



June 24<sup>th</sup>, 2013

Mr. Bhatiar Manurung  
Mazars  
Jl. Sisingamangaraja 26, Bundaran Senayan  
12120 Jakarta Selatan  
bahtiar.manurung@mazars.co.id

Ms. Anna Triponel  
Shift Project, Ltd.  
1330 Avenue of the Americas – Suite 23A  
New York, NY 10019  
anna.triponel@shiftproject.org

Dear Mr. Manurung and Ms. Triponel,

The International Corporate Accountability Roundtable (ICAR), a project of the Tides Center, is a coalition of human rights, environmental, labor, and development organizations that creates, promotes and defends legal frameworks to ensure corporations respect human rights in their global operations. Our Steering Committee includes Amnesty International, EarthRights International, Global Witness, Human Rights First and Human Rights Watch.

Mazars and Shift have recently announced a two-year project to develop a twin set of standards for auditing companies in line with the United Nations Guiding Principles on Business and Human Rights (“Guiding Principles”).<sup>1</sup> The standards include:

1. Reporting Standard: A global and widely accepted standard for business to report on their implementation of appropriate risk management procedures, in line with the Guiding Principles; and
2. Assurance Standard: A global and widely accepted assurance standard to assess companies’ performance with regard to human rights risk management, designed around existing auditing standards.<sup>2</sup>

---

<sup>1</sup> Human Rights Council, John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, UN Doc. A/HRC/17/31 (March 21, 2011) (advance edited edition), available at <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>.

<sup>2</sup> Mazars & Shift, *Developing Global Standards for the Reporting and Assurance of Company Alignment with the UN Guiding Principles on Business and Human Rights: A Discussion Paper*, 3, (May 1, 2013), available at <http://shiftproject.org/sites/default/files/Developing%20Global%20Standards%20Discussion%20Paper%20-%20Final%202013%2005%2001.pdf>.

As part of the Reporting Standard, the company would prepare a Human Rights Statement that provides an overview of its key human rights policies and processes throughout a given period and describes the extent to which these policies are in alignment with the Guiding Principles.<sup>3</sup>

As part of the Assurance Standard, the company would engage a competent and independent human rights assurance provider to confirm the company's Human Rights Statement is a fair representation of their internal practices. The assurance review would assess the existence, suitability and effectiveness of the policies and processes that make up the company's human rights management system, as judged against the Guiding Principles.<sup>4</sup>

ICAR believes that the Guiding Principles do not provide a set of clear, well-defined, and measurable standards that would be capable of establishing an effective system for auditing and comparing businesses' implementation of commitments to respect human rights. Further, using the Guiding Principles in this manner may also have the unintended effect of diluting efforts of existing multi-stakeholder initiatives that already require independent monitoring and have clearer and stronger standards. Additionally, ICAR is concerned that lessons learned from previous third-party auditing regimes indicate the weakness of these systems in compelling companies to take effective action to implement even clear commitments.

ICAR believes that the Mazars and Shift proposal underestimates the complexity of using reporting and third-party auditing to regulate the implementation of the universe of human rights norms that are incorporated into the Guiding Principles.

Given these concerns, ICAR believes that, at minimum, the proposal must be improved to address the following:

- The Guiding Principles set the minimum agreed upon floor for companies to understand the components of their responsibility to respect human rights. The Guiding Principles should therefore not be read as an exhaustive standard, especially where existing sector-specific standards have been developed through multi-stakeholder processes and may be stronger and clearer in certain contexts;
- Companies should be required to fully disclose both policies and processes, including results of risk assessments and mitigation efforts, as part of their human rights due diligence to motivate effective action to respect human rights; and
- The selection process for assurance providers as well as the processes used by assurers in making their assessments should be publicly disclosed.

**The UN Guiding Principles should not be applied as an exhaustive standard and sector specific standards developed in a multi-stakeholder fashion may provide stronger and clearer standards**

ICAR is concerned that the Reporting Standard as envisioned by Mazars and Shift would lead to the development of the Guiding Principles as the limiting standard for corporate reporting on

---

<sup>3</sup> Mazars & Shift, *supra* note 2, at 6.

<sup>4</sup> *Id.*, at 6.

human rights. The proposal frames the Guiding Principles as “the extent and limits of what is expected of companies with regard to respect for human rights,”<sup>5</sup> whereas the Introduction to the Guiding Principles describes them as “establishing a common global platform for action, on which cumulative progress can be built.”<sup>6</sup> The Guiding Principles have been offered by the UN Special Representative as a blueprint for implementing the “Protect, Respect, and Remedy” Framework, and a set of benchmarks for stakeholders to assess business respect for human rights, but they were not intended to foreclose other promising longer-term developments.<sup>7</sup>

Existing approaches such as the OECD Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High Risk Areas<sup>8</sup> (“OECD Guidance”) and the Global Network Initiative<sup>9</sup> (“GNI”) have, for example, developed sector-specific standards that are stronger and clearer than the Guiding Principles.

The OECD Guidance provides an auditable, sector-specific disclosure requirement that includes risk assessment reports, detailed descriptions of how due diligence processes have been reviewed and verified, and what steps are taken to regularly monitor changing circumstances of supply chains.<sup>10</sup>

Another example, the GNI, is a sector-specific multi-stakeholder initiative for the information and communications technology industry that requires participating companies to implement its Principles on Freedom of Expression and Privacy (the “Principles”) to protect and advance the enjoyment of these human rights globally.<sup>11</sup> Implementation of the Principles includes a Governance, Accountability and Learning process that requires participating companies to submit to independent compliance monitoring and transparent reporting outlining its compliance activities, results of independent assessments, the impact on freedom of expression and privacy and the path forward.<sup>12</sup>

ICAR believes that examples like the OECD Guidance and the GNI, where standards were developed through elaborate multi-stakeholder processes, represent models where the responsibility to respect human rights has been clarified, and where companies can be held to agreed-upon standards for their actions with respect to human rights. Therefore, as Mazars

---

<sup>5</sup> Mazars & Shift, at 6.

<sup>6</sup> Human Rights Council, *supra* note 1, at 5.

<sup>7</sup> *See id.* *See also* Office of the Special Representative of the United Nations Secretary-General for business and human rights, Press Release: UN Guiding Principles for business & human rights published (March 24, 2011), available at <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-press-release-24-mar-2011.pdf>.

<sup>8</sup> OECD (2011), *OECD Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High Risk Areas*, OECD Publishing, available at <http://www.oecd.org/daf/inv/mne/GuidanceEdition2.pdf>.

<sup>9</sup> Global Network Initiative, *Principles on Freedom of Expression and Privacy* [hereinafter *GNI Principles*] (2009), available at <http://globalnetworkinitiative.org/principles/index.php>.

<sup>10</sup> OECD (2011), *supra* note 8. *See also*, OECD (2012), *Due Diligence Guidance: towards conflict-free mineral supply chains*, OECD Publishing, available at [http://www.oecd.org/daf/inv/mne/EasytoUseGuide\\_English.pdf](http://www.oecd.org/daf/inv/mne/EasytoUseGuide_English.pdf).

<sup>11</sup> Global Network Initiative, *Implementation Guidelines* [hereinafter *GNI Implementation*] (2009), available at <http://globalnetworkinitiative.org/implementationguidelines/index.php>; *GNI Principles*, *supra* note 9.

<sup>12</sup> Global Network Initiative, *Governance, Accountability, & Learning Framework* (2009), available at <http://globalnetworkinitiative.org/governanceframework/index.php>; *GNI Implementation*; *GNI Principles*.

and Shift develop the Reporting Standard, they should carefully consider the range of other standards that provide enhanced specificity, clarity and accountability around human rights developed with, or prior to, the Guiding Principles.

**Companies should be required to disclose publicly both policies and processes for human rights due diligence to motivate effective action to respect human rights**

The Guiding Principles require that companies actively communicate their policy commitment on human rights, and implement processes to enable them to “know and show” that they respect human rights in practice.<sup>13</sup> The commentary to Principle 21 clarifies that “showing involves providing a measure of transparency and accountability to individuals or groups who may be impacted and to other stakeholders, including investors.”<sup>14</sup> The commentary to Principle 21 further states that businesses whose activities or operations pose risks of severe human rights impacts should report formally on how they address them.<sup>15</sup>

The Reporting Standard proposed by Mazars and Shift provides a path for companies to develop and report a Human Rights Statement. However, it inadequately addresses the need for companies to be prepared to fully “know and show” how they respect human rights in their operations.

ICAR believes that the Reporting Standard should not allow companies to limit their Human Rights Statement to certain aspects of their operations or to limit their disclosure to specific types of risks or impacts.

ICAR has consistently advocated for human rights disclosures requiring that companies publicly disclose both their human rights due diligence policies and their actual processes.<sup>16</sup> Reporting on “processes” should include: the concrete steps taken to identify risks to human rights; the results of the company’s inquiry, including risks and impacts identified; and, steps actually taken to mitigate the risks and prevent human rights abuses.<sup>17</sup> Furthermore, reporting requirements should clearly extend to the activities of a company’s subsidiaries, contractors and business partners.<sup>18</sup>

---

<sup>13</sup> Human Rights Council, *supra* note 1, at 15.

<sup>14</sup> *Id.*, at 20.

<sup>15</sup> *Id.*

<sup>16</sup> ICAR, *Submission to U.S. Department of State on UN Framework and Guiding Principles Implementation* (July 30, 2012), available at <http://accountabilityroundtable.org/analysis/icar-statement-to-us-state-department-on-un-framework-and-guiding-principles-implementation/>; ICAR, *Submission to U.S. Department of State on “Reporting Requirements on Responsible Investment in Burma”* (October 15, 2012), available at <http://accountabilityroundtable.org/analysis/icar-statement-to-us-government-on-reporting-requirements-on-responsible-investment-in-burma/>; ICAR & Global Witness, *Submission to the U.S. Securities & Exchange Commission* (November 1, 2011), available at <http://accountabilityroundtable.org/analysis/icar-and-global-witness-letter-to-the-sec-november-1st-2011/>.

<sup>17</sup> ICAR, *Submission to U.S. Department of State on “Reporting Requirements on Responsible Investment in Burma”*, *supra* note 15.

<sup>18</sup> See *id.*; ICAR, *Submission to U.S. Department of State on UN Framework and Guiding Principles Implementation*, *supra* note 15.

In our December 2012 publication, “Human Rights Due Diligence: The Role of States”, ICAR’s Experts noted that when a company is required by regulators to disclose its policies and procedures, it prompts companies to go beyond reporting and act affirmatively to ensure compliance with the standards set.<sup>19</sup> Broad human rights due diligence disclosure allows stakeholders, including consumers, shareholders, and civil society organizations, to access information about corporate activities, and to advocate for improvements to such policies.<sup>20</sup>

Transparency around policies and human rights due diligence processes is not a novel approach, and has been adopted or proposed in existing legislation and regulation. In the United States, the Securities and Exchange Commission (SEC) has issued a rule for conflict minerals reporting requirements, based on the congressional mandate under section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.<sup>21</sup> The SEC rule requires companies that report to the SEC to identify whether they source minerals from the Democratic Republic of the Congo (DRC) or neighboring countries. As part of the required disclosures, companies must describe the specific measures taken to exercise due diligence and it is recommended that they follow the OECD Guidance, described above.<sup>22</sup>

The U.S. Department of State recently released their Responsible Investment Reporting Requirements for all U.S. businesses investing more than US\$500,000 in Burma, effective May 23, 2013, which include annual public disclosure of human rights due diligence policies and procedures.<sup>23</sup> Public reports require summaries or copies of the policies and procedure relating to operational impacts on human rights, community and stakeholder engagement in Burma, and grievance processes.<sup>24</sup>

The European Commission (EC) has recently proposed a directive on non-financial disclosure requirements that would, in part, require corporations to report publicly their respect for human rights. The proposed standards would require companies report relevant and material information on policies, results, risks and risk management efforts pertaining to respect for human rights, as well as other environmental, social and governance issues.<sup>25</sup>

---

<sup>19</sup> De Schutter, Olivier, Mark B. Taylor, Anita Ramasastry & Robert C. Thompson, *Human Rights Due Diligence: The Role of States*, 45 (December 2012), available at <http://accountabilityroundtable.org/initiatives/human-rights-due-diligence/>.

<sup>20</sup> *Id.*, at 45.

<sup>21</sup> SEC Conflict Minerals, 17 C.F.R. § 240 and § 249b (2012); Conflict Minerals, Exchange Act Release No. 34-67716 (Aug. 22, 2012), available at <http://www.sec.gov/rules/final/2012/34-67716.pdf>.

<sup>22</sup> *Id.*

<sup>23</sup> U.S. Department of State, *Responsible Investment Reporting Requirements*, OMB No. 1405-0209, available at <http://www.humanrights.gov/wp-content/uploads/2013/05/Responsible-Investment-Reporting-Requirements-Final.pdf>.

<sup>24</sup> *Id.*

<sup>25</sup> European Commission, *Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups*, COM(2013) 207 final (April 16, 2013), available at [http://ec.europa.eu/internal\\_market/accounting/docs/non-financial-reporting/com\\_2013\\_207\\_en.pdf](http://ec.europa.eu/internal_market/accounting/docs/non-financial-reporting/com_2013_207_en.pdf). See also, European Commission, *Memo: Disclosure of non-financial and diversity information by certain large companies and groups (proposal to amend Accounting Directives) – Frequently asked questions*, MEMO-13-336\_EN (April 16, 2013), available at [http://europa.eu/rapid/press-release MEMO-13-336\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-336_en.htm).

Mandated transparency in reporting human rights due diligence policies and processes, including results of risk assessments and mitigation efforts, encourages businesses to affirmatively take action to respect human rights. ICAR therefore believes that the Reporting Standard must include full disclosure of human rights due diligence policies and processes.

**The process of selecting assurance providers and the processes undertaken by the assurance providers in their assessments should be transparent and publicly reported**

ICAR expresses strong concerns about the transparency of the Assurance Standard proposed by Mazars and Shift. We believe there should be transparency of both the process for selection of assurance providers, and the procedures used by assurance providers to verify companies' reporting statements.

Social audit processes have been increasingly fraught with controversy and challenges to their effectiveness compared to alternative approaches.<sup>26</sup> Requiring transparency regarding the selection process for assurance providers will help ensure the independence and credibility of assurers. This may address weaknesses that have confronted social audit programs in the past, where stakeholders felt certain auditors lacked credibility and independence based on their prior relationships with the businesses they were hired to audit.<sup>27</sup>

ICAR believes that transparent disclosure of assurance providers' processes in verifying compliance will provide accountability to affected stakeholders regarding the competence of the Assurance Standard.

**Conclusion**

ICAR reiterates our concern that the Mazars and Shift proposal underestimates the complexity of using reporting and third-party auditing to regulate the implementation of the universe of human rights norms that are incorporated into the Guiding Principles. The Guiding Principles do not provide a set of clear, well-defined, and measurable standards that would be capable of establishing an effective system for auditing and comparing businesses' implementation of commitments to respect human rights.

Further, we believe that any reporting process developed cannot replace the need for effective remedies to be available to victims, both judicial and non-judicial, when harm occurs.<sup>28</sup> Due diligence measures, including through public disclosures, serve a valuable purpose as a means for companies to understand and address human rights related risks. They should not, however, be used to evade liability.

---

<sup>26</sup> AFL-CIO, *Responsibility Outsourced* (April 2013), available at <http://www.aflcio.org/content/download/77061/1902391/CSReport.pdf>

<sup>27</sup> *Id.*, at 17.

<sup>28</sup> ICAR, *Statement to the European Commission on "Renewed EU Strategy 2011-2014 for Corporate Social Responsibility"* (June 26, 2012), available at <http://accountabilityroundtable.org/analysis/icar-statement-on-renewed-eu-strategy-2011-2014-for-corporate-social-responsibility/>.

We look forward to further engagement on this important issue with Mazars and Shift, and to ensuring that any standards and assurance processes that are developed consider the concerns and suggestions we have above.

Sincerely,

A handwritten signature in black ink, appearing to read "Amol Mehra". The signature is fluid and cursive, with the first name "Amol" being more prominent than the last name "Mehra".

Amol Mehra  
Director  
International Corporate Accountability Roundtable (ICAR)  
[amol@accountabilityroundtable.org](mailto:amol@accountabilityroundtable.org)