Submission to the Department for Business, Innovation & Skills on

The Future of Narrative Reporting

For further information relating to this submission:

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BIS Consultation response form: The Future of Narrative Reporting

A copy of the consultation is available at: http://www.bis.gov.uk/consultations.

Responses to the Consultation to be received by 19 October 2010

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Please tick the box from the following list of options that best describes you:

	Quoted company
	Other company
	Investor or investment manager
	Business representative organisation
	Investor representative organisation
✓	**Non governmental organisation (NGO)**
	Trade Union
	Lawyer or accountant
	Other (e.g. consultant or private individual)

Value of narrative reporting

<u>Question 1</u>: Are company directors providing useful and relevant information on the company's:

i) forward-looking strategy and
ii) principal risks and opportunities?

Comments
The October 2009 study published by the CORE Coalition on "The Reporting of Non-Financial Information in Annual Reports by the FTSE100" provides evidence of low overall levels of reporting of social and environmental issues. According to this study "the area of human rights was least well served". It gave the example of extractive companies that did not report on human rights issues relating to their security arrangements, despite the fact that many of the oil and gas sector companies in the FTSE100 are participants in initiatives that are designed to enable them to address human rights issues more effectively, such as the UN Global Compact and the Voluntary Principles on Security and Human Rights. **This deficit is particularly incongruous for several reasons:** **1) Some UK companies have suffered material losses because of their failure to address their human rights impacts; e.g. Vedanta Resources failing to gain a licence to operate a mine and expand their refinery in Orissa (India).** **2) Companies are increasingly likely to operate in contexts where their activities might contribute to infringements of human rights; e.g. through their utilisation of scarce resources, such as land, water and forestation. Issues such as global warming, soil erosion, reduced water tables and internal displacement elevate the risk for companies with regard to their human rights impacts.** **3) The UN Special Representative on Business and Human Rights, Professor Ruggie, has emphasised in his 2010 report to the UN Human Rights Council that "*Encouraging or requiring companies to report on human rights policies and impacts is a…key policy tool. It enables shareholders and other stakeholders to better engage with businesses, assess risk and compare performance within and across industries. Moreover, it helps companies to integrate human rights as core business concerns, supporting their responsibility to respect human rights*." (para 36)**

<u>Question 2:</u> What are the constraints on companies providing information on these issues?

Comments
The idea that companies are constrained from providing information on these issues is misleading. The reality is that there is a lack of incentives for companies to do so. This is partly because markets don't reward companies for providing such information. It also because the Government does not requires companies to do so. **If suitable incentives were in place, then companies would report on their social and environmental impacts.** **The UN Special Representative on Business and Human Rights set out the problem very clearly in his 2010 report to the UN Human Rights Council:** **"Worldwide, companies' financial reporting is their most tightly regulated and legally consequential reporting requirement. …However, the Special Representative's corporate law project documents that none of the 40-plus jurisdictions studied specifically identify human rights-related risks as a factor in determining "materiality", therefore few companies report them. This is despite the growing number of lawsuits against companies on human rights grounds, coupled with emerging evidence of significant costs triggered by human rights-based grievances". (para 39)** **The UN Special Representative urges regulators to "clarify that human rights impacts may be material and indicate when they should be disclosed under current financial reporting requirements" (para 39)**

<u>Question 3:</u> Does the information provided reflect the issues discussed by the directors in board meetings?

Comments
Not in a position to comment.

<u>Question 4</u>: Does the information help shareholders to press directors on key issues relating to strategy and risk, or inform their business decisions?

Comments
Amnesty International has had many meetings with investors over the last year to share with them our concerns about specific company operations that have contributed to human rights abuses. In not a single case did an investor cite company reports as a source of useful information on a company's human rights impacts. **Information provided by non-governmental organisations and by the media is likely to be of much greater use to shareholders in deciding when to press directors and around what issues.**

<u>Question 5</u>: If a company does not provide sufficient or material information to you, do you challenge it? Is there anything which could help you to do so?

Comments
In our experience of examining company reports, the likelihood of a company drawing attention to a particular human rights issue is often inversely proportionally to the company's actual impacts on human rights. In other words, companies are more likely in their Business Reviews and CSR/Sustainability reports to draw attention to issues of relatively minor consequence for human rights (such as their CSR activities) than they are to draw attention to issues of major consequence that are linked to the company's business model and core business operations. **The kind of hooks that would be useful for non-governmental organisations would include:** **a) separate vote on the Business Review at the AGM;** **b) legislation requiring appropriate disclosure of environmental and social impacts and risk;** **c) monitoring and enforcement role of a regulator in overseeing reporting requirements** **There should also be an explicit requirement on companies to report on human rights issues. These should not be subsumed under other issues as they are at present under s417.**

Question 6: **What other sources of company information do you use and how valuable are they (e.g. information provided on the website, analysts' briefings, dialogue with the company, corporate social responsibility report)?**

Comments
Amnesty International has many avenues of information on the human rights impacts of companies. Perhaps the most significant is the Business and Human Rights Resource Centre (www.business-humanrights.org). **However, there is no substitute for having a single reliable source of information emanating from the company itself that serves as a basis of comparison. The idea that shareholders and others should rely on multiple sources of information, including third party sources, obfuscates the issue.** **Companies are very selective in deciding what information to provide to which constituencies. Just as they segment the market with regard to promoting their products, so they segment the market with regard to provision of information. Companies decide what information to provide to whom on the basis of expediency. This defeats the purpose of reliability, consistency and comprehensiveness of information, even with regard to 'materiality'.** **Markets rely on quality and availability of information to operate effectively. Why should markets be fobbed off with inadequate information relating to a company's social and environmental impacts? It is the responsibility of Government to correct such market failure.**

Question 7: **Is there scope to reduce or simplify the requirements on which companies report?**

Comments
With regard to non-financial reporting, there is the need to clarify requirements with regard to international standards and norms on the responsibilities of business. There are various sources from which human rights reporting requirements could be derived, including the Global Reporting Initiative, the UN Global Compact, and the due diligence framework that is being developed by the UN Special Representative on Business and Human Rights, Professor Ruggie.

<u>Question 8:</u> Is there scope to arrange the information in a more useful way?

Comments
The information should be arranged in a way that eases comparability and that reflects the principles of effective non-financial reporting that have been developed by institutions such as Accountability and that are embodied in ISO 26000. **Two of the main areas of guidance in ISO 26000 concern labour practices and human rights. These include issues of complicity, discrimination, the position of vulnerable groups, and civil and political rights as well as economic, social and cultural rights. For all such issues, ISO 26000 addresses the expectations of companies in confronting them. The human rights sections have also been written to be consistent with the Ruggie framework for human rights and the due diligence-based approach for companies which he recommends.**

Business Review

<u>Question 9</u>: Looking at an Operating & Financial Review and the existing business review (see Annex D), do you see value in reinstating elements of an OFR and if so what would they be? In particular, would a statutory reporting standard help to improve the quality of reporting?

Comments
Some elements of the OFR could be usefully reinstated, in particular with regard to the enhanced audit, an articulation of long-term risks and developments, and a framework for reporting on social and environmental issues that facilitates comparability. **A statutory reporting standard would not only help improve the quality of reporting, but is a pre-condition for this to happen.**

<u>Question 10</u>: The business review provisions require quoted companies to report, to the extent necessary, on:

- **main trends and factors likely to affect the future development, performance and position of the company's business**
- **information on environmental matters**
- **information on employees**
- **information on social and community matters**
- **persons with whom the company has essential contractual and other relationships**
  - **i) is this information useful to you? How do you use it?**
  - **ii) Could disclosure be improved? If so, how?**
  - **iii) Are there key issues which are missing? If so, please explain?**

Comments
There should be an explicit requirement to report on human rights issues. These should not be subsumed under other issues as they are at the moment. The assumption that human rights can be fitted into other categories is at odds with all key developments in the field of business and human rights, including the revision of the OECD Guidelines which is almost certain to have a separate human rights chapter, and the proposals that have been developed by the UN Special Representative on Business and Human Rights. **A key element of reporting that would be useful to investors in identifying human rights risk is information on outstanding regulatory action and court cases against companies.**

<u>Question 11:</u> Would more guidance be helpful? If so, what form should this take? For example, best practice example, sample Key Performance Indicators, etc?

Comments
A statutory reporting requirement should be introduced, with guidance to accompany it. Non-financial KPIs should be introduced to ensure that reporting is meaningful and useful. This should cover the human rights issues identified in ISO 26000 and in the framework developed by the UN Special Representative on Business and Human Rights.

<u>Question 12:</u> Should there be a shareholder's advisory vote on the Business Review?

Comments
This might provide a useful hook for shareholders to flag up concerns.

<u>Question 13</u>: Are there non-regulatory solutions to increasing quality through better guidance or publicising excellence in business reports? If so, what?

Comments
Such initiatives will not provide sufficient incentives for companies to report on their non-financial impacts. The problem is not fundamentally one of lack of knowledge, but lack of will. Companies could report on their human rights impacts if they wanted to, but they choose not to. Deficiencies in the current framework will not be addressed by non-regulatory initiatives.

Directors' Remuneration Report

Question 14: Do the current disclosure requirements provide clear and usable information about:

- **the total remuneration paid to directors, and how this is made up;**
- **the performance criteria for payments to directors, and how these relate to the company's strategic objectives;**
- **company performance against these criteria, so that there is a demonstrable link between pay and performance.;**
- **the process by which directors' remuneration is decided?**

Comments
Not in a position to comment

Costs

Question 15:
If you can provide any information on costs associated either with the existing narrative reporting requirements eg preparing your business review or your views on potential costs and benefits in relation to any of the ideas in this consultation, please give details

Comments
An improved reporting framework will enable companies to rationalise their reporting, thereby potentially reducing the overall cost of social and environmental reporting. It provides less incentive for companies to use reporting for PR purposes, providing material that is of little relevance to their shareholders or stakeholders.