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United States

30 December 2020

Dear IFRS Foundation Trustees,

I am writing to you in my former role as the Special Representative of the UN Secretary-General for Business and Human Rights, and author of the UN Guiding Principles on Business and Human Rights. I have read with interest the proposal of the IFRS Foundation to establish "a new Sustainability Standards Board (SSB) under the governance structure of the IFRS Foundation to develop global sustainability standards". In response to your consultation on this proposal, I would like to urge that the Foundation not limit the initial work of a future SSB to environmental issues and exclude the human dimensions of the sustainability agenda. In particular, I strongly suggest that:

(a) The urgency of today's inequality crisis, including environmental justice issues, requires a parallel effort to integrate the underlying human rights issues into a new standard-setter's work.
(b) The IFRS Foundation take care to ensure that the framing and presentation of a new standard-setter are clear regarding the constraints of its mandate to issues that have demonstrated narrowly-defined financial materiality, and that they do not imply that it covers all sustainability issues of critical importance with regard to companies' social and environmental performance.

Over the period of my UN mandate, from 2005 to 2011, I led a broad range of research and consultations on all continents to explore the ways in which business activities can impact people's human rights, and the standard of conduct that might be reasonably expected of companies, large and small, when it comes to this aspect of their performance. The result was a set of Guiding Principles on Business and Human Rights, which the UN's Human Rights Council unanimously endorsed in 2011, making them the authoritative global standard on this issue. In the same year, the OECD incorporated a new chapter on human rights into its Guidelines for Multinational Enterprises, which aligns with the UN Guiding Principles (UNGPs).

Since then, dozens of governments have adopted National Action Plans on business and human rights, and numerous global, regional and industry bodies have aligned their policies and standards with the UNGPs and developed guidance on their implementation in specific sectors and contexts. Moreover, in recent years, governments have begun to put aspects of this global soft law standard into hard law. This began in the form of reporting requirements on companies' management of human rights impacts, and has now begun to take the form of mandatory human rights due diligence requirements. The European Union will in 2021 propose legislation mandating human rights and environmental due diligence by companies above a certain size operating within the EU.

The business and human rights agenda in essence is about the risks to people that can arise from the ways in which companies construct and conduct their business, within their own operations and through their value chains. These risks range from people's labor rights such as freedom of association, health and safety and fair working conditions, living wages and freedom from discrimination to issues of child labor and forced labor. They equally include impacts on people's right to clean water, to adequate livelihoods and to health or on their rights to freedom of expression, privacy and security of person. Many of these are closely related to companies' environmental practices.

As these examples show, the range of actual and potential impacts is broad and my mandate's research showed that there is no human right on which businesses cannot, in principle, have a negative impact. At the same time, human rights set a key threshold – they focus on impacts that rise to the level of undermining people's basic dignity and equality. As such, and unsurprisingly, where the risks to people from business activities meet this threshold, they also tend to create risks to the company itself – operational, reputation, legal, financial or other – whether in the near, medium or longer term.

My concern in reading your consultation paper is that it almost entirely leaves out the human dimension of sustainability, often referring solely to its environmental aspects. Yet as far back as the Brundtland Commission's original 1987 report on sustainable development, "Our Common Future", Gro Brundtland took pains to underline that the environmental and human dimensions are of equal significance and integrally intertwined. As she summed it up in her foreword, "A world in which poverty and inequity are endemic will always be prone to ecological and other crises". And we now know that people who already lead precarious lives are most likely to suffer the consequences of poor environmental practices.

Today, alongside the current crisis of climate change and the urgency of action it demands from businesses and governments alike, we also face a crisis of growing and gross inequalities, which is undermining social stability and cohesion and has resulted in political backlashes in developed and developing countries alike. Widespread calls for a new form of stakeholder capitalism in place of the shareholder primacy theory that led to so many costs being externalized onto people and planet is one result. It is primarily through reducing risks to people's human rights that business can play its role in reducing today's inequalities.

I fully understand the need for the IFRS Foundation to consider how and where a new Sustainability Standards Board might start its work, without taking on too much at once. The proposal that it might begin with climate change and then move on, over time, to other aspects of environmental sustainability may be necessary and appropriate, as regards the environmental aspects of the agenda – recognizing they are inseparable from the people who are most at risk in suffering the consequences. But your consultation paper appears to relegate what it refers to in passing as 'social' issues to, at best, a third tier of priority: and therein lies the problem.

I have written extensively on the "S" in ESG investment. The elements included by different data service providers under the 'social' component of ESG analyses and indexes vary widely, are measured differently and produce unhelpfully diverse results. This has perpetuated confusion and a poor understanding of what is essentially the 'human dimension' of sustainability. Yet these 'social' components, the S in ESG, are in fact nearly all human rights-related issues. And while accounting has so far generally looked only at the positive social impacts that business can bring in the form of jobs and growth, the priority for any sustainability standard must be the actual and potential *negative* impacts on people that can result from how business gets done: it is for this that business needs to be accountable to society as well as shareholders.

With respect, I would therefore urge that the proposed standard setter take up at least a part of this critical aspect of sustainability from its inception. A focus on inequalities and even exploitation may enable a standard setter to look first at a sub-set of human rights impacts that are most directly associated with the ways in which business conduct contributes to the fate of workforces and others beyond. Examples could include living wages, proportions of a workforce in precarious forms of labor, and discriminatory pay and promotion practices. They may also include the effects of land acquisition and use in many sectors and regions where these practices leave vulnerable communities exposed to numerous abuses. There has long been growing evidence of the financial materiality for many companies of poor practices on these issues and – if we needed it – COVID 19 has provided us with yet more.

A similar approach may therefore be taken with regard to the human dimension of sustainability as the one proposed with regard to the environmental dimension. A standard-setter could first take a sub-set of human rights impacts that are both directly connected with inequalities and which can most clearly have financial consequences for business itself. It could then progress on to other human rights impacts over time, including as the financial consequences for business of some of these become better understood.

Finally, I would urge that the IFRS Foundation take care in how it represents in both title and description the role of the proposed new standard-setter. Sustainability itself, and expectations of companies' sustainability reporting specifically, extend well beyond those issues that are currently recognized as having financially material consequences for companies and their shareholders. It would be a step backwards if the IFRS Foundation were to create the impression that the standards it will develop, being constrained to those with narrowly-defined financially material implications, are sufficient to meet today's needs with regard to the sustainability performance and reporting of companies. Nor should it be implied that they are of greater importance than significant business impacts on either people or planet for which we may not as yet understand the financial costs, or for which we may not reckon their toll in financial terms.

Yours sincerely,

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Board Chair
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