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Mazars and Shift Proposed Reporting/Assurance Standards for the UN “PRR Framework” on Business and Human Rights: UNI Apro Response

We, at the UNI Global Union Asia Pacific Regional Organization (UNI Apro), welcome the 2008 decision of the UN Human Rights Council adopting the “Protect, Respect and Remedy” (PRR) Framework developed by the Special Representative of the UN Secretary General “on the issue of human rights and transnational corporations”.

Likewise, we welcome the subsequent decision of the Council endorsing the UN Guiding Principles on Business and Human Rights crafted by Prof. John Ruggie, the UN Special Representative on business and human rights. Finally, we welcome the initiative of the UN Working Group on Business and Human Rights, along with some ASEAN advocates of business adherence to universal human rights conventions, to develop global standards for the reporting and assurance of company alignment with the UN Guiding Principles on Business and Human Rights.

We acknowledge that some of our colleagues in the broad trade union and civil society movement in the Asia-Pacific, in Southeast Asia in particular, have expressed some reservations about the efforts of Prof. Ruggie to develop these UN Guiding Principles because they feel that these are not bold enough to arrest the labor and human rights abuses being committed by some multinational corporations. Some even suggested that the PRR framework can be made more effective by adding a fourth step, namely S for Shame. However, for the time being, we, at UNI Apro, see the PRR Framework as an advance in humanizing a globalized, liberalized, privatized and deregulated global economic order.

The lack of enforceable global rules on how corporations shall conduct their business across borders in a responsible and ethical manner are at the roots of the lingering global financial and economic crisis. Deregulation in virtually all areas of the economy has fuelled an unsustainable Race to the Bottom, with borderless corporate greed reigning supreme everywhere, from the factory system of Asia all the way to the stock markets of New York and London.

The hundreds, if not thousands, of the so-called voluntary Codes of Conduct among the multinationals helped minimize some of the abuses; however, they are not enough to stop the Race to the Bottom, which, in general, has sacrificed labor, social and human rights in many places of the globe.

Look at the health and safety disasters occurring with alarming regularity in the global garments and textile industry, easily the sector with the most number of

voluntary Codes. We all know the latest proof of corporate irresponsibility -- a thousand underpaid Bangladeshi garments workers buried last April in a decrepit building that was not supposed to host factories producing branded garments for the global market. Look also how Lehman Brothers, which used to produce social responsibility reports extolling their philanthropic projects, contributed to the global financial mess we are all in today.

No, we are not opposed to these Codes per se, much less to the concept of corporate social responsibility (CSR). In fact, we, in the trade union movement, have been pushing for CSR through the decades, seeking a deepening of substance and broadening of coverage. Deep in our heart, we know that the Race to the Bottom can only be arrested if the business world would learn to behave responsibly based not only on the profit targets of their shareholders but also, and more importantly, on the welfare and sustainability requirements of all stakeholders in society.

For this, we need a new architecture of economic globalization, which puts people first at the center of development. For this, we need balanced and equitable rules of business engagement that are enforceable, at the workplaces, national, regional and global levels. This is why we welcome this dialogue-consultation on the development of standards on reporting and assurance on the UN Guiding Principles on Business and Human Rights.

In this context, we, at UNI Apro, would like to share the following views:

1. On the PRR and Guiding Principles: a continuing work in progress

Essentially, there is indeed relatively nothing new in the PRR Framework and Guiding Principles. They restate and reaffirm established UN International Conventions on varied economic, social and cultural human rights and the role of the UN Member States as protectors of those rights. What is new is the coherence and logic in the perspective provided by Prof. Ruggie, the UN Human Rights Council and the UN Working Group on Human Rights on how these rights should be fully respected by the business community, especially under globalization. In particular, there is coherence in the presentation of the triad concepts – the duty of the State to protect human rights, the duty of corporations to respect these rights and the shared duty or responsibility of the two to provide remedies for any human rights violations.

Nonetheless, we believe the PRR Framework and the Guiding Principles need to be further fleshed out even if the relational dynamics of the triad concepts remain. For example, there is a need to visualize and operationalize the triad concepts in terms of work relations in the factory system, plantations, extractive industries, services sector and so on. Also, a common recurring issue under globalization is the outsourcing/offshoring of work and the myriad corporate value chains that have evolved in various shapes and complexity across the globe. Most of the labor rights violations documented by the trade union movement are related to these phenomena because they are partly based on the desire of multinationals to extract maximum profits at the cheapest (and sometimes, ruthless) way possible, fuelling

what we all call as a Race to the Bottom.

Hence, there is a need to flesh out further the minimum standards of behavior that should be observed by corporations everywhere and throughout their global production networks and so-called value chains. A Listing of the core universal rights should be amplified, similar to what the International Labor Conference did in 1998 when it adopted the Fundamental Principles and Rights at Work, which subsequently became the advocacy platform for the ILO's Decent Work campaign. There is no similar listing in the documents on the PRR Framework and Guiding Principles and the proposed global standards for the reporting and assurance of company alignments with the UN Guiding Principles on Business and Human Rights.

2. On reportorial and assurance processes: no to "tick-box" approach

The trade union movement has accumulated so much knowledge and experiences on the reporting, monitoring and auditing of numerous Codes of Conduct. Some companies do good because of the belief that doing good indeed makes good business.

However, many corporations try to market their social reports primarily for public relations - "PR" purposes even if their claim to goodness is weak or tenuous. How are such companies able to come up with good reports? The most common explanations are the weak reportorial and assurance requirements, which are manipulated by these companies to their advantage.

For example, social audits based on a checklist of "concretes", e.g., rest rooms, fire exits, ventilation systems, etc. are promoted at the expense of a deeper inquiry on the "non-concretes", e.g., freedom to organize, grievance procedure, cultural diversity management, etc. Thus, a company with a beautiful building but undertaking excessive casualization of the work force through excessive outsourcing and short-term hiring can easily get a seal of good housekeeping provided by chosen reporters and "independent" social auditors.

The point is that good reporting and assurance require many things such as full disclosure of relevant materials and information, capacity-building for social auditors to undertake rigorous "independent" evaluation and so on and so forth.

3. Social dialogue and consultation mechanisms: still underdeveloped

Missing in most of the voluntary Codes of Conduct are social dialogue and consultation with trade unions, which, by themselves, can provide some remedies for problems mentioned by the PRR reports. In the PRR Guiding Principles, these are not fully developed. The truth is that many corporate abuses happen precisely because of the lack of dialogue and consultation by companies with all the stakeholders, starting with their own employees and their trade unions and those affected by any company project. Incidentally, the heart of modern industrial relations (IR) is rule making, as propounded by the late US Labor Secretary John

Dunlop. Rule making in an industrial democracy is not possible without any social dialogue and consultation among the concerned IR actors.

One problem under globalization: how does local people, workers and their trade unions hold dialogue and consultation with employers or investors (or principals) based in another country and who makes decisions thousands of kilometers away? The trade unions and UNI Global Union answer to this is to have a Global Framework Agreement (GFA), which, unfortunately, has been received positively by only a few companies, mostly in Europe.

4. Clearing the maze: applying the rules in the FTAs

The PRR Guiding Principles should also be fleshed out and operationalized in the context of the confusing array of bilateral, regional and global free trade agreements (FTAs) that have proliferated, over a hundred of them, in the Asia-Pacific. In general, these FTAs seek full liberalization of trade and investment. The problem is that most of these FTAs have no clear provisions on the observance or enforcement of human, labor, trade union and environmental rights. This maze of FTAs present the UN PRR groups, the trade unions and all concerned civil society organizations a very difficult development challenge – how to insure that the social, labor and environmental dimensions of economic integration are enhanced, rather than eroded, due to the proliferation of these FTAs. UNI Apro shall be happy to participate in any discussion along this line.

5. Beyond the minima: Race to the Top and challenge of managing adjustments through social dialogue and social partnership

Any social audit and social dialogue should lead to a regime of good Industrial Relations (IR) and other practices and towards the continuous raising of the bar. The problem with many social audits and Codes of Conduct is the focus on the minima, which the checklist or tick-off approach represents. As the TQM practitioners put it, the ideal is to have continuous improvement. If this continuous improvement were applied by the 80,000 multinationals and their 800,000 subsidiaries worldwide in the areas of social relations, employment relations and environmental relations, then the world would be a better place to live in indeed. The Race to the Bottom can be a Race to the Top.

The Race to the Top is what UNI Global Union and UNI Apro have been trying to push through our campaigns for GFAs, social dialogue and partnership industrial relations, especially in managing business and organizational adjustments under globalization. We at UNI Apro are acutely aware that such adjustments are real and continuing challenges in our fiercely competitive world amidst a rapidly changing technological and market environment. What we are saying: adjust without trampling on basic human and labor rights. Adjust without giving up on our collective sense of humanity and morality. To achieve this, we, trade unions and employers, need to sit down, discuss the challenges together and work in partnership to develop and implement joint strategy to confront the challenges.

The essence of a GFA is social dialogue, primarily to discuss common survival and growth concerns -- business and profits for the companies, jobs and welfare for the employees. This framework is clearly spelled out in the forty eight Global Framework Agreements concluded by UNI with major multinational companies and institutions. Eventually, social dialogue, sustained by good faith and respect by the parties for each other, lead to social partnership, specifically in the sharing of gains as well as pains.

For example, in the case of the Hero supermarket chain in Indonesia, the best marketing and productivity ally of this highly-successful retail firm is the trade union and its committed members. But this has happened only after Hero Supermarket Management and its union learned to sit down, hold dialogue in a frank and open manner on critically business and employee concerns, and forge a common vision of growth. The dialogue has bloomed into a trade union management partnership that is the envy of many companies in Indonesia.

The whole point is that the PRR Framework should serve as an instrument in encouraging social dialogue with all stakeholders, particularly with the employees of multinational corporations. But for social dialogue to be effective and trade union and management partnership to develop, companies should be prepared to accept unions as dialogue partners and eventually, as social partners.

**Challenge to ASEAN:
Building a truly rules-based community**

In the light of the foregoing, the UNI Apro is enthused that the ASEAN, through some of its official human rights officials, is supporting the development of global standards for the operationalization of the PRR Framework and its Guiding Principles. The ASEAN vision of a community of caring and sharing societies is not possible if the region is unable to fulfill the minimum PRR challenges: duty of the State to protect human, trade union and workers' rights, duty of corporations to respect these rights and shared duty of the State and the business community to find just remedies for any human, trade unions and workers' rights violations.

The PRR Framework gives the ASEAN a good opportunity to develop a road map on how the provisions of the ASEAN Charter on human rights can be operationalized in the context of regional and global integration. UNI Apro shall be happy to assist the ASEAN in helping develop this road map – in the spirit of community-hood and social partnership.

The Mazars/Shift Project - Fundamental Deficits that need to be addressed

Reviewing the proposed project, we found a number of critical elements missing, particularly the roles of trade unions and key issues related to or of concern to workers, namely the questions of respect for trade union rights and collective bargaining.

Workers are human beings, and indeed they constitute the majority in any societies. Therefore, any discussions about human rights must include workers' rights, especially

those mandated under the various ILO Conventions, particularly workers' right to join trade union of their own choosing and collective bargaining. The impact of any abuses of ILO core Conventions or neglect of these rights must be a mandatory component of the reporting and assurance standards.

In this connection, the Company's Human Rights Statement, that must include a section on their compliance with the ILO core conventions, must be jointly attested by a senior representative of the Management and the trade union and the representative of the workers nominated by the workers.

The same for the Company Human Rights Assurance Report. The appointment of the "competent assurance provider" must be subjected to the approval of the trade union and the representative of the workers nominated by the workers. As in the case of the Company's Human Rights Statement, the Assurance Report must be jointly attested by a senior representative of the "Assurance Provider" and the trade union and the representative of the workers nominated by the workers.

While understanding that alignment with the guiding principles as a journey, we must also point out that the journey need to be well planned to ensure that we take the shortest route to ensure and enable the Company to observe and implement the guiding principles in the nearest future.

In this connection, the process for companies to assure their stakeholders that they are capable and are meeting their responsibility to respect human rights in practice must include, among others, the following:

- ✓ Regular and scheduled consultation with stakeholders, affected people in particular such as workers and their trade unions, to evaluate the effectiveness of the company policies and strategy in relations to the Guiding principles and consider ways and means to address any weaknesses and inconsistencies in their respect for human rights.
- ✓ Access to enable victims of human rights abuses to seek effective and prompt remedy and to ensure that those responsible for such abuses are held to account.

These are our initial response to the proposal as outlined in the Discussions paper produced by Mazars and Shift and launched on 1st. May 2013. UNI Apro look forwards to an active and constructive dialogue with all the stakeholders including the representatives of Mazars and Shift - the proponents of this project to develop a credible and transparent process to ensure and enable Company to achieve the noble goals as set out in the UN Guiding Principles on Business and Human Rights.

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