always exist, but they cannot and should not become the basis for general and universally applicable principles.

In short, I have serious concerns about these inconsistencies regarding the sphere of influence: within the ISO Guidance document itself, and between it and the UN "protect, respect and remedy" framework.

I very much hope—and indeed would urge—that the Working Group responsible for drafting the ISO 26000 Guidance document review all references to sphere of influence in the document to ensure that they are consistent with the UN framework not only in the human rights section but throughout.

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